

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 23-0005226 CAF**

**KEVIN BONILLA,
Complainant**

v.

**FCA US LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Kevin Bonilla (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in a vehicle manufactured by FCA US LLC (Respondent). A preponderance of the evidence shows that Complainant's vehicle qualifies for warranty repair relief.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

Notice and jurisdiction were not contested and are addressed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened electronically on August 16, 2023, before Chief Hearings Examiner Bennie Brown with the Department's Office of Administrative Hearings (OAH). Complainant appeared and represented himself. Respondent appeared through its representative Curtis Jeffries. The hearing concluded the same day, but the record was held open until August 23, 2023, to allow the submission of additional evidence. On September 25, 2023, Complainant requested that another issue be considered for relief. The record was reopened to allow the parties to address the additional issue, and the record officially closed on October 17, 2023.

II. APPLICABLE LAW

The Texas Lemon Law and Warranty Performance Law require a manufacturer, converter, or distributor to make repairs necessary to conform a new motor vehicle to an applicable warranty.¹ If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.² The case may be referred to OAH for a hearing on the merits to determine which type of relief, if any, is warranted pursuant to statute.³ The complaint filed with the Department identifies the relevant issues to address at the hearing.⁴ Complainant has the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.⁵ Failure to prove even one required fact results in denial of relief.

In this case Complainant is seeking repair of alleged warrantable defects. A vehicle may qualify for warranty repair relief if all the following conditions are met:

- 1) the vehicle has a “defect . . . that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle;”⁶
- 2) the vehicle owner provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty’s expiration;⁷ and
- 3) the vehicle owner filed a complaint with the Department specifying the defect.⁸

¹ Tex. Occ. Code § 2301.603(a).

² Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

³ Tex. Occ. Code § 2301.204(d); 43 Tex. Admin. Code § 215.202(b)(4).

⁴ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent. *See* Tex. Gov’t Code §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

⁵ 43 Tex. Admin. Code § 206.66(d); *see Vance v. My Apartment Steak House, Inc.*, 677 S.W. 2d 480, 482 (Tex. 1984) (“[A] civil litigant who asserts an affirmative claim of relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

⁶ Tex. Occ. Code § 2301.204(a).

⁷ Tex. Occ. Code § 2301.204(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

⁸ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1).

III. DISCUSSION

A. Summary of Complainant's Evidence and Arguments

On May 31, 2021, Complainant purchased a pre-owned 2020 Jeep Wrangler Sport from Dick Poe Motors, LP d/b/a Dick Poe Chrysler Jeep (Dick Poe), a franchised dealer of Respondent, located in El Paso, Texas.⁹ The vehicle had 11,068 miles on the odometer at the time of purchase.¹⁰ The vehicle's basic warranty provides coverage for 3 years or 36,000 miles, whichever occurs first, and the vehicle's powertrain warranty provides coverage for 5 years or 60,000 miles, whichever occurs first.¹¹

On December 28, 2022, Complainant filed a complaint with the Department alleging that the vehicle has coolant leaks, failure of the auto start/stop system, failure to start, and misfires. The complainant also noted that the vehicle may require a second replacement of the powertrain control module (PCM). On December 29, 2022, the Department sent a copy of the complaint to Respondent providing written notice of the alleged defects.

In relevant part, the vehicle was taken for repair of the alleged issues as follows:

Date	Miles	Issue
10/11/2021- 12/13/2021 ¹²	20,318	Issue: Engine and electrical concern; coolant leak; auto start/stop not working.

⁹ Complainant Ex. 6.

¹⁰ Complainant Ex. 10.

¹¹ Complainant Ex. 9. Mr. Jeffries also testified to the applicable warranty coverage for the vehicle.

¹² Complainant Ex. 7.

12/09/2021- 12/15/2021 ¹³	20,435	Issue: Deft wobble. Repair: Replaced steering damper.
06/20/2022- 06/22/2022 ¹⁴	31,699	Issue: Check engine light on. Repair: Reprogrammed PCM.
06/24/2022- 08/05/2022 ¹⁵	31,846	Issue: Check engine light flashing and misfire; coolant leaking; auto start light is on. Repair: Replaced PCM, fuel injector, fuel line, and O-rings; coolant hose replaced.
11/10/2022- 01/13/2023 ¹⁶	36,736	Issue: Check engine light on; coolant leaking. Repair: PCM and coolant reservoir replaced.
01/31/2023- 03/31/2023 ¹⁷	36,784	Issue: Check engine light flashes; engine is shaky. Repair: Engine replaced.
03/31/2023- 04/24/2023 ¹⁸	36,901	Issue: Start/Stop light on; check engine light on and engine is shaky. Repair: Engine replaced.
04/24/2023- 05/19/2023 ¹⁹	37,901	Issue: Battery light on and voltage meter red. Repair: Replaced and reprogrammed PCM.

Complainant testified that in 2019, prior to purchasing the vehicle, the auxiliary battery was replaced in the vehicle and the steering was adjusted. In October 2021, after purchasing the

¹³ Complainant Ex. 8 at 4. This invoice reflects the vehicle's "date in" as December 9, 2021. However, the invoice in Complainant Exhibit 7, indicates that the vehicle was in service on this date at another dealership and cashed out on December 13, 2021. Since it is unclear how the vehicle could be in service at two different dealerships during the same time period, it is reasonable to infer that one or both of the invoices contains a typographical error regarding these dates. However, the discrepancy has no bearing on the issues to be decided in this case and is only noted for clarity.

¹⁴ Complainant Ex. 8 at 1.

¹⁵ Complainant Ex. 8 at 2.

¹⁶ Complainant Ex. 8 at 3.

¹⁷ Complainant Ex. 3.

¹⁸ Complainant Ex. 4.

¹⁹ Complainant Ex. 5.

vehicle, Complainant took the vehicle in for an issue with the start/stop system, a coolant leak, and no acceleration.

In December 2021, the vehicle was taken to Dick Poe for a deft wobble. Complainant explained that the steering wheel was jerking back and forth while driving and he was unable to control the vehicle. Complainant had to slow down in traffic to get off the road. The dealership test drove the vehicle and said nothing was wrong. He brought the vehicle back in, and the steering damper was replaced. He noted that this issue was labeled as “pulling steering” and was repaired in December 2020, prior to his purchase of the vehicle. During this repair visit, another coolant leak was found and repaired.

In June 2022, Complainant took the vehicle in for a misfire, but the dealer noted it as a check engine light. They determined that the PCM was outdated and needed a new update. Four days later, he took the vehicle back in, and the issue was noted as a misfire. The PCM was reprogrammed again.

In November 2022, there was another PCM problem and a coolant leak. There were also misfires with engine shaking and the engine light on. After the repair, Complainant was stationed in Chicago, and the vehicle was shipped there sometime in January 2023. The vehicle began to misfire again, and Complainant took it to a dealer in Chicago (Hawk). The engine was replaced, but it still misfired. He took the vehicle back in for service four days later, and another engine was installed.

Complainant testified that vehicle’s current mileage is approximately 37,000 miles. At the time of hearing, the vehicle was operable, and no issues were present. Complainant usually drives the vehicle about four or five miles per day.

Complainant explained that the vehicle was in and out of service for over 9 months. He did not accept a settlement offer from Respondent because the sum of his expenses and car payments during the time without the vehicle was approximately \$10,000. Complainant wants Respondent to repurchase the vehicle.

After the record of the hearing closed, Complainant sent notification that the auto stop/start light is on. He noted that this issue was previously fixed and asked that it be considered for repair in this decision. Because this issue was listed in the original complaint filed with the Department, the record was reopened to allow the parties to submit additional evidence or argument regarding this issue. However, neither party submitted any additional information or argument.

B. Vehicle Inspection

The vehicle was located out-of-state at the time of the hearing and was not inspected at the hearing.

C. Summary of Respondent's Evidence and Arguments

Mr. Jeffries testified that he was assigned to this case in April 2023. He contacted the technical advisor to get him involved with the dealership. Mr. Jeffries explained that the subject vehicle's engine was replaced twice because the first replaced engine did not perform to the expected level.

Mr. Jeffries also advised that Respondent offered Complainant \$5,000 for his inconvenience and expenses. However, Complainant declined the offer. Respondent argues that the vehicle has been repaired and does not qualify for relief.

D. Analysis

Complainant had the burden of proof to show that the subject vehicle qualified for relief pursuant to statute. Because the vehicle was purchased as a pre-owned vehicle, the only remedy provided by statute is warranty repair.²⁰ To qualify for relief, Complainant must prove the required elements by a preponderance of the evidence. Based on the evidence presented, Complainant has established the facts necessary for warranty repair relief.

²⁰ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b).

The first element required to be proven for warranty repair is that the vehicle has a “defect. . . covered by a manufacturer’s, converter’s, or distributor’s . . . warranty agreement applicable to the vehicle.”²¹ That is, the vehicle must currently have a warrantable defect. At the hearing, Complainant testified that the vehicle was operable and all issues had been repaired. After the hearing, Complainant advised that the auto stop/start light was activated on the vehicle. The record was held open for Complainant and Respondent to provide additional information and argument regarding this issue. Neither party responded. However, the record shows that the auto start/stop system was listed in the original complaint filed by Complainant, and the vehicle was brought in for repair of this issue on October 11, 2021, June 24, 2022, and March 31, 2023.²² Complainant asserts that the issue has returned, and Respondent did not object or file any response to this allegation. Therefore, according to the evidence presented, it is more likely than not that the auto start/stop light issue is a warrantable defect that currently exists.

The second issue required to be proven for warranty repair is that written notice of the alleged defect was provided to Respondent prior to the warranty’s expiration.²³ As noted earlier, the subject vehicle’s basic warranty provides coverage for 3 years or 36,000 miles, whichever occurs first, and the vehicle’s powertrain warranty provides coverage for 5 years or 60,000 miles, whichever occurs first. On December 28, 2022, Complainant filed a complaint with the Department alleging failure of the auto start/stop system. A copy of the complaint was sent to Respondent on December 29, 2022, providing written notice of the alleged defects. In addition, the written invoices provide documentation of notice to Respondent or Respondent’s agent prior to the warranty’s expiration. The documented complaints for the auto start/stop issue occurred on October 11, 2021, at 20,318 miles, and on June 24, 2022, at 31,846 miles, prior to the vehicle warranty’s expiration.²⁴ Therefore, the second element required for relief has been proven by a preponderance of the evidence.

²¹ Tex. Occ. Code § 2301.204(a).

²² Complainant Exs. 7; 8 at 2; 4.

²³ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1), (3).

²⁴ Complainant Exs. 7; 8 at 2.

The final element required for relief is proof that the vehicle owner filed a complaint with the Department specifying the defect.²⁵ As noted earlier, Complainant filed a complaint with the Department on December 28, 2022, advising of failure with the auto start/stop system. Thus, the third element required for relief has been proven by a preponderance of the evidence.

For the reasons listed above, the Hearings Examiner finds that Complainant has met its burden of proof and has established all elements required for relief pursuant to statute.²⁶ Therefore, the subject vehicle qualifies for warranty repair relief.

IV. FINDINGS OF FACT

1. On May 31, 2021, Kevin Bonilla (Complainant) purchased a pre-owned 2020 Jeep Wrangler Sport from Dick Poe Motors, LP d/b/a Dick Poe Chrysler Jeep, a franchised dealer of FCA US LLC (Respondent), located in El Paso, Texas. The vehicle had 11,068 miles on the odometer at the time of purchase.
2. The vehicle's basic warranty provides coverage for 3 years or 36,000 miles, whichever occurs first, and the vehicle's powertrain warranty provides coverage for 5 years or 60,000 miles, whichever occurs first.
3. Complainant took the vehicle for repair as shown below:

Date	Miles	Issue
10/11/2021- 12/13/2021	20,318	Issue: Engine and electrical concern; coolant leak; auto start/stop not working.
12/09/2021- 12/15/2021	20,435	Issue: Deft wobble. Repair: Replaced steering damper.
06/20/2022- 06/22/2022	31,699	Issue: Check engine light on. Repair: Reprogrammed PCM.
06/24/2022- 08/05/2022	31,846	Issue: Check engine light flashing and misfire; coolant leaking; auto start light is on.

²⁵ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1).

²⁶ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b).

		Repair: Replaced PCM, fuel injector, fuel line, and O-rings; coolant hose replaced.
11/10/2022- 01/13/2023	36,736	Issue: Check engine light on; coolant leaking. Repair: PCM and coolant reservoir replaced.
01/31/2023- 03/31/2023	36,784	Issue: Check engine light flashes; engine is shaky. Repair: Engine replaced.
03/31/2023- 04/24/2023	36,901	Issue: Start/Stop light on; check engine light on and engine is shaky. Repair: Engine replaced.
04/24/2023- 05/19/2023	37,901	Issue: Battery light on and voltage meter red. Repair: Replaced and reprogrammed PCM.

4. On December 28, 2022, Complainant filed a complaint with the Texas Department of Motor Vehicles (Department) alleging that the vehicle has coolant leaks, failure of the auto start/stop system, failure to start, and misfires. The vehicle may also require a second replacement of the powertrain control module (PCM).
5. On December 29, 2022, the Department sent a copy of the complaint to Respondent providing written notice of the alleged defects.
6. On April 19, 2023, the Department's Office of Administrative Hearings (OAH) issued a Notice of Hearing directed to all parties, providing not less than 10 days' notice of the hearing date and advising the parties of their rights under the applicable rules and statutes.
7. The Notice of Hearing advised the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the Department.
8. On August 16, 2023, a hearing on the merits was convened electronically before OAH Chief Hearings Examiner Bennie Brown. Complainant appeared and represented himself. Respondent appeared electronically through its representative Curtis Jeffries.
9. The hearing concluded the same day, but the record was held open until August 23, 2023, to allow the submission of additional evidence. On September 25, 2023, Complainant advised that the auto start/stop light was on and requested that this issue be considered for relief. The record was reopened to allow the parties to address the additional issue, and the record officially closed on October 17, 2023.

10. In October 2021, Complainant took the vehicle in for an issue with the start/stop system, a coolant leak, and no acceleration.
11. In December 2021, the vehicle was taken in for a deft wobble, and the steering damper was replaced. During this repair visit, a coolant leak was discovered and repaired.
12. In June 2022, Complainant took the vehicle in for an engine misfire. The PCM was updated.
13. The vehicle was taken back four days later for the same issue. The PCM was reprogrammed again.
14. In November 2022, there was another PCM problem and a coolant leak. There were also misfires with engine shaking and the engine light on. The PCM and coolant reservoir were replaced.
15. In January 2023, the check engine light was on, and the engine was shaky. The engine was replaced.
16. In March 2023, the auto start/stop light was on, the check engine light was on, and the engine was shaky. The vehicle's engine was replaced a second time.
17. In April 2023, the battery light was on, and the voltage meter was red. The PCM was replaced and reprogrammed.
18. At the time of the hearing in August 2023, all issues had been resolved with the subject vehicle.
19. The vehicle's mileage was approximately 37,000 miles at the time of the hearing.
20. In September 2023, the vehicle's auto stop/start light was activated.

V. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, 601-.613.
2. A Hearings Examiner with the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant filed a sufficient complaint with the Department. 43 Tex. Admin. Code § 215.202.

4. Proper and timely notice of the hearing was provided. Tex. Gov't Code ch. 2001.051-.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).
6. Complainant proved, by a preponderance of the evidence, that the subject vehicle has a defect covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
7. Complainant or an agent of Complainant notified Respondent or Respondent's agent of the alleged defect(s) with the subject vehicle prior to the expiration of the warranty period. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(3).
8. Complainant filed a complaint with the Department specifying the defect(s). Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1).
9. Complainant is entitled to warranty repair relief pursuant to Texas Occupations Code § 2301.204 and 43 Texas Administrative Code § 215.202(b).

VI. ORDER

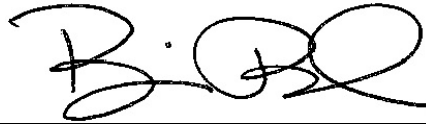
Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's request for warranty repair relief pursuant to Texas Occupations Code § 2301.204 is **GRANTED**.

It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the subject vehicle to the applicable warranty; specifically, Respondent shall resolve the auto start/stop issue. Upon this Order becoming final under Texas Government Code § 2001.144:²⁷ (1) Complainant shall deliver the vehicle to Respondent within 30 days; and (2) Respondent shall complete the repair of the vehicle within **60 days** after receiving it. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainant to have rejected

²⁷ This Order does not become final on the date this Order is signed, instead: (1) this Order becomes final if a party does not file a motion for rehearing within 25 days after the date this Order is signed, or (2) if a party files a motion for rehearing within 25 days after the date this Order is signed, this Order becomes final when: (A) an order overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after the date this Order is signed. Accordingly, this Order cannot become final (1) while a motion for rehearing remains pending; or (2) after the grant of a motion for rehearing.

the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED December 18, 2023

A handwritten signature in black ink, appearing to read 'B. Brown', written over a horizontal line.

**BENNIE BROWN
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**