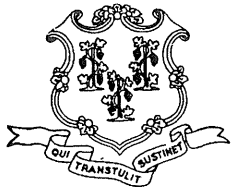


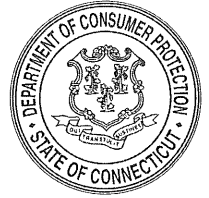
In the matter of arbitration entitled:

**Salazar-Ruiz vs. FCA US, LLC**

**Case Number: 2016-935**



**STATE OF CONNECTICUT  
DEPARTMENT OF CONSUMER PROTECTION  
Automobile Dispute Settlement Program**



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrator, Jerry P. Padula, Esq., having been duly sworn and having given due consideration to the proofs and allegations of the parties, hereby decides the following in regard to the above captioned matter:

**I. FINDINGS OF FACT**

Jennifer Salazar-Ruiz (the "Consumer") purchased a **2015 Chrysler 200** (the "vehicle") from **Gengras Chrysler Dodge Jeep, LLC** located at **460 Connecticut Boulevard in East Hartford, Connecticut 06108** (the "Dealer"). The Consumer took delivery of this vehicle on **July 25, 2015**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes, or the equivalent.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. The Manufacturer did not contest the initial eligibility of the vehicle in this case. Said hearing was held on **Thursday, July 14, 2016**. Mr. Tim Clark served as the State's Technical Expert. **FCA US, LLC** (the "Manufacturer") was represented by Michael Gregg, Esq.

- A.** The Consumer first reported to the Manufacturer, its authorized dealer, or its agent a defect pertaining to **the transmission failing, preventing the vehicle from moving on August 10, 2015 with 922 miles** on the vehicle's odometer. Subsequent repair attempts for this defect and others occurred on:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
<u>11-16-2015</u>	<u>7,788</u>	<u>Transmission failure; Vehicle unable to move on roadway</u>
<u>03-03-2016</u>	<u>15,127</u>	<u>Transmission failure; Vehicle unable to move on roadway</u>
<u>04-04-2016</u>	<u>17,489</u>	<u>Transmission failure; Vehicle unable to move on roadway</u>

The Consumer claimed the above defect or defects continued to exist as of the date of the hearing.

- B.** The vehicle has been out of service by reason of repair for a cumulative total of \_\_\_\_\_ days during the statutory eligibility period (the earlier of: two years from the date of purchase or 24,000 miles driven).

- C.** Two repair attempts during the first 12 months and the defect still exists that is life threatening or likely to cause serious bodily injury, if the vehicle is driven. The defects occurred as follows:

<u>Date</u>	<u>Miles</u>	<u>Defect</u>
<u>Transmission failure preventing the vehicle from being driven (as listed above)</u>		

## **II. REASONING**

### **Nonconformity**

The Consumer complained of the following nonconformity with the subject vehicle: The transmission experiencing episodes whereby it did not recognize the proper gear it was placed in, causing a warning message to appear, and either rendering the Vehicle immobile when it was parked (during the first such episode), or necessitating that the vehicle immediately be pulled off the roadway while being driven (during the second through fourth documented episodes).

### **Eligibility and Reasonable Repair Attempts**

The Consumer's Request for Arbitration revealed that the vehicle experienced a serious transmission nonconformity, as described above. The Consumer made four visits to the Dealer for diagnosis, testing, and repair during the statutory period. The Consumer therefore met the eligibility requirements set forth in Chapter 743b for a loss of use.

Due to the sudden transmission episodes requiring the driver to immediately pull off the roadway, a safety concern was also proven to exist by substantial evidence. The statutory presumption for two repairs during that first year of ownership for a safety concern was therefore also met.

Mr. Gregg, appearing for the Manufacturer, stipulated at the start of the hearing that the vehicle was eligible for arbitration, and also stipulated to the Manufacturer's liability in this case, therefore leaving open for arbitration the sole issue of damages.

### **Substantial Impairment and Factual Discussion**

In the present matter, this arbitrator holds that both a substantial impairment to use and a substantial impairment to safety exist in the form of a defect or defects which meet the requirements of Connecticut General Statutes Section 42-179. The documents in the record and the testimony presented at the arbitration hearing indicate a violation of Connecticut General Statutes Chapter 743b.

The Consumer's Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the vehicle defect experienced by the Consumer and the repair attempts by the Dealer. The Consumer first experienced a serious transmission episode when the vehicle had been driven just 922 miles, as shown in Part I of this decision. At that time, less than three weeks after the vehicle's delivery date, the vehicle was first brought back to the Dealer for diagnosis and repair. During this episode, the vehicle would not move from a parked position due to the transmission defect. A more serious, but similar transmission episode repeated on three other occasions, when the vehicle was being driven on the roadway. During those three episodes, either the Consumer or her father experienced a transmission warning message on the dashboard while driving the vehicle, and had to immediately pull off the road. On at least one occasion, the vehicle did not allow the Consumer enough time to move the car completely out of the travel lane before it prevented her from moving further. This was surely a dangerous condition.

The Consumer testified as to her apprehension with driving the vehicle, given that barely any warning was given before the vehicle shut down. The transmission issue was described as a "dangerous" safety concern in the Consumer's Request for Arbitration (see pages 8 and 9). The written repair records and the oral testimony of both parties verified that the Dealer had performed diagnostic tests and had attempted to duplicate the Consumer's concerns. However, three transmission episodes appeared after periods of Dealer diagnosis and repair, as listed in Part 1.A. of this decision.

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The Consumer felt that she did not have the full use of the vehicle, and given the transmission episodes experienced during normal use of the vehicle, she is justified in her concerns. Based on the transmission defect, which impacted the Consumer's normal use of the vehicle, I find a substantial loss of use in this case. Also proven by convincing evidence is a substantial loss of safety due to the transmission episodes, which included a sudden error message, followed by the automatic shut-down of the vehicle. A refund and exchange is appropriate in this case.

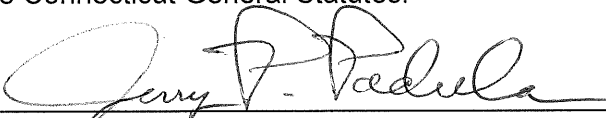
Balancing the safety concerns presented due to the documented transmission episodes, which impacted the Consumer's ability to use the vehicle confidently, with the fact that the vehicle did not suffer from any continual defect while being driven, a mileage deduction in favor of the Manufacturer is appropriate given the facts presented. Beginning early on in the Consumer's ownership (less than three weeks from the date of delivery), the subject vehicle suffered from a transmission episode, and three other episodes followed. Beside the four documented episodes, the vehicle performed well. The record demonstrated that the Consumer's intended use of the vehicle was satisfied, given the very high number of miles driven in a short amount of time since her purchase: Almost double the national average of 12,000 miles per year. Said deduction shall be based upon the mileage at the time of the second repair attempt (7,788 miles), when the defect first appeared as the vehicle was being driven.

The Consumer agreed that the three contracts she entered into upon purchase could be cancelled and the balance refunded back to her (refer to hearing at 30:43), which include the following: GAP coverage which had a purchase price of \$900.00; "CostGuard" vehicle service contract which had a purchase price of \$2,374.00; and "SafeRide" Motor Club which had a purchase price of \$499.99. Given the safety concerns in this case, finance charges will be awarded to the Consumer in full. The full cost of the "ResistAll NG" environmental guard package shall be reimbursed by the Manufacturer, as it was applied at the Dealer upon purchase and is therefore part of the vehicle. The Consumer shall either have the documented body damage repaired before returning the vehicle, or shall pay \$990.76 to the Manufacturer, representing the reasonable estimate of Gengras Collision Center (provided within the Request for Arbitration). Any other damage above normal wear and tear shall be repaired to industry standards by the Consumer (refer to hearing at 22:48). The Consumer accepted responsibility for the body damage (refer to hearing at 23:43).

### **III. CONCLUSION**

Given that the Consumer presented substantial evidence that the vehicle is not able to function normally, I hold for the Consumer in this case. A refund and exchange, as noted in Part IV of this decision, is appropriate given the facts presented.

The decision of this arbitrator does not replace any other remedies available under the applicable warranties, Connecticut General Statutes Chapter 743b, or the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 88 Stat. 2183 (1975), 15 USC 2301 et seq., as in effect on October 1, 1982. Either party to the dispute may apply to the Superior Court within 30 days receiving this decision to have the decision vacated, modified, or corrected or within one year to have it confirmed as provided in Sections 42-181, 52-417, 52-418, and 52-420 of the Connecticut General Statutes.

  
Arbitrator - Jerry P. Padula, Esq.

08-05-2016  
Date

***(See Section IV of this decision, entitled "Refund Award," on the following page.)***

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#### **IV. REFUND AWARD**

The arbitrator finds that the Consumer is entitled to a **refund of the contract price**, including charges for any undercoating, dealer preparation and transportation, and dealer installed options, if applicable. (The contract price is less the **\$2,000.00** credit/rebate given to the Consumer.) The total vehicle price, as delivered, was **\$27,394.00**.

#### **Allowance for use:**

- The contract price **shall not be** reduced by taking into account the mileage on the vehicle.
- The contract price **shall be** reduced by an allowance for the Consumer's use of the vehicle. It shall be calculated using the mileage driven at the time of the first repair for the stalling issue (at 7,788 miles), minus the mileage at the time of delivery (40 miles) and during the repair visit of March 3, 2016 (11 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$27,394.00 \times 7,737 \text{ miles } (7,788 \text{ miles} - 40 \text{ miles} - 11 \text{ miles})}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be: **\$1,766.23**.

#### **Finance Charges to be Reimbursed by Manufacturer:**

- The Consumer shall be reimbursed for finance charges incurred on the following dates:  
\_\_\_\_\_
- The Consumer shall be reimbursed for finance charges incurred from:  
\_\_\_\_\_ to \_\_\_\_\_.
- The Consumer shall be reimbursed for **all finance charges incurred**.
- The Consumer shall **not** be reimbursed for finance charges.

#### **Additional Expenses to be Reimbursed by Manufacturer:**

Conn. State Sales Tax: \$2,137.67    Title & Regis. Fees: \$185.00    Lemon Law Filing Fee: \$50.00  
Dealer Conveyance Fee: \$499.00    ResistALL Enviro Guard: \$699.00

#### **Total Refund Award and Conditions:**

The total refund amount is **\$29,198.44** (twenty nine thousand one hundred ninety eight dollars and forty four cents). **In addition to the total refund amount indicated, the finance charges indicated above are to be paid by the manufacturer**. A rental vehicle shall be provided by the Manufacturer if the vehicle is inoperable for any time after the hearing up through the time of the vehicle exchange.

If the vehicle is financed and the loan has an outstanding balance, the Manufacturer shall prepare one check payable to the lien holder as its interest may appear, and one check payable to the Consumer(s) in the amount of the balance of the refund. The Consumer(s) shall sign an authorization that will assign the Consumer's right, title, and interest of the vehicle to the Manufacturer upon receipt of the refund. The Consumer(s) shall surrender the vehicle at the time of the refund.

If the vehicle is not financed, the Consumer(s) shall surrender the vehicle's title to the Manufacturer at the time of receipt of the refund set forth in this decision.

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The Manufacturer shall provide the total refund to the Consumer(s) within 30 days of the manufacturer's receipt of this arbitration decision. The Consumer(s) shall surrender the vehicle to the manufacturer upon receipt of the refund, but if the vehicle is in the possession of the Manufacturer or her agent, the vehicle title shall be so surrendered when the refund is provided. The exchange shall occur at (Consumer's choice): **Gengras Chrysler Dodge Jeep, LLC** located at **460 Connecticut Boulevard in East Hartford, Connecticut 06108** OR at the Consumer's home.