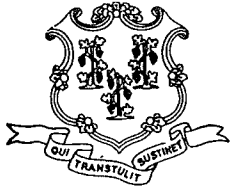


In the matter of arbitration entitled:

**Gagnon vs. FCA US, LLC**

**Case Number: 2016-2110**



**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**

**Reynold and Donna Gagnon** (collectively, the "Consumers") purchased a **2015 Jeep Cherokee Trailhawk** (the "vehicle") from **Crowley Chrysler Jeep Dodge** located at **1461 Farmington Avenue in Bristol, Connecticut 06010** (the "Dealer"). The Consumers took delivery of this vehicle on **August 15, 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. Said hearing was held on **Thursday, January 5, 2017**. Mr. Tim Clark served as the State's Technical Expert. **FCA US, LLC** (the "Manufacturer") was represented by Mark Skanes, Esq. Attending as a witness for the Manufacturer was Mr. Peter Thierry, Shop Foreman at the Dealer. The Manufacturer did not contest the initial eligibility of the vehicle in this case.

**A.** The Consumers reported to the Manufacturer, its authorized dealer, or its agent a defect pertaining to the electrical stop-start system being inoperable at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect/Repair Work Performed</u>
09-08-2015	230	Electrical stop-start system inoperable
11-23-2015	687	Electrical stop-start system inoperable
02-17-2016	1,298	Electrical stop-start system inoperable
04-29-2016	2,377	Electrical stop-start system inoperable
08-03-2016	3,195	Electrical stop-start system inoperable
08-15-2016	3,315	Electrical stop-start system inoperable

The above defect or defects continue to exist.

**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>
_____	_____	_____
_____	_____	_____

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## **II. REASONING**

### **Nonconformity**

The Consumers complained of the following nonconformity with the subject vehicle: the electrical stop-start feature was inoperable. The Consumers claimed that this defect continued to exist as of the date of the hearing.

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

The Consumers' Request for Arbitration revealed that the electrical stop-start feature of their vehicle was inoperable for all but a few short days during their entire course of ownership, beginning when the vehicle had just 230 miles on the odometer. There were multiple visits to the dealer for diagnosis, testing, and repair. Said defect met the statutory presumption for eligibility, as it was subject to six repair attempts during the first year of ownership, as detailed in Part 1 of this decision, thereby meeting the statutory standard of four repair attempts during the first two years of ownership. The Manufacturer did not contest the initial eligibility of the vehicle.

The Consumers had also claimed that a safety concern existed due to the possibility that the vehicle's electrical stop-start feature may shut off the engine as designed when the vehicle was brought to a stop, but then fail to start immediately when called upon by the driver, or the feature may "kick in suddenly on the highway and cause the engine to stop running and cause an accident" (Request for Arbitration at Page 9). However, substantial evidence was not presented to prove the existence of this concern. The defect alleged by the Consumers was that the stop-start function never engaged, so the possibility that other defects exist within that system were based upon speculation. The statutory presumption for eligibility based upon a safety-related concern, as set forth in Chapter 743b, was not met.

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

In the present matter, this arbitrator holds that a substantial impairment to use exists 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 Request for Arbitration, the Manufacturer's Statement, the written repair records, and the oral testimony provided at the hearing detailed the vehicle defects experienced by the Consumers and the repair attempts by the Dealer. The Consumers appeared and testified at the arbitration hearing, where they presented their experiences driving the vehicle, with Mr. Gagnon being the primary driver, as well as a similarly-equipped vehicle of the same model driven by Mrs. Gagnon.

The Consumers first noticed the non-functional start-stop feature right after their purchase, as they had just purchased the like vehicle two weeks before, and were aware of the functionality of the start-stop feature. They brought the vehicle in for repair to the Dealer when the vehicle had been driven just 230 miles, less than one month since the vehicle's delivery date, as shown in Part I of this decision. This feature is designed to shut off the engine when the vehicle is brought to a stop in order to improve fuel economy and reduce emissions that would be caused by engine idling. The feature came with the V6 engine option order by the Consumers for additional cost.

The start-stop system was shown to the vehicle's driver to be inoperable through a dashboard message which stated the reason for the system failing to work: "Battery charging." The Manufacturer's testimony revealed that having a sufficiently charged battery is one of nineteen different parameters that have to be met in order for the stop-start function to operate (see the Owner's Manual at pages 476 and 477). If one of the parameters is not met, the system will provide a dashboard alert, and the stop-start will be disabled. In relation to the proper battery charge needed for the system to function, the Manufacturer revealed during

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the hearing that the battery must be at least seventy to seventy-five percent (70-75%) charged in order to meet the battery charge parameter set within the system.

The written repair records and the oral testimony verified that the Dealer had performed diagnostic tests and performed computer module re-programming multiple times. During the repair of February 17, 2016, when the vehicle had just 1,298 miles on the odometer, the Dealer installed a new battery. The start-stop function worked for about one week according to testimony of the Consumers, but then again became inoperable. During the sixth repair, on August 15, 2016, the "IBS sensor" was replaced. However, the Consumers testified that this repair did not remedy the problem. The failure of the start-stop function to work has remained a continual complaint since the purchase date.

The Manufacturer argued that the Consumers were not driving the car enough to charge up the battery. The Consumers testified that the Dealer had also told them on at least one occasion that they were not driving the vehicle enough. This argument was not convincing. It is assumed that the original battery that came from the factory was charged when the Consumers purchased the vehicle, as the vehicle never failed to start when that battery was installed. Despite the fresh factory battery, the stop-start feature did not work upon the Consumer's purchase. In addition, the replacement battery installed by the Dealer was charged and working as designed to start the vehicle without issue, yet the start-stop function only worked for one week with that battery installed. Mr. Clark also noted that the vehicle never needed to be jump-started, indicating that the battery always had sufficient power to start the vehicle.

At the hearing, the Consumers detailed their driving patterns and described several long trips they made driving the vehicle. They testified that the stop-start had remained non-functional during and after completion of a three hundred (300) mile trip from Connecticut to New Jersey. The dashboard monitor had continually displayed the "battery charging" message." Said distance was judged by Mr. Clark to be adequate to re-charge the battery after it had been partially depleted by the act of providing power for starting. In addition, the Consumer had driven two hundred (200) miles for a Block Island excursion, and the dashboard message remained "battery charging" and the function remained inoperable for the entire trip.

The Consumers also detailed at the hearing that they had "swapped cars" for a period of time, and the vehicle's stop-start function did not work with Mrs. Gagnon driving it, while her like vehicle continued to perform flawlessly when driven by Mr. Gagnon. Although the like vehicle is not the subject of this arbitration proceeding, it is illustrative of the Consumers' driving patterns, as well as their familiarity with the start-stop function. As such, this arbitrator found this evidence to be relevant. The vehicle was said to have approximately 4,500 miles on the odometer as of the hearing date, while the like vehicle, purchased just two weeks prior to the vehicle subject to this proceeding, had been driven approximately 5,000 miles. Both vehicles have low mileage for their age and the amount of use for both vehicles is roughly equivalent.

The Consumers testified as to the continual inoperability of the stop-start system and felt that they did not have the full use of the vehicle. Given the continual issues experienced they are justified in their concerns. Based on the ongoing defect, which impacts the Consumers' normal, everyday use of the vehicle, I find a substantial loss of use in this case. Because the start-stop function is designed to improve fuel economy and reduce emissions, the Consumers have not been able to reap those benefits, and in fact, have suffered from decreased fuel economy and additional fuel expenses from what they were promised upon purchase. A refund and exchange is appropriate in this case.

As shown by the repair orders, beginning very soon after the Consumers took ownership of the vehicle, they reported to the Dealer the failure of the electrical stop-start function. Given that the Consumers were able to use the vehicle, albeit without full functionality, and that the Manufacturer and the Dealer sincerely attempted to repair this vehicle function, a mileage deduction in favor of the Manufacturer is appropriate

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given the facts presented. Said mileage deduction will be based upon the mileage at the time of the fourth repair attempt. Finance charges will be awarded to the Consumers in full.

### **III. CONCLUSION**

Given that the Consumers presented substantial evidence that the vehicle is not able to function normally, I hold for the Consumers 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.**

**01-17-2017**

**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 Consumers are 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 **\$1,500.00** credit/rebate given to the purchaser.) The total vehicle price, as delivered, was **\$34,466.00**.

#### **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 Consumers' use of the vehicle. It shall be calculated using the total mileage driven at the time of the fourth repair (at 2,377 miles), minus the mileage at the time of delivery (22 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$34,466.00}{120,000 \text{ miles}} \times 2,355 \text{ miles ( } 2,377 \text{ miles - } 22 \text{ miles)}$$

The allowance (reduction from the contract price) for the Consumers' use of the vehicle shall be: **\$676.36**.

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

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

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

Conn. State Sales Tax: \$2,315.58    Title & Regis. Fees: \$175.00    Dealer Conveyance: \$499.00  
Lemon Law Filing Fee: \$50.00

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

The total refund amount is **\$36,829.22** (thirty-six thousand eight hundred twenty-nine dollars and twenty-two 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 (Consumers') 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.

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

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receipt of the refund, but if the vehicle is in the possession of the Manufacturer or their agent, the vehicle title shall be so surrendered when the refund is provided. The exchange shall occur at **Crowley Chrysler Jeep Dodge** located at **1461 Farmington Avenue in Bristol, Connecticut 06010**.