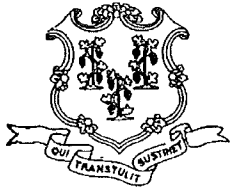


In the matter of arbitration entitled:

DILLON MAILING BUREAU, INC. VS. FCA US LLC Case Number: 2017-1598



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



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrator, Dennis J. Plevyak, 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

Dillon Mailing Bureau, Inc. (the "Consumer") purchased a **2016 Fiat 500X Trekking** (the "Vehicle") from **Valenti Maserati** located at **133-149 Liebert Road** in **Hartford, Connecticut 06120** (the "Dealer"). The Consumer took delivery of this Vehicle on **October 31, 2015**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes.

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, September 21, 2017**. John Dillon, President of Dillon Mailing Bureau, Inc. and Amy Dillon, Spouse of John Dillon and an employee of the business, represented the Consumer. Mr. Timothy Clark served as the State's Technical Expert. **FCA US, LLC**, (the "Manufacturer") was represented by Attorney Mark W. Skanes and Robert Bowman, Service Manager of Valenti Maserati.

- A.** The Consumer reported to the Manufacturer, its authorized dealer, or its agent defects pertaining to jerking, hesitation, and the transmission banging into gear; noise and vibration while braking; rattling from the instrument cluster area; noise from the front suspension; and improper operation of the power windows at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect/Repair Work Performed</u>
<u>11-17-2015</u>	<u>330</u>	<u>Dents: Repaired dents; Low tire pressure: Rest tire pressure; Rattle from steering column: Adjust cover</u>
<u>01-05-2016</u>	<u>3,188</u>	<u>Brakes squeak: Burnished brake pad; Rattle from Dash: Insulated trim panel</u>
<u>04-05-2016</u>	<u>7,690</u>	<u>Rattle from Dash: Install anti-rattle tape; Jerky shifting: Performed software updates</u>
<u>06-14-2016</u>	<u>11,822</u>	<u>Check Engine Light ("CEL") on, Shifting jerky: Perform software update</u>
<u>12-07-2016</u>	<u>21,354</u>	<u>Passenger front window goes down when requesting up: Lubed guide rails</u>
<u>02-01-2017</u>	<u>23,712</u>	<u>CEL on: Replaced thermostat; Noise from right front suspension: Inspected and lubricated suspension; Transmission lurching: Perform software update</u>

In the matter of arbitration entitled:

DILLON MAILING BUREAU, INC. VS. FCA US LLC **Case Number: 2017-1598**

03-16-17 25,052 Transmission bangs into second gear: Replaced transmission valve body;
Rattle in front end under hood: Clean and lube strut bumpstops

04-03-2017 26,109 Transmission jerky: Adjusted shift points; Noise from front suspension:
Replace right front strut; Noise from dash: Replaced missing screws; Driver door sticks: Align rear door

04/25-2017 26,765 Front brakes squeak and pulsate: Replaced brake rotors; Passenger front
window goes down when requesting up: Replaced window switch block

06-01-2017 28,781 Driver and passenger front window goes down when requesting up:
Replaced window motors

The transmission and window defect or defects continued to exist as of the date of the arbitration hearing.

- B. The Vehicle has been out of service by reason of repair for a cumulative total of ____ calendar 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:

II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject Vehicle: Jerking, hesitation, and the transmission banging into gear; noise and vibration while braking; rattling from the instrument cluster area; noise from front suspension; and improper operation of the power windows. The Consumer claimed that the transmission and window defects continued to exist as of the date of the arbitration hearing.

Eligibility and Reasonable Repair Attempts

The Consumer's Request for Arbitration indicated that the Vehicle experienced transmission jerking upon acceleration at low speeds. The claimed transmission defects began, and the Vehicle was first brought in for this repair, with 7,690 miles on the odometer. No complaint of a transmission issue is noted on the repair order at this date. However, this Arbitrator finds the Consumer's testimony credible that it was mentioned to the Dealer at that time. Amy Dillon stated she had mentioned "jerky" shifting when bringing the Vehicle in for service. The repair order noted two software updates related to the "TCM". This is an acronym widely used in the automotive industry to refer to the transmission control module.

A second repair attempt at 23,712 miles was made for the transmission issue. At that time a software update was performed.

In the matter of arbitration entitled:

DILLON MAILING BUREAU, INC. VS. FCA US LLC Case Number: 2017-1598

A third repair attempt at 25,052 miles was made for the transmission issue. The transmission valve body was replaced.

A fourth repair attempt at 26,109 miles was made for the transmission issue. The shift points were adjusted.

The Consumer stated the transmission was also mentioned at the 11,822 service. It is not noted on the repair order. This Arbitrator finds the Consumer's testimony credible.

Amy Dillon testified that the repair orders of 04-05-2016 at 7,690 miles and 06-14-2016 at 11,822 miles contain a false signature. Ms. Dillon stated the signatures on the pickup invoice(s) do not match her signature(s) on the initial repair order(s). After reviewing these signatures, this Arbitrator finds Ms. Dillon's testimony credible. The signatures, although somewhat similar, do not appear to match. On both these occasions software updates were applied to the Vehicle pertaining to the Power Train Control Module or Transmission Control Module. The Consumer's assertion that the invoice signatures are not hers brings into question the Consumer's right to notice and approval of repair.

Therefore, the Vehicle met the requirements for reasonable number of repair attempts as set forth in Chapter 743b.

Substantial Impairment and Factual Discussion

The Request for Arbitration, the written repair records, and the oral testimony provided at the arbitration hearing detailed the Vehicle defects experienced by the Consumer and the repair attempts by the Dealer.

The Consumer complained of transmission jerking and banging into gear upon acceleration at low speeds when operating the Vehicle during normal driving conditions. These issues would occur in low speed driving conditions that might be encountered such as in an urban setting. It would exhibit itself in driving such as slowing to a low speed followed by acceleration or slowing for a corner at an intersection. The Consumer also complained of noise from the front suspension, noise and vibration when braking and the power windows operating in an erratic manner; attempting to raise a window fully would result in it lowering, sometimes more than once before closing. The Consumer gave a chronological account of repeated trips to the Dealer for repairs as outlined earlier in this decision.

Amy Dillon stated the lurching and banging into gear was so severe that a rear seat passenger in the Vehicle nearly struck her head on the back of the passenger front seat. The Consumer testified Robert Bowman had stated the transmission was a new design and the Manufacturer was working out the kinks. The Consumer stated the violent nature of the jerking posed a safety hazard to passengers. The Consumer stated the jerking gave a feeling of lack of control over the Vehicle. The Consumer stated that when the jerking occurs she does not know if she should press the accelerator harder or release it and feared a collision with another vehicle.

With regard to the power window issue, Ms. Dillon stated the erratic operation of the windows distracts from the safe operation of the Vehicle by causing distraction from the road, and raises concern over the safety of passengers. Ms. Dillon stated the condition continues to exist.

The Consumer described frustration with multiple repairs to identify and correct the noise from the front suspension and the rattling from the dash instrument area. The Consumer stated the many roundtrips to the Dealer were time consuming. The Consumer stated the transmission issue had been repeatedly brought up in discussions with Dealer staff.

In the matter of arbitration entitled:

DILLON MAILING BUREAU, INC. VS. FCA US LLC Case Number: 2017-1598

Ms. Dillon stated she has ceased regular use of the Vehicle and only operates it once per week so that the Vehicle will remain operational. Following the filing of the Request for Arbitration, she no longer brought the ongoing transmission and window issues to the attention of the Dealer.

Attorney Skanes, the Manufacturer's representative, questioned the Consumer regarding the business and personal use of the Vehicle. This arbitrator finds that line of questioning to be irrelevant to the issue at hand and was not taken into consideration to the benefit of either party in any way in this decision. Ms. Dillon conceded the Vehicle was also used for personal use and the proper tax filings were made accordingly. Had this Vehicle been a heavy duty truck its commercial use might be a factor in this decision. This is a passenger vehicle and is used in that manner.

Attorney Skanes stated a finding for the Consumer requires the Manufacturer to first be provided with a reasonable number of repair attempts. It was his contention that no single issue was subject to four or more repair attempts in the first twenty-four months or twenty-four thousand miles. Attorney Skanes stated that at the 7,690 mile and 11,822 mile services no mention of a transmission issue was made by the Consumer. Attorney Skanes also stated the Consumer had never been denied service, nor had the Vehicle been towed, broken down, been serviced at another dealer or left the Consumer stranded. Attorney Skanes stated no witness to the severity of the jerking has been offered. Attorney Skanes stated the Vehicle was not made available for inspection at the time of this hearing. Attorney Skanes stated no evidence of diminished value had been offered, nor had evidence supported a claim of substantial defect impairing the safety of the Vehicle.

Mr. Clark questioned Mr. Bowman as to the nature of several software updates made to the Vehicle. Mr. Bowman stated an update made at the 7,692 service was not transmission related. Mr. Clark stated that information available to him from ALLDATA, an automotive repair and service bulletin consolidation website indicated the update was transmission related. Attorney Skanes questioned the validity of the ALLDATA information. This Arbitrator notes that ALLDATA is an auto industry accepted information platform much like LexisNexis is in the legal profession. ALLDATA makes use of Original Equipment Manufacturer ("OEM") repair procedures, technical service bulletins, and other available information. ALLDATA's use of the acronym "TCM" would indicate a transmission related software update to those in the automobile repair industry.

This arbitrator finds that the Manufacturer was afforded reasonable repair attempts to correct the transmission jerking complaint. The statutory requirement of four attempts in the first 24,000 miles is a presumptive requirement. The Consumer's testimony that the problem was brought to the attention of the Dealer in numerous conversations, despite it not always being noted on a repair order, was credible. The repair attempt at 25,052 miles is taken into consideration based on the Consumer's contention that the issue was brought to the Dealer's attention prior to 24,000 miles and an appointment for service made. This Arbitrator agrees with the Consumer that the signatures on the invoices at 7,690 and 11,822 miles do not appear to match the repair order signatures. As a result, the Consumer may not have been afforded notice and approval of repair.

Due to the prior and ongoing transmission jerking when operating the Vehicle during normal driving conditions causing safety concerns due to impaired acceleration, a substantial loss of both use and safety were proven by substantial evidence to exist. The Vehicle's inability to accelerate in a normal fashion from low speed could result in a collision, such as when making a turn across oncoming traffic during a gap in said oncoming traffic. The ongoing window control issue impairs the normal use of the Vehicle, after three attempts at repair. Although the dash rattle has been rectified, three repair attempts were required to locate and replace missing screws. The Vehicle had two separate repair trips for brake noise and vibration. Two repair trips were necessary to properly diagnose and repair noise from the suspension. Cumulatively, these seemingly minor noise issues and the repair attempts on top of the window and transmission defects have resulted in loss of normal use of the Vehicle.

In the matter of arbitration entitled:

DILLON MAILING BUREAU, INC. VS. FCA US LLC **Case Number: 2017-1598**

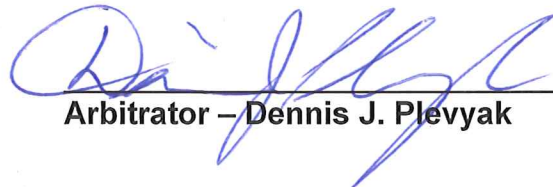
This arbitrator holds that both a substantial impairment to use and a substantial impairment to safety exists in the form of a defect or defects which meet the requirements of Connecticut General Statutes Section 42-179. The documents in the record and the testimony presented at the arbitration hearing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

The Consumer's preference is to be awarded a buyback of the Vehicle by the Manufacturer. Awarding a buyback of the Vehicle is appropriate in this case.

III. CONCLUSION

Given that the Consumer presented substantial evidence that the Vehicle is not able to function normally due to a transmission defect, I hold for the Consumer in this case. A buyback award, 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 – Dennis J. Plevyak

10-02-2017

Date

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

In the matter of arbitration entitled:

DILLON MAILING BUREAU, INC. VS. FCA US LLC Case Number: 2017-1598

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 cash price, as delivered, was **\$27,056.00**, minus **\$1,500.00** for a total of **\$25,556.00**.

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 total mileage driven at the time of the first transmission software update (at 7690 miles), minus the mileage at the time of delivery (12 miles), yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$25,556.00 \times 7678 \text{ miles (7690 miles - 12 miles)}}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be: **\$1,635.16**.

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:

Lemon Law Filing Fee: \$50.00 Conn. State Sales Tax: \$1,714.37
Registration & Title Fees: \$185.00

Total Refund Award and Conditions:

The total refund amount is **\$25,870.21** (twenty five thousand eight hundred seventy five dollars and twenty one cents). **In addition to the total refund amount indicated, the finance charges indicated above are to be paid by the manufacturer.**

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 in the amount of the balance of the refund. The Consumer 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 shall surrender the vehicle at the time of the refund.

In the matter of arbitration entitled:

DILLON MAILING BUREAU, INC. VS. FCA US LLC **Case Number: 2017-1598**

If the Vehicle is not financed, the Consumer 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 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 **Valenti Maserati** located at **133-149 Liebert Road** in **Hartford, Connecticut**.