

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0387 CAF**

ABEL MEDRANO,
Complainant

v.

GENERAL MOTORS LLC,
Respondent

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**BEFORE THE OFFICE
OF
ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Abel Medrano (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2015 Chevrolet Silverado. Complainant asserts that the vehicle has electrical issues that have not been repaired by Respondent. General Motors LLC (Respondent) argued that the vehicle does not have any defects and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is not eligible for repurchase or replacement relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the hearing record closed on December 14, 2016, in El Paso, Texas before Hearings Examiner Edward Sandoval. Complainant represented himself at the hearing. Also, testifying for Complainant was Raymond Shepherd, co-worker. Respondent was represented by Kevin Phillips, Business Resource Manager. Testifying for Respondent was Leonard Sgarlata, Field Service Engineer.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ *Id.*

the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2015 Chevrolet Silverado from Viva Chevrolet (Viva) in El Paso, Texas on June 20, 2015, with mileage of 65 at the time of delivery.^{7,8} Respondent provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle. On the date of hearing the vehicle's mileage was 15,099. Respondent's warranty was still in effect at the time of hearing.

1. Abel Medrano's Testimony

Abel Medrano, Complainant, testified that he feels that the vehicle has electrical issues. The vehicle's check engine light (CEL) has illuminated several times, the My Link multi-media screen sometimes freezes, and some of the icons on the screen will sometimes be gray or not show at all.

Complainant stated that he first experienced a problem with the vehicle on August 14, 2015. He used the remote start to start the vehicle and then took some trash to a trash bin. When he returned to the vehicle, it was not running. So, he restarted the vehicle and when he got in, he saw that the CEL was flashing on and off. In addition, he felt that the vehicle was idling rough. That same day, Complainant took the vehicle to James Corlew Chevrolet (Corlew) in

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

⁷ Complainant Ex. 1, Motor Vehicle Retail Installment Contract dated June 20, 2015.

⁸ Complainant Ex. 2, Odometer Disclosure Statement dated June 20, 2015.

Clarksville, Tennessee. The service technician found some diagnostic trouble codes (DTC's) stored in the engine control module (ECM) and checked the vehicle's sensors.⁹ The technician was unable to duplicate the problem and did not perform any repairs.¹⁰ Complainant was informed that if the problem recurred that he should take the vehicle back to Corlew for repair. The vehicle's mileage on this occasion was 3,424.¹¹ The vehicle was in the dealer's possession for twelve (12) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

A few days later, Complainant observed the vehicle's CEL flashing on and off and felt that the vehicle was idling rough. He took the vehicle to Corlew to repair the problem on August 31, 2015. The technician found stored DTC's on the ECM, but could not duplicate the problem.¹² No repairs were performed on the vehicle.¹³ The vehicle's mileage on this occasion was 3,638.¹⁴ The vehicle was in Corlew's possession for ten (10) to twelve (12) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant did not have any further problems with the CEL flashing on and off or with the vehicle idling rough. However, in February of 2016, Complainant experienced the vehicle's instrument panel cluster (IPC) freezing up. Complainant stated that the speedometer, radio, and heater would not work. He took the vehicle to Corlew for repair on February 18, 2016. On this occasion, the service technician updated the IPC, but found that it was not working correctly.¹⁵ So, the technician replaced the IPC and reprogrammed it.¹⁶ The mileage on the vehicle at the time was 9,533.¹⁷ Corlew had the vehicle in their possession for six (6) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that he kept having the same problem with the vehicle's radio. It would turn on and off while he was driving. In addition, some of the icons would appear and some would not. Complainant stated that the radio and cluster kept shutting down. He contacted Respondent's customer service line and was advised to take the vehicle to a different dealer for repair. Complainant took the vehicle to Patriot Chevrolet-Buick-GMC (Patriot) in Hopkinsville, Kentucky for repair on March 31, 2016. The dealer's technician did not find any stored DTC's

⁹ Complainant Ex. 3, Repair Order dated August 14, 2015.

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 4, Repair Order dated August 31, 2015.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Complainant Ex. 5, Repair Order dated February 18, 2016.

¹⁶ *Id.*

¹⁷ *Id.*

on the vehicle's modules and was not able to duplicate the issues.¹⁸ The mileage on the vehicle on this occasion was 10,921.¹⁹ The vehicle was in Patriot's possession for one (1) day.

Complainant testified that the problem recurred on his way home. He called Patriot's service advisor who told him to take the vehicle back to Patriot for repair. Complainant returned the vehicle to Patriot on April 6, 2016. Patriot's service technician did not perform any repairs, but indicated that he would contact GM technical support about the issues and reschedule a new appointment for Complainant.²⁰ The vehicle was in the dealer's possession for the day. The mileage on the vehicle on this occasion was 10,996.²¹

Complainant took the vehicle to Patriot for repair on June 2, 2016. Patriot's service technician did not find any stored DTC's and could not duplicate the problem.²² The vehicle's mileage on this occasion was 11,399.²³ The vehicle was in Patriot's possession for two (2) weeks. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant continued to have problems with the My Link screen and returned the vehicle to Patriot for repair on June 25, 2016. Patriot's service technician reprogrammed the vehicle's radio with an update.²⁴ The vehicle's mileage on this occasion was 11,618.²⁵ The vehicle was in Patriot's possession for the day. Complainant was not provided with a loaner vehicle.

On August 17, 2016, Complainant mailed a letter to Respondent advising them of his dissatisfaction with the vehicle.²⁶ Complainant also filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on August 22, 2016.²⁷

Complainant testified that he was contacted by Respondent's representative who scheduled an appointment to repair the vehicle for September 21, 2016, at Corlew. The dealer's service technician checked the vehicle and could not find a problem nor could he duplicate the issues.²⁸ Leonard Sgarlata, Respondent's field service engineer (FSE), looked at the vehicle on October

¹⁸ Complainant Ex. 6, Repair Order dated March 31, 2016.

¹⁹ *Id.*

²⁰ Complainant Ex. 7, Repair Order dated April 6, 2016.

²¹ *Id.*

²² Complainant Ex. 8, Repair Order dated June 2, 2016

²³ *Id.*

²⁴ Complainant Ex. 9, Repair Order dated June 25, 2016.

²⁵ *Id.*

²⁶ Complainant Ex. 11, Letter to General Motors Company dated August 17, 2016.

²⁷ Complainant Ex. 10, Lemon Law Complaint dated August 22, 2016. Complainant signed and dated the complaint on August 17, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until August 22, 2016, which is the effective date of the complaint.

²⁸ Complainant Ex. 12, Repair Order dated September 21, 2016.

18, 2016, to see if he could determine the cause of the problems.²⁹ Mr. Sgarlata was unable to duplicate the concerns or find a probable cause for the problems.³⁰ No repairs were performed at the time.³¹ The vehicle was in Corlew's possession about a month. Complainant was not provided a loaner at the time because he did not have a valid driver's license. The vehicle's mileage on this occasion was 13,171.³²

Complainant testified that neither the instrument panel nor the speedometer have gone out again since the IPC was replaced on February 18, 2016. In addition, the CEL has not illuminated since August 31, 2015. The only problem that Complainant is experiencing with the vehicle is that the My Link icons will sometimes be gray or not appear on the screen.

During cross-examination, Complainant testified that the vehicle does not have any major dents or scratches on its exterior. The vehicle does not have broken or cracked glass. It has the original tires. The vehicle does not have any interior or undercarriage damage. Complainant has not added any after-market items to the vehicle. He's never been charged for repairs to the vehicle or for any rental vehicles while his vehicle was being repaired.

Complainant also stated that he drove the vehicle from Kentucky to Texas, a distance of approximately 1300 miles, and the vehicle did not die or leave him stranded. Complainant did observe the My Link icons go gray at least twice during the drive.

2. Raymond Shepherd's Testimony

Raymond Shepherd, co-worker, testified for Complainant. Mr. Shepherd testified that he observed the icons on the My Link display turn gray and disappear when he was in the vehicle. He only observed this occur one time about two (2) months prior to the hearing date. Mr. Shepherd testified that this incident occurred in the evening before it got dark.

C. Respondent's Evidence and Arguments

1. Leonard Sgarlata's Testimony

Leonard Sgarlata, Field Service Engineer, testified for Respondent. Mr. Sgarlata has been in the automotive industry since 1969. He's worked for Respondent since 1994. Mr. Sgarlata is an

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

Automotive Services Excellence (ASE) Master Certified technician. In addition, he is a General Motors World Class Certified technician.

Mr. Sgarlata testified that he inspected the vehicle on October 18, 2016, at the Corlew dealership in Tennessee. He was informed that the vehicle had electrical issues in that the IPC and radio icons were not illuminating properly, the radio display would freeze up, warning lights illuminated on the IPC, and the vehicle's CEL had illuminated. Mr. Sgarlata performed a visual inspection of the vehicle and then checked the vehicle's modules for stored DTC's. He did not find any stored DTC's. Mr. Sgarlata ensured that the modules had the latest updates and then took the vehicle for a test drive. Mr. Sgarlata testified that he started the vehicle cold and hot to see if the problems could be duplicated. He performed five (5) test drives covering 69 miles and was unable to duplicate the problem.

Mr. Sgarlata testified that he does not feel that the vehicle has a defect. He stated that he would be comfortable driving the vehicle.

2. Kevin Phillip's Testimony

Kevin Phillips, Business Resource Manager, testified for Respondent. He stated that the vehicle has a solar load cell sensor which can cause icons on the My Link display to dim if the sensor gets covered up. In addition, he stated that there could be a compatibility issue with power cords charging phones if an after-market cord is used.

Mr. Phillips stated that he does not feel that there is a defect with the vehicle.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle.

Complainant indicated that he feels that the vehicle has electrical problems. He has experienced the vehicle's CEL flashing, the IPC freezing up, and the icons on the My Link radio screen will turn gray or sometimes not appear at all. The evidence does indicate that the problems with the CEL and the IPC have been repaired and are no longer occurring. The only issue left is the problem with the icons on the radio screen. The evidence does indicate that the icons may be going gray because the solar load cell sensor which can affect the lighting on the My Link screen may have been covered somehow. Even if this is not the case, however, the hearings examiner must hold that the radio screen icons going gray or not appearing does not create a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupations Code. It's not a life-threatening malfunction or nonconformity that substantially impedes Complainant's ability to control or operate the vehicle and it does not create substantial risk of fire or explosion.

In addition, the icons going gray or not appearing does not *substantially* impair the use or market value of the vehicle. If Complainant were to trade in the vehicle or attempt to sell it to another party, it's doubtful that the issues would affect the purchase price, since most people would not even notice them.

The hearings examiner must hold that there is no evidence of a defect with the vehicle and, as such, repurchase or replacement relief for Complainant is not warranted.

On the date of hearing, the vehicle's mileage was 15,099 and it remains under warranty. As such, Respondent is still under an obligation to perform repairs for any issues that arise that are covered by the vehicle's warranty.

Complainant's request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Abel Medrano (Complainant) purchased a new 2015 Chevrolet Silverado on June 20, 2015, from Viva Chevrolet (Viva) in El Paso, Texas, with mileage of 65 at the time of delivery.
2. The vehicle's mileage on the date of hearing was 15,099.
3. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles.
4. At the time of hearing the bumper-to-bumper warranty for the vehicle was still in effect.

5. Complainant took the vehicle to Respondent's authorized dealers in order to address his concerns regarding the vehicle's electrical issues on the following dates:
 - a. August 14, 2015, at 3,424 miles;
 - b. August 31, 2015, at 3,638 miles;
 - c. February 18, 2016, at 9,533 miles;
 - d. March 31, 2016, at 10,921 miles;
 - e. April 4, 2016, at 10,996 miles;
 - f. June 2, 2016, at 11,399 miles and
 - g. June 25, 2016, at 11,618 miles.
6. The service technician at James Corlew Chevrolet (Corlew) in Clarksville, Tennessee was unable to duplicate any problems with the vehicle on August 14, 2015. No repairs were performed at the time.
7. On August 31, 2015, Corlew's service technician was unable to duplicate the concern regarding the check engine light flashing and performed no repairs.
8. On February 18, 2016, Corlew's service technician removed and replaced the vehicle's instrument panel cluster (IPC) and reprogrammed it to resolve the issue of the IPC freezing up.
9. On February 26, 2016, the service technician at Patriot Chevrolet-Buick-GMC (Patriot) in Hopkinsville, Kentucky was unable to duplicate the problem of having the radio and IPC screen going blank. No repairs were performed at the time.
10. On April 6, 2016, Patriot's service technician scheduled another appointment for Complainant regarding the problem with radio and IPC screen going blank or icons not appearing because he wanted to contact Respondent's technical support center.
11. On June 2, 2016, Patriot's service technician was unable to duplicate the concern. No repairs were performed at the time.
12. On June 25, 2016, Patriot's service technician reprogrammed the vehicle's radio with an update.
13. On August 22, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

14. On September 21 2016, Respondent's field service engineer, Leonard Sgarlata, inspected the vehicle and could not duplicate the complained of problems.
15. On November 15, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
16. The hearing in this case convened and the hearing record closed on December 14, 2016, in El Paso, Texas before Hearings Examiner Edward Sandoval. Complainant represented himself at the hearing. Also, testifying for Complainant was Raymond Shepherd, co-worker. Respondent was represented by Kevin Phillips, Business Resource Manager. Testifying for Respondent was Leonard Sgarlata, Field Service Engineer.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of 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 timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove that the vehicle has an existing warrantable defect. Tex. Occ. Code § 2301.604(a).

7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED December 22, 2016



**EDWARD SANDOVAL
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**