

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0173876 CAF**

RANDY SANDEFER,
 Complainant

v.

GENERAL MOTORS LLC,
 Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Randy Sandefer (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2016 Chevy Traverse LT. Complainant asserts that the vehicle’s radio screen intermittently goes black and the radio stops working. In addition, the driver’s seat control panel pops in and out and has to be repaired periodically. General Motors LLC (Respondent) argued that there is no defect with the vehicle and that no relief is warranted. The hearings examiner concludes that the vehicle does have a currently existing warrantable defect and is eligible for repurchase 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 on May 25, 2017, in Amarillo, Texas before Hearings Examiner Edward Sandoval and the hearing record closed that same day. Complainant represented himself at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Steve Kuhr, Field Service Engineer, testified in the hearing. Chuck Kellogg, District Manager for After-Sales, was also present in the hearing, but did not offer testimony.

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 owner must have mailed written notice of the alleged defect or

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

In addition to these 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.⁵

B. Complainant's Evidence and Arguments

Complainant purchased a new 2016 Chevrolet Traverse LT from AutoNation Chevrolet–Cadillac (AutoNation) in Amarillo, Texas on November 5, 2016.⁶ The vehicle's mileage was 3,953 at the time of delivery.⁷ Respondent provided a new vehicle bumper-to-bumper warranty for the vehicle, which provides warranty coverage for the vehicle for three (3) years or 36,000 miles from the date of delivery, whichever comes first.⁸ On the date of hearing the vehicle's mileage was 11,185. Respondent's warranty was still in effect at the time of hearing.

Complainant testified that a few days after purchasing the vehicle, the vehicle's radio blacked out and wouldn't work when Complainant was driving the vehicle. He turned the vehicle off and then back on and the radio started working again. A couple of days later the same thing occurred. At that time, Complainant decided to return the vehicle to AutoNation for repair.

Complainant took the vehicle to AutoNation on November 21, 2016. Complainant indicated to the dealer's service advisor that the vehicle's radio screen would go black while driving and if he tapped the screen squiggly lines would appear on it.⁹ The dealer's service technician was unable to duplicate the problem or to find any stored diagnostic codes on the vehicle's human machine

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ 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.

⁶ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated November 5, 2016.

⁷ Complainant Ex. 11, AutoNation GAP Protection Deficiency Waiver Addendum dated November 5, 2016.

⁸ Complainant Ex. 10, Monroney Sticker for 2016 Traverse FWD 1LT.

⁹ Complainant Ex. 2, Repair Order dated November 21, 2016.

interface (HMI) module.¹⁰ The vehicle's mileage on this occasion was 4,827.¹¹ The vehicle was in the dealer's possession for two (2) days during this repair visit. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant stated that the radio worked fine for several weeks, but the problem recurred on January 22 or 23 of 2017. In addition, Complainant noticed that the driver's side seat trim would pop loose periodically. Complainant took the vehicle back to AutoNation for these issues on January 25, 2017. The dealer's service technician discussed the issue with Respondent's technical service center (TAC) and they recommended replacing the vehicle's radio.¹² The technician replaced the vehicle's radio and the driver's seat trim in order to address Complainant's concerns with the vehicle.¹³ The vehicle's mileage when it was taken to the dealership on this occasion was 6,932.¹⁴ Complainant testified that the vehicle was in Auto Nation's possession for two (2) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

On January 29, 2017, the vehicle's radio screen blacked out again. Complainant took the vehicle back to AutoNation on January 30, 2017. Complainant also informed AutoNation's service advisor that the vehicle's front USB port would not charge a phone.¹⁵ The technician could not duplicate the problem with the radio, but did find that the USB cable was not making a good connection into the radio and fixed the connection.¹⁶ In addition, the technician performed a manual power reset on the radio in an attempt to resolve the issue with the radio screen going black.¹⁷ The mileage on the vehicle on this occasion was 7,095.¹⁸ The vehicle was in the dealer's possession for three (3) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that while he was driving the vehicle the radio screen went black again on February 8, 2017. Complainant took the vehicle to AutoNation on the same day. AutoNation's service technician was unable to duplicate the concern, even after removing the radio and checking all of the connections for it.¹⁹ The vehicle's mileage when it was delivered to the dealer

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 3, Repair Order dated January 25, 2017.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Complainant Ex. 4, Repair Order dated January 30, 2017.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant Ex. 5, Repair Order dated February 8, 2017.

on this occasion was 7,398.²⁰ The vehicle was in AutoNation's possession for eight (8) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant stated that the vehicle's radio screen went black again on March 24, 2017. He took the vehicle back to AutoNation for repairs on March 25, 2017 for the radio issue and for the driver's side seat trim which had popped out again. AutoNation's service technician was unable to duplicate the problem with the radio, so no repair was performed for this issue.²¹ The technician also removed the vehicle's driver's seat adjuster trim and tightened the clips in order to address the trim issue. The vehicle's mileage on this occasion was 9,084.²² The vehicle was in the dealer's possession for two (2) days. Complainant was provided a loaner vehicle while his vehicle was being repaired.

On March 21, 2017, Complainant wrote a letter to Respondent advising them of his dissatisfaction with the vehicle.²³ Complainant filed a Lemon Law complaint to the Texas Department of Motor Vehicles (Department) on March 12, 2017.

Complainant agreed to allow Respondent to perform a final repair attempt on the vehicle. This was done on May 9, 2017, at AutoNation. Respondent's representative inspected the vehicle and addressed the radio issue and the driver's side seat trim issue. The vehicle's radio's software was updated at the time.²⁴ In addition, the driver's side seat trim was replaced.²⁵ The vehicle's mileage on this occasion was 10,510.²⁶ The vehicle was in AutoNation's possession for two (2) days. Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant testified that after Respondent's final repair attempt the vehicle's radio continued to go black intermittently. He stated that it went out four (4) times in fifteen (15) days. Complainant stated that he would have to stop the vehicle, turn it off, and restart it in order to get the radio to start working again. In addition, the driver's side seat trim popped out again. Complainant decided to leave the trim out since it did not seem to want to stay together. Complainant stated that the problem with the vehicle's radio has never occurred when he's had a cell phone plugged in and charging.

During cross-examination, Complainant testified that he is the primary driver of the vehicle. He has not had any accidents in the vehicle nor has he filed any insurance claims on it. Complainant

²⁰ *Id.*

²¹ Complainant Ex. 6, Repair Order dated March 25, 2017.

²² *Id.*

²³ Complainant Ex. 7, Letter to General Motors LLC dated March 21, 2017.

²⁴ Complainant Ex. 9, Repair Order dated May 9, 2017.

²⁵ *Id.*

²⁶ *Id.*

stated that the problem with the radio is very intermittent. When the radio goes black, it does not work at all. Neither the vehicle's check engine light (CEL) nor any warning light has ever illuminated in the vehicle.

C. Respondent's Evidence and Arguments

Steve Kuhr, Field Service Engineer, testified for Respondent. Mr. Kuhr has been in his present position with Respondent since 2012.²⁷ He is an Automotive Service Excellence (ASE) Master Certified technician.²⁸ In addition, he is a General Motors World Class Certified technician.²⁹

Mr. Kuhr testified that he performed the final repair attempt on Complainant's vehicle to address the issues of the radio blacking out and the passenger's side seat trim popping out. This was performed on May 9, 2017, at AutoNation. Mr. Kuhr observed that the driver's side seat trim had popped out. He had the trim replaced and secured in the vehicle. In regards to the radio issue, Mr. Kuhr updated the radio software. During the repair, Mr. Kuhr testified that he drove the vehicle for 12 hours and was not able to duplicate the problem with the radio.

Mr. Kuhr indicated that some vehicles and some cell devices do not work well together. In those cases, there may be anomalies that occur which may affect a radio's performance. Mr. Kuhr also stated that starting a vehicle is like rebooting the system, that's why when Complainant turns off the vehicle and restarts it, the radio works again. The radio module's processing speed is not very fast and may be getting confused and backed up.

Mr. Kuhr feels that the vehicle does not have any defects in material or workmanship. He also stated that the vehicle conforms to the new vehicle warranty. He stated that there are no safety concerns with the vehicle and that he would feel comfortable driving the vehicle with his family. Mr. Kuhr also testified that he doesn't feel that the loss of use of the vehicle's radio substantially affects the vehicle's value or use.

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 a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the nonconformity

²⁷ Respondent Ex. 2, Resume of Steven Jeffrey Kuhr.

²⁸ *Id.*

²⁹ *Id.*

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, Complainant is entitled to have the vehicle repurchased or replaced.

1. Radio Issue

The evidence provided by Complainant at the hearing established that the vehicle's radio is not working properly even after providing Respondent's authorized dealer several attempts to repair it. The radio was even replaced and it still does not work properly after being replaced by AutoNation's technician on May 9, 2017. Whenever the radio stops working, Complainant must turn the vehicle off and turn it back on to get it to work again. This makes the vehicle less desirable to drive and could affect the value of the vehicle on resale, particularly in light of the fact that Respondent has been unable to repair the issue. As such, the hearing examiner must hold that Complainant has established the vehicle has a defect or condition that substantially impairs the use or market value of the vehicle.

2. Driver's Seat Trim Issue

The evidence also indicates that there is a problem with the vehicle's driver's side seat trim. The trim has been replaced twice by Respondent's authorized dealer and it still pops out. On the date of hearing, the trim was still not connected properly even after being replaced by AutoNation's technician on May 9, 2017. This also impairs the use or market value of the vehicle, since a person would be less likely to want to purchase a vehicle that has a driver's seat trim pop-out periodically.

3. Number of Repair Attempts

Complainant purchased the vehicle on November 5, 2016, and presented the vehicle to Respondent's authorized dealer, AutoNation, due to his concerns with the radio going black and not working on the following dates: November 21, 2016; January 25, 2017; January 30, 2017; and February 8, 2017. He also asked AutoNation's technicians to repair the vehicle's driver's seat trim on January 25, 2017. The radio and trim issues were also raised to AutoNation's technicians on March 25, 2017, after Complainant filed the Lemon Law complaint. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(1) specifies that a rebuttable presumption that a reasonable number of attempts to repair have been made if "two or more repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner, and two other repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the

date of the second repair attempt.” The evidence presented at the hearing establishes that Complainant has met the requirements of this test for the radio issue, but not for the trim issue. As such, Complainant has established that a reasonable number of attempts to repair the vehicle’s radio were made by Respondent.

4. Notice to Respondent and Opportunity to Cure

In addition, the evidence presented at the hearing indicates that Complainant also provided Respondent with written notice of the nonconformity and a final opportunity to cure the defect. Complainant informed Respondent via letter dated March 21, 2017, of the issues with the vehicle. In addition, Complainant provided Respondent with an opportunity to cure of which Respondent availed themselves. The vehicle was inspected and a final repair attempt was performed on May 9, 2017, by Respondent’s representative who updated the vehicle’s radio module’s software and replaced the driver’s seat trim. However, the problems still persist after the repair.

Although Respondent has been provided several opportunities to repair the vehicle and to ensure that it operates properly, they have not been able to do so. As such, Complainant has met his burden of proof to establish that the vehicle has a warrantable and existing defect or condition that substantially impairs the vehicle’s use and market value.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainant’s request for repurchase relief is hereby granted.

III. FINDINGS OF FACT

1. Randy Sandefer (Complainant) purchased a new 2016 Chevrolet Traverse LT from AutoNation Chevrolet–Cadillac (AutoNation) in Amarillo, Texas on November 5, 2016 with mileage of 3,953 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a new vehicle limited bumper-to-bumper warranty which provided coverage for the vehicle for three (3) years or 36,000 miles from the date of delivery to the owner, whichever occurs first.
3. The vehicle’s mileage on the date of hearing was 11,185.
4. At the time of hearing the vehicle’s basic warranty was still in effect.

5. A few days after purchasing the vehicle, the vehicle's radio screen went black and the radio would not play.
6. The radio screen still intermittently goes black and the radio won't work.
7. In January of 2017, Complainant noticed that the vehicle's driver's seat trim was popping out and was not fitting together as designed.
8. On the date of hearing, the driver's side trim was visibly popped out and not clipped together as it was designed.
9. Complainant took the vehicle to Respondent's authorized dealer, AutoNation, in order to address his concerns with the vehicle's radio and with the driver's side trim popping out on the following dates:
 - a. November 21, 2016, at 4,827 miles;
 - b. January 25, 2017, at 6,932 miles;
 - c. January 30, 2017, at 7,095 miles;
 - d. February 8, 2017, at 7,398 miles; and
 - e. March 25, 2017, at 9,084 miles.
10. On November 21, 2016, AutoNation's service technician checked the vehicle's radio and was unable to find any diagnostic codes on the radio's module and was unable to duplicate the concern. No repairs were performed at the time.
11. On January 25, 2017, AutoNation's service technician replaced the vehicle's radio and driver's seat trim in order to address the two (2) issues raised by Complainant.
12. On January 30, 2017, AutoNation's technician was unable to duplicate the radio issue, but did reconnect the USB port cable to the radio, since it was not connected correctly.
13. On February 8, 2017, AutoNation's technician removed the vehicle's radio and checked the connections, but was unable to duplicate the problem with the radio. No repairs were performed at the time.
14. On March 25, 2017, AutoNation's technician was unable to duplicate the issue with the radio screen going black and the radio not working.
15. On March 25, 2017, AutoNation's technician addressed the driver's seat trim issue by

removing the trim and tightening the clips attaching the two pieces.

16. Complainant provided written notice of the defect to Respondent on March 21, 2017.
17. Respondent's field service engineer, Steve Kuhr, performed a final repair attempt on the vehicle on May 9, 2017, at AutoNation.
18. Mr. Kuhr was unable to duplicate the concern with the radio during the final repair attempt. However, he did replace the vehicle's driver's seat trim to address the issue of the trim popping out.
19. The vehicle's radio screen has gone black and the radio stopped working several times since the final repair attempt.
20. The driver's seat trim has popped out again since the last repair attempt and has not been repaired again.
21. On March 12, 2017, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
22. On April 3, 2017, 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.
23. The hearing in this case convened on May 25, 2017, in Amarillo, Texas before Hearings Examiner Edward Sandoval and the hearing record closed that same day. Complainant represented himself at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Steve Kuhr, Field Service Engineer, testified in the hearing. Chuck Kellogg, District Manager for After-Sales, was also present in the hearing, but did not offer testimony.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.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 proved by a preponderance of the evidence that the vehicle has a verifiable defect or condition that substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
 7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
 8. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief under Texas Occupations Code § 2301.604(a).
 9. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to repurchase Complainant's 2016 Chevrolet Traverse LT. Tex. Occ. Code § 2301.604(a)(1).

IT IS THEREFORE ORDERED that:

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in this final order;

2. Respondent shall repurchase the subject vehicle in the amount of **\$32,992.69** which shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondent with clear title to the vehicle;

Purchase price, including tax, title, license and registration	\$34,109.75
Delivery mileage	3,953
Mileage at first report of defective condition	4,827
Mileage on hearing date	11,185
Useful life determination	120,000

Purchase price, including tax, title, license and registration	\$34,109.75			
Mileage at first report of defective condition	4,827			
Less mileage at delivery	<u>-3,953</u>			
Unimpaired miles	874			
Mileage on hearing date	11,185			
Less mileage at first report of defective condition	<u>-4,827</u>			
Impaired miles	6,358			
Reasonable Allowance for Use Calculations:				
Unimpaired miles				
	<u>874</u>			
	120,000	X	\$34,109.75	= \$248.43
Impaired miles				
	<u>6,358</u>			
	120,000	X	\$34,109.75	X .5 = <u>\$903.62</u>
Total reasonable allowance for use deduction:				\$1,152.06
Purchase price, including tax, title, license and registration	\$34,109.75			
Less reasonable allowance for use deduction	-\$1,152.06			
Plus filing fee refund	<u>\$35.00</u>			
TOTAL REPURCHASE AMOUNT	\$32,992.69			

11. Within twenty (20) calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is

not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31st calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);

4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department,³⁰
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous. Upon Respondent's first retail sale of the reacquired vehicle, the disclosure statement shall be completed and returned to the Department.
6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent shall repair the warrantable defect in the reacquired vehicle identified in this Decision.

SIGNED July 19, 2017


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

³⁰ Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, ph. (512) 465-4076.