

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 21-0000303 CAF**

**RUSSELL DONALDSON,  
Complainant**

v.

**TESLA MOTORS, INC.,  
Respondent**

§           **BEFORE THE OFFICE**  
§  
§  
§           **OF**  
§  
§           **ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Russell Donaldson (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in his 2017 Tesla Model X. Complainant asserts that the vehicle has a defect or nonconformity which causes the navigation screen to flicker when being used. Tesla Motors, Inc. (Respondent) argued that the vehicle is operating as designed and that no relief is warranted. The hearings examiner concludes that the vehicle is operating as designed and Complainant is not eligible for repair 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 telephonically on February 10, 2021, before Hearings Examiner Edward Sandoval. Russell Donaldson, Complainant, appeared and represented himself. Tesla Motors, Inc., Respondent, was represented by Matthew Needleman, Case Manager. The hearing record closed on February 10, 2021.

**II. DISCUSSION**

**A. Applicable Law**

Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.” Occupations Code § 2301.603(a) provides that “[a] manufacturer, converter, or distributor shall make repairs necessary to conform a **new motor vehicle** to an applicable manufacturer’s, converter’s, or distributor’s express warranty.” (Emphasis mine.) Therefore, repurchase or replacement relief for defects in a vehicle is available only for new vehicles as defined in the Code. However, relief is available for purchasers of used vehicles under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s,

converter's, or distributor's warranty agreement applicable to the vehicle." The relief available under this section of the Code is repair of the vehicle in question.

## **B. Complainant's Evidence and Arguments**

Complainant purchased a used 2017 Tesla Model X on January 16, 2020, from Respondent with mileage of 17,670 at the time of delivery.<sup>1</sup> When the vehicle was originally sold, Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever comes first.<sup>2</sup> In addition, Respondent provided a used vehicle warranty for the vehicle which provides additional coverage for one (1) years or 10,000 miles after the conclusion of the original warranty.<sup>3</sup> On the date of the initial hearing the vehicle's mileage was 31,625. At the time of purchase, the warranty was still in effect.

Complainant testified that he purchased the vehicle on-line directly from Respondent. He did not initially experience any problems with the vehicle. However, he soon began experiencing an issue where the vehicle's navigation screen began flickering when he was using it. Complainant stated that while driving the vehicle, the navigation screen would flicker and if the screen rotated, the landmarks on the screen would flicker. The navigation screen is part of the vehicle's infotainment system and includes the radio controls, telephone controls, and climate controls. Complainant testified that the other features worked as designed, except for the navigation screen.

Complainant stated that he took the vehicle to Respondent's service center in San Antonio, Texas on June 7, 2020, to have the issue regarding the flickering navigation screen repaired. Respondent's service technician inspected the vehicle, but did not perform any repair at the time. However, the technician ordered a new media control unit (MCU) for the vehicle.<sup>4</sup> The vehicle's mileage on this occasion was 21,728.<sup>5</sup> Complainant could not recall if he received a loaner vehicle while his vehicle was being repaired.

Complainant returned the vehicle to Respondent's service center for repair for the navigation screen issue on July 6, 2020. The technician replaced the vehicle's MCU and performed a firmware update to the vehicle in order to resolve the issue with the navigation screen.<sup>6</sup> The vehicle's mileage was 22,894 at the time.<sup>7</sup> The vehicle was in the service center's possession for

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<sup>1</sup> Complainant Ex. 2, Motor Vehicle Purchase Agreement dated January 16, 2020.

<sup>2</sup> Complainant Ex. 9, Used Vehicle Limited Warranty, p. 5.

<sup>3</sup> *Id.*

<sup>4</sup> Complainant Ex. 3, Repair Order dated June 7, 2020.

<sup>5</sup> *Id.*

<sup>6</sup> Complainant Ex. 4, Repair Order dated July 6, 2020.

<sup>7</sup> *Id.*

over one (1) day on this occasion. Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant testified that the navigation screen was still flickering when he got the vehicle back from Respondent's service center. He took the vehicle back to the service center for repair for the issue on August 26, 2020. Complainant testified that he was informed by the service technician that there may be a wiring issue with the vehicle. However, no repairs were performed at the time. The vehicle's mileage at the time was 24,889.<sup>8</sup> The vehicle was in the service center's possession until September 3, 2020, on this occasion. (Complainant had raised other issues with the vehicle which needed repair during this service visit which may have been a reason for the lengthy stay at the service center.) Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department) on September 6, 2020.<sup>9</sup> Complainant mailed a letter to Respondent on September 7, 2020, in which he indicated his dissatisfaction with the vehicle.<sup>10</sup>

Complainant stated that Respondent did not contact him in regards to his letter of complaint. However, he was contacted in October or November of 2020 by one of Respondent's representatives (Matthew Thompson, service advisor) who asked Complainant to take the vehicle to the service center for an inspection of the navigation screen. On November 17, 2020, Complainant took the vehicle to Respondent's service center. Respondent's service technicians inspected the vehicle and determined that the flickering screen is a normal characteristic of the vehicle's MCU.<sup>11</sup> The technician indicated that when the navigation system is in the satellite view and rotating while driving, the frames per second (FPS) will drop slightly and cause the picture to flicker.<sup>12</sup> The technician determined that the vehicle was operating as designed.<sup>13</sup> The vehicle's mileage on this occasion was 27,633.<sup>14</sup> The vehicle was in the service center's possession for three (3) or four (4) days on this occasion. Complainant received a loaner vehicle while his vehicle was at the service center. Complainant testified that he was not informed prior to this repair that the flickering issue was normal for the navigation screen.

Complainant testified that there have been no more repairs to the vehicle for the navigation screen flickering issue. He stated that the screen flickering issue is a daily occurrence.

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<sup>8</sup> Complainant Ex 5, Repair Order dated August 26, 2020.

<sup>9</sup> Complainant Ex. 1, Warranty Performance Complaint dated September 6, 2020.

<sup>10</sup> Complainant Ex. 6, Letter to Respondent dated September 7, 2020.

<sup>11</sup> Complainant Ex. 7, Repair Order dated November 17, 2020.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

### C. Respondent's Evidence and Arguments

Matthew Needleman, Case Manager, testified for Respondent. He stated that he does not have a technical background. In addition, he stated that he has never seen the subject vehicle.

Mr. Needleman stated that the flickering issue with the vehicle's navigation screen that Complainant raised is normal for the vehicle. He stated that the screen's FPS will slow down when the navigation map is in the satellite view and rotating while driving. He stated that the vehicle is operating as designed and that there is no repair to be performed for the issue. Mr. Needleman feels that Respondent has adhered to their warranty and performed all possible repairs to the vehicle so that it conforms to their warranty.

### D. Analysis

Complainant raised a concern with the vehicle's navigation screen flickering when he used it while driving. The evidence presented at the hearing established that the screen may occasionally flicker due to a slight decrease in the FPS when the screen is in satellite view and rotating. The evidence presented in the hearing indicates that this is a normal operation of the vehicle's navigation screen and is not the result of a defect or nonconformity in the vehicle. Therefore, the hearing examiner must hold that the issue does not provide grounds to order repair relief for Complainant and the request for such relief must be denied.

On the date of hearing, the vehicle's mileage was 31,625 and it remains covered under Respondent's warranty. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

Complainant's request for repair relief is denied.

## III. FINDINGS OF FACT

1. Russell Donaldson (Complainant) purchased a used 2017 Tesla Model X on January 16, 2020, from Respondent with mileage of 17,670 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Tesla Motors, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever occurs first. In addition, Respondent provided a used vehicle warranty for the vehicle which provides additional coverage for one (1) years or 10,000 miles after the conclusion of the original warranty.

3. The vehicle's mileage on the date of hearing was 31,625.
4. At the time of hearing, the vehicle's warranty was still in effect.
5. In May of 2020, Complainant noticed that the navigation screen flickered when he used it for directions.
6. Prior to filing the warranty performance complaint, Complainant took the vehicle to Respondent's authorized service center on the following dates in order to address his concerns with the vehicle's navigation screen flickering:
  - a. June 7, 2020, at 21,728 miles;
  - b. July 6, 2020, at 22,894 miles; and
  - c. August 26, 2020, at 24,889 miles.
7. On June 7, 2020, Respondent's service technician inspected the vehicle and ordered a new media control unit (MCU) in order to address Complainant's concerns with the navigation screen. No actual repair was performed at this time.
8. On July 6, 2020, Respondent's service technician replaced the vehicle's MCU with the special ordered MCU and updated the vehicle's firmware.
9. On August 26, 2020, Respondent's service technician examined the vehicle's navigation screen, but did not perform any repairs at the time.
10. On September 6, 2020, Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).
11. On September 7, 2020, Complainant mailed a letter to Respondent advising them of his dissatisfaction with the vehicle.
12. On November 17, 2020, Complainant took the vehicle to Respondent's service center in order to have the navigation screen repaired for the flickering issue. The vehicle's mileage at the time was 27,633.
13. During the repair described in Findings of Fact #12, Respondent's service technician determined that the flickering issue was a normal characteristic of the vehicle, in that a slight drop in the video frames per second (FPS) was normal if the map is in satellite view and rotating.

14. No repair was performed on November 17, 2020, for the navigation screen flickering issue.
15. On December 7, 2020, 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 telephonically on February 10, 2021, before Hearings Examiner Edward Sandoval. Russell Donaldson, Complainant, appeared and represented himself. Tesla Motors, Inc., Respondent, was represented by Matthew Needleman, Case Manager. The hearing record closed on February 10, 2021.

#### 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) and § 2301.204 (Warranty Performance).
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 by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604 and § 2301.204.

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 repair relief. Tex. Occ. Code § 2301.204.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **DISMISSED**.

**SIGNED February 23, 2021.**

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