

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0008413 CAF**

**MICHAEL MCDUGAL,
Complainant**

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BEFORE THE OFFICE

v.

OF

**GENERAL MOTORS LLC,
Respondent**

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Michael McDougal (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his vehicle manufactured by General Motors LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ 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 August 13, 2021, in Lubbock, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself. Carlin Davis, Business Resource Manager, represented the Respondent. Irfaun Bacchus, Field Service Engineer, also testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.² A vehicle qualifies for repurchase or replacement if the respondent cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”³ In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must currently exist after a “reasonable number of attempts” at repair.⁴ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a written notice of the defect to the respondent, (2) an opportunity to cure by the respondent, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life-threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁵

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a

² TEX. OCC. CODE § 2301.603.

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.604(a).

⁵ TEX. OCC. CODE § 2301.601(4).

vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁶

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”⁷

c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

⁷ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“We find that this interpretation of the standard required for demonstrating substantial impairment is reasonable and consistent with the statute’s plain language which requires a showing of loss in market value. . . . [T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁸ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.¹⁰

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹¹

The existence of a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹² Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.¹³

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner, or the Department has provided written notice of the alleged defect or nonconformity

⁹ TEX. OCC. CODE § 2301.605(a)(2).

¹⁰ TEX. OCC. CODE § 2301.605(a)(3).

¹¹ TEX. OCC. CODE § 2301.605(c).

¹² *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’”).

¹³ *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

to the respondent;¹⁴ (2) the respondent was given an opportunity to cure the defect or nonconformity;¹⁵ and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹⁶

2. Warranty Repair Relief

If repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle”; the vehicle owner provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty's expiration; and the owner filed a complaint with the Department specifying the defect.¹⁷ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁸

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁹ The Complainant must prove all facts required for relief by a preponderance of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.²⁰ Accordingly, the

¹⁴ 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department's notice of the complaint to the Respondent satisfies the requirement to provide notice of the defect or nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

¹⁵ TEX. OCC. CODE § 2301.606(c)(2). A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer may satisfy the opportunity to cure requirement when the respondent authorizes a dealer to attempt repair after written notice to the respondent. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); Texas Department of Transportation, *Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2. A respondent forgoes its opportunity to repair by replying to a written notice of defect with a settlement offer instead of arranging a repair attempt. *Id* at 2.

¹⁶ TEX. OCC. CODE § 2301.606(d)(2).

¹⁷ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁸ TEX. OCC. CODE § 2301.603(a).

¹⁹ 43 TEX. ADMIN. CODE § 215.66(d).

²⁰ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

Complainant cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely.

4. The Complaint Identifies the Relevant Issues in this Case

The complaint identifies the relevant issues to address in this case.²¹ The complaint must state “sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law.”²² However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.²³ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²⁴ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁵

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainant for reasonable incidental expenses resulting from the vehicle’s loss of use because of the defect.²⁶ Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle’s failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by

²¹ “In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.” TEX. GOV’T CODE § 2001.051; “Notice of a hearing in a contested case must include . . . either: (A) a short, plain statement of the factual matters asserted; or (B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.” TEX. GOV’T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) (“The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.”); TEX. OCC. CODE § 2301.204(d) (“A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

²² 43 TEX. ADMIN. CODE § 215.202(a)(3).

²³ 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

²⁴ *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

²⁵ *See* TEX. GOV’T CODE §§ 2001.141(b)-(c), 2001.051-2001.052; TEX. R. CIV. P. 301.

²⁶ TEX. OCC. CODE § 2301.604.

counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts or similar written documents).²⁷ However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²⁸

B. Summary of Complainant's Evidence and Arguments

On December 18, 2020, the Complainant, purchased a new 2021 Cadillac Escalade ES from Alderson Cadillac, LLC, a franchised dealer of the Respondent, in Lubbock, Texas. The vehicle had eight miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for four years or 70,000 miles, whichever occurs first.

On or about March 1, 2021, the Complainant provided a written notice of defect to the Respondent. On March 24, 2021, the Complainant filed a complaint with the Department alleging that the rear entertainment system was inoperable due to connectivity issues.

In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
01/18/21	1,239	Cannot connect to rear seat headrest
03/24/21	3,262	Rear seat entertainment system will not connect
04/30/21	5,117	Radio software update

The Respondent's opportunity to cure occurred on March 24, 2021.

The Complainant testified that he first noticed the issues with the compatibility between his phone and the vehicle's entertainment system on or before January 4, 2021. He described that the entertainment system was designed to stream from an Android device. He tried streaming from a phone and a tablet, which did not work. He affirmed that the operating system on the phone was Android 10. He noted that the devices connected through wi-fi. He testified that the connection did not work at all. He established that the last time he attempted to use the system was the night before the hearing and it did not work properly.

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

²⁸ 43 TEX. ADMIN. CODE § 215.208(b)(1).

The Complainant explained that he had used a Blue-ray player to find a solution. He clarified that the device did not stream to the entertainment system, but plugged in. He added that the Blue-ray player worked successfully.

The Complainant reported that there were two additional, informal visits to the dealership that were not represented by the repair invoices. He added that the informal repair visits occurred on January 5, 2021 and January 11, 2021. He confirmed that he never had to leave the vehicle at the dealership overnight for any repairs. He mentioned that his wife was the primary driver but he drove the vehicle as well. He explained that he drove the vehicles on road trips and that they had driven over 7500 miles this year. He expressed a preference for the repurchase of the vehicle.

On cross examination, the Complainant confirmed that he did have a Samsung Galaxy A21 phone. The Complainant stated that he did not understand the difference between the A21 and the S21.

C. Inspection

The vehicle's odometer displayed 12,601 miles upon inspection at the hearing. Pressing the "Miracast" connection option on the vehicle's rear entertainment center brought up a message stating: "Apple devices, and some Android devices do not support Miracast." The Complainant's phone, using a stand-alone Miracast application (app), could not to connect to the entertainment system. The Hearings Examiner confirmed that the Complainant's phone, a Samsung Galaxy A21, had the Android 10 operating system (OS), which did not include the screen mirroring feature (named "Smart View" on Samsung devices) built into the OS. The Complainant explained that the only other device he had tried to connect was a tablet, which he did not bring to the hearing. The hearings examiner's phone, a Samsung Galaxy A71 with the Android 11 OS, successfully connected and cast to the vehicle's entertainment system using the screen mirroring feature integrated in the OS.

The complainant pointed out where the Firestick and Chrome Cast had been plugged in to the vehicle as an attempted workaround. However, the complainant explained that the devices caused a hazard in the vehicle and would frequently get removed when entering/exiting the vehicle.

D. Summary of Respondent's Evidence and Arguments

Irfaun Bacchus, Field Service Engineer for the Respondent, explained that the Miracast technology is not owned by the Respondent. He further explained that it is a point to point screen share technology. He claimed the Complainant's phone did not work because it was not compatible with the entertainment system. Mr. Bacchus testified that, in previous conversations, the Complainant stated that he had an S21 phone, which is compatible with the system. However, Mr. Bacchus continued that since the Complainant had an A21, the phone did not have a screen mirroring function. Mr. Bacchus stated that the only applications that the Respondent had validated with the entertainment system were the ones that came installed on the phone from the factory. Mr. Bacchus claimed that the only way to fix the concern was to buy a compatible phone.

On cross-examination, Mr. Bacchus acknowledged that the rear screen entertainment system displayed "Miracast" as an option for inputs. He explained that Miracast was not specific to a certain brand or phone and therefore would not list the specific app name. He confirmed that the Respondent had not validated any third-party screen mirroring applications (for compatibility). Mr. Bacchus pointed out that a list of compatible devices was available online.

Carlin Davis, Business Resource Manager for the Respondent, testified that the Complainant collaborated with a representative from the Respondent's customer assistance center and the Complainant declined a final repair attempt.

When asked on cross-examination, Mr. Davis answered that the owner's manual did not list what devices worked with the system. He pointed out that the system itself mentions that some android devices are not compatible. Mr. Davis confirmed that the rear entertainment system was covered under the bumper to bumper warranty. He further confirmed that Miracast was installed at the factory.

E. Analysis

Lemon Law relief does not apply to all problems that may occur with a vehicle but only to defects covered by warranty (warrantable defects) that continue to exist after repairs.²⁹ The Lemon Law does not require that a respondent provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. The Lemon Law only

²⁹ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

requires the respondent to conform its vehicles to whatever coverage the warranty provides. In part, the warranty generally states that: “The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period, excluding slight noise, vibrations, or other normal characteristics of the vehicle due.”³⁰ According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³¹

A defectively manufactured vehicle has a flaw so that it does not conform to the manufacturer’s specifications, and is not identical to other same model vehicles.³² A manufacturing defect occurs when the vehicle varies from the manufacturer’s design standards, causing that vehicle to differ from other vehicles of the same kind.³³ In other words, a manufacturing defect is an isolated aberration, an unintended configuration occurring only in those vehicles not produced according to the manufacturer’s specifications.³⁴ A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Accordingly, manufacturing defects occur during manufacturing and exist when the vehicle leaves the manufacturing plant. In contrast, design issues result from the

³⁰ Complainant’s Ex. 3, New Vehicle Limited Warranty.

³¹ Courts have affirmed that warranty language covering “defects in material or workmanship” do not cover design issues. *E.g.*, *Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 (“The manufacturer’s express warranty in the case sub judice provides: ‘Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship’ The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty.”); *see GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) (“the language in the contract of May 12, 1980, expressly limited TCR’s recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.”).

³² *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.—Texarkana 1985), *aff’d* in part on other grounds, *rev’d* in part on other grounds, 715 S.W.2d 629 (Tex. 1986) (“Manufacturing defect cases involve products which are flawed, i.e., which do not conform to the manufacturer’s own specifications, and are not identical to their mass-produced siblings.”).

³³ *Ridgway v. Ford Motor Co.*, 82 S.W.3d 26, 31-32 (Tex. App.—San Antonio 2002), *rev’d on other grounds*, 135 S.W.3d 598 (Tex. 2004) (“A manufacturing defect may be distinguished from a design defect. A manufacturing defect occurs when the product varies from the manufacturer-established design standards, causing that product to deviate from the normal safety of other products of its kind.”).

³⁴ *Harduvel v. Gen. Dynamics Corp.*, 878 F.2d 1311, 1317 (11th Cir. 1989) (“This distinction between ‘aberrational’ defects and defects occurring throughout an entire line of products is frequently used in tort law to separate defects of manufacture from those of design. . . . Stated another way, the distinction is between an unintended configuration [a manufacturing defect], and an intended configuration that may produce unintended and unwanted results [a design defect].”).

manufacturer's design of the vehicle, even though manufactured without any flaws.³⁵ Design characteristics, including design defects, exist in the vehicle's specifications, before the vehicle is even manufactured, and do not arise from any error during manufacturing.³⁶ Accordingly, a design characteristic exists in all vehicles of the same design, but the vehicle's intended configuration may produce unintended and unwanted results.³⁷ Unlike manufacturing defects, issues that do not arise from manufacturing, such as the vehicle's design characteristics (which exist before manufacturing) or dealer representations and improper dealer repairs (which occur after manufacturing), are not warrantable defects. Because the warranty only covers manufacturing defects, the Lemon Law does not provide relief for design characteristics, design defects, or any other non-manufacturing problem. Even though an issue may be unintended and unwanted, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect.

The complaint in this case asserts that the rear entertainment system is incompatible with the Android 10 OS. The Complainant did not discover the compatibility issue until after purchasing the vehicle and investing in an Android phone and tablet, which turned out to be incompatible with the rear entertainment system's Miracast wireless connection. At the inspection during the hearing, when attempting to connect to the rear entertainment system through Miracast, the screen displayed the following message: "Note: Apple devices, and some Android devices do not support Miracast." In other words, the Miracast feature of the entertainment system as designed will not work with all Android devices. The inspection at the hearing confirmed that the Android 10 OS on the Complainant's phone did not include the screen mirroring feature required to use the Miracast wireless connection. Moreover, the Complainant's phone could not connect to the entertainment system through Miracast using a stand-alone Miracast screen mirroring app installed on the phone. However, the entertainment system connected successfully through Miracast to a

³⁵ *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.--Texarkana 1985), aff'd in part on other grounds, rev'd in part on other grounds, 715 S.W.2d 629 (Tex. 1986) ("Defective design cases, however, are not based on consumer expectancy, but on the manufacturer's design of a product . . . even though not flawed in its manufacture.").

³⁶ In contrast to manufacturing defects, "[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves." *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

³⁷ *Harduvel v. Gen. Dynamics Corp.*, 878 F.2d 1311, 1317 (11th Cir. 1989) ("This distinction between 'aberrational' defects and defects occurring throughout an entire line of products is frequently used in tort law to separate defects of manufacture from those of design. . . . Stated another way, the distinction is between an unintended configuration [a manufacturing defect], and an intended configuration that may produce unintended and unwanted results [a design defect].").

phone with the Android 11 OS, which includes the screen mirroring feature. As reflected in evidence, the Respondent only supports the screen mirroring feature integrated into the OS, which Android 10 does not include. In sum, consistent with the entertainment system's design, the Miracast connection only functions when using a phone with screen mirroring integrated in the OS. However, this limitation is a design characteristic and not a warrantable manufacturing defect. Further, though the present issue may have been avoidable with better disclosure of the entertainment system's compatibility requirements, any disclosure-related issues are nevertheless not warrantable defects subject to Lemon Law relief.

III. Findings of Fact

1. On December 18, 2020, the Complainant, purchased a new 2021 Cadillac Escalade ES from Alderson Cadillac, LLC, a franchised dealer of the Respondent, in Lubbock, Texas. The vehicle had 8 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for 4 years or 70,000 miles, whichever occurs first.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
01/18/21	1,239	Cannot connect to rear seat headrest
03/24/21	3,262	Rear seat entertainment system will not connect
04/30/21	5,117	Radio software update

4. The Respondent's opportunity to cure occurred on March 24, 2021.
5. On or about March 1, 2021, the Complainant provided a written notice of defect to the Respondent.
6. On March 24, 2021, the Complainant filed a complaint with the Department alleging that the rear entertainment system was inoperable due to connectivity issues.
7. On May 24, 2021, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them 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 factual matters asserted.

8. The hearing in this case convened on August 13, 2021, in Lubbock, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself. Carlin Davis, Business Resource Manager, represented the Respondent.
9. The vehicle's odometer displayed 12,601 miles at the time of the hearing.
10. The vehicle's warranty was in effect at the time of the hearing.
11. During the inspection at the hearing, pressing the "Miracast" connection option on the vehicle's rear entertainment center brought up a message stating: "Apple devices, and some Android devices do not support Miracast." The Complainant's phone, using a stand-alone Miracast application (app), could not connect to the entertainment system. The Hearings Examiner confirmed that the Complainant's phone, a Samsung Galaxy A21, had the Android 10 operating system (OS), which did not include the screen mirroring feature (named "Smart View" on Samsung devices) built into the OS. The hearings examiner's phone, a Samsung Galaxy A71 with the Android 11 OS, successfully connected through Miracast and cast to the vehicle's entertainment system using the screen mirroring feature integrated in the Android 11 OS.
12. The entertainment system's Miracast connection requires a compatible Android device that includes the screen mirroring feature integrated in the OS.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
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. The Complainant filed a sufficient complaint with the Department. 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. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
7. The Complainant does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
8. The Complainant's vehicle does not qualify for warranty repair. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
9. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

V. Order

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

SIGNED September 14, 2021



ANDREW KANG
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES