

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 23-0006712 CAF**

TRAVIS SNOW,
Complainant

v.

POLESTAR AUTOMOTIVE USA, INC.,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Travis Snow (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged warrantable defects in a vehicle manufactured by Polestar Automotive USA, Inc.¹ (Respondent). A preponderance of the evidence shows that Complainant's vehicle does not qualify for repurchase relief.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

Notice and jurisdiction were not contested and are addressed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on July 13, 2023, in Houston, Texas, before Chief Hearings Examiner Bennie Brown with the Department's Office of Administrative Hearings (OAH). The Complainant appeared and represented himself. Respondent appeared electronically through its representative Susan Aluia. The hearing concluded the same day, but the record was held open until July 20, 2023, to allow the submission of additional evidence.

¹ Polestar Automotive USA, Inc. is affiliated with Volvo Car USA, LLC.

II. APPLICABLE LAW

The Texas Lemon Law and Warranty Performance Law require a manufacturer, converter, or distributor to make repairs necessary to conform a new motor vehicle to an applicable warranty.² If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.³ The case may be referred to OAH for a hearing on the merits to determine which type of relief, if any, is warranted pursuant to statute.⁴ The complaint filed with the Department identifies the relevant issues to address at the hearing.⁵ The Complainant has the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.⁶ Failure to prove even one required fact results in denial of relief.

In this case, Complainant is seeking repurchase of the subject vehicle.

A. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.⁷ A new vehicle may qualify for repurchase or replacement of the vehicle, along with reimbursement of incidental expenses resulting from the loss of use of the vehicle due to the defect(s).⁸ A vehicle qualifies for repurchase or replacement if all the following conditions are met:

- 1) the vehicle has a defect covered by an applicable warranty (applicable defect);
- 2) the defect must either:
 - a) create a serious safety hazard; or

² Tex. Occ. Code § 2301.603(a).

³ Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

⁴ Tex. Occ. Code § 2301.204(d); 43 Tex. Admin. Code § 215.202(b)(4).

⁵ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent. *See* Tex. Gov't Code §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

⁶ 43 Tex. Admin. Code § 206.66(d); *see Vance v. My Apartment Steak House, Inc.*, 677 S.W. 2d 480, 482 (Tex. 1984) (“[A] civil litigant who asserts an affirmative claim of relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

⁷ Tex. Occ. Code § 2301.603.

⁸ Tex. Occ. Code § 2301.604.

- b) substantially impair the use or market value of the vehicle; and
- 3) the defect must currently exist after a “reasonable number of attempts” to repair the vehicle.⁹

The above terms are further defined by the Lemon Law statute and case law.

1. Serious Safety Hazard

The Lemon Law statute defines “serious safety hazard” as a life-threatening malfunction or non-conformity 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.¹⁰

2. Substantial Impairment of Use or Value

a. Impairment of Use

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs use of the vehicle. Under this standard, the factfinder considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle” from the perspective of a reasonable prospective purchaser.¹¹ For example, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”¹²

b. 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

⁹ Tex. Occ. Code § 2301.604(a).

¹⁰ Tex. Occ. Code § 2301.601(4).

¹¹ *Dutchmen Manufacturing, Inc. v. Texas Dep’t of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App. – Austin 2012).

¹² *Id.*

an owner to present an expert witness or any technical or market-based evidence to show decreased value.”¹³ 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.”¹⁴

3. 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.¹⁵

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 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.¹⁶

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:

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Tex. Occ. Code § 2301.605(a)(1).

¹⁶ Tex. Occ. Code § 2301.605(a)(2).

[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.¹⁷

The 30 days described above do not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁸

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.¹⁹ 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.²⁰

4. Other Requirements for Repurchase/Replacement

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 to the respondent;²¹

¹⁷ Tex. Occ. Code § 2301.605(a)(3).

¹⁸ Tex. Occ. Code § 2301.605(c).

¹⁹ *Ford Motor Company v. Texas Dep't 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.’”).

²⁰ *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.”).

²¹ Tex. Occ. Code § 2301.606(c)(1); 43 Tex. Admin. Code § 215.204.

- (2) the respondent was given an opportunity to cure the defect or nonconformity;²² and
- (3) the Lemon Law complaint was filed within 6 months after the earliest of:
 - (a) the warranty's expiration date; or
 - (b) 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.²³

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 due to the defect.²⁴ 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 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.²⁵ However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²⁶

²² 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 Dep't of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221, 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. 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.

²³ Tex. Occ. Code § 2301.606(d).

²⁴ Tex. Occ. Code § 2301.604(a).

²⁵ 43 Tex. Admin. Code § 215.209(a).

²⁶ 43 Tex. Admin. Code § 215.208(b)(1).

B. Warranty Repair Relief

If a vehicle does not qualify for repurchase or replacement, the vehicle may still qualify for warranty repair relief.²⁷ A vehicle may qualify for warranty repair relief if all the following conditions are met:

- 1) the vehicle has a “defect . . . that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle;”
- 2) the vehicle owner, or the owner’s designated agent, provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty’s expiration; and
- 3) the vehicle owner filed a complaint with the Department specifying the defect.²⁸

III. DISCUSSION**A. Summary of Complainant’s Evidence and Arguments**

On September 10, 2022, Complainant purchased a new 2022 Polestar PS2 from Polestar Houston, a franchised dealer of Respondent in association with Volvo Cars West Houston, located in Houston, Texas. The vehicle had 4 miles on the odometer at the time of purchase.²⁹

The vehicle’s warranty states that “[i]f any part of the car fails because of a manufacturing defect, it will be repaired or replaced free of charge at an authorized Polestar service point. This

²⁷ 43 Tex. Admin. Code § 215.208(e).

²⁸ Tex. Occ. Code § 2301.204(a),(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

²⁹ The Lemon Law complaint states that the vehicle had 4 miles on the odometer at the time of purchase. However, the Retail Order for a Motor Vehicle lists the vehicle mileage as 43 miles at the time of purchase. Complainant Ex. 6. In addition, the invoice dated September 28, 2023, lists the vehicle mileage on that date as 43 miles. Respondent Ex. 1. Complainant testified that he believed the vehicle had very minimal miles at the time of purchase as it was only driven to load and unload it for delivery. Therefore, the Hearings Examiner finds it more likely than not that the vehicle had 4 miles at the time of purchase and 43 miles when an invoice was created on September 28, 2023.

guarantee covers the first 4 years after delivery, regardless of a change in ownership, or 50,000 miles, whichever comes first.”³⁰

On February 5, 2023, Complainant filed a Lemon Law complaint with the Department alleging that the vehicle has had repeated issues with the Operating System (OS) and dash technology and that the trunk has failed to open several times. The Department sent a copy of the Lemon Law complaint to Respondent, providing written notice of the alleged defects.

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

Date	Miles	Issue
09/28/2022	43	Software update
10/28/2022	2,125	Doors would not lock with keys; maps not loading
11/28/2022	2,935	Trunk opened without warning and vehicle damaged
02/07/2023	4,386	Trunk opened without warning and vehicle damaged; software issues

Shortly after purchasing the vehicle, on September 13, 2022, Complaint experienced issues with the vehicle’s doors and locks. Specifically, the doors would not lock when using the Polestar application.

On October 28, 2022, the vehicle was taken in for service at 2,125 miles due to the trunk and doors not responding to the key fob, and the maps were not loading.³¹ In addition, the main center display was intermittently unresponsive, and a message stating “rear position light malfunction” kept appearing on the dash display.

The dealer updated the OS software. Although the connection with the key fob improved somewhat after the update, it still did not operate normally. Several attempts were required before

³⁰ Complainant Ex. 8.

³¹ Complainant Ex. 4.

the vehicle would lock. The display issues were not resolved either. In fact, Complainant testified that the display issues gradually became worse after each update.

Complainant testified that on November 18, 2022, there was a malfunction with the vehicle's trunk. On that date, Complainant's wife loaded a few items into the trunk and pressed the button to close the trunk. The trunk clicked closed. She entered the vehicle on the passenger side and sat down. Complainant was in the driver's seat, and Complainant's daughter was in the backseat. As Complainant backed out of his garage, he heard a loud noise, and the vehicle stopped on its own. He discovered that the trunk had opened and collided with the garage door. Complainant explained that the trunk is designed like a hatchback and has a full lift gate that fully raises the trunk. Complainant testified that there were no warning lights, sounds, or notifications that the trunk was open. The vehicle sustained damage to the roofline frame and rear trunk area.

Complainant took the vehicle for repair of the trunk issue on November 28, 2022. No repairs were performed, but an OS update was installed. The dealership advised Complainant to file an insurance claim and have the vehicle repaired by a Volvo authorized repair center. When Complainant tried to get repair estimates from these centers, he was informed that they did not work on fully electric vehicles and could not repair his vehicle. Complainant stated that after the vehicle was damaged, he was treated differently by the dealership. In addition, his auto insurance premiums increased after the incident.

He went back to the dealership a few days later and spoke to the service department manager who told Complainant that there was no record of collisions or errors with the vehicle. On December 12, 2022, Complainant sent a letter to Polestar's corporate office, explaining his problems with the vehicle.³² However, he never received a response.

On January 18, 2023, Complainant posted his experience on Polestar's Facebook account. Within a few hours, he received a message to contact them privately through Facebook Messenger. His post was later removed. The next day, he received a letter from Polestar's corporate office

³² Complainant Ex. 10.

asking for more information regarding problems with the vehicle. Complainant provided the requested information and did not receive anything in response. On February 1, 2023, Complainant requested that someone call him. Approximately one or two days later, Complainant received a call from Polestar corporate. He was told to take the vehicle to a Volvo dealership so it could be inspected by someone from the corporate office.

On February 7, 2023, Complainant took the vehicle to Volvo as advised. The dealership kept the vehicle for 24 days. The only work performed was another OS update. Complainant picked up the vehicle on March 3, 2023. The vehicle was covered in dust because it had been sitting on the lot. Just days after picking up the vehicle, Complainant started experiencing intermittent issues with the display.

On March 27, 2023, Complainant received a letter from Polestar Corporate stating that there is no data in the vehicle relating to the trunk incident. In addition, they were unable to find any faults in the vehicle, and the engineers were unable to replicate his concerns.³³

Complainant testified that he normally drives between 1,200 to 1,500 miles per month. After the trunk incident, he stopped driving as often because he did not feel safe driving the vehicle. On one or two occasions, the instrument panel behind the steering wheel went black while he was driving. However, he was still able to view the vehicle's speed, but other information, like Google Maps, would not display. In addition, the main screen display in the center of the dash intermittently goes black. This screen displays maps, entertainment, vehicle settings, air conditioning and heating, etc. When this screen malfunctions, there is no access to safety features or comfort settings. No buttons are available to access the features manually. He recalled a time when the main display was completely black for 4 days. During that time, there was no back-up camera, no air conditioning, no radio, no access to vehicle settings or safety features.

Complainant testified that he has an Apple iPhone and was told that there could be compatibility issues between his phone and the vehicle which utilizes a Google-based system. The

³³ Complainant Ex. 1.

main screen does not connect to his phone. He agreed that it may take time for Google updates to get to vehicle manufacturers. Complainant performed a couple of OS updates on his own, but he does not have documentation.

Complainant's wife, Cicely Snow, testified that prior to the trunk incident, the vehicle would not lock with the Polestar application. On one occasion, the GPS map blacked out while they were driving out of town, and they were unable to get directions.

Mrs. Snow testified that, on the day of the trunk incident, she saw the screen inside the vehicle and it showed a clear view to back up. There were no warning lights or notifications that the trunk was ajar or open. Mrs. Snow does not drive the vehicle because there are too many glitches and she is afraid of getting into an accident. Mrs. Snow testified that the issues with the vehicle have taken a toll on their family because it has been a never-ending cycle of not being heard and not receiving relief.

Jazmin Snow, Complainant's daughter, testified that she was in the backseat of the vehicle on the passenger side when the trunk incident occurred. She confirmed that Mrs. Snow closed the trunk because she heard the click when it closed. She also stated that she was able to see the main center display while Complainant was reversing and the display was clear. She did not see or hear anything abnormal.

As of the hearing date, the vehicle has damage that no one can repair. Complainant is concerned about the decreased value of the vehicle due to the inability to repair the vehicle and the damage to the frame. The main screen display does not load properly, glitches frequently, and is getting worse. Complainant is concerned about the safety of the vehicle because the safety features are not working properly.

He testified that this has been a very stressful experience for him and his family. He purchased the vehicle for its safety features, but he does not always have access to that information due to the screen malfunctions. In addition, the trunk opened while he was backing up. He believes the vehicle's issues are due to a manufacturing defect and requests that the vehicle be repurchased.

B. Vehicle Inspection

Upon inspection at the hearing, the subject vehicle's odometer displayed 7,777 miles. Complainant demonstrated that key fob would not open the trunk; however, the trunk opened when Complainant swiped his foot under the back of the vehicle. There was an audible click when the trunk closed. Complainant attempted to open the trunk again by pressing the trunk button inside the vehicle, and the trunk did not open. Google Maps loaded on the main display screen.

Complainant opened the trunk a second time, and the instrument panel displayed an orange notification that the trunk was open. Complainant put the vehicle in reverse while Mrs. Snow was standing near the rear of the vehicle, and warning lights and chimes displayed due to Mrs. Snow's proximity to the vehicle. Mrs. Snow walked close to the vehicle a second time to engage the sensors while the vehicle was in reverse, and no warning lights or sounds were activated.

C. Summary of Respondent's Evidence and Arguments

Ms. Aluia clarified the vehicle's service history. On September 28, 2022, at 43 miles, a new car software update was performed. No complaint was listed on the invoice.³⁴

The October 28, 2022, invoice notes that Complainant stated the vehicle will not recognize the keys and the trunk kick option was not working. The issue with the key was replicated. A software update was performed, a fuse was removed, and the back up battery was reset. After the reset, the keys and trunk option were working as designed.³⁵

³⁴ Respondent Ex. 1.

³⁵ *Id.*

On November 18, 2022, after the trunk incident, no codes were found, and the dealer could not verify a failure with the trunk release or lock mechanism. Another software update was installed.³⁶

On February 7, 2023, a second inspection was performed regarding the trunk. No codes or failures were found.³⁷

Respondent argues that the software issues experienced by Complainant are not due to a manufacturing defect. Respondent was unable to duplicate Complainant's concerns or to identify a software issue as the cause of the trunk collision. In addition, Respondent's engineers were unable to identify a manufacturing defect with the vehicle. Therefore, Respondent argues that the subject vehicle does not qualify for relief under the Texas Lemon Law.

D. Analysis

Complainant had the burden of proof to show that the subject vehicle qualified for relief. To qualify for relief, Complainant must prove, by a preponderance of the evidence, the following elements: (1) the alleged defect is covered under Respondent's warranty; (2) the defect causes either a serious safety hazard or a substantial impairment of use or value; and (3) the vehicle has had a reasonable number of repair attempts. Failure to prove even one required fact results in the denial of relief. Based on the evidence presented, Complainant failed to establish the facts necessary for repurchase relief.

Lemon Law relief does not apply to all problems that may occur with a vehicle but only to those that are covered by warranty and continue to exist (i.e., currently exist) after repairs.³⁸ The Lemon Law requires a respondent to conform its vehicles to whatever coverage the warranty provides. In this case, the subject vehicle's warranty states, in part, that "[i]f any part of the car

³⁶ *Id.*

³⁷ *Id.*

³⁸ Tex. Occ. Code §§ 2301.603(a), 2301.604(a); Tex. Occ. Code § 2301.204.

fails because of a manufacturing defect, it will be repaired or replaced free of charge at an authorized Polestar service point.”³⁹ According to these terms, the warranty only applies to manufacturing 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 issue then, in this case, is whether the problems experienced by Complainant were caused by a manufacturing defect or a design defect.

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.⁴⁰ In contrast, design issues result from the manufacturer’s design of the vehicle, even though manufactured without any flaws.⁴¹ Essentially, the difference between a manufacturing defect and a design defect is that a manufacturing defect is created when a product deviates from its original design and becomes defective. A design defect is when a product is created exactly how it was designed, but the design itself caused the product to be defective. A product with a manufacturing defect would not be defective if it had been made according to the design, while a product with a design defect is still defective, even though it was made correctly.

In the present case, the subject vehicle experienced glitches or malfunctions related to the vehicle’s software. Software issues are typically the result of a design defect, not a manufacturing

³⁹ Complainant Ex. 8.

⁴⁰ *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.”).

⁴¹ *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.”).

defect.⁴² The problems in vehicle software are due to faults or limitations of the code, not due to a variation from the original design of the system. Because of that, software issues in vehicles are design issues and do not qualify for relief under the Lemon Law statute. Therefore, the software issues and malfunctions experienced by Complainant were more likely than not caused by a design defect, not a manufacturing defect. Consequently, the first element required for relief has not been met, and the subject vehicle does not qualify for repurchase or replacement pursuant to statute.

IV. FINDINGS OF FACT

1. On September 10, 2022, Travis Snow (Complainant) purchased a new 2022 Polestar PS2 from Polestar Houston, a franchised dealer of Polestar Automotive USA, Inc. (Respondent), in Houston, Texas.
2. Respondent is affiliated with Volvo Car USA, LLC.
3. The vehicle had 4 miles on the odometer at the time of purchase.
4. The vehicle's warranty provides coverage for any part of the vehicle that fails because of a manufacturing defect. The failed part will be repaired or replaced free of charge at an authorized Polestar service point. The warranty provides coverage for the first 4 years after delivery, regardless of a change in ownership, or 50,000 miles, whichever comes first.
5. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
09/28/2022	43	Software update
10/28/2022	2,125	Doors would not lock with keys; maps not loading
11/28/2022	2,935	Trunk opened without warning and vehicle damaged
02/07/2023	4,386	Trunk opened without warning and vehicle damaged; software issues

⁴² “Unless there is an error in the copying of software code, software defects are likely to be considered design defects. ...[S]oftware that does something unexpected is nevertheless responding exactly as it has been programmed to do.” Frances E. Zollers et al., *No More Soft Landings for Software: Liability for Defects in an Industry That Has Come of Age*, 21 Santa Clara Computer & High Tech. L.J. 745, 749-750, 778 (2005) (“Software can only fail for one reason: faulty design.”).

6. On September 13, 2022, Complaint experienced issues with the vehicle's doors and locks. The doors would not lock when using the Polestar application.
7. On September 18, 2022, at 43 miles, a software update was installed.
8. On October 28, 2022, at 2,125 miles, the vehicle was taken in for service because the trunk and doors were not responding to the key fob, and the maps were not loading. In addition, the main center display was intermittently unresponsive, and a message stating "rear position light malfunction" kept appearing on the dash display.
9. A software update was performed, a fuse was removed, and the backup battery was reset. The dealer noted after the reset that the keys and trunk option were working as designed.
10. Complainant experienced some improvement with the key fob after the update, but it still required several attempts to lock the doors. The display issues were not resolved.
11. On November 18, 2022, the vehicle's trunk was closed and opened on its own while Complainant was backing out of his garage. The raised trunk collided with the garage door.
12. The vehicle sustained damage to the roofline frame and rear trunk area.
13. No warning lights, sounds, or notifications displayed to warn Complainant that the trunk was open.
14. On November 28, 2022, at 2,935 miles, the vehicle was taken in for repair of the trunk issue and damage to the vehicle.
15. A new software update was installed. No collision history or error codes were found in the vehicle's history.
16. The dealer told Complainant to take the vehicle to a Volvo approved repair center.
17. None of the repair centers would repair the vehicle because they did not work on fully electric vehicles.
18. The vehicle's physical damage has not been repaired.
19. On December 12, 2022, Complainant sent a letter to Polestar's corporate office, explaining his problems with the vehicle. He did not receive a response.
20. On January 18, 2023, Complainant posted his experiences on Polestar's Facebook account. Within a few hours, he received a message to contact them privately through Facebook Messenger. His post was later removed.

21. The next day, Complainant received a letter from Polestar's corporate office asking for more information regarding problems with the vehicle. Complainant provided the requested information and did not receive anything in response.
22. On February 1, 2023, Complainant requested that someone call him. Approximately one or two days later, Complainant received a call from Polestar corporate. He was told to take the vehicle to a Volvo dealership so it could be inspected by someone from the corporate office.
23. On February 7, 2023, Complainant took the vehicle to Volvo as advised. The dealership kept the vehicle for 24 days and performed another OS update.
24. Complainant picked up the vehicle on March 3, 2023. A few days after picking up the vehicle, Complainant started experiencing intermittent issues with the display.
25. On March 27, 2023, Complainant received a letter from Polestar Corporate stating that there is no data in the vehicle relating to the trunk incident and that they were unable to find any faults in the vehicle.
26. On February 5, 2023, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) alleging that the vehicle has repeated issues with the Operating System and dash technology and that the trunk has failed to open several times. The Department sent a copy of the Lemon Law complaint to Respondent, providing written notice of the alleged defects.
27. On May 1, 2023, the Department's Office of Administrative Hearings (OAH) issued a Notice of Hearing directed to all parties, providing not less than 10 days' notice of the hearing date and advising the parties of their rights under the applicable rules and statutes.
28. The Notice of Hearing advised the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the Department.
29. On July 13, 2023, a hearing on the merits was convened in Houston, Texas, before OAH Chief Hearings Examiner Bennie Brown. Complainant appeared and represented himself. Respondent appeared electronically through its representative Susan Aluia. The hearing concluded the same day, but the record was held open until July 20, 2023, to allow the submission of additional evidence.
30. The vehicle's odometer displayed 7,777 miles at the time of the hearing.
31. The vehicle's warranty was in effect at the time of the hearing.
32. During the vehicle inspection at the hearing, the key fob would not open the trunk.

33. The trunk opened when Complainant swiped his foot under the back of the vehicle. There was an audible click when the trunk closed.
34. The trunk did not open when Complainant pressed the trunk button inside the vehicle.
35. The trunk was opened a second time, and the instrument panel displayed an orange notification that the trunk was open.
36. On one occasion, the vehicle's warning lights and chimes displayed due to Complainant's wife's close proximity to the vehicle while the vehicle was in reverse.
37. On a second occasion, the vehicle failed to display any warning lights or sounds when Complainant's wife was in close proximity to the vehicle while the vehicle was in reverse.
38. Google Maps loaded on the main display screen inside the vehicle during the inspection.
39. The problems with the vehicle stem from software issues or malfunctions.
40. Software issues are a design defect.

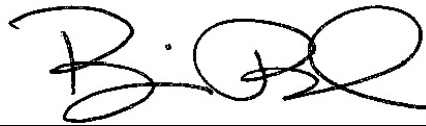
V. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, 601-.613.
2. A Hearings Examiner with 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. Proper and timely notice of the hearing was provided. Tex. Gov't Code ch. 2001.051-.052; 43 Tex. Admin. Code § 215.206(2).
5. The Complainant bears the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).
6. Complainant failed to show, by a preponderance of the evidence, that the subject vehicle has a warrantable manufacturing defect. Tex. Occ. Code § 2301.604(a), .605.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranty. Tex. Occ. Code § 2301.603.

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-.613 is **DENIED**.

SIGNED September 18, 2023

A handwritten signature in black ink, appearing to read 'B. Brown', written over a horizontal line.

**BENNIE BROWN
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**