

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0182 CAF**

GARETH PARTRIDGE,
Complainant

v.

GENERAL MOTORS LLC,
Respondent

§
§
§
§
§
§

**BEFORE THE OFFICE
OF
ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Gareth Partridge (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2015 Chevrolet Suburban. Complainant asserts that the vehicle's multi-media (radio) screen flickers and goes blank at times. In addition, the vehicle's door locks locked and unlocked on their own, the hazard lights turned on by themselves, and the vehicle began losing power while Complainant was driving on the highway. General Motors LLC (Respondent) argued that the vehicle does not have a defect, that the vehicle has not been devalued, and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect, and Complainant 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 June 8, 2016, in Odessa, Texas before Hearings Examiner Edward Sandoval. Complainant, Gareth Partridge, was present and was represented by his wife, Heather Partridge, at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. John Ferrell, Field Service Engineer, was present and testified for Respondent. J. T. Barry, District Manager for After-Sales, was also present for Respondent and observed. The hearing record was closed on June 22, 2016, when Complainant submitted as additional evidence a requested copy of a video to the hearings examiner.

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

¹ Tex. Occ. Code § 2301.604(a).

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 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

1. Heather Partridge's Testimony

Complainant purchased a new 2015 Chevrolet Suburban from All American Chevrolet of Midland (All American) located in Midland, Texas on November 15, 2014, with mileage of 320 at the time of delivery.^{6,7} Respondent's bumper-to-bumper warranty for the vehicle provides coverage for four (4) years or 50,000 miles, whichever comes first. On the date of hearing the vehicle's mileage was 17,915. At this time, Respondent's bumper-to-bumper warranty for the vehicle remains in effect.

Heather Partridge, Complainant's wife, testified that the vehicle's multi-media screen started flickering or glitching the day after they purchased the vehicle. They took the vehicle back to All American on November 16, 2014, whose representative informed them that the dealer had just

² *Id.*

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 15, 2014.

⁷ Complainant Ex. 2, Odometer Disclosure Statement dated November 15, 2014.

replaced the vehicle's screen. All American's service technician tightened some wires and informed Ms. Partridge that the multi-media system was good.

Ms. Partridge indicated that she and Complainant took the vehicle to All American on January 27, 2015, because the multi-media system's screen was flickering or glitching. All American's service technician looked at the wiring to the system, reconnected some wires, and ran an update to the system. Ms. Partridge testified that the multi-media system began acting up again within twelve (12) hours.

On February 12, 2015, Complainant took the vehicle to All American for further repair for the multi-media system and to the vehicle's dashboard. All American's service technician studied the system's schematics and performed tests on various wires in the system.⁸ The technician found a poor crimp on a wire, so he re-crimped and reinstalled the wires and components.⁹ The vehicle's dashboard was reinstalled because it had been misaligned.¹⁰ The vehicle's mileage on this occasion was 4,434.¹¹ The vehicle was in the dealer's possession for approximately a month and a half. All American provided Complainant with a loaner vehicle while his vehicle was being repaired.

Ms. Partridge testified the problem with the vehicle's multi-media screen began to occur again. Complainant took the vehicle to All American for repair on June 10, 2015. The service technician could not find any trouble codes for the problem, but contacted Respondent's technical line.¹² Respondent's technical line representative informed the technician that "GM is aware of the problem but as of this time does not have a repair for this issue."¹³ The vehicle's mileage when it was taken to the dealership on this occasion was 8,395.¹⁴ The vehicle was in the dealer's possession for a month on this occasion.¹⁵ Complainant was provided a loaner vehicle while his vehicle was being repaired.

On August 10, 2015, Complainant took the vehicle to All American for repair to the multi-media system, and because the air conditioner was not working, and because the door locks were locking and unlocking while he and his wife were driving. All American's service technician

⁸ Complainant Ex. 3, Repair Order dated February 12, 2015.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 4, Repair Order dated June 10, 2015.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* The repair visit was extended because the vehicle's keys were lost while the vehicle was being serviced. In addition, the vehicle was hit by another customer's vehicle while in the dealer's possession and the body damage had to be repaired before it was returned to Complainant.

indicated that there was no fix for the multi-media system's issue.¹⁶ The technician repaired the air conditioner issue, but was unable to duplicate the problem with the door locks.¹⁷ The vehicle's mileage when it was delivered to the dealer on this occasion was 10,236.¹⁸ The vehicle was in the dealer's possession for almost three (3) months. Complainant received a loaner vehicle while his vehicle was being repaired.

During the time that the vehicle was in All American's possession in late 2015, Complainant requested a reimbursement of his car payments, since he was not able to drive the vehicle for approximately three (3) months. All American did reimburse two vehicle payments (for September and October of 2015) totaling \$2,012.60 to Complainant.¹⁹

Ms. Partridge testified that on January 12, 2016, Complainant took the vehicle to All American for repair to the multi-media system, since the screen was going blank on occasion. All American's service technician verified the issue and determined that a connector had loose pin fits.²⁰ The technician replaced the terminating leads for some of the pins in order to correct the problem with the multi-media screen.²¹ The vehicle's mileage when it was delivered to the dealer on this occasion was 15,086.²² The vehicle was in the dealer's possession for 18 days.²³ Complainant was provided with a rental vehicle while his vehicle was being repaired.

On February 17, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).²⁴ Complainant wrote a letter to Respondent which was signed for by Respondent's representative on March 16, 2016, advising them of the problems with the vehicle's multi-media system.²⁵

Ms. Partridge indicated that the vehicle's multi-media screen still flickers or glitches. This affects the radio, the navigation screen, and the back-up camera. This happens on a daily basis.

¹⁶ Complainant Ex. 5, Repair Order dated August 10, 2015.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant Ex. 6, Repair Orders dated September 2, 2015 and October 5, 2015.

²⁰ Complainant Ex. 8, Repair Order dated January 12, 2016.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Complainant Ex. 7, Lemon Law Complaint dated February 17, 2016. Complainant signed the complaint on January 9, 2016, but it was not received by Texas Department of Motor Vehicles until February 17, 2016, which is the effective date of the complaint.

²⁵ Complainant Ex. 9, Letter to General Motors Relations Department indicating receipt by Respondent's representative on March 16, 2016.

During cross examination, Ms. Partridge testified that she is the primary driver of the vehicle. Complainant has not filed any insurance claims on the vehicle due to accidents. The tires are all original to the vehicle, although Complainant has had a flat tire that needed repair. The vehicle has not suffered any hail or flood damage. The vehicle has not had to be towed for repair. The vehicle does not have any after-market devices or any modifications to the wiring. Complainant has not been stranded in the vehicle and has not had to call a tow truck to get the vehicle towed anywhere.

2. Gareth Partridge's Testimony

Complainant testified that he is the secondary driver of the vehicle. His wife, Heather Partridge, is the primary driver. Complainant stated that he drives the vehicle about ten (10) times per month. Every time that he's been in the vehicle, he has observed the multi-media system's screen flicker on or off. He stated that this occurred at least twice on his drive to the hearing location on the hearing date.

Complainant also testified about an incident in the vehicle where he set the cruise control while driving on the highway. The vehicle's door locks started locking and unlocking and the hazard lights started flashing. The vehicle also lost power for about 30 seconds before resuming driving normally. The navigation/multi-media screen also flickered during this incident. Complainant testified that this occurred twice on their trip.

C. Respondent's Evidence and Arguments

John Ferrell, Field Service Engineer, has been working in the automotive industry since 1998. He worked for 17 years as a service technician at different automobile dealerships. He's been working as a field service engineer for Respondent for almost one (1) year. Mr. Ferrell is a GM World Class technician. He is an Automotive Service Excellence (ASE) Master Certified Technician.

Mr. Ferrell testified that he was assigned to perform a final repair attempt on the vehicle. The final repair attempt was performed on March 31, 2016, at All American. Mr. Ferrell stated that during the repair he first checked to see if there were any recalls or field actions for the vehicle's multi-media system, which there weren't. He did not find any diagnostic trouble codes (DTC) for the vehicle's multi-media system on the vehicle's computers. He did discover a technical service bulletin (TSB) which he felt would address Complainant's concern, so he followed the instructions for the TSB which indicated that the human machine interface (HMI) module should

be updated.²⁶ He also determined that the radio's programming was up to date. Mr. Ferrell feels that the problem noticed by Complainant was due to the radio display (multi-media screen) flickering on startup of the vehicle and that this is normal.²⁷ In addition, Mr. Ferrell test drove the vehicle several times and the screen did not flicker or go blank.²⁸ Mr. Ferrell also checked the multi-media system's sound quality which sounded fine to him.²⁹ Finally, Mr. Ferrell determined that the vehicle's transmission was operating normally and that the engine idle was within manufacturer's specifications.³⁰

Mr. Ferrell testified that he believes that the vehicle is operating as designed and that there is no defect present in the vehicle. He indicated that if there were a defect in the vehicle's electrical system, then there would be diagnostic trouble codes (DTC's) present on the vehicle's computers. Mr. Ferrell does not believe that the vehicle has lost value. He indicated that he would feel comfortable driving the vehicle.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that 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 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.

It is clear from the evidence presented at the hearing that the vehicle's multi-media system does not operate properly. The screen will flicker and sometimes will not operate for an entire day. The loss of usage of the multi-media system has a negative impact on the value of the vehicle. Such systems are often selling points for vehicles in the present day. Many consumers will not purchase new vehicles that don't contain such systems. As such, Complainant has proven by a preponderance of the evidence the existence of a defect in the vehicle which substantially impairs the vehicle's use or market value.

Complainant purchased the vehicle on November 15, 2014, and presented the vehicle to All

²⁶ Respondent Ex. 2, Vehicle Inspection Report for 2015 Chevrolet Suburban dated March 31, 2016.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

American due to his concerns with the vehicle's multi-media system on: November 16, 2014; January 27, 2015; February 12, 2015; June 10, 2015; August 10, 2015; and January 12, 2016. 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 since he took the vehicle for repair the requisite number of times within the specified time frame. As such, Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent.

In addition, the evidence presented at the hearing indicates that Complainant also provided Respondent with a final opportunity to cure the defect. Complainant informed Respondent via letter received by Respondent on March 16, 2016, of the issues with the vehicle and providing them with an opportunity to cure of which Respondent availed themselves. The vehicle was inspected and a final repair attempt was performed on March 31, 2016, by Respondent's representative who updated the human machine interface (HMI) module programming. However, the problem still persisted after the repair.

Although the 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. Gareth Partridge (Complainant) purchased a new 2015 Chevrolet Suburban on November 15, 2014, from All American Chevrolet (All American), in Midland, Texas with mileage of 320 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles, whichever occurs first.

3. The vehicle's mileage on the date of hearing was 17,915.
4. At the time of hearing the vehicle's bumper-to-bumper warranty was still in effect.
5. After purchasing the vehicle, Complainant noticed that the vehicle's multi-media screen flickered and sometimes went blank when he was driving the vehicle.
6. Complainant took the vehicle to Respondent's authorized dealer, All American, in order to address his concerns with the vehicle's multi-media screen, on the following dates:
 - a. November 16, 2014, at unknown mileage;
 - b. January 27, 2015, at unknown mileage;
 - c. February 12, 2015, at 4,434 miles;
 - d. June 10, 2015, at 8,395 miles;
 - e. August 10, 2015, at 10,236 miles; and
 - f. January 12, 2016, at 15,086 miles.
7. Respondent, through its authorized dealer, undertook a reasonable number of attempts to conform Complainant's vehicle to an applicable express warranty, but the nonconformity in the vehicle continues to exist.
8. The defective condition of Complainant's vehicle substantially impairs its use and market value. The vehicle's problems with the multi-media screen make it less desirable to own than comparable vehicles.
9. Complainant provided written notice of the defect to Respondent on March 16, 2016, and Respondent was given the opportunity to perform a final repair on the vehicle on March 31, 2016.
10. On February 17, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On April 11, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.

12. The hearing in this case convened on June 8, 2016, in Odessa, Texas before Hearings Examiner Edward Sandoval. Complainant, Gareth Partridge, was present and was represented by his wife, Heather Partridge, at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. John Ferrell, Field Service Engineer, was present and testified for Respondent. J. T. Barry, District Manager for After-Sales, was also present for Respondent and observed. The hearing record was closed on June 22, 2016, when Complainant submitted as additional evidence a requested copy of a video to the hearings examiner.

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's vehicle has an existing nonconformity that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).
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 2015 Chevrolet Suburban. 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 **\$65,160.19** which shall be paid to Complainant and the vehicle lien holder as their interests require.³¹ 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;

³¹ The total purchase price of the vehicle was \$73,614.48 which includes tax, title, license, and fees. This amount was reduced by \$2012.60, which is the amount that was refunded to Complainant by All American for the September and October 2015 vehicle payments. After the deductions taken for the reasonable use of the vehicle and the Lemon Law filing fee is added back, Respondent is required to buy back the vehicle for \$65,160.19.

| | |
|--|-------------|
| Purchase price, including tax, title, license and registration | \$71,601.88 |
| Delivery mileage | 320 |
| Mileage at first report of defective condition | 4,434 |
| Mileage on hearing date | 17,915 |
| Useful life determination | 120,000 |

| | | | | | |
|--|---------------|---|-------------|------|---------------------|
| Purchase price, including tax, title, license and registration | | | | | \$71,601.88 |
| Mileage at first report of defective condition | | | | | 4,434 |
| Less mileage at delivery | | | | | <u>-320</u> |
| Unimpaired miles | | | | | 4,114 |
| Mileage on hearing date | | | | | 17,915 |
| Less mileage at first report of defective condition | | | | | <u>-4,434</u> |
| Impaired miles | | | | | 13,481 |
| Reasonable Allowance for Use Calculations: | | | | | |
| Unimpaired miles | | | | | |
| | <u>4,114</u> | | | | |
| | 120,000 | X | \$71,601.88 | = | \$2,454.75 |
| Impaired miles | | | | | |
| | <u>13,481</u> | | | | |
| | 120,000 | X | \$71,601.88 | X .5 | = <u>\$4,021.94</u> |
| Total reasonable allowance for use deduction: | | | | | \$6,476.69 |
| Purchase price, including tax, title, license and registration | | | | | \$71,601.88 |
| Less reasonable allowance for use deduction | | | | | -\$6,476.69 |
| Plus filing fee refund | | | | | <u>\$35.00</u> |
| TOTAL REPURCHASE AMOUNT | | | | | \$65,160.19 |


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.³²
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 August 15, 2016



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

³² 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, Phone (512) 465-4076.