



Biennial Report to the Legislature on the Status of The Arbitration Certification Program

2015 – 2016



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State of California

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Executive Summary

Pursuant to Business and Professions Code section 472.4(e), the Department of Consumer Affairs' (DCA) Arbitration Certification Program (ACP) is required to submit a biennial report to the California State Legislature evaluating the effectiveness of the Certification of Third-Party Dispute Resolution Processes for New Motor Vehicles. This is ACP's fourteenth biennial report, covering calendar years 2015 and 2016.

The ACP's mission is to protect consumers whose vehicles are covered by their manufacturer's original warranty by providing a fair and timely state-certified arbitration program. ACP monitors arbitration programs, manufacturers, hearings, dealerships, and audits arbitrator training sessions. In addition to monitoring activities, ACP also reviews case files, educates the public, verifies performance of settlements and arbitration decisions, and investigates complaints.

A few of the key highlights are noted below:

- The ACP certified Fiat Chrysler Automobile US, LLC's California Dispute Settlement Program arbitration program bringing the total to 19 vehicle manufacturers and encompassing more than 40 vehicle brands certified in California.
- The arbitration programs regulated by ACP returned an approximate \$21.9 million to consumers.
- The ACP focused its priorities on the audits of arbitration hearings, setting historical highs of 47%, compared to the prior six year average of 30% in the oversight of these hearing.
- The ACP has submitted a regulatory packet in the hopes of addressing some deficiencies, including further defining repairs, repair attempts and other commonly used terms, and requiring that settlements conform to the specific provisions of ACP's regulations and the California Civil Code.

Background

The ACP was created pursuant to AB 2057 (Tanner, Chapter 1280, Statutes of 1987) to certify and monitor lemon law arbitration programs sponsored by new vehicle manufacturers. The Song Beverly Consumer Warranty Act, also known as the California Lemon Law, in effect, protects buyers and lessees of new motor vehicles from having to endure endless attempts to repair serious warranty defects by demanding that manufacturers repurchase or replace vehicles they are unable to fix. By defining when a "reasonable" number of repair attempts have occurred, AB 2057 addressed consumer groups' concerns that some arbitration programs were not operating in compliance with federal statutes and regulations and were biased in favor of the manufacturers. AB 2057 required the ACP to promulgate regulations setting forth standards for certification of new vehicle warranty arbitration programs, review applications for certification submitted by

such programs, and monitor certified programs for continued compliance with regulatory and statutory requirements.

New car manufacturers are not required to provide consumers with a warranty dispute resolution process. If, however, a manufacturer chooses to operate a certified arbitration process, the manufacturer's liability is limited. Furthermore, consumers are required to use an existing certified process prior to asserting certain rights, specifically the "Lemon Law Presumption," in court.

The ACP's role is to serve as a state regulator and to comply with the statutory mandate to ensure all California state-certified vehicle programs remain in substantial compliance with the regulations governing the arbitration process. The ACP certifies that manufacturers' California state-certified arbitration programs comply with federal and state regulations and arbitrations are conducted in a fair and expeditious manner.

The ACP is a special-fund program within the DCA. All of the ACP's expenses are covered by fees collected from each vehicle manufacturer for each new vehicle sold in California. The New Motor Vehicle Board (NMVB) collects the fees on the ACP's behalf and deposits them into the Certification Account. The NMVB is authorized by Business and Professions Code section 472.5(b) to collect an amount not to exceed one dollar (\$1) for each motor vehicle sold, leased, or distributed in, by, or for manufacturers in California, during the preceding calendar year. The ACP sends the NMVB its estimated budget for the fiscal year and the NMVB then determines the fee that will be assessed. The fee collected by the NMVB during fiscal year 2014-2015 was \$0.647 per vehicle. This fee decreased to \$0.625 per vehicle in fiscal year 2015-2016. This fee has decreased again in fiscal year 2016-2017 to \$0.589 per vehicle. As the economy improves and new car sales in California continue to rise, the per-vehicle fee necessary to fund the ACP's operations is expected to continue to decrease.

The arbitration programs regulated by the ACP returned approximately \$9.9 million to consumers in 2015 and \$12 million to consumers in 2016. The ACP believes these returns demonstrate the immense benefits that these arbitration programs and the ACP offer to California consumers.

Mission

The ACP's mission is to protect consumers whose vehicles are covered by their manufacturer's original warranty by providing a fair and timely state-certified arbitration program. The ACP's vision is that California will have a model arbitration process that encourages manufacturer participation and ensures consumer confidence. The ACP values consumer protection, service, accountability, fairness, and integrity. Its strategic goals are:

- Enforcement: enhance oversight of certified arbitration programs
- Legislation and Policy: evaluate and make recommendations for consumer protection and industry regulation
- Communication: inform and educate consumers while continuing to partner with public and private organizations that share common interests

- Administration: provide services in a prompt, courteous, accurate, and cost-effective manner

To ensure substantial compliance with the statutes and regulations governing the arbitration process, and to accomplish its mission, the ACP certifies and continually monitors the operation of arbitration programs.

The ACP works with the state-certified arbitration programs and the sponsoring vehicle manufacturers to identify areas of improvement for the certified programs. In addition, the ACP seeks opportunities to increase consumer awareness of the state-certified arbitration programs by distributing educational materials. The ACP has incorporated social media into its strategy for educating consumers, including the use of Twitter, Facebook, Google+, and YouTube. The ACP posts relevant Lemon Law communications, as well as vehicle recalls, effective car buying strategies, tools for getting vehicle repairs, safety information, and consumer guides. The ACP believes these measures have helped make the ACP more consumer-centric, raised the visibility of the ACP, and enhanced consumer awareness of state-certified arbitration programs. These strategies are also responsible for directing consumers to the ACP's website, where they gain a better understanding of their legal rights and protections under California's Lemon Law.

To carry out its statutory and regulatory mandates, the ACP engages in the following activities:

- Reviews vehicle manufacturers' applications for certification
- Certifies arbitration programs found to be in substantial compliance with federal and state statutes and regulations
- Conducts annual inspections of the state-certified programs
- Conducts frequent audits of arbitration hearings
- Conducts audits of certified manufacturers' dealerships to ensure the proper Lemon Law disclosures are provided to consumers
- Conducts audits of state-certified arbitration programs' case files
- Investigates complaints against state-certified arbitration programs
- Publishes and disseminates educational information
- Utilizes Internet technology, including social media, to educate consumers on their rights under California's Lemon Law
- Prepares annual reviews of state-certified arbitration programs to determine if the programs continue to operate in substantial compliance with the standards for certification
- Coordinates with Department of Motor Vehicles to ensure that reacquired vehicles' titles are properly branded as "Lemon Law Buyback"
- Decertifies arbitration programs found noncompliant with the standards for certification
- Prepares annual statistical reports based on data collected by the ACP, as well as data received from the state-certified arbitration programs
- Conducts an annual survey (Consumer Satisfaction Survey) to gauge the satisfaction of consumers who have utilized the state-certified arbitration programs
- Reviews, revises, and implements regulations as needed

- Reviews and proposes legislation as needed
- Reports biennially to the California Legislature on the effectiveness of the ACP

The ACP continues to establish and maintain relationships with consumer and public interest groups, business and professional communities, and law enforcement agencies. The ACP also strives to persuade non-participating manufacturers to operate or sponsor state-certified arbitration programs for use by consumers.

Legislative History

The law promotes the use of state-certified arbitration programs to resolve new vehicle warranty disputes by providing participation incentives to both manufacturers and consumers. To encourage manufacturers to offer state-certified arbitration programs, the law protects participating manufacturers by limiting their civil penalty liability. If a buyer establishes a violation of the requirement to repair, replace, or reimburse a non-conforming vehicle, the buyer may recover a civil penalty of up to two times the amount of damages. If however, the manufacturer maintains a qualified third-party dispute resolution process, the manufacturer shall not be liable for any such civil penalty. To encourage the use of arbitration by consumers, the law also provides that before consumers can use the “Lemon Law Presumption” in court, they must first resort to the manufacturer’s state-certified arbitration program. The California Lemon Law Presumption states that if a manufacturer or its agents cannot repair a substantial warranty defect after a specified number of repair attempts within a specified period, the consumer is presumed to be entitled to a replacement vehicle or a refund of the lemon vehicle’s purchase price. The law further encourages consumers to use arbitration by providing them with a free and expeditious alternative to litigating warranty disputes. In addition, the arbitration process is conditionally binding in that the manufacturer is bound by the arbitrator’s decision, if the consumer accepts it. However, if the consumer rejects the arbitrator’s decision, the consumer is free to pursue any recourse otherwise available to them, including, but not limited to, re-applying for arbitration after a subsequent warranty related repair.

No new legislation with regard to the ACP or the Song-Beverly Consumer Warranty Act was proposed or enacted in 2015 or 2016.

Manufacturer Certifications and Program Updates

For the years 2015 and 2016, the ACP noted the following significant certification change:

- On November 3, 2015, Fiat Chrysler Automobile US, LLC (FCA) was certified in a joint undertaking with the National Center for Dispute Settlement (NCDS) and began using the California Dispute Settlement Program (CDSP).

As of May 2017, 19 vehicle manufacturers, encompassing more than 40 vehicle brands maintain state certification of their arbitration programs. The following is a chart of these manufacturers and their state-certified arbitration program administrators:

ARBITRATION PROGRAM ADMINISTRATOR	MANUFACTURER
BETTER BUSINESS BUREAU (BBB) AUTO LINE	Aston Martin North America, Bentley Motors, Inc., Automobili Lamborghini America, LLC, BMW of North America, LLC (includes Mini Cooper), Ferrari North America, Inc., Ford Motor Company (includes Lincoln, Mercury, Ford motor home Chassis), General Motors (includes Buick, Cadillac, Chevrolet, GMC, Hummer, Pontiac, Saab, and Saturn), Hyundai Motor America (includes Genesis Motor America), Jaguar Land Rover North America, LLC, KIA Motors America, Inc., Lotus Cars USA, Inc., Maserati North America, Inc., Mazda North American Operations, Nissan North America, Inc. (also INFINITI Division), and Volkswagen of America, Inc. (also Audi of America, Inc.)
CONSUMER ARBITRATION PROGRAM (CAP) - MOTORS	Porsche Cars North America, Inc.
CALIFORNIA DISPUTE SETTLEMENT PROGRAM (CDSP)	Fiat Chrysler Automobile US, LLC, Tesla Motors, Inc., and Toyota Motor Sales U.S.A., Inc. (includes Scion)

To increase the number of state-certified arbitration programs available to consumers, the ACP continues to encourage, via networking at conferences and direct communication, vehicle manufacturers that do not currently offer certified programs to submit applications for certification.

Monitoring Activities

Maintaining state certification is based on the applicants' continued substantial compliance with the governing statutes and regulations. The focus of the ACP's monitoring activities is on ensuring that certified programs implement and abide by the written operating procedures that were approved by the ACP during the certification process. In addition to monitoring arbitration hearings, the ACP's oversight of the programs includes the auditing of arbitrator training programs, review of certified programs' records, investigation of consumer complaints regarding the programs' operations, monitoring the programs' consumer information toll-free numbers, auditing manufacturers' dealerships for proper disclosures, and conducting annual inspections of the certified programs' facilities.

Due to the programs' vast number of hearings conducted at various locations statewide, the ACP faces logistical challenges in monitoring the activities of three dispute resolution program administrators involving 19 manufacturers. During 2014, the ACP was committed to its goal of auditing all state-certified manufacturers' dealerships in California. In January 2015, the ACP achieved this goal. In 2015 and 2016, the ACP focused its

priorities on the audits of arbitration hearings, setting historical highs compared to the prior six year average of 30% in the oversight of these hearings.

The following charts are a breakdown of the ACP's monitoring activities for all programs in 2015 and 2016:

PROGRAM	2015 HEARINGS			2016 HEARINGS		
	HELD	MONITORED*	%	HELD	MONITORED*	%
BBB AUTO LINE	451	151	33%	404	121	30%
CAP - MOTORS	10	9	90%	1	1	100%
CDSP	100	90	90%	341	243	71%
Totals	561	250	45%	746	365	49%

*Some consumers voluntarily elect to have their hearing held by documents only. In these cases, while reflected as a hearing held, no physical hearing occurs that can be monitored. These types of cases accounted for 29% of hearings held in 2015 and 37% of hearings held in 2016. In addition, hearings are held daily throughout the entire state.

PROGRAM	2015 DEALERSHIPS			2016 DEALERSHIPS		
	OPERATING IN CA	AUDITED	%	OPERATING IN CA	AUDITED	%
BBB AUTO LINE	969	156	16%	969	105	11%
CAP - MOTORS	25	7	28%	25	2	8%
CDSP	158	25	16%	307	99	32%
Totals	1,152	188	16%	1,152	206	18%

PROGRAM	2015 CASE FILES			2016 CASE FILES		
	TOTAL DISPUTES	REVIEWED	%	TOTAL DISPUTES	REVIEWED	%
BBB AUTO LINE	2,134	300	14%	2,130	351	16%
CAP - MOTORS	25	8	32%	8	1	13%
CDSP	150	82	55%	474	62	13%
Totals	2,309	390	17%	2,612	414	16%

Arbitrator Training

The majority of arbitration programs certified by the ACP have transitioned away from the in-person classroom style setting for their arbitrator training sessions. These programs now use new methods, including e-mails, conference calls, and webinars to train their arbitrators pursuant to title 16 of the California Code of Regulations section 3398.2. The ACP reviews all training materials and provides corrections, updates, and additional information for incorporation. Once approved by the ACP, the programs present these materials to the arbitrators as training.

An exception to this transition is the CDSP, which continues to hold yearly seminar-style training sessions for its arbitrators. In 2015 and 2016, the CDSP held one in-person training session each year for California arbitrators, both of which the ACP attended and monitored.

The ACP will continue to review, monitor, and approve all training materials and sessions in order to ensure that arbitration programs are sufficiently training arbitrators in applicable law, the principles of arbitration, and the rights and responsibilities of arbitrators consistent with the requirements of the California Code of Regulations.

Onsite Inspections

Business and Professions Code section 472.4(c)(1) requires the ACP to perform onsite inspections of each qualified third-party dispute resolution process at least twice annually.

On-Site Inspections:

	2015	2016
BBB AUTO LINE	2	2
CAP – Motors	2	2
CDSP	2	2

Complaints

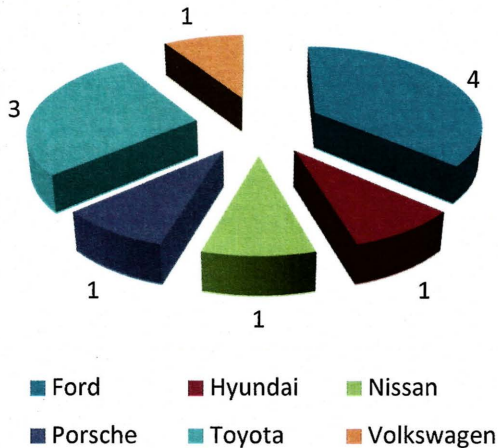
Business and Professions Code section 472.4(c)(2) charges the ACP with the investigation of complaints from consumers regarding the operation of qualified third-party dispute resolution processes. The ACP acknowledges all complaints and inquires within 24 hours and attempts to resolve complaints within 11 days. The ACP has received positive remarks from consumers expressing appreciation for prompt responses, helpful resources, and valuable next steps.

Complaints Received by ACP:

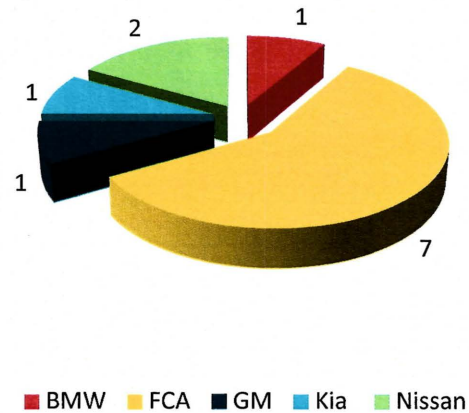
	2015 Complaints (Percentage of Total Disputes)	2016 Complaints (Percentage of Total Disputes)
BBB AUTO LINE	7 (0.3%)	5 (0.2%)
CAP – Motors	1 (4%)	0 (0%)
CDSP	3 (2%)	7 (1%)

The following charts breakdown complaints by specific manufacturer:

2015 Complaints (11)

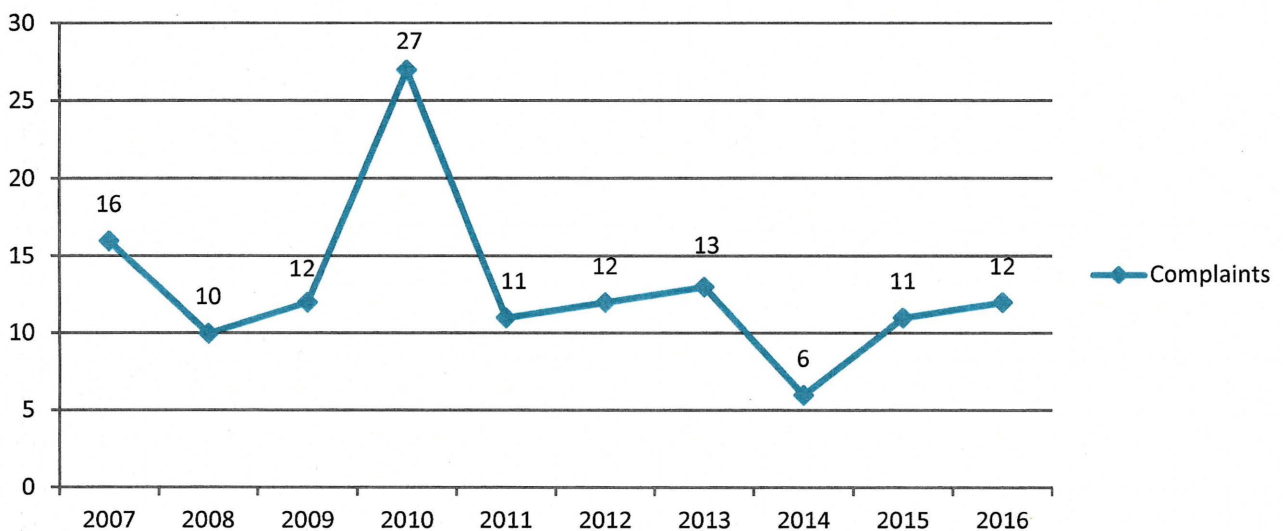


2016 Complaints (12)



The next chart illustrates the number of complaints the ACP has received over the last decade:

Complaints Received by ACP (2007-2016)



The ACP believes sustained oversight and an emphasis on public education will result in continued low complaint levels.

Consumer Satisfaction Survey

As mandated by Business and Professions Code section 472.4 (b), the ACP must conduct an annual survey of consumers who utilized the state-certified arbitration programs during the previous year. The annual Consumer Satisfaction Survey (Survey) has proven a valuable tool for evaluating the performance of the certified programs from the consumer's perspective. Through the results of the Survey, the ACP is in a better position to evaluate the effectiveness of the dispute resolution process, and the participating manufacturers are able to make adjustments to improve the process.

The ACP surveys consumers immediately following the arbitration hearing, prior to receiving the decision. The ACP believes the timing of this Survey allows consumers to express unbiased sentiment about their experience with the process, as they are not yet influenced by whether they "won" or "lost." In addition, the ACP continues to survey all consumers at the conclusion of the entire arbitration process. This post-decision Survey includes the same questions, as well as additional inquiries, as the pre-decision Survey. This also allows the ACP to compare the results of the pre-decision and post-decision Surveys and control for the decision's impact on the other components of the process. Through these controls, the ACP more accurately captures consumers' satisfaction with the process, independent of the process' outcome.

The following is a summary of the significant findings of the 2015 Survey:

- 98% of all respondents to the pre-decision survey rated their satisfaction with the arbitration program's staff as either "excellent" or "acceptable," compared to 58% of all respondents to the post-decision survey
- 95% of all respondents to the pre-decision survey rated their satisfaction with the arbitrator as either "excellent" or "acceptable," compared to 52% of all respondents to the post-decision survey
- 95% of all respondents to the pre-decision survey rated their satisfaction with the entire arbitration process as either "excellent" or "acceptable," compared to 48% of all respondents to the post-decision survey

In 2016, once again the ACP made changes to the Survey in order to better gauge consumer satisfaction with the arbitration process. The ACP added a one to five (poor to excellent) scale to give consumers more options when rating their experience. The following is a summary of the significant findings of the 2016 Survey:

- 86% of all respondents to the pre-decision Survey rated their satisfaction with the arbitration program's staff from 4 to 5, compared to 47% of all respondents to the post-decision Survey
- 89% of all respondents to the pre-decision Survey rated their satisfaction with the arbitrator from 4 to 5, compared to 42% of all respondents to the post-decision Survey

- 83% of all respondents to the pre-decision Survey rated their satisfaction with the entire arbitration process from 4 to 5, compared to 36% of all respondents to the post-decision Survey

These results, along with other analysis the ACP has performed in conjunction with the Survey and the decisions rendered by the specific program, strongly suggests that consumer satisfaction with the process is largely tied to the outcome of their case.

Consumer Assistance and Information

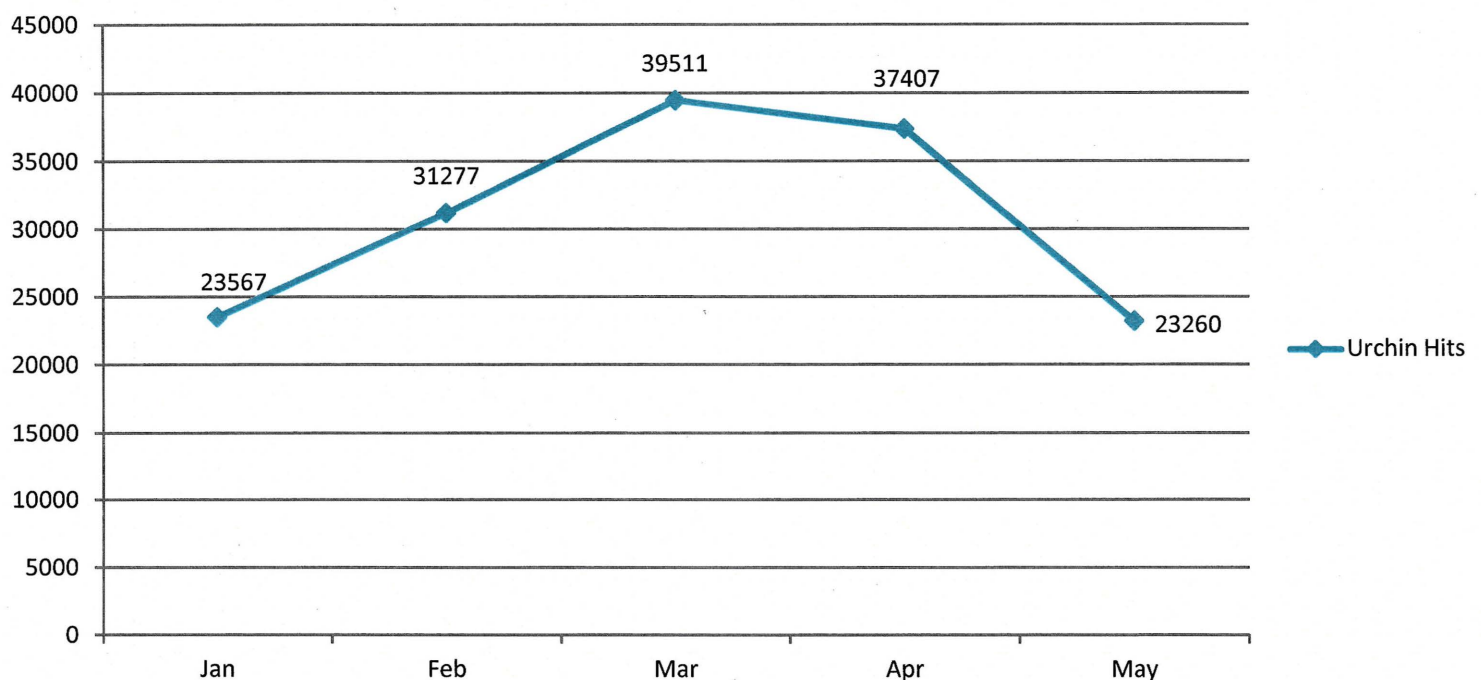
The ACP staff responds to consumer phone, fax, mail and e-mail inquiries by providing information on the state-certified arbitration programs, referrals to appropriate agencies, and other information designed to help consumers resolve vehicle warranty disputes.

The ACP collects data from consumers about the certified programs through the Consumer Satisfaction Survey and posts the results on its website. In addition to the benefits to the ACP and program administrators discussed above, the posted data assists consumers considering arbitration in understanding the arbitration process.

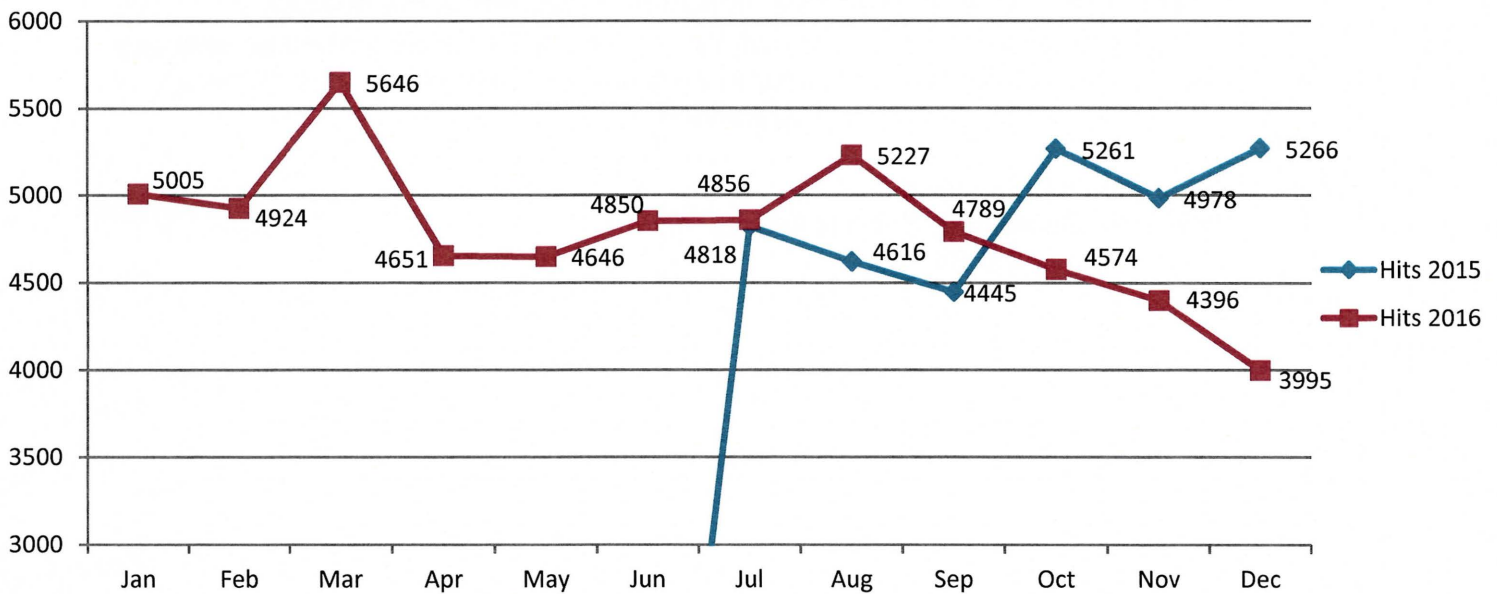
ACP Website

In June 2015, the Department switched ACP website data analytics providers from Urchin to Google Analytics. Due to the differences in the metrics/algorithms used by each provider, the number of website hits differs dramatically from the first five months of 2015 to the next five-month period. In addition, during the transition in June 2015, the ACP was unable to capture any website traffic data.

Urchin Hits of ACP Website (Jan-May 2015)



Google Analytics Hits of ACP Website (2015-2016)



Public Education

A major component of the ACP's education program is the *Lemon Aid for Consumers* booklet. The booklet is produced in three languages: English, Spanish, and Chinese. The booklet provides comprehensive and very easy to understand information on the California Lemon Law and the dispute resolution process, as well as a variety of other resources for complaints that fall outside of the purview of the ACP and the California Lemon Law.

To ensure wide distribution of the *Lemon Aid for Consumers* booklets, the ACP partners with the California Department of Motor Vehicles, the California State Automobile Association, the Council of Better Business Bureaus, Inc., the California Dispute Settlement Program and National Center for Dispute Resolution, DeMars and Associates, Ltd., and various consumer organizations to reach as many vehicle-owning Californians as possible. In addition, ACP supplies booklets to other programs within the DCA with public contact units, as well as other community organizations. The ACP collaborates with the state-certified arbitration programs to distribute the booklets to all consumers who apply for arbitration. The ACP believes these efforts have substantially increased consumers' awareness of their rights and responsibilities under the California Lemon Law.

In 2015, the ACP circulated approximately 2,000 English and Spanish brochures. In 2016, the ACP circulated 1,912 English and 150 Spanish booklets. In addition, the online version of the booklet was viewed almost 1,300 times in 2015-16.

Current Issues

Through its monitoring of certified arbitration programs, the ACP has identified areas where the ambiguity of current regulations has the unintended effect of causing confusion

for all parties. The ACP has submitted a regulatory packet in the hopes of addressing some of these deficiencies, including further defining repairs, repair attempts and other commonly used terms, and requiring that settlements conform to the specific provisions of ACP's regulations and the California Civil Code. The ACP hopes that these changes will help further protect California consumers, while also increasing the efficiency of arbitration program administration and operations.

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