



Biennial Report to the Legislature on the Status of  
**The Arbitration Certification Program**  
**2017–2018**



Gavin Newsom, Governor  
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 15th biennial report, covering calendar years 2017 and 2018.

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 and 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:

- ACP certified Mercedes-Benz USA, LLC's Better Business Bureau (BBB) AUTO LINE arbitration program bringing the total to 20 vehicle manufacturers and encompassing more than 40 vehicle brands certified in California.
- The arbitration programs regulated by ACP returned an approximate \$25.5 million to consumers.
- ACP conducted on-site visits with 95 percent of its certified manufacturers during 2018.

## Background

The ACP was created pursuant to the Tanner Consumer Protection Act 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, the Tanner Protection Act 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. ACP's regulations set forth standards for certification of new vehicle warranty arbitration programs, review of applications for certification submitted by such programs and monitoring of certified programs for continued compliance with regulatory and statutory requirements.

In California, it is not mandatory for new car manufacturers to participate in a

state-certified arbitration process. However, if a manufacturer chooses to participate in one, then ACP certifies that arbitration process. This certification may limit manufacturer's civil liabilities. Furthermore, if the manufacture participates in the state-certified program, consumers are required to use an existing certified process prior to asserting certain rights, specifically the "Lemon Law Presumption," in court. The "Lemon Law Presumption" assumes a vehicle is a lemon if during the first 18 months or 18,000 miles after the purchase or lease of the new vehicle, any of the following occurred:

1. The vehicle is repaired at least two times for a serious safety defect that can cause serious bodily injury or death; or
2. The vehicle is repaired at least four times for the same warranty problem; or
3. The vehicle is out of service for a total of more than 30 days while being repaired for any number of warranty problems.

If any of the scenarios are demonstrated, the consumer is presumed to be entitled to a replacement vehicle or a refund of the lemon vehicle's purchase price. However, this presumption is rebuttable. The consumer would still need to complete the arbitration process.

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

ACP is a special-fund program within the DCA that has eight civil service positions. All of ACP's expenses are provided for by fees collected from each vehicle manufacturer for each new vehicle sold in California. The New Motor Vehicle Board (NMVB) collects the fees on 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. 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 2016–17 was 58.9 cents per vehicle. The fee decreased to 58.6 cents per vehicle in fiscal year 2017–18. The fee increased in fiscal year 2018–19 to 68.0 cents per vehicle. This increase was due to fewer vehicles sold during the given period.

The arbitration programs regulated by ACP returned approximately \$10.8 million to consumers in 2017 and \$14.7 million to consumers in 2018. ACP believes these returns demonstrate the significant benefits certified vehicle arbitration programs and the ACP offer to California's consumers.

## Mission

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's vision is that California will have a model arbitration process that encourages manufacturer participation and ensures consumer confidence. ACP values accountability, communication, consumer protection, employees, and professionalism. Its strategic goals are:

- Enforcement: enhances oversight of certified arbitration programs by effectively investigating consumer complaints and violations.
- Legislation and Policy: supports legislation and adopts regulations, policies, and procedures that reinforce ACP's mission, vision, and goals.
- Communication and Education: informs and educates consumers and stakeholders on the laws and regulations that govern the arbitration process by increasing awareness of ACP and state-certified arbitration programs.
- Administration: continues to build and maintain an excellent organization with effective governance and strong leadership through the development of staff and management.

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

ACP works with the state-certified arbitration programs and the sponsoring vehicle manufacturers to identify areas of improvement for the certified programs. In addition, ACP seeks opportunities to increase consumer awareness of the state-certified arbitration programs by distributing educational materials. ACP has incorporated social media into its strategy for educating consumers, including the use of Twitter, Facebook, and YouTube. ACP posts relevant Lemon Law communications, as well as vehicle recall information, manufacturer class action suits, fraudulent sales disputes, dissatisfaction of vehicle repairs, safety information, and consumer guides. ACP believes these measures have helped make ACP more consumer-centric, raised the visibility of ACP, and enhanced consumer awareness of state-certified arbitration programs. These strategies are also responsible for directing consumers to 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, 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 biannual 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
- Educates consumers on their rights under California's Lemon Law using Internet technology, including social media
- 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 titles of reacquired vehicles 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 ACP, as well as data received from the state-certified arbitration programs
- Conducts an annual Consumer Satisfaction Survey to gauge the satisfaction of consumers who have utilized the state-certified arbitration programs and to identify areas of improvement
- Reviews, revises, and implements regulations as needed
- Reviews and proposes legislation as needed
- Reports biennially to the California Legislature on the effectiveness of ACP

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

### **Manufacturer Certifications and Program Updates**

For the years 2017 and 2018, ACP noted the following significant certification change:

- On January 1, 2018, Mercedes-Benz USA, LLC, was certified in a joint undertaking with the Better Business Bureau's (BBB) AUTO LINE.

As of December 31, 2018, 20 vehicle manufacturers, encompassing more than 40 vehicle brands, maintain state certification of their arbitration programs. Three arbitration programs are currently used in California; BBB AUTO LINE, Consumer Arbitration Program (CAP) Motors; and the California Dispute Settlement Program (CDSP). These arbitration programs act as a third-party decision maker for a dispute between the consumer and the manufacturer.

These California state-certified arbitration programs act as administrators by training arbitrators in the fair and expeditious resolution of consumer disputes,

ensuring timelines are adhered to, and facilitating arbitration hearings. These programs also create an environment that maintains both the fact and appearance of impartiality for both parties.

The following chart lists the California state-certified arbitration program administrators and their associated manufactures:

<b>ARBITRATION PROGRAM ADMINISTRATORS</b>	<b>MANUFACTURERS</b>
BETTER BUSINESS BUREAU (BBB) AUTO LINE	Aston Martin The Americas, 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 motorhome Chassis), General Motors, LLC (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, Mercedes-Benz USA, LLC, 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 (includes Alfa Romeo, Chrysler, Dodge, Fiat, Jeep and Ram), 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, 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. At this time there are approximately 10 manufacturers that do not have a California state-certified arbitration program.

### Monitoring Activities

Maintaining state certification is based on the applicants' continued substantial compliance with the governing statutes and regulations. The focus of ACP's monitoring activities is on ensuring that certified programs implement and abide by the written operating procedures that were approved by ACP during the certification process. In addition to monitoring arbitration hearings, 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 considerable number of hearings conducted at various locations statewide, ACP faces logistical challenges in monitoring the activities of three dispute resolution program administrators involving 20 manufacturers. Hearings are held daily throughout the entire state. However, 2017 and 2018 were very successful monitoring years for the ACP. It is important to note that in 2017 and 2018, there was a class action settlement that occurred. The vehicles involved were not able to file a claim through the state-certified arbitration program which created a decline in the number of cases that could have been held.

The following charts offer a breakdown of ACP's monitoring activities for all programs in 2017 and 2018:

<b>PROGRAMS</b>	<b>2017 HEARINGS HELD</b>	<b>2017 HEARINGS MONITORED</b>	<b>2017 HEARINGS %</b>
BBB AUTO LINE	381	82	22%
CAP—MOTORS	6	4	67%
CDSP	331	116	35%
<b>Totals</b>	<b>718</b>	<b>202</b>	<b>28%</b>

<b>PROGRAMS</b>	<b>2018 HEARINGS HELD</b>	<b>2018 HEARINGS MONITORED</b>	<b>2018 HEARINGS %</b>
BBB AUTO LINE	274	71	26%
CAP—MOTORS	5	4	80%
CDSP	339	129	39%
<b>Totals</b>	<b>618</b>	<b>204</b>	<b>33%</b>

\*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 could be monitored. These types of cases accounted for 27% of hearings held in 2017 and 39% of hearings held in 2018.



PROGRAM	2017 DEALERSHIPS OPERATING IN CA	2017 DEALERSHIPS AUDITED	2017 DEALERSHIPS %
BBB AUTO LINE	957	102	11%
CAP—MOTORS	25	1	4%
CDSP	321	64	20%
<b>Totals</b>	<b>1,303</b>	<b>167</b>	<b>13%</b>

PROGRAM	2018 DEALERSHIPS OPERATING IN CA	2018 DEALERSHIPS AUDITED	2018 DEALERSHIPS %
BBB AUTO LINE	1,106	166	15%
CAP—MOTORS	25	2	8%
CDSP	321	78	24%
<b>Totals</b>	<b>1,452</b>	<b>246</b>	<b>17%</b>

PROGRAM	2017 CASE FILES TOTAL DISPUTES	2017 CASE FILES REVIEWED	2017 CASE FILES %
BBB AUTO LINE	2,138	342	16%
CAP—MOTORS	13	11	85%
CDSP	475	62	13%
<b>Totals</b>	<b>2,626</b>	<b>415</b>	<b>16%</b>

PROGRAM	2018 CASE FILES TOTAL DISPUTES	2018 CASE FILES REVIEWED	2018 CASE FILES %
BBB AUTO LINE	2,245	385	17%
CAP—MOTORS	8	8	100%
CDSP	476	176	37%
<b>Totals</b>	<b>2,729</b>	<b>569</b>	<b>21%</b>

### Arbitrator Training

Pursuant to Title 16 of the California Code of Regulations section 3398.2, the arbitration programs are required to provide arbitrators with relevant training, including periodic updates and a refresher course. ACP reviews all training materials and provides corrections, updates, and additional information for incorporation. Once approved by ACP, the programs present these materials to the arbitrators as training.

The majority of arbitration programs certified by ACP have transitioned away from the in-person classroom style setting for their arbitrator training sessions. These programs now use new methods, including emails, conference calls, and webinars to train their arbitrators.

The California Dispute Settlement Program (CDSP) is an exception to this trend, as they continue to do yearly classroom style training in addition to monthly bulletins and web-based trainings. The CDSP continues this style of training to allow arbitrators to have open conversations with each other, learning best practices from the other arbitrators in a classroom style learning environment. During these trainings, the CDSP gets a chance to assess arbitrators through the conversations and behavior exhibited during the in-person training sessions. The CDSP also uses this training method to evaluate whether arbitrators are grasping concepts better with in-person training rather than solely web-based training.

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. At this time, no specific method of training (i.e., in-person versus webinars) is preferred.

### **Program On-Site Inspections**

Business and Professions Code section 472.4(c)(1) requires the ACP to perform on-site inspections of each qualified third-party dispute resolution process at least twice annually, which provides ACP an opportunity to inspect the program's facilities, records and operations, including the records of individual disputes, interviews of program staff, discussion of violations, and current trends and issues. The ACP conducted the required program on-site inspections during the reporting period, and all were found to be in compliance.

### **Manufacturer On-Site Inspections**

The manufacturer on-site inspections conducted in 2018 allowed ACP regulators to personally meet with the manufacturer's principal administrator in charge of the California state-certified arbitration program. The inspections also provide opportunities to engage with other key personnel familiar with the day to day operations, and with attorneys from their legal team. During these on-sites, ACP reviewed operations to ensure the program remains in substantial compliance with California law and regulations. ACP was also able to inspect the program's facilities, records, and operations, including the record of individual disputes as well as conduct interviews of program staff and discuss violations, current trends and issues.

### **Complaints**

Business and Professions Code section 472.4(c)(2) charges ACP with the investigation of consumer complaints regarding the operation of qualified third-party dispute resolution processes. Complaints received typically concern dissatisfaction with the arbitrator's decision or noncompliance by the manufacturer with the 30-day requirement to respond to the arbitrator's decision. ACP acknowledges all complaints and inquires within 24 hours and

attempts to resolve complaints within 21 days. ACP has received positive remarks from consumers expressing appreciation for prompt responses, helpful resources, and valuable next steps. All complaints received during the given period were resolved.

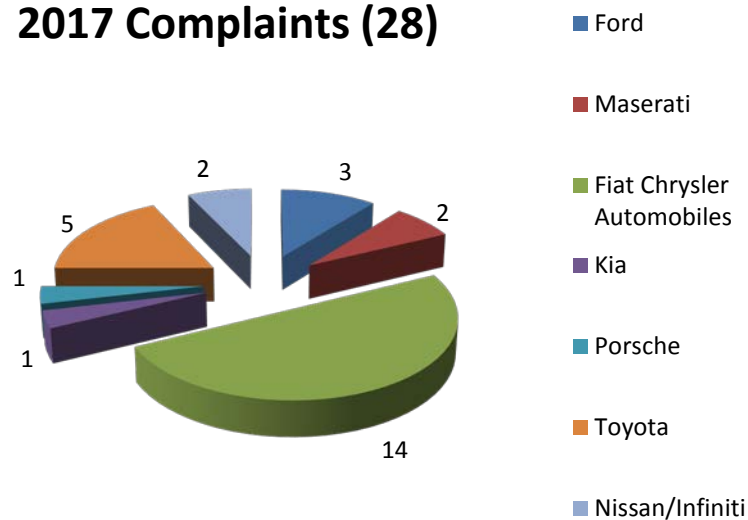
Note that the 21-day complaint resolution target reflects an increase from prior year's reports (the prior target having been to resolve within 11 days). Due to the number of investigations and workload required, ACP increased the response time target to 21 calendar days.

Complaints Received by ACP:

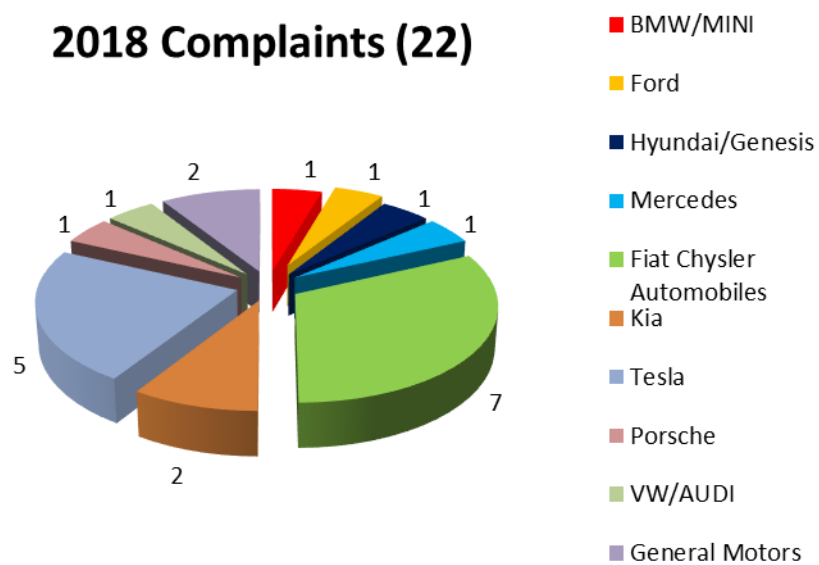
<b>Programs</b>	<b>2017 Complaints (Percentage of Total Disputes)</b>	<b>2018 Complaints (Percentage of Total Disputes)</b>
BBB AUTO LINE	8 (0.003%)	9 (0.004%)
CAP—MOTORS	1 (0.77%)	1 (0.125%)
CDSP	19 (0.04%)	12 (0.25%)

The following charts break down complaints by specific manufacturer:

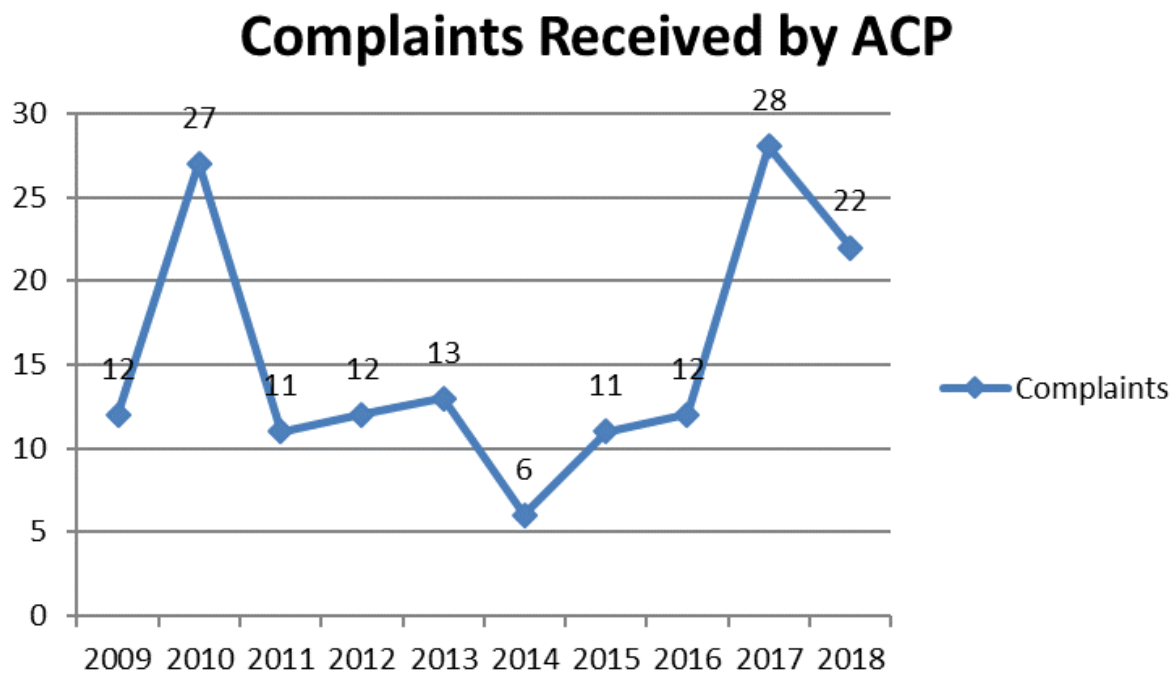
## 2017 Complaints (28)



## 2018 Complaints (22)



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



### 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 to be a valuable tool for evaluating the performance of the certified programs from the consumer's perspective. Through the results of the Survey, 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.

ACP surveys consumers immediately following the arbitration hearing, prior to receiving the decision. ACP also began mailing the Survey to consumers prior to their hearing to ensure they are provided the opportunity to participate if ACP is unable to attend the hearing. ACP believes this allows consumers to express unbiased opinions about their experience with the process, as they are not yet influenced by whether they "won" or "lost." In addition, ACP continues to survey all consumers at the conclusion of the entire arbitration process. This postdecision Survey includes the same questions as the predecision Survey, as well as additional inquiries. This also allows ACP to compare the results of the predecision and postdecision Surveys and control for the decision's impact on the other components of the process. Through these controls, ACP more accurately captures consumers' satisfaction with the process, independent of

the process' outcome.

The following is a summary of the key findings of the 2017 Survey:

- The response rate was 16% for the predecision and 19% for the postdecision surveys.
- A total of 93 percent of respondents to the predecision Survey rated their satisfaction with the arbitration program's staff as either "excellent" or "acceptable," compared to 65 percent of all respondents to the postdecision Survey.
- A total of 95 percent of respondents to the predecision Survey rated their satisfaction with the arbitrator as either "excellent" or "acceptable," compared to 53 percent of all respondents to the postdecision Survey.
- A total of 94 percent of respondents to the predecision Survey rated their satisfaction with the entire arbitration process as either "excellent" or "acceptable," compared to 51 percent of all respondents to the postdecision Survey.

One manufacturer requested a teleconference to discuss the results of the 2017 Annual Consumer Satisfaction Survey. This conference call took place in July 2018. The manufacturer requested more specifics about the data presented in the report to assure more quality control.

The following is a summary of the key findings of the 2018 Survey:

- The response rate was 21% for the predecision and 19% for the postdecision surveys.
- A total of 90 percent of respondents to the predecision Survey rated their satisfaction with the arbitration program's staff as either "excellent" or "acceptable," compared to 57 percent of all respondents to the postdecision Survey.
- A total of 89 percent of respondents to the predecision Survey rated their satisfaction with the arbitrator as either "excellent" or "acceptable," compared to 53 percent of all respondents to the postdecision Survey.
- A total of 83 percent of respondents to the predecision Survey rated their satisfaction with the entire arbitration process as either "excellent" or "acceptable," compared to 54 percent of all respondents to the postdecision Survey.

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

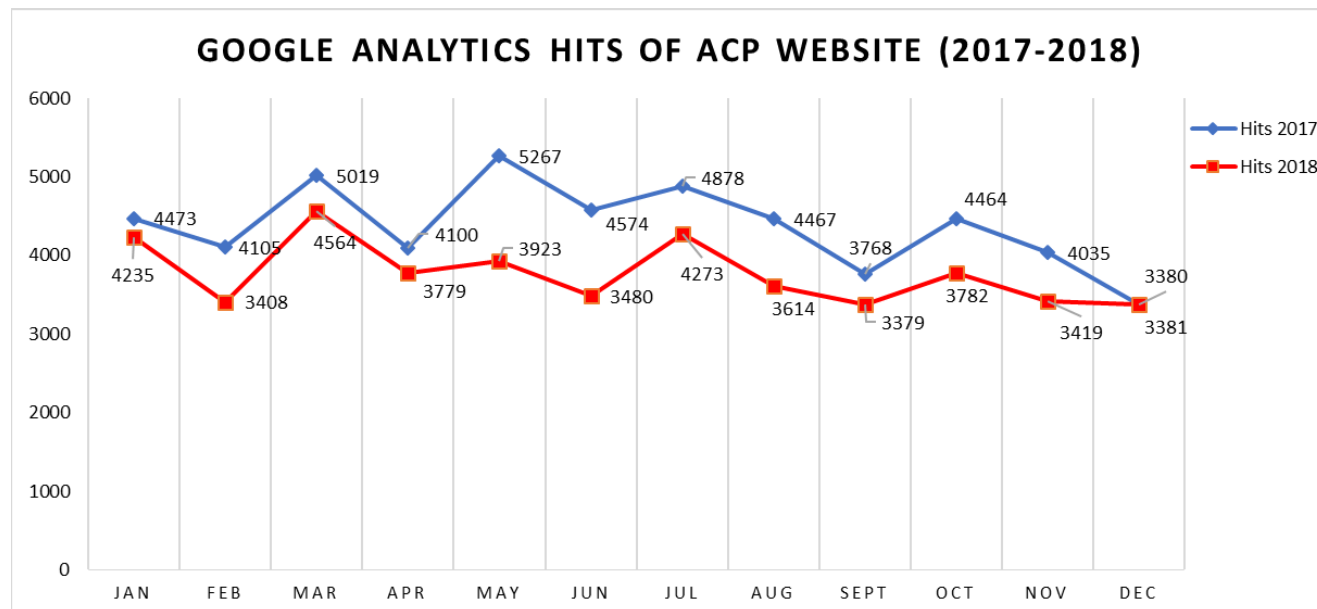
### Consumer Assistance and Information

ACP staff responds to consumer phone, fax, mail and email 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.

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

### ACP Website

In 2017, a total of 48,425 consumers accessed ACP's website, while in 2018, a total of 45,237 consumers accessed ACP's website. ACP continues to promote the usage of its website by redesigning it to appeal to consumers as a one-stop-shop for all California Lemon Law related topics. 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. In addition, ACP interacts with various federal and state agencies and consumer organizations to educate consumers about their Lemon Law rights.



## Public Education

A major component of ACP's education program is the *Lemon-aid for Consumers* booklet. The booklet is produced in two languages: English and Spanish. The booklet provides comprehensive and 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 ACP and the California Lemon Law.

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

In 2017, ACP updated the content of this booklet and circulated approximately 7,500 English and 5,500 Spanish copies. Nearly 11,000 copies (5,700 English and 5,000 Spanish) were sent to the Department of Motor Vehicles for distribution in their offices statewide. In 2018, ACP circulated 2,300 English and 300 Spanish booklets. In addition, the online version of the booklet was viewed approximately 1,200 times in 2017–18.

## Current Issues

Through its monitoring of certified arbitration programs, ACP has identified areas where the ambiguity of current regulations may have had the unintended effect of causing confusion. ACP has submitted a regulatory package to address these areas, including:

- Defining "repair attempts," "subject to repairs," and "transmit"
- Requiring settlements to conform to the specific provisions of ACP's regulations and the California Civil Code
- Training and removal of arbitrators
- Clarification on the process of applying for arbitration and costs for compensation
- Furnishing parties with all records pertaining to the dispute
- Clarifying which forms are acceptable for verification of performance



ACP anticipates that these changes will further protect California consumers, while also increasing the efficiency of arbitration program administration and operations.

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