



Biennial Report to the Legislature on the Status of

The Arbitration Certification Program

**January 1, 2021 to
December 31, 2022**



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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 or Program) 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 17th biennial report, covering calendar years 2021 and 2022.

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, arbitration meetings, and dealerships, and audits arbitrator training sessions. In addition to monitoring activities, ACP also reviews dispute files, educates the public, verifies performance of settlements and arbitration decisions, investigates complaints, and conducts a consumer satisfaction survey.

A few of the key highlights are noted below:

- The arbitration programs regulated by ACP returned in excess of \$17.8¹ million in calendar year 2021 and \$25.5 million in calendar year 2022 to consumers.
- ACP management establishes and demonstrates integrity and ethical values by creating and marketing its strategic plan that contains the Program's vision, mission, goals, and values. The ACP is currently in the process of developing a strategic plan for calendar years 2023 to 2028.
- ACP collaborated with state-certified arbitration programs and manufacturers to create a new hybrid environment to continue to provide mandated oversight given the movement of various companies to a full telework environment and/or limited in office access.

Background

The ACP was created in 1987 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.

¹ The amount is unaudited as the amounts are self-reported by each program.

By defining when a “reasonable” number of repair attempts have occurred, the Tanner Consumer Protection Act addressed consumer groups’ concerns that some manufacturers that run 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 state 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, the ACP certifies that arbitration process. This certification may limit a manufacturer’s civil liabilities. Furthermore, if the manufacturer 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 above 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 provide oversight to 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.

Funding

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 (Board) collects the fees on ACP’s behalf and deposits them into

the Certification Account. The New Motor Vehicle Board is in the California Transportation Agency.

The New Motor Vehicle Board is authorized to collect an amount not to exceed one dollar (\$1.00) for each motor vehicle sold, leased, or distributed in, by, or for manufacturers in California, during the preceding calendar year. (See Business and Professions Code section 472.5(b)). ACP sends the New Motor Vehicle Board its estimated budget for the fiscal year and the Board then determines the fee that will be assessed.

The fee collected by the New Motor Vehicle Board during fiscal year 2019–20 was 77.8 cents per vehicle. The fee remained the same in fiscal year 2020-21. The fee increased in fiscal year 2021-22 to \$1.00 per vehicle, due to fewer vehicles sold during this period. The annual collection of ACP fees for 2023 was completed by the New Motor Vehicle Board. In 2023, the New Motor Vehicle Board collected \$1,644,180 in fees and deposited the funds directly into the ACP's account.

The arbitration programs regulated by ACP returned in excess of \$17.8² million to consumers in calendar year 2021 and \$25.5³ million to consumers in calendar year 2022. ACP believes these returns demonstrate the significant benefits of the certified vehicle arbitration programs along with the ACP oversight responsibilities that provide appropriate responses to California consumers.

Strategic Plan

Prior to the COVID 19 pandemic ACP conducted onsite visits to monitor manufacturers and state certified arbitration programs. ACP implemented the tools that facilitated expanding teleworking and remote teaching. In addition, it was determined that more data analytics, and a more robust technology infrastructure for virtual meetings and data collection was required. This emphasized the importance of ACP planning and meeting future challenges through modernizing technology. In addition, ACP continues to improve internal processes, facilitate collaboration, and provide secure, reliable, information .

Therefore, ACP is currently in the process of developing a Strategic Plan for 2023 to 2028. . This plan will identify actionable goals designed to support the ACP mission, vision, and goals.

Mission, Vision, and Values

To protect consumers whose vehicles are covered by the manufacturer's original warranty by providing a fair and timely state-certified arbitration program.

² The amount is unaudited.

³ The amount is unaudited.

Vision

California will have a model arbitration process that encourages manufacturer participation and ensures consumer confidence.

Values

Accountability
Communication
Consumer Protection
Employees
Professionalism

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 the arbitration programs. ACP will be making a concerted effort in 2024 to encourage nonparticipating manufacturers to operate or sponsor a state-certified arbitration program for consumers to use.

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 and resources to aid consumers with various vehicle problems. 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 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, 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 meetings
- Conducts audits of certified manufacturers' dealerships to ensure the proper Lemon Law disclosures are provided to consumers

- Conducts random audits of state-certified arbitration programs' dispute 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
- Decertifies arbitration programs found to be 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 annual Consumer Satisfaction Surveys to gauge the satisfaction of consumers who have utilized the state-certified arbitration programs and to identify areas for 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

The ACP work processes were impacted by the COVID-19 pandemic. Specifically, the on-site visits were conducted virtually rather than in person as was the previously accepted operation. This created some delays in the performance of participating in arbitration investigations because the virtual investigations required more coordination between the impacted parties. In 2021-22 ACP returned to in person onsite visits with the certified programs but manufacturer onsite visits have remained virtual since their teams have continued to telework.

As of December 31, 2022, 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 train arbitrators in the fair and expeditious resolution of consumer disputes, ensure timelines are adhered to, and facilitate arbitration meetings to decide disputes. 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 and their associated manufacturers:

ARBITRATION PROGRAM	MANUFACTURERS
BBB AUTO LINE	Aston Martin North America, Bentley Motors, Inc., Automobile Lamborghini America, LLC, BMW of North America, LLC (includes Mini Cooper and Rolls Royce), Ferrari North America, Inc., Ford Motor Company (includes Lincoln and Ford motorhome Chassis), General Motors, LLC (includes Buick, Cadillac, Chevrolet and GMC), Hyundai Motor America (includes Genesis Motor America), Jaguar Land Rover North America, LLC, Kia 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 Group of America, Inc. (also Audi of America, Inc.)
CONSUMER ARBITRATION PROGRAM MOTORS	Porsche Cars North America, Inc.
CALIFORNIA DISPUTE SETTLEMENT PROGRAM	FCA US, LLC (includes Alfa Romeo, Chrysler, Dodge, Fiat, Jeep, and RAM), Tesla Motors, Inc., and Toyota Motor Sales U.S.A., Inc.

To increase the number of state-certified arbitration programs available to consumers, ACP continues to encourage, via networking at on-line meetings and direct communication, vehicle manufacturers that do not currently offer certified programs to submit applications for certification. Currently 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 meetings, ACP's oversight of the programs includes the auditing of arbitrator training programs, review of certified programs' records, investigation of consumer or

manufacturer 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.

In 2021 and 2022, the number of arbitration meetings held declined by about 16%. ACP monitored about 36% of the arbitration meetings in 2021 and 37% of the arbitration meetings in 2022. These meetings were attended virtually as the meetings were held via telephone, Teams, or Zoom. Some consumers voluntarily elect to have their arbitration meeting held by documentation only. In these disputes, while reflected as an arbitration meeting held; no physical arbitration meeting occurs that could be monitored. These types of disputes accounted for 26% of arbitration meetings held in 2021 and 30% in 2022.

The following chart offers a breakdown of ACP's arbitration meeting monitoring activities for all programs in 2021 and 2022:

ARBITRATION PROGRAM	2021 ARBITRATION MEETINGS			2022 ARBITRATION MEETINGS		
	HELD	MONITORED	%	HELD	MONITORED	%
BBB AUTO LINE	222	92	41%	188	75	40%
CAP—MOTORS	1	0	0%	6	4	67%
CDSP	245	76	31%	198	67	34%
Totals	468	168	36%	392	146	37%

ACP performed dealership visits to provide information and ensure they inform consumers of the existence of the state-certified arbitration programs at the time of a warranty dispute. The following chart offers a breakdown of the dealership visits:

ARBITRATION PROGRAM	2021 DEALERSHIPS			2022 DEALERSHIPS		
	OPERATING IN CA	VISITED	%	OPERATING IN CA	VISITED	%
BBB AUTO LINE	972	93	9%	923	125	14%
CAP—MOTORS	27	1	4%	27	1	4%
CDSP	351	54	15%	337	36	11%
Totals	1,350	148	11%	1,287	162	13%

ACP staff conduct dispute file reviews, which are either randomly selected or triggered by consumer complaints. The following chart offers a breakdown of the dispute file reviews conducted:

ARBITRATION PROGRAM	2021 DISPUTE FILES			2022 DISPUTE FILES		
	TOTAL DISPUTES	REVIEWED	%	TOTAL DISPUTES	REVIEWED	%
BBB AUTO LINE	2,062	153	7%	1,778	176	10%
CAP—MOTORS	12	2	17%	14	6	43%
CDSP	406	83	20%	409	43	2%
Totals	3,219	238	7%	2,201	225	10%

Arbitrator Training

Arbitration programs are required to provide arbitrators with relevant training, including periodic updates and a refresher course. (See California Code of Regulations, Title 16, section 3398.2.) ACP reviews all training materials and provides corrections, updates, and additional information for incorporation.

Most arbitration programs certified by ACP have transitioned away from the in-person classroom style setting for their arbitrator training sessions. These programs now use virtual methods, including disseminating information via email, conference calls, and webinars to train their arbitrators.

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. 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, CDSP gets a chance to assess arbitrators through the conversations and behavior exhibited during the in-person training sessions. 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 and monitor all training materials and sessions to ensure that arbitration programs have trained 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.

Program On-Site Inspections

ACP is required 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. (See Business and Professions Code section 472.4(c)(1)). The ACP conducted the required program on-site inspections, and all were found to be in compliance. Due to COVID travel restrictions, some inspections took place via teleconference or video conference.

Manufacturer On-Site Inspections

The manufacturer on-site inspections conducted in 2021 and 2022 allowed the ACP oversight team to personally meet with the manufacturer's principal administrator in charge of the California state-certified arbitration programs. 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. Due to changes in certain manufacturer operations, some manufacturers operate remotely and no longer have a physical location to inspect. Inspections for these manufacturer's took place via teleconference or video conference.

Complaints

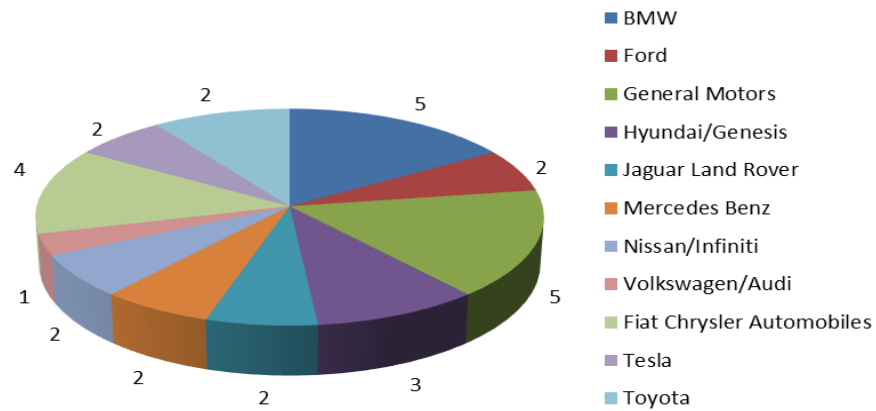
Business and Professions Code section 472.4(c)(2) charges ACP with the investigation of consumer complaints regarding the operation of qualified third-party dispute resolution processes. Complaints received typically concern dissatisfaction with the arbitrator's decision or noncompliance by the manufacturer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

Complaints Received by ACP:

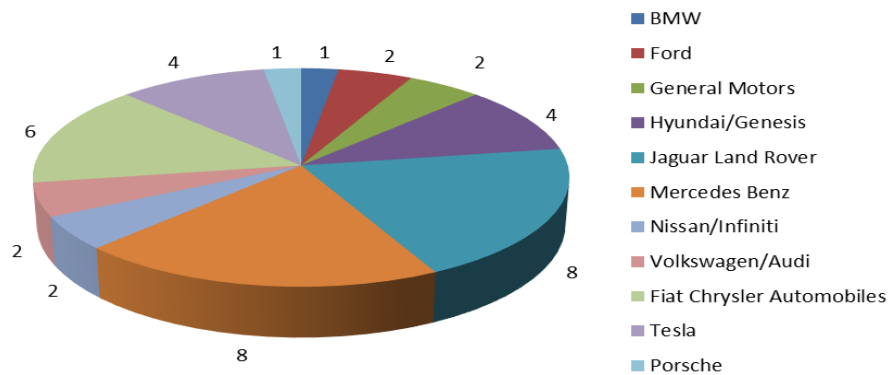
	2021 Complaints (Percentage of Total Disputes)	2022 Complaints (Percentage of Total Disputes)
BBB AUTO LINE	23 (72%)	29 (72.5%)
CAP Motors	0 (0%)	1 (2.5%)
CDSP	9 (28%)	10 (25%)

The following charts break down complaints by specific manufacturer:

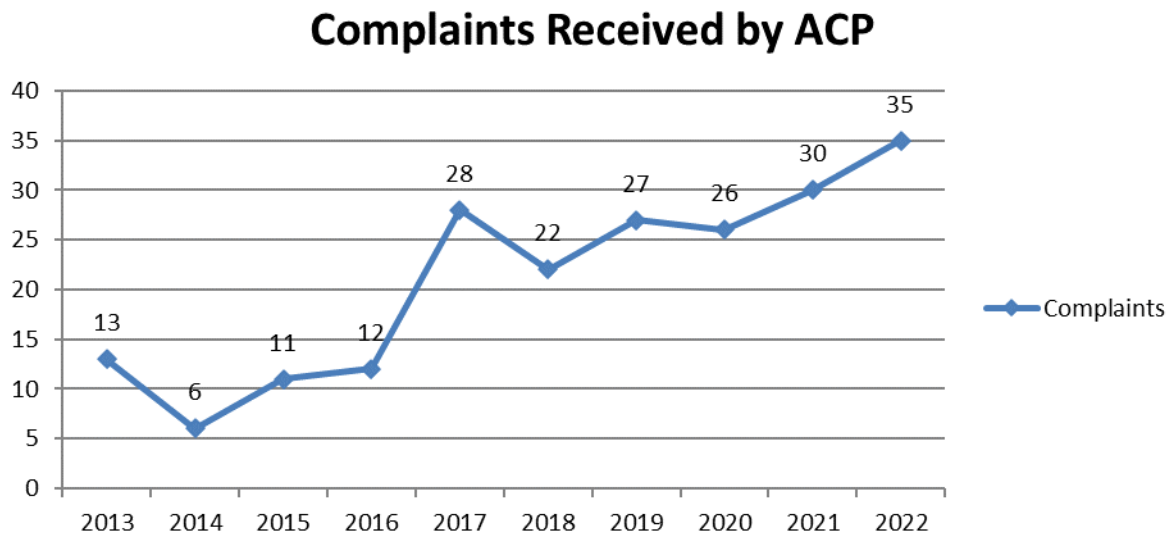
2021 Complaints (32)



2022 Complaints (40)



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 utilize 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 can then work with the certified programs and manufacturers to adjust and improve their internal arbitration process. In addition, ACP utilizes the data collected to identify target areas and realign resources for improvement to the overall effectiveness of the state program.

In 2021, ACP surveyed consumers prior to their arbitration meeting to ensure they were provided the opportunity to participate. In addition, ACP continued to survey all consumers at the conclusion of the entire arbitration process. This post-decision Survey includes the same questions as the pre-decision Survey, as well as additional inquiries. This allowed ACP to compare the results of the pre-decision and post-decision Surveys and control 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 processes' outcome.

In 2022, ACP surveyed consumers only after their arbitration meetings or post-decision.

The following is a summary of the key findings of the 2021 Survey:

- The response rate was 5% for the pre-decision and 11% for the post-decision surveys.
- A total of 80% of respondents to the pre-decision Survey rated their satisfaction with the arbitration program's staff as either "excellent" or "acceptable," compared to 63% of all respondents to the post-decision Survey.
- A total of 68% of 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.

The following is a summary of the key findings of the 2022 Survey:

- The response rate was 6.7% for the post-decision survey.
- A total of 54% of respondents to the Survey rated their satisfaction with the arbitration program as either "excellent," "good," or "satisfactory."
- A total of 50% of respondents to the Survey rated their satisfaction with the arbitrator's fairness and the maintaining of neutrality as either "excellent," "good," or "satisfactory."
- A total of 45% of respondents to the Survey rated their satisfaction with the arbitrator's understanding of key issues and concerns as either "excellent," "good," or "satisfactory."
- A total of 37% of respondents to the post-decision Survey rated their satisfaction with the entire arbitration process as either "excellent," "good," or "satisfactory."

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 dispute.

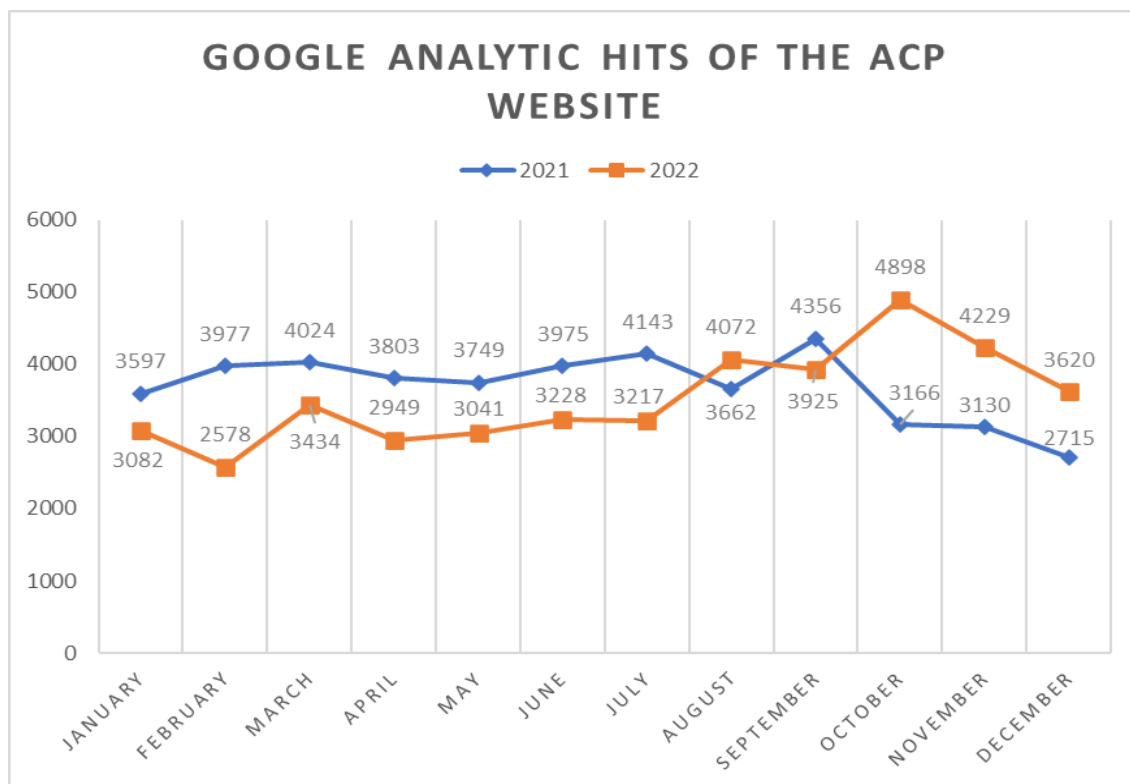
Consumer Assistance and Information

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 2021, a total of 44,297 consumers accessed ACP's website, while in 2022, a total of 42,273 consumers accessed ACP's website. ACP continues to promote the usage of its website by providing consumers clarification on the ACP in order to remain a good resource and a one-stop-shop for all California Lemon Law related topics. ACP posts relevant Lemon Law communications and resources to aid consumers with various vehicle problems. In addition, ACP interacts with various federal and state agencies and consumer organizations to educate consumers about their Lemon Law rights.



Public Education

ACP distributed two trifolds; one that provided an overview of the arbitration programs, while the other is a questions and answers style trifold. The trifolds are produced in two languages: English and Spanish.

In 2021, ACP circulated 1,936 of each trifold. In 2022, 1,900 of each trifold were sent to consumers. The trifolds are posted on the ACP website and the English

version was viewed 52 times in 2021 and 130 times in 2022. The Spanish version was not viewed in 2021, while it was viewed 52 times in 2022.

Current Issues

ACP is in the first phase of developing a new tracking system to be the central repository for ACP data. The new system will provide detailed information on monitoring activities and the results of ACP activities.

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