

In the matter of arbitration entitled:

Salamack vs. Ford Motor Company

Case Number: 2016-2258



**STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
Automobile Dispute Settlement Program**



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrator, Jerry P. Padula, Esq., having been duly sworn and having given due consideration to the proofs and allegations of the parties, hereby decides the following in regard to the above captioned matter:

I. FINDINGS OF FACT

Neill J. Salamack (the "Consumer") purchased a **2015 Ford Escape** (the "Vehicle") from **Hammonasset Ford** located at 191 Boston Post Road in Madison, Connecticut, 06443 (the "Dealer"). The Consumer took delivery of this Vehicle on **August 17, 2015**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. Said hearing was held on **Tuesday, January 24, 2017**. **Ford Motor Company** (the "Manufacturer") was represented by Attorney Curtis Berglund. Mr. Tim Clark served as the State's Technical Expert. The Consumer represented himself during the proceeding.

- A.** The Consumer reported to the Manufacturer, its authorized dealer, or its agent a defect pertaining to a malfunctioning navigation, Bluetooth, touch-screen, and radio system (features which function collectively as the "SYNC" system, as known by the Manufacturer) at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
10-19-2015	5,075	Malfunctioning SYNC system
07-28-2016	23,825	Malfunctioning SYNC system
08-01-2016	23,850	Malfunctioning SYNC system
08-02-2016	24,152	Malfunctioning SYNC system
08-04-2016	24,152	Malfunctioning SYNC system
08-11-2016	24,853	Malfunctioning SYNC system; SYNC steering column button inoperable
10-18-2016	29,854	Malfunctioning SYNC system

The above defect or defects was said to continue to exist as of the date of the hearing.

- B.** The Vehicle has been out of service by reason of repair for a cumulative total of days during the statutory eligibility period (the earlier of: two years from the date of purchase or 24,000 miles driven).
- C.** Two repair attempts during the first 12 months and the defect still exists that is life threatening or likely to cause serious bodily injury, if the Vehicle is driven. The defects occurred as follows:

<u>Date</u>	<u>Miles</u>	<u>Defect</u>

II. REASONING

Nonconformity

The Consumer complained of the following nonconformity or defect with the subject Vehicle: Randomly non-functioning navigation, Bluetooth, touch-screen, and radio system, features which collectively function as the "SYNC" system, as known by the Manufacturer. This defect was claimed by the Consumer to continue to exist as of the time of the hearing.

Eligibility and Reasonable Repair Attempts

The Request for Arbitration revealed that the Vehicle experienced random inoperability of various functions within the SYNC system, necessitating visits to the Dealer for diagnosis, testing, and repair.

The Consumer's Request for Arbitration indicated that the claimed defect caused the Vehicle to be subject to repair seven (7) times before the date of the hearing: the first two (2) repairs were within the first two (2) years or twenty four thousand (24,000) miles of ownership, and five (5) additional repairs to address the claimed defects were outside the statutory timeframe, as detailed in Part 1 of this decision. In addition, the Consumer indicated that additional repairs would have been sought, but for a Dealer representative stating that no fix was available (see page 9 of the Request for Arbitration). The record indicated that all seven (7) repairs were attempted during the first year of ownership. The multiple repair attempts for the SYNC defects were reasonable, given the facts presented. Therefore, this Arbitrator found the Vehicle to meet the eligibility requirements set forth in Connecticut General Statutes Chapter 743b. The arbitration then proceeded on the merits.

Substantial Impairment and Factual Discussion

In the present matter, this arbitrator holds that a substantial impairment to use exists in the form of defects which meet the requirements of Connecticut General Statutes Section 42-179. The documents in the record and the testimony presented at the arbitration hearing indicate a violation of Connecticut General Statutes Chapter 743b.

The Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the Vehicle defects experienced by the Consumer and the multiple repair attempts by the Dealer. The Consumer first reported the SYNC system malfunctioning to the Dealer on October 19, 2015, just two months after purchasing the Vehicle. At the time, the Vehicle had 5,075 miles on the odometer. At random times, the GPS navigation would stop working, the GPS would fail to recognize memorized points of interest, the system's voice would randomly interrupt a drive by "shouting out" a command at a high volume, the voice recognition would not work, and touch-screen interface would go black. These incidents sometimes necessitated that the Consumer pull off the roadway, and then shut off and re-start the Vehicle.

The Consumer's testimony revealed that he purchased the Vehicle in large part due to his intended reliance upon the newest SYNC system installed in the Vehicle, particularly for GPS navigation and use of the hands-free Bluetooth technology. The Consumer commented that Connecticut law mandates the use of "hands-free" devices when driving with a cellular phone. This Arbitrator takes judicial notice of said law.

The Consumer revealed that he is a salesman who intended to use the Vehicle for work purposes. At the time of purchase, his work required him to travel to schools in a territory which covered a wide area of Connecticut, and as of January 1, 2017, said territory had recently expanded to include more far-flung areas including Windham County and Rhode Island. As such, he stated that a functional GPS navigation system

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is critical for his work. The Consumer also stated that he is a volunteer fireman, and needs to rely of the GPS during emergency calls. The Vehicle continued to have functionality issues, as the SYNC system which controls the navigation and other functions was unreliable, working sporadically and less than fifty percent (50%) of the time, in his estimation.

The record revealed that the Dealer verified the SYNC system malfunctioning, and made attempts to reprogram the relevant computer on multiple occasions. In an attempt to address the SYNC system's inoperability, the Consumer paired multiple phones with the Vehicle's SYNC system, to no avail. Attempting to use the SYNC system with no phone paired to it likewise did not resolve the random system failures. However, the defects continued according to the Consumer, and still existed as of the date of the hearing.

The Consumer testified that his intended use of the Vehicle has not been realized, given the random SYNC malfunctioning from early in his ownership. The Consumer felt that he did not have the full use of the Vehicle, and given that the SYNC system was randomly inoperable over fifty percent (50%) of the time he drove the Vehicle, he is justified in his concern. Based on the ongoing SYNC defects, which have impacted the Consumer's normal, everyday use of the Vehicle, I find a substantial loss of use in this case. A refund and exchange is appropriate in this case.

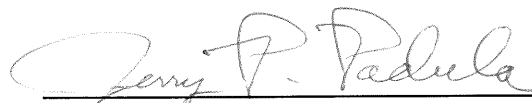
Given that the Consumer has had to drive the Vehicle with a randomly functioning SYNC system, which was a major reason why he purchased the Vehicle, and that such system was to be used during the Consumer's work as a salesperson driving in unfamiliar territories, balanced against the high number of miles on the odometer as of the date of the hearing (over 35,000 miles as testified by the Consumer), a mileage deduction shall be awarded in favor of the Manufacturer. Said deduction shall be based upon the mileage up through October 19, 2015, the time of the first repair attempt at the Dealer (5,075 miles). Finance charges shall be awarded in full to the Consumer in this case.

The Extended Warranty purchased through the Dealer may be cancelled by the Consumer and a pro-rated refund provided to him. If such Extended Warranty contract cannot be so cancelled, the entire purchase price of \$1,708.00 shall be reimbursed by the Manufacturer. The Vehicle sealant contract "Protect All" purchased through the Dealer may be cancelled and a pro-rated refund provided to the Consumer. If such contract cannot be so cancelled, the entire purchase price of \$500.00 shall be reimbursed by the Manufacturer.

III. CONCLUSION

Given that the Consumer presented substantial evidence that the Vehicle is not able to function normally, I hold for the Consumer in this case. A refund and exchange, as noted in Part IV of this decision, is appropriate given the facts presented.

The decision of this arbitrator does not replace any other remedies available under the applicable warranties, Connecticut General Statutes Chapter 743b, or the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 88 Stat. 2183 (1975), 15 USC 2301 et seq., as in effect on October 1, 1982. Either party to the dispute may apply to the Superior Court within 30 days receiving this decision to have the decision vacated, modified, or corrected or within one year to have it confirmed as provided in Sections 42-181, 52-417, 52-418, and 52-420 of the Connecticut General Statutes.


Arbitrator - Jerry P. Padula, Esq.

Feb. 7, 2017
Date

(See Section IV of this decision, entitled "Refund Award," on the following page.)

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IV. REFUND AWARD

The arbitrator finds that the Consumer is entitled to a **refund of the contract price**, including charges for any undercoating, dealer preparation and transportation, and dealer installed options, if applicable. (The contract price is less the **\$500.00** credit/rebate given to the Consumer.) The total Vehicle price, as delivered, was **\$31,567.00**.

Allowance for use:

- The contract price shall not be reduced by taking into account the mileage on the Vehicle.
- The contract price **shall be** reduced by an allowance for the Consumer's use of the Vehicle. It shall be calculated using the total mileage driven **at the time of the first repair attempt** (at 5,075 miles), minus the mileage at the time of delivery (64 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$31,567.00 \times 5,011 \text{ miles } (5,075 \text{ miles} - 64 \text{ miles})}{120,000 \text{ miles}}$$

The allowance (reduction from contract price) for the Consumer's use of the Vehicle shall be: **\$1,318.19**.

Finance Charges to be Reimbursed by Manufacturer:

- The Consumer shall be reimbursed for finance charges incurred on the following dates:

- The Consumer shall be reimbursed for finance charges incurred from:
_____ to _____
- The Consumer shall be reimbursed for **all finance charges incurred**.
- The Consumer shall not be reimbursed for finance charges.

Additional Expenses to be Reimbursed by Manufacturer:

Conn. Sales Tax: \$2,176.46	Title & Regis. Fees: \$235.00	Dealer Conveyance Fee: \$499.00
Extended Warranty: TBD	Vehicle Sealant Warranty: TBD	Lemon Law Filing Fee: \$50.00

Total Refund Award and Conditions:

The total refund amount is **\$33,209.27** (thirty three thousand two hundred nine dollars and twenty-seven cents). **In addition to the total refund amount indicated, the finance charges indicated above (and the warranties noted above, amounts to be determined) are to be paid by the Manufacturer.** A rental vehicle shall be provided by the Manufacturer, at the Manufacturer's sole cost, if the Vehicle is inoperable for any time after the hearing up through the time of the Vehicle exchange due to the named defect(s).

If the Vehicle is financed and the loan has an outstanding balance, the Manufacturer shall prepare one check payable to the lien holder as its interest may appear, and one check payable to the Consumer(s) in the amount of the balance of the refund. The Consumer(s) shall sign an authorization that will assign the Consumer's right, title, and interest of the Vehicle to the Manufacturer upon receipt of the refund. The Consumer(s) shall surrender the Vehicle at the time of the refund.

If the Vehicle is not financed, the Consumer(s) shall surrender the Vehicle's title to the Manufacturer at the time of receipt of the refund set forth in this decision.

The Manufacturer shall provide the total refund to the Consumer(s) within 30 days of the Manufacturer's receipt of this arbitration decision. The Consumer(s) shall surrender the Vehicle to the Manufacturer upon

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receipt of the refund, but if the Vehicle is in the possession of the Manufacturer or their agent, the Vehicle title shall be so surrendered when the refund is provided. The exchange shall occur at: **Hammonasset Ford** located at **191 Boston Post Road in Madison, Connecticut, 06443** OR at the **local Manufacturer-authorized dealership of the Consumer's choice**.