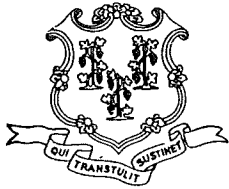


In the matter of arbitration entitled:

**Volgmuth vs. Toyota Motor Corp.**

**Case Number: 2016-1409**



**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**

**Lorraine and Robert Volgmuth** (collectively, the "Consumers") purchased a **2013 Toyota Camry SE** (the "vehicle") from **Colonial Toyota** located at **470 Boston Post Road in Milford, Connecticut 06460** (the "Dealer"). The Consumers took delivery of this vehicle on **August 28, 2013**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes, or the equivalent.

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 **Thursday, September 1, 2016**. Mr. Tim Clark served as the State's Technical Expert. **Toyota Motor Corporation** (the "Manufacturer") was represented by Ken Marques, a Field Technical Specialist for the Manufacturer. The Manufacturer did not contest the initial eligibility of the vehicle in this case.

- A.** The Consumers reported to the manufacturer, its authorized dealer, or its agent a defect pertaining to the battery dying at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect/Repair Work Performed</u>
01-17-2014	985	a dead battery
12-22-2014	6,734	a dead battery
04-07-2015	9,328	a dead battery
04-20-2015	9,505	installation of solar-powered battery charger
01-21-2016	10,720	a dead battery
04-21-2016	11,189	a dead battery

The above defect or defects continue to exist.

- 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>

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## **II. REASONING**

### **Nonconformity**

The Consumers complained of the following nonconformity with the subject vehicle: the battery was found dead on multiple occasions. The Consumers claimed that this defect continued to exist as of the date of the hearing.

### **Eligibility and Reasonable Repair Attempts**

The Consumers' Request for Arbitration revealed that the vehicle experienced several dead batteries over the course of their ownership, beginning when the vehicle had just 985 miles on the odometer. There were multiple visits to an authorized dealership for diagnosis, testing, and repair. Said defect met the statutory presumption for eligibility, as it was subject to four repair attempts during the first two years of ownership, as detailed in Part 1 of this decision. Additional repairs for this issue occurred after the two-year statutory eligibility period elapsed. The Manufacturer did not contest the initial eligibility of the vehicle.

One factor which prevented the Consumers from bringing the car in for additional repairs during the early period of ownership was revealed at the hearing. The Consumers testified that the Dealer told them during the first repair attempt that the subject vehicle has an aftermarket remote starter, which the Dealer claimed to be a contributing factor to the dead battery issue. However, the record clearly revealed that the Dealer installed said remote starter upon the Consumers' purchase. The later removal of said aftermarket starter did not solve the dead battery problem.

Due to the continual episodes whereby the Consumers found the vehicle battery to be dead and the vehicle unable to be started, a safety concern was also proven by substantial evidence to exist. Said concern was subject to one repair attempt during the first year of ownership, and although the statutory presumption is for two repairs during that first year of ownership, the above-cited representations of the Dealer prevented the Consumers from bringing the car back for additional repairs during the first year. The statutory presumption for eligibility based upon a safety-related concern, as set forth in Chapter 743b, was therefore also met.

### **Substantial Impairment and Factual Discussion**

In the present matter, this arbitrator holds that both a substantial impairment to use and a substantial impairment to safety exist in the form of a defect or 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 Manufacturer's Statement, the written repair records, and the oral testimony provided at the hearing detailed the vehicle defects experienced by the Consumers and the repair attempts by the Dealer. The Consumers appeared and testified at the arbitration hearing.

The Consumers first experienced a dead battery when the vehicle had been driven just 985 miles, as shown in Part I of this decision. At that time, just under five months since the vehicle's delivery date, the vehicle was first brought back to the Dealer for diagnosis and repair. The written repair records and the oral testimony verified that the Dealer had performed diagnostic tests and had installed several new batteries, to no avail. The new batteries did not remedy the problem. The dead battery issue has remained a complaint since that time, with multiple episodes occurring.

Concurrent with some of the repair attempts, the Dealer had told the Consumers that they were not driving the car enough to charge up the battery. This argument was not convincing. Mr. Clark noted at the hearing

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that the battery had died shortly after a long drive from Connecticut to Florida. The Consumers also detailed at the hearing that they drive the car for approximately 30 minutes every day. Said time was judged by Mr. Clark to be normal driving, adequate to re-charge the battery after it is partially depleted by the act of providing power for starting.

As a remedial measure, the Consumers consented to the installation of a solar-powered battery charger in April of 2015, which was mounted by the Dealer on the rear deck underneath the window. Said device was intended to provide a trickle charge to the battery to help prevent the battery from becoming drained. Said device was said by the Consumers to cause a reflection upon the rear window, which they considered to be an unsafe condition. This charger also did not remedy the dead battery situation, as episodes occurred while the charger was installed. Another repair attempt had the Dealer remove the aftermarket remote starting system that it installed upon purchase, and replacing the system with a factory Toyota unit. This swapping of remote starters did not remedy the dead battery issue either. Removal of the factory unit during the last repair attempt also did not remedy the problem, with the battery dying again.

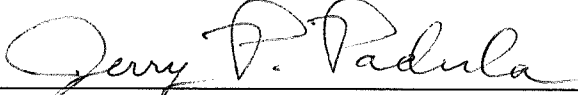
The Consumers testified as to their apprehension with driving the vehicle, as they can never be sure when the battery will be dead and the vehicle unable to be started. Their Request for Arbitration described their need to own a reliable vehicle in case of health emergencies (see page 9). The Consumers felt that they did not have the full use of the vehicle, and given the continual issues experienced they are justified in their concerns. Based on the ongoing defect, which impacts the Consumers' normal, everyday use of the vehicle, I find a substantial loss of use in this case. A substantial loss of safety due to the likelihood of being stranded has also been proven by convincing evidence. A refund and exchange is appropriate in this case.

Beginning early on in the Consumers' ownership, the subject car suffered from the battery defect under normal driving and ownership conditions. Given that the battery issue appeared when the vehicle had just 985 miles on the odometer, as well as the safety concerns presented due to the unpredictable dead battery episodes which impacted the Consumers' ability to use the vehicle confidently, a mileage deduction in favor of the Manufacturer is not appropriate given the facts presented. Finance charges will be awarded to the Consumers in full.

### **III. CONCLUSION**

Given that the Consumers presented substantial evidence that the vehicle is not able to function normally, I hold for the Consumers 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.

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Arbitrator - Jerry P. Padula, Esq. 10-04-2016  
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 Consumers are 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 \$0.00 credit/rebate given to the purchaser.) The total vehicle price, as delivered, was \$30,499.62.

**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 (Consumers') use of the vehicle. It shall be calculated using the total mileage driven at the time of the \_\_\_\_\_ repair (at \_\_\_\_\_ miles), minus the mileage at the time of delivery (\_\_\_\_ miles) and during the repair visit of \_\_\_\_\_, 201X (\_\_\_\_ miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$ \quad X \quad \text{miles ( } \underline{\quad \text{miles} - \text{ miles)}}}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's (Consumers') use of the vehicle shall be: \$0.

**Finance Charges to be Reimbursed by Manufacturer:**

- The Consumer(s) shall be reimbursed for finance charges incurred on the following dates: \_\_\_\_\_
- The Consumer(s) shall be reimbursed for finance charges incurred from: \_\_\_\_\_ to \_\_\_\_\_
- The Consumer(s) **shall be** reimbursed for **all finance charges incurred**.
- The Consumer(s) shall not be reimbursed for finance charges.

**Additional Expenses to be Reimbursed by Manufacturer:**

Conn. State Sales Tax: \$1,706.93	Title & Regis. Fees: \$175.00	Dealer Conveyance: \$499.00
GAP Insurance: \$495.00	Lien Fee: \$10.00	Lemon Law Filing Fee: \$50.00
Fee Listed on Invoice: \$898.00	Fee Listed on Invoice: \$1,990.00	

**Total Refund Award and Conditions:**

The total refund amount is **\$36,323.55** (thirty six thousand three hundred twenty three dollars and fifty five cents). **In addition to the total refund amount indicated, the finance charges indicated above are to be paid by the manufacturer.** A rental vehicle shall be provided by the Manufacturer if the vehicle is inoperable for any time after the hearing up through the time of the vehicle exchange.

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 (Consumers') 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.

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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 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 (Consumers' choice): **Colonial Toyota located at 470 Boston Post Road in Milford, Connecticut 06460, OR at the Consumers' home.**