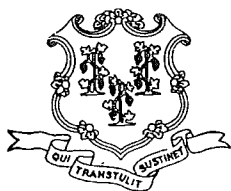


In the matter of arbitration entitled:

Samuel vs. Ford Motor Company

Case Number: 2016-694



**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

Kyle Samuel (the "Consumer") purchased a **2015 Ford F-250 Super Duty** (the "vehicle") from **Dowling Ford** located at **1011 South Main Street in Cheshire, Connecticut, 06410** (the "Dealership"). The Consumer took delivery of this vehicle on **May 16, 2015**. The vehicle 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. The manufacturer of the subject vehicle, Ford Motor Company ("the Manufacturer") did not contest the initial eligibility of the vehicle in this case. Said hearing was held on **Tuesday June 14, 2016**, at which Mr. Tim Clark served as the State's Technical Expert.

- A. The Consumer first reported to the manufacturer, its authorized dealer, or its agent a defect pertaining to various electrical system malfunctions on _____ with _____ miles on the vehicle's odometer. Subsequent repair attempts for this defect and others occurred on:

Repair Date Miles Defect

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 **39 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:

Date Miles Defect

II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject vehicle: Electrical system malfunctions; Infotainment system malfunctions; a water leak inside the passenger compartment; and abnormal noises from the engine, the steering system, and the braking system. Some of the listed defects were said to continue to exist as of the date of the hearing.

Eligibility and Reasonable Repair Attempts

The Request for Arbitration revealed that the vehicle experienced various electrical system malfunctions and other nonconformities, necessitating multiple visits to an authorized dealership for diagnosis, testing, and repair. Due to the electrical malfunctions and other nonconformities, the vehicle was out of service by reason of repair for a total of thirty-nine (39) days during the first nine (9) months of ownership. Said defects met the statutory presumption for eligibility, as the vehicle was out of service by reason of repair for thirty (30) or more days during the first two years or 24,000 miles of ownership, as listed in Part 1 of this decision. The Consumer was therefore found to have met the eligibility requirements set forth in Connecticut General Statutes Chapter 743b. The Manufacturer did not contest the initial eligibility of the subject vehicle.

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 Consumer appeared and testified at the arbitration hearing, and was represented by Attorney Louis E. Faiella of the Law Offices of Lawrence A. Levinson, P.C. in New Haven. Attorney Thomas Mountain of Campbell, Campbell, Edwards & Conroy of Boston, Massachusetts represented the Manufacturer. 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 Dealership.

The Consumer experienced the first of several electrical system anomalies early on in his ownership, when the vehicle was first brought to the Dealership for diagnosis and repair of the power windows on July 27, 2015, when the vehicle had been driven just 1,006 miles. This date was just two months after delivery of the vehicle. The various electrical issues and other unrelated concerns have been brought to the attention of the Dealership, and have accumulated thirty-nine (39) days of repair visits, up through the date of the hearing.

The Consumer testified as to the intermittent nature of the electrical defects, as well as of the infotainment system, which is centered on the Ford "Sync" system and includes the Bluetooth connection and radio. He also explained his intended use of the subject F-250 "Super Duty" truck for his landscaping and plowing business, and how the multiple visits to the Dealership caused significant inconvenience to him, negatively impacting his business. The small-sized loaner cars provided by the Dealership did not allow him to perform his regular business functions.

Based on the ongoing defects and the thirty-nine (39) days the vehicle was out of service by way of repair, which greatly impacted the Consumer's normal use of the vehicle, I find a substantial loss of use in this case. A refund and exchange is appropriate in this case. The particular use for which the Consumer

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contemplated using the vehicle was unable to be fulfilled due to the excessive number of days the vehicle was out of service.

Given the ongoing, unresolved electrical system issues discovered early in the vehicle's ownership and the other noted defects, the number of days out of service, and the Consumer's intended use of the vehicle, balanced against the relatively high number of miles on the odometer as of the date of the hearing (over 22,000 based upon the Consumer's oral testimony), a mileage deduction shall be awarded in favor of the Manufacturer, but only up through the date of the fifth repair. During the fifth repair, the vehicle was out of service for sixteen (16) days; from December 7 through December 22, 2015. The mileage as of December 7, 2015 was 10,767 miles.

The subject vehicle had been equipped with a Boss snow plow assembly, purchased by the Consumer. In order for the Consumer to be made whole, this plow assembly and associated apparatus shall be removed from the subject vehicle and re-installed on the Consumer's replacement truck. The record contained an estimate dated March 3, 2016 from "Strollo's Towing Service" of Cheshire to perform this work. The Consumer shall therefore be reimbursed for the cost to remove the Boss snow plow assembly (estimated to cost \$420.06), as well as to re-install it (estimated to cost \$637.50).


The Consumer shall also receive reasonable attorney's fees, as shown in Section IV of this decision, noting that on page ten of the Request for Arbitration, the Consumer referenced settlement negotiations that his counsel took part in on his behalf. A reasonable number of hours to engage in settlement negotiations, to prepare the Consumer's case, and to attend the hearing is ten hours. A standard hourly rate of \$150.00 per hour is reasonable in this context.

Also noted is that the vehicle was in an accident on February 2, 2016. A "Police Crash Report" of the Hamden Police Department was provided as part of the Consumer's Request for Arbitration. Said report concluded that the Consumer's vehicle "did not suffer any apparent damage" as a result of the impact. The record indicated that the vehicle had no unrepaired body damage that would require an adjustment to the Consumer's award.

III. CONCLUSION

Given that the Consumer presented substantial evidence that the vehicle was not able to function normally, and was out of service for over thirty (30) days during the statutory period, 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.

07-06-2016
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 Consumer is entitled to a **refund of the contract price**, including charges for any dealer preparation and transportation, and dealer installed options, if applicable. (The contract price is less the **\$5,000.00** credit/rebate given to the Consumer at the time of original purchase.) The total vehicle price, as delivered, was **\$40,138.00**.

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 December 7, 2015 repair attempt** (10,767 miles), minus the mileage at the time of delivery (45 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$40,138.00 \times 10,722 \text{ miles } (10,767 \text{ miles} - 45 \text{ miles})}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be: **\$3,586.33**.

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. State Sales Tax: \$2,866.26
Lemon Law Filing Fee: \$50.00

Title & Regis. Fees: \$159.60
Attorney Fees: 10 hours at \$150.00/hr = \$1,500.00

Total Refund Award and Conditions:

The total refund amount is **\$41,147.53** (forty one thousand one hundred forty seven dollars and fifty three 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, 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

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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 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: **Dowling Ford located at 1011 South Main Street in Cheshire, Connecticut, 06410.**