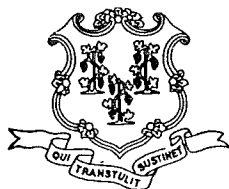


In the matter of arbitration entitled:

**DeAngelis vs. Ford Motor Company**

**Case Number: 2016-1461**



**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**

**Robert DeAngelis** (the "Consumer") purchased a **2015 Ford Mustang** (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 **February 13, 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 **Thursday, September 15, 2016**. **Ford Motor Company** (the "Manufacturer") contested the initial eligibility of the Vehicle in this case. Mr. Tim Clark served as the State's Technical Expert. Also appearing at the hearing was the Consumer and, for the Manufacturer, Attorney Sam Hoff.

- A.** The Consumer reported to the Manufacturer, its authorized dealer, or its agent a defect pertaining to vibration with buzzing, rattling, and/or creaking noises while the Vehicle is being driven at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
<u>02-13-2015</u>	<u>84</u>	<u>Vibration with rattling and creaking noises from dashboard area</u>
<u>06-27-2015</u>	<u>6,240</u>	<u>Vibration with rattling and creaking noises from dashboard area (Refusal)</u>
<u>02-09-2016</u>	<u>15,497</u>	<u>Vibration with rattling and creaking noises from dashboard area</u>
<u>02-23-2016</u>	<u>15,589</u>	<u>Vibration with rattling and creaking noises from dashboard &amp; rear interior</u>
<u>05-27-2016</u>	<u>20,185</u>	<u>Vibration with rattling and creaking noises from dashboard area</u>

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 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:

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

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## **II. REASONING**

### **Nonconformity**

The Consumer complained of the following nonconformity or defect with the subject Vehicle: Abnormal noises and vibration while the Vehicle was in motion. 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 continual abnormal noises while being driven, necessitating visits to an authorized dealership for diagnosis, testing, and repair. The Manufacturer contested the Vehicle's initial eligibility, counting just twenty-four (24) days out of service in their Manufacturer's Statement (at page 9), and believing that less than four (4) repairs were made within the timeframe to meet the statutory presumption.

However, the Consumer's Request for Arbitration indicated that the claimed defect caused the Vehicle to be out of service by reason of repair for thirty-nine (39) days within the first two (2) years or twenty four thousand (24,000) miles of ownership as detailed in Part 1 of this decision, and additionally indicated that five repairs to address the claimed defect were performed during the statutory timeframe. For both of those reasons, the Vehicle was found to meet the statutory presumption for eligibility. Also, the Consumer stated that the Dealer had refused him service. Given the number of repairs, the total number of days out of service, and the refusal of service, the Vehicle was found to have met 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 both 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. 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 and Crowley Ford, a second authorized Ford dealership. The Consumer first noticed the disturbing noise and vibration when driving the Vehicle home from the Dealer, when the car had just 84 mile son the odometer. The Consumer explained at the hearing that he did not test-drive the Vehicle before purchase, only performing test drives on similar vehicles. The test-driven vehicles did not exhibit the claimed noise and vibration defect. The Vehicle was taken directly off the showroom floor for sale to him. On that very first trip home from the Dealer, the Consumer noticed the noise and vibration issue, and immediately called the Dealer and set up an appointment for service. He was given a loaner car for one week as diagnosis commenced. No repair order exists for this work.

The record revealed that Mr. Peter Hollenbeck, the Service Writer for Crowley Ford, later verified the noise and rattles when test-driving the Vehicle during the February 23, 2016 repair attempt (at 15,589 miles). A Ford-authorized technician corroborated the buzzing noise and vibration, as shown, for example, by the technician's notes at Crowley Ford for Repair Order No. 561124 dated March 2, 2016, when the Vehicle had reached 16,400.6 miles. The technician noted "Heard buzzing type noise with engine running. Found A/C/ lines making contact with each other. Repositioned lines." Other work was performed at that time to attack the noise issue, including: "Added flock type tape to contact areas of battery cover. Replaced broken push pin on cover." However, the noise continued according to the Consumer, and still existed as of the date of the hearing. The Consumer's testimony revealed that the Dealer refused to take apart the

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dashboard to ascertain the cause of the buzzing and vibration. His reasonable requests to have a Ford engineer inspect the Vehicle were never approved.

The Consumer testified as to his apprehension when driving the Vehicle due to the distraction caused by the vibration and buzzing, both heard and felt. The Consumer also testified that while driving the Vehicle, a silver metal clip vibrated itself out from somewhere underneath the dashboard and landed on the carpet of the passenger foot well. The Consumer gave this clip to Louis, a staff member at Crowley Ford, during one of the February, 2016 repair visits. The vibration and buzzing noise was proven to be disruptive to the Consumer's ability to drive the Vehicle, as well as detrimental to the physical integrity of the Vehicle.


The Consumer testified that he has driven many different sports cars and currently owns other sports cars, and his intended use of the Vehicle to drive as a pleasurable convertible has not been realized from his first day of ownership. The Consumer felt that he did not have the full use of the Vehicle, and given the thirty-nine (39) days out of service and the constant Vehicle vibration and noise problem he experienced, he is justified in his concerns. Based on the days out of service and the ongoing defect, which has impacted the Consumer's normal, everyday use of the Vehicle, I find a substantial loss of use in this case. It appears that the Vehicle's value has also been impacted, but no written documentation was presented to verify the \$28,000 valuation for similar Mustangs obtained by the Consumer from a relative involved in the sale of automobiles, nor the \$22,000 value obtained from the Dealer when a trade-in was considered at 6,250 miles (refer to hearing @ 25:50). A refund and exchange is appropriate in this case.

Given that the Consumer discovered the vibration and buzzing defect upon his drive home from the Dealer's lot and continuing up through the date of the hearing, together with the unresolved vibration and buzzing noise issue and the thirty-nine (39) days that the Vehicle was out of service during the first two years, balanced against the relatively high number of miles on the odometer as of the date of the hearing (20,430 miles as testified by the Consumer), a mileage deduction shall be awarded in favor of the Manufacturer, but only up through June 27, 2015, the time of the refusal of service and attempted trade-in at the Dealer (at 6,240 miles). Given the number of days out of service, the nagging noise while driving, the vibration issue, and the many inconveniences placed upon the Consumer, 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 \$1,175.00 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.

10-12-2016  
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 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 **\$34,483.00**.

#### **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 second repair attempt** (at 6,240 miles), minus the mileage at the time of delivery (84 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$34,483.00 \times 6,156 \text{ miles } (6,240 \text{ miles} - 84 \text{ miles})}{120,000 \text{ miles}}$$

The allowance (reduction from contract price) for the Consumer's use of the Vehicle shall be: **\$1,768.98**.

#### **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: \$841.59	Title & Regis. Fees: \$220.00	Dealer Conveyance Fee: \$499.00
Extended Warranty: TBD	Lemon Law Filing Fee: \$50.00	

#### **Total Refund Award and Conditions:**

The total refund amount is **\$34,324.61** (thirty four thousand three hundred twenty-four dollars and sixty-one 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 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**.