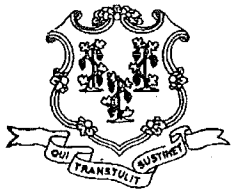


In the matter of arbitration entitled:

ALGERI VS. NISSAN NORTH AMERICA

Case Number: 2017-2244



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



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrator, Dennis J. Plevyak, 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

Janie Algeri (the "Consumer") purchased a **2013 Nissan Pathfinder** (the "Vehicle") from **Paul Miller Nissan** located at **930 Kings Highway in Fairfield, Connecticut 06825** (the "Dealer"). The Consumer took delivery of this Vehicle on **September 25, 2014**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes. The Vehicle was purchase with 13,516 miles as indicated by the Vehicle odometer.

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, December 7, 2017**. Timothy Clark served as the State's Technical Expert. **Nissan North America** (the "Manufacturer") was represented by Carlos Ferreira, Dealer Technical Specialist, Aftersales Division.

- A.** The Consumer reported to the Manufacturer, its authorized dealer, or its agent defects pertaining to hesitation, shudder and bucking on acceleration at the following times (Note: repairs prior to 13,983 miles predated the Consumer's purchase):

<u>Repair Date</u>	<u>Miles</u>	<u>Defect/Repair Work Performed</u>
<u>12-05-2012</u>	<u>7</u>	<u>Reprogrammed Transmission Control Unit ("TCM")</u>
<u>03-13-2014</u>	<u>5,955</u>	<u>Vehicle bucks back and forth excessively: Reprogrammed TCM</u>
<u>04-10-2014</u>	<u>6,040</u>	<u>Vehicle bucks/hesitation at slow speed: Could not duplicate</u>
<u>04-25-2014</u>	<u>6,127</u>	<u>Vehicle bucks/hesitates at low speed: Reprogrammed TCM</u>
<u>09-22-2014</u>	<u>13,316</u>	<u>Shudder on acceleration: repair unknown</u>
<u>10-13-2014</u>	<u>13,983</u>	<u>Feel heavy shudder, shaking: Installed remanufactured transaxle assembly</u>
<u>02-18-2016</u>	<u>35,072</u>	<u>Check for open recalls: Reprogrammed Continuously Variable Transmission ("CVT")</u>

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09-14-2017 54,382 Shuddering while driving 20-30 mph: Replaced CVT transmission control valve assembly and CVT transmission subassembly

09/28-2017 54,630 Bucking/shuddering while driving 20-30 mph: Replaced CVT transmission assembly

- B. The Vehicle has been out of service by reason of repair for a cumulative total of ____ calendar 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:

II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject Vehicle: Bucking and shuddering at low speeds. The Consumer claimed that the transmission defect continued to exist as of the date of the arbitration hearing.

Eligibility and Reasonable Repair Attempts

The Consumer's Request for Arbitration indicated that the Vehicle experienced transmission bucking and shuddering upon acceleration at low speeds. The Vehicle was purchased as what was described to the Consumer as a certified pre-owned vehicle with 13,516 miles. The Vehicle's service records indicate five repair attempts prior to the Consumer's purchase of the Vehicle. During the Consumer's ownership the Vehicle has been subject to four repair attempts. Therefore, the Vehicle met the requirements for reasonable number of repair attempts as set forth in Connecticut General Statutes Chapter 743b.

Substantial Impairment and Factual Discussion

The Request for Arbitration, the written repair records, and the oral testimony provided at the arbitration hearing detailed the Vehicle defects experienced by the Consumer and the repair attempts by the Dealer.

The Consumer testified that at no time prior to her purchase of the Vehicle had she been advised that the Vehicle had been subject to five repairs of the transmission. She stated that the transmission issue had been known to the Dealer prior to her purchase and the shudder issue had been mentioned on a repair order only three days before her purchase. The Consumer stated within days of after her purchase she asked that the Vehicle be bought back and was denied.

The Consumer testified that during her ownership the Vehicle transmission has been repaired four times including two complete transmission replacements. She stated that each time she suffered substantial loss of the Vehicle because of the multiple days the Vehicle was in for repair. The Vehicle was purchased for its ability to carry three child car seats along with a child stroller. The Consumer has three children under the age of six years, and was pregnant at the time of the Vehicle purchase. She described the Dealer as uncooperative in assisting her with a suitable loaner vehicle during some of these repair attempts. The Consumer stated the violent bucking of the Vehicle frightens her children. The loss of the Vehicle to repair

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has led to stress and disruption of family trips. She stated that time constraints of caring for several very young children prevented her from bringing her Vehicle to the Dealer each time until the issue became severe. The Consumer stated that given the number of repairs and full transmission replacements, she has no faith that the transmission will not continue to fail in the future.

This arbitrator notes that the Manufacturer's Statement indicates the Vehicle was out of service for 64 days in the first two years or 24,000 miles and 123 days from the date the new car warranty went into effect until the present day. The Consumer sought a buyback of the Vehicle along with all finance charges and the cost of a hitch installed on the Vehicle.

Mr. Ferreira stated that the 02/18/2016 repair order makes no mention of a transmission complaint. This arbitrator notes the Vehicle's transmission was reprogrammed for the fourth time at this service event. Mr. Ferreira stated that transmission fluid pressure variations can result in a "weird sensation" but contended that the transmission is operating as designed. He also stated the 02/18/2016 repair order was closed on 03/18/2016, which would seem to indicate the Vehicle was out of service for thirty days. He offered an email (as shown in the record) from the Dealer stating the repair order was held open to allow for obtaining parts and their subsequent installation at arrival. During the wait for the parts the Consumer had the use of the Vehicle. This Arbitrator notes that if this repair order is completely disregarded the Consumer was still without the Vehicle for 42 days.

Mr. Ferreira stated with the final two repairs being after 24,000 miles the Vehicle does not meet the presumption of law to qualify for Lemon Law arbitration. This Arbitrator notes that the repair attempts prior to the Consumer taking possession of the Vehicle may be considered in reaching a finding of eligibility.

This arbitrator finds that the Manufacturer was afforded reasonable repair attempts to correct the transmission complaint.

This arbitrator holds a substantial impairment to use exists in the form of a defect or defects which meet the requirements of Connecticut General Statutes Section 42-179. The Consumer has been denied reasonable use of the Vehicle on multiple occasions for multiple days. The documents in the record and the testimony presented at the arbitration hearing indicate a violation of Connecticut General Statutes Chapter 743b.

The Consumer's preference is to be awarded a buyback of the Vehicle by the Manufacturer. Awarding a buyback of the Vehicle is appropriate in this case.

III. CONCLUSION

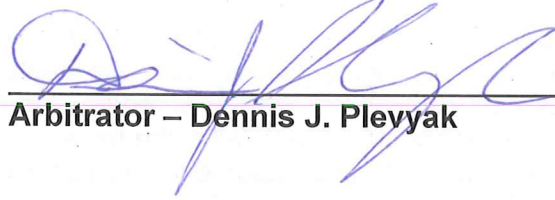
Given that the Consumer presented substantial evidence that the Vehicle is not able to function normally due to a transmission defect, I hold for the Consumer in this case. A buyback award, as noted in Part IV of this decision, is appropriate given the facts presented. The Manufacturer is not granted a mileage allowance. The evidence indicates the defect has existed since the Consumer took delivery of the Vehicle and, in fact, existed prior to her purchase. A repair order dated three days before delivery indicates the Vehicle was to be inspected for a transmission shudder. Eighteen days after purchase the Consumer brought the Vehicle to the Dealer with a complaint of transmission defect.

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 – Dennis J. Plevyak

12-15-2017

Date

(See Section IV of this decision, entitled "Replacement 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 total Vehicle cash price, as delivered, was **\$28,447.95**.

Allowance for Use:

- The contract price shall be reduced by taking into account the mileage on the vehicle.
- The contract price **shall not** be reduced by an allowance for the Consumer's use of the vehicle

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:

Lemon Law Filing Fee: \$50.00
Trailer hitch and installation: \$450.62

Total Refund Award and Conditions:

The total refund amount is **\$28,948.57** (twenty seven thousand nine hundred forty eight dollars and fifty seven). **In addition to the total refund amount indicated, the finance charges indicated above are to be paid by the manufacturer.**

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 in the amount of the balance of the refund. The Consumer 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 shall surrender the Vehicle at the time of the refund.

If the Vehicle is not financed, the Consumer 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 **Paul Miller Nissan** located at **930 Kings Highway in Fairfield, Connecticut 06825**.

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