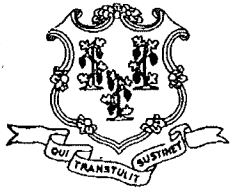


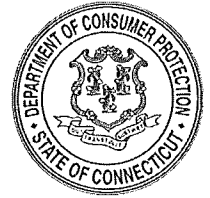
In the matter of arbitration entitled:

Weindruch vs. Ford Motor Company

Case Number: 2016-54



**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

Gail M. Weindruch (hereinafter, the "Consumer") purchased a **2014 Ford Focus SE** from **Central Auto Group** (the "Authorized Dealer" or "Dealer") located at **98 Lathrop Road** in **Plainfield, Connecticut, 06374**. The Consumer took delivery of this vehicle on **August 20, 2014**. The vehicle was manufactured by **Ford Motor Company** (the "Manufacturer"), and holds a "passenger," "combination," or "motorcycle," registration as defined in Section 14-1 of the Connecticut General Statutes.

After reviewing the allegations, the Department of Consumer Protection (The Department") deemed this case initially eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. Said arbitration hearing was held on **Thursday, March 10, 2016**. Mr. Tim Clark of the Department served as The State's Technical Expert. The Manufacturer, through counsel, Attorney Thomas Mountain of Campbell, Campbell and Edwards, did not contest the initial eligibility of the vehicle in this case. Therefore, this arbitrator determined that the vehicle met the eligibility requirements pursuant to Chapter 743b and said arbitration hearing proceeded on the merits.

- A.** The Consumer first reported to the Manufacturer, the Authorized Dealer, or their agent a defect pertaining to **check engine light warnings, engine stuttering, backfiring and a lack of acceleration** on **September 9, 2015** with **20,619 miles** on the vehicle's odometer. Subsequent repair attempts for these defects and others occurred on:

| <u>Repair Date</u> | <u>Miles</u> | <u>Defect</u> |
|--------------------|---------------|---|
| <u>09-11-2015</u> | <u>20,760</u> | <u>Check Engine Light; stuttering, backfiring, loss of acceleration</u> |
| <u>09-30-2015</u> | <u>21,829</u> | <u>Check Engine Light; stuttering, backfiring, loss of acceleration</u> |
| <u>09-30-2015</u> | <u>21,831</u> | <u>Check Engine Light; stuttering, backfiring, loss of acceleration</u> |
| <u>10-10-2015</u> | <u>21,862</u> | <u>CEL; stuttering, backfiring, loss of acceleration; stalled out on road</u> |

The above defect or defects continued 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 _____ 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:

| <u>Date</u> | <u>Miles</u> | <u>Defect</u> |
|-------------|--------------|---------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |

II. REASONING

Nonconformity

The Consumer complained of the following defects with the subject vehicle: the engine stuttering, stumbling, backfiring, feeling like it would stall during slow speed operation, sluggish acceleration during normal driving conditions, and undercarriage noises. At the hearing, the Consumer presented substantial evidence that the listed defects existed, were not successfully repaired, and continued to exist.

Eligibility and Reasonable Repair Attempts

The Consumer's written Request for Arbitration revealed that the vehicle experienced serious malfunctioning of the engine or driveline, necessitating multiple visits to the selling Dealership for diagnosis, testing, and repair. Said defect met the statutory presumption for eligibility, as it was subject to five (5) repair attempts during the statutory period, as detailed in Part 1 of this decision (refer to the recording at 4:20). The vehicle easily met the statutory presumption of 4 repairs before the first 24,000 miles.

The Consumer was therefore found to have met the eligibility requirements of the statute. The engine defect impacted the ability of the vehicle to accelerate normally, and the engine stalled out once during a rainstorm, which are both considered to be serious safety issues related to drivability. The vehicle was therefore deemed eligible for the number of repair attempts, and initial eligibility was not contested by the Manufacturer through its counsel (see recording at 5:05). As such, this case 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 a defect (malfunctioning of the engine and driveline) which meets 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 Consumer's Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the vehicle's engine defect experienced by the Consumer, and the multiple repair attempts by an authorized Ford dealership.

As shown in Part I of this decision, the Consumer first brought the vehicle to the Dealership in order to diagnose the engine and driveline concern when the vehicle had been driven 20,619 miles. At that time, the Check Engine Light was not only illuminated, but was flashing (refer to the recording at 21:40). Mr. Clark stated on the record that a flashing Check Engine Light is a serious warning that requires the driver to pull over and shut off the engine immediately in order to prevent permanent engine and emissions component damage. On September 30, 2015, the Dealer performed repairs and released the vehicle to the Consumer. After driving out of the dealership parking lot, the Check Engine light and other defects immediately reappeared, so the Consumer took the vehicle back to the Dealership, where additional repairs were performed. The Powertrain Control Module (commonly known as the "PCM") was replaced twice (refer to the hearing at 33:10), a main ignition fuse was replaced (refer to the hearing at 34:42), and several ignition coils were replaced during the various repair attempts. One of the coils was found to be melted and emanating smoke from under the hood. Mr. Clark stated that a fire could have been caused by this serious high-voltage electrical malfunction.

The Consumer testified that the vehicle was not performing as it had during the first months of ownership, before the engine and driveline defects manifested themselves and repairs were attempted. The Consumer complains that the vehicle's acceleration is still limited since the time of the first repair, and up through the

In the matter of arbitration entitled:

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Case Number: 2016-54

date of the hearing. The Consumer claimed that she did not have the full use of the vehicle, and given the many episodes she experienced during daily driving when the engine failed to properly accelerate the vehicle, accompanied by the shuddering, backfiring, stalling sensation at low speeds, and the episode of actual stalling, she is justified in her concerns.


Based on the ongoing defects, which impact the Consumer's normal, everyday use of the vehicle, I find a substantial loss of use in this case. Additionally, serious safety issues included the stalling of the vehicle on the road during a rain storm, as well as under-hood smoke that could have caused a fire but for being caught before additional damage or serious injury resulted. However, due to the fact that the vehicle defects appeared well after the date of the Consumer's purchase, when 20,619 miles were driven without incident, a mileage deduction in favor of the Manufacturer is appropriate in this case. I make note that the vehicle had 2,074 miles on the odometer when purchased, according to the Consumer in her Request for Arbitration (see page 11, for example), and in reply to Mr. Clark's question at the conclusion of the hearing.

Finance charges will be awarded in full to the Consumer. The cost of filing the Lemon law arbitration case with the Department of Consumer Protection (\$50.00) will also be awarded to the Consumer, as well as the cost of custom-fit accessories and Paint Protectant coating (\$599.00). Warranties, including the "Hyundai Protection Plan" costing \$3,709.49, and the GAP Insurance costing \$800.00, shall be pro-rated, so that the Consumer will receive the value of these contracts which is related to their current value. If any contract purchased with the vehicle cannot be pro-rated, the Manufacturer shall be responsible for reimbursing the Consumer. The details of the award are set forth in Part IV of this decision.

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.

04-06-2016

Date

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

In the matter of arbitration entitled:

Weindruch vs. Ford Motor Company

Case Number: 2016-54

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 \$0.00 credit/rebate given to the purchaser.) The total vehicle price, as delivered, was **\$19,529.04**.

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 dealer repair attempt (at 20,619 miles), minus the mileage at the time of delivery (2,074 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$19,529.04 \times 18,545 \text{ miles } (20,619 \text{ miles} - 2,074 \text{ miles})}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be: **\$3,018.05**.

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: \$1,543.24 | Title & Regis. Fees: \$160.00 | Extended Warranty: \$3,709.49 pro-rated |
| GAP Insurance: \$800.00 pro-rated | Dealer Conveyance: \$599.00 | WeatherTech Accessories: \$237.90 |
| Paint Protectant: \$599.00 | VIN Etching fee: \$189.00 | Dealer-Installed Accessories: \$788.00 |
| Lemon Law Filing Fee: \$50.00 | | |

Total Refund Award and Conditions:

The total refund amount is **\$20,677.13** (twenty thousand six hundred seventy seven dollars and thirteen cents). **In addition to the total refund amount indicated, the finance charges, GAP Insurance, and Extended Warranty 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 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: **Central Ford-Mercury located at 98 Lathrop Road in Plainfield, Connecticut, 06374.**