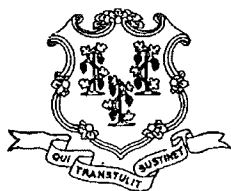


In the matter of arbitration entitled:

Ali vs. Hyundai Motor America

Case Number: 2017-871



**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

Syeda R. Ali (the "Consumer") purchased a **2017 Hyundai Sonata Eco** (the "Vehicle") from **Lia Hyundai** located at **20 Jennings Road** in **Hartford, Connecticut 06066** (the "Dealer"). The Consumer took delivery of this Vehicle on **December 31, 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, June 15, 2017**. Mr. Timothy Clark served as the State's Technical Expert. The Manufacturer, Hyundai Motor America, was represented by Loi Nguyen.

- A.** The Consumer reported to the Manufacturer, its authorized dealer, or its agent defects pertaining to hesitation, bucking, jerking, and vibration at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect/Repair Work Performed</u>
09-09-2016	10,202	Jerking
10-07-2016	11,013	Shaking; Vibration; Shudder; Transmission replaced
10-18-2016	11,984	Hesitation; Shifting not smooth
11-14-2016	11,020	(note: mileage per repair order, likely clerical order) Jerking while accelerating and driving
11-18-2016	13,158	Hesitation; Jerking; Performed technical service bulletin
12-19-2016	15,180	Bucking
12-27-2016	16,034	Jerking; Bucking; Vibration; Banging into gear
01-05-2017	17,225	Alternator service campaign; Replaced alternator bolt
04-06-2017	21,323	Vibration; Carbon on exhaust

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 **37** days during the statutory eligibility period (the earlier of: two years from the date of purchase or 24,000 miles driven).

- C.** Seven repair attempts were performed during the first 12 months after purchase and the defects still exist that are 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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(see the above-listed defects related to bucking, jerking, and hesitation episodes)

II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject Vehicle: shuddering, jerking, hesitation, and bucking upon acceleration; shifting not smooth; banging into gear; and vibration. The Vehicle also had a carbon buildup in the exhaust. The Consumer claimed that these defects continued to exist as of the date of the hearing.

Eligibility and Reasonable Repair Attempts

The Consumers' Request for Arbitration indicated that the Vehicle experienced a transmission shudder at low speeds under acceleration, jerking and bucking upon acceleration, rough shifting, vibration, and a carbon buildup in the exhaust. The claimed transmission defects began, and the Vehicle was first brought in for repair, with 10,202 miles on the odometer.

There were multiple visits to the Dealer for diagnosis, testing, and repair of these defects. Said defects were subject to seven repair attempts during the first year of ownership, thereby meeting the statutory eligibility requirements of four or more repairs within the first two years or 24,000 miles of ownership, as detailed in Part 1 of this decision. The Vehicle was also out of service for thirty seven (37) days during the statutory period, as detailed in the Request for Arbitration and the repair orders. Given the nature of the transmission-related problems experienced by the Consumer, the Vehicle met the requirements for a safety-related defect likely to cause death or serious bodily injury, as set forth in Chapter 743b. The Manufacturer did not contest the initial eligibility of the Vehicle.

Substantial Impairment and Factual Discussion

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 repair attempts by the Dealer. The record will indicate the Vehicle has a transmission, called "EcoShift" by the Manufacturer, that employs a dual clutch system whereby the transmission shifts as though it were a manual transmission, but all shifts are automatically performed through computer controls. Proper gear selection is the result of driver input, road conditions, engine speed, load, and other parameters, each monitored by the Vehicle's computer. In addition, this transmission contains "adaptive" software, which allows shift points and shift quality to change (within pre-determined ranges) after learning the driver's style of driving. During the November 18, 2016 repair attempt, the parameters were reset by the Dealer via an Engine Control Module and a Transmission Control Module Technical Service Bulletin.

Mr. Clark offered both written and oral evidence into the record related to a Technical Service Bulletin ("TSB") entitled "DCT Control Logic Update (Service Campaign TWW)" related to the particular model transmission found in the Vehicle. Mr. Clark stated this TSB was applicable to (as noted in the TSB) "Certain 2017 Sonata ECO (LF) with 1.6L turbo engine 7-speed DCT Transmission." Mr. Clark asked the manufacturer's representative, Loi Nguyen, if the TSB would also be applicable to the Consumer's vehicle, a 2015 model year Sonata Eco. Mr. Nguyen was unable to confirm whether the TSB could have an effect on a 2015 model year vehicle.

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The Consumer complained of shuddering, jerking, hesitation, bucking and vibration when operating the Vehicle during normal driving conditions in stop-and-go traffic. The Dealer was unable to verify those defects during their repair attempts. The Consumer stated the replacement of the transmission did not rectify the issues described. The Consumer stated that replacement of the transmission would have an adverse effect on the Vehicle's value should they attempt to sell it, as a buyer might question why the transmission was replaced. The Consumer stated their child has questioned the safety of the Vehicle, as have they. The Consumer stated they were familiar with, and have experience with, the operation of conventional manually shifted transmissions.

The Consumer considered the shuddering, jerking, hesitation, bucking, rough shifting and vibration when operating the Vehicle during normal driving conditions to be serious driveability issues impacting their use of the Vehicle and their safety. The Consumer acknowledged the issues are intermittent and do not occur at steady state highway speeds. The Consumer testified as to apprehension when driving the Vehicle, and their child's apprehension when a passenger in the Vehicle. The Consumer requested replacement of the subject Vehicle.

The Manufacturer asserted that the "EcoShift" transmission in the Vehicle is performing as designed. The replacement of the original transmission occurred after consultation between dealer service technicians and the Manufacturer's service Tech Line in an effort at customer satisfaction. The repair performed after the transmission replacement was reprogramming of the computer modules, with no mechanical parts needing to be replaced. The Manufacturer stated should the Consumer be awarded a replacement vehicle, the Consumer should conduct a thorough test drive to acquaint themselves with the driving and shifting characteristics of the Vehicle.

The Manufacturer was afforded multiple attempts to repair the Vehicle through the Dealer during the Consumer's ownership. Those efforts, totaling over thirty seven (37) days, have been unsuccessful.

Due to the prior and ongoing transmission shuddering, jerking, hesitation, bucking, rough shifting and vibration when operating the Vehicle during normal driving conditions causing safety concerns and impaired acceleration, a substantial loss of both use and safety were proven by substantial evidence to exist. The Manufacturer's transmission replacement along with the service bulletins indicate that a known problem with the Vehicle's transmission existed.

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 Consumer's preference is to be awarded a replacement vehicle by the Manufacturer. Awarding a replacement 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 severe transmission defect, I hold for the Consumer in this case. A replacement award, as noted in Part IV of this decision, is appropriate given the facts presented.

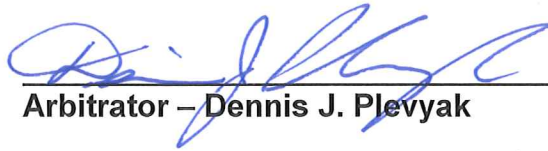
The decision of this arbitrator does not replace any other remedies available under the applicable warranties, Connecticut General Statutes Chapter 743b, or the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 88 Stat. 2183 (1975), 15 USC 2301 et seq., as in effect on October 1, 1982.

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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 – Dennis J. Plevyak

06-21-2017

Date

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

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IV. REPLACEMENT AWARD

This arbitrator finds the Consumer is entitled to a **replacement vehicle**. The Manufacturer shall replace the Vehicle (a Hyundai Sonata) with a new **Hyundai Sonata Eco or comparable vehicle of the Consumer's choice**. The replacement vehicle **shall have similar options (to be chosen by the Consumers)**, as the Vehicle, or contain the replacement model year's equivalent trim level and options.

The replacement vehicle shall have no more than **250 miles** on the odometer at the time of delivery. If the underlying vehicle, or any vehicle option or option package chosen by the Consumers increases the MSRP value of the replacement vehicle above the MSRP of the nonconforming Vehicle, **the Consumer shall be responsible** for the cost of said item or items.

Any increase between the MSRP cost of the Vehicle and the replacement vehicle shall be:

- Borne by the Consumer** Borne by the Manufacturer
 Allocated as follows: 50 percent paid by the Manufacturer and 50 percent by the Consumers.

The Manufacturer shall be responsible for the cost of registering the replacement vehicle. The party responsible for securing the registration for the replacement vehicle from the Department of Motor Vehicles shall be: The Consumers The Manufacturer

Other Reimbursements Paid by the Manufacturer:

Lemon Law Filing Fee: \$50.00

No additional costs other than those indicated above shall be borne by the Consumer.

Neither party will be subject to any sales or use tax. An advisement dated May 24, 1991 from the Commissioner of Revenue Services states, "In the event that manufacturers of motor vehicles are required, in accordance with Conn. Gen. Stat. Sec. 42-179, to replace motor vehicles with new motor vehicles, sales and use tax shall not apply to such replacements." Any policy change resulting in the imposition of taxes shall be the responsibility of the Manufacturer.

VEHICLE EXCHANGE:

The exchange shall occur at (Consumer's choice): **Lia Hyundai** located at **20 Jennings Road** in **Hartford, Connecticut 06120**, OR at the **Consumer's home** within **thirty (30) days** of the Manufacturer's receipt of this arbitration decision.

If the Manufacturer provides a **2017 model year** replacement vehicle, the Manufacturer shall order the vehicle within **14 days** of the Manufacturer's receipt of this arbitration decision, **giving the Consumer the choice of exterior and interior color, as well as the options and trim to be included**. The Consumer shall be notified within **2 days** of the replacement vehicle being delivered to the Dealer listed above.

If the vehicle is financed, 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 replacement vehicle. If the Vehicle is not financed, the Consumer shall surrender to the Manufacturer the title to the Vehicle at the time of receipt of the replacement vehicle.