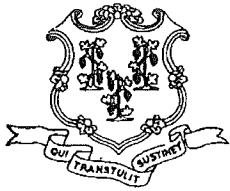


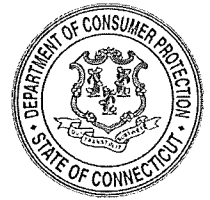
In the matter of arbitration entitled:

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**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

Neil Camhi (the "Consumer") leased a **2016 Hyundai Sonata** (the "Vehicle") from **Stamford Hyundai** located at **85 Magee Avenue** in **Stamford, Connecticut 06902** (the "Dealer"). The Consumer took delivery of this Vehicle on **March 30, 2016**. 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, July 6, 2017**. Mr. Timothy Clark served as the State's Technical Expert. The Manufacturer, Hyundai Motor America, was notified of the hearing via email on June 1, 2017. The Manufacturer, Hyundai Motor America, did not submit a Manufacturer's Statement nor did the Manufacturer appear at the arbitration hearing despite actual or constructive knowledge of the arbitration hearing. The manufacturer did properly submit its \$250.00 filing fee. The leasing company, Hyundai Lease Titling Trust, was notified via certified mail #7009 0080 0000 6081 1826 and delivery was confirmed.

- A.** The Consumer reported to the Manufacturer, its authorized dealer, or its agent defects pertaining to stalling, shaking, misfires, unstable idling, loss of power, and Check Engine Light issues at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect/Repair Work Performed</u>
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<u>04-10-2017</u>	<u>11,794</u>	<u>Intermittent stalling; Check Engine Light came on; Vehicle towed to Dealer Stored misfire codes detected, Dealer could not duplicate complaint</u>
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<u>04-17-2017</u>	<u>11,807</u>	<u>Vehicle shakes intermittently, Check Engine Light came on; Dealer drained and replaced fuel, replaced fuel injectors; Mileage 11,844 when returned to Consumer</u>
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<u>05-04-2017</u>	<u>11,849</u>	<u>Misfire; Unstable idle; Loss of power; Dealer replaced all coilpacks, replaced Engine Control Module harness; Mileage 12,176 when returned to Consumer</u>
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- B.** The Vehicle has been out of service by reason of repair for a cumulative total of 38 days during the statutory eligibility period (the earlier of: two years from the date of purchase or 24,000 miles driven).

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- C. Three repair attempts were performed during the first 24 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 stalling, shaking, misfires, unstable idling, loss of power, and Check Engine Light turning on)

II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject Vehicle: stalling, shaking, misfiring, unstable idling, loss of power, and the Check Engine Light turning on.

Eligibility and Reasonable Repair Attempts

The Consumers' Request for Arbitration indicated that the Vehicle experienced stalling, shaking, misfires, unstable idling, loss of power, and the Check Engine Light turning on. The claimed drivability defects began, and the Vehicle was first brought in for repair, with 11,794 miles on the odometer.

There were multiple visits to the Dealer for diagnosis, testing, and repair of these defects. The Vehicle was also out of service for thirty eight (38) days during the statutory period, as detailed in the Request for Arbitration and the repair orders. Given the nature of the drivability-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. It is noted that the Manufacturer did not submit a Manufacturer's Statement.

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 Consumer was driving the Vehicle in late March of 2017 under normal driving conditions on a limited access highway when the Vehicle's Check Engine Light came on and the Vehicle lost ability to maintain speed or accelerate. After a brief period the Vehicle resumed normal operation. The Consumer stated that the Vehicle operated normally for several weeks and then the same drivability issues of loss of power and the Check Engine Light reoccurred several times. Hesitant to drive the Vehicle due to safety considerations, the Consumer had the Vehicle towed to the Dealer on April 10, 2017. At that time the Dealer was unable to duplicate the defects but did find stored misfire codes in the Vehicle's computer, suspecting a bad fuel issue. At this time an Engine Control Module software update was performed as specified by a Manufacturer warranty campaign. The Consumer picked up the Vehicle on April 12, 2017 and upon starting the Vehicle and backing out of a parking space, after travelling approximately fifteen feet, the Check Engine Light illuminated and the Vehicle stalled. The Vehicle was retained for further diagnosis and repair.

The Consumer was contacted by the Dealer on April 17, 2017 and informed he could pick up the Vehicle. When the Consumer arrived he was informed that the Dealer had driven the Vehicle to the carwash prior to its return to the Consumer, and the Vehicle exhibited the drivability characteristics the Consumer had

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described. The Dealer contacted the Manufacturer for technical assistance and was advised to swap the Vehicle's fuel injectors amongst the cylinders. Initially the Vehicle was fine but after a short period of inactivity at the Dealer the condition returned. The Dealer was advised to drain and replenish the fuel. Upon testing, the Vehicle again exhibited poor drivability. The Dealer was then advised to replace the four fuel injectors.

The Consumer was contacted by the Dealer on May 4, 2017 and informed he could pick up the Vehicle. The Consumer drove the Vehicle less than five (5) miles when it stalled in an intersection and the Check Engine Light illuminated. Upon restarting the Vehicle, it stalled several more times during his return to the Dealer. A Manufacturer's Field Engineer was consulted and he authorized the replacement of all four coil packs along with replacement of the Engine Control Module harness. The Consumer stated the Dealer's Service Manager told him that a Manufacturer's representative had informed the Service Manager that other similar automobiles had demonstrated a wiring harness issue. The Consumer stated the Dealer's Service Manager was cooperative in attempting to repair the Vehicle.

The Consumer stated he had concern for the reliability and safety of the Vehicle following this episode and made several attempts to communicate with Hyundai at the Dealer and Manufacturer level. He did not receive a return phone call from the Dealer General Manager. The Consumer contacted Hyundai at the corporate level and was told a review could take as much as thirty (30) days. The Consumer stated Hyundai contacted him by email on June 9, 2017 with a buyback offer and advised him he could reply by email or telephone. Attempts to contact Hyundai by telephone resulted in reaching two different voicemail boxes, both of which were full. On June 20, 2017 the Consumer received a response that did not meet his financial request. The Consumer stated he is concerned about the safety of the Vehicle and about the completeness of the repairs. He stated his spouse has refused to drive the vehicle due to her safety concerns.

The Manufacturer was afforded multiple attempts to repair the Vehicle through the Dealer during the Consumer's ownership. Those efforts, totaling thirty seven (38) days, have been unsuccessful.

Due to the stalling, loss of power, loss of acceleration and Check Engine Light issues when operating the Vehicle during normal driving conditions causing impaired usage along with safety concerns, a substantial loss of both use and safety were proven to exist by substantial evidence.

The Manufacturer did not submit a Manufacturer's Statement nor did it appear at this arbitration session to contest the Consumer's contentions through testimony or evidence.

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 buyout of the Vehicle's lease along with certain fees and expenses. This request, less certain expense requests, is appropriate in this case. As shown in Part I of this decision, the Consumer first brought the Vehicle back to the Dealer to diagnose and repair drivability issues on April 10, 2017, when the Vehicle had been driven 11,794 miles. Due to the severe drivability and safety issues experienced by the Consumer along with his difficulties encountered in his attempts to communicate with the Manufacturer, and the lack of contrary evidence or testimony by the Manufacturer, no mileage deduction will be afforded the Manufacturer.

III. CONCLUSION


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Given that the Consumer presented substantial evidence that the Vehicle is not able to function normally due to a severe drivability defect, 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 – Dennis J. Plevyak

07-18-2017

Date

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

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IV. REFUND AWARD FOR LEASED VEHICLE

This arbitrator finds in favor of the Consumer, and holds that the Consumer and lease holder are entitled to a refund based upon the terms of the Vehicle lease agreement and this decision, as set forth below:

For The Consumer:

The Manufacturer shall refund to the Consumer the total of all amounts detailed below:

- 1) All lease payments made by the Consumer since March 30, 2016 (the date of the lease agreement);
- 2) All lease costs paid;
- 3) State Sales/Use Tax due at signing in the amount of \$320.30;
- 4) Vehicle title, registration, and Clean Air Act fees in the amount of \$195.00;
- 5) Documentation fees in the amount of \$599.00;
- 6) Certified mailing fees in the amount of \$11.20; and
- 7) The Department of Consumer Protection Lemon Law filing fee of \$50.00.

For the Leasing Company:

The Manufacturer shall pay the leasing company "**Hyundai Lease Titling Trust.**" the balance necessary to terminate the lease and release the Consumer from any further obligation of the lease. The Manufacturer shall also pay the leasing company the "purchase option," and therefore ownership shall revert to the Manufacturer. The Manufacturer shall be responsible for any early termination or disposition fees, if applicable.

Other Reimbursements by the Manufacturer:

The Manufacturer shall reimburse to the leasing company all of the following fees or expenses:

NONE

Vehicle Exchange:

The Manufacturer shall provide the total refund to the Consumer and the leasing company, as their interests may appear. The exchange shall occur at **Stamford Hyundai** located at **85 Magee Avenue** in **Stamford, Connecticut 06902** within **thirty (30) days** of the Manufacturer's receipt of this arbitration decision. Payment of the refund shall be conditional upon the assignment of any right, title, and interest in the Vehicle by the leasing company and the Consumer, to the Manufacturer. The Consumer and the leasing company shall surrender the Vehicle at the time of receipt of the refund.

