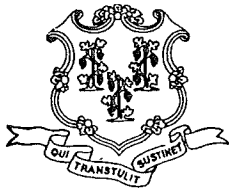


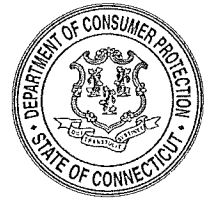
In the matter of arbitration entitled:

Merced vs. Honda

Case Number: 2015-2280



**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

The Consumer **Michele Merced** purchased a **2015 Honda Pilot (VIN No. 5FNYP4H35FB064794)** from **Schaller Honda** located at **1 Veterans Drive in New Britain, Connecticut, 06051**. The Consumer took delivery of this vehicle on **April 15, 2015**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes, or the equivalent.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. The Manufacturer did not contest the initial eligibility of the vehicle in this case. Said hearing was held on **Thursday, January 21, 2016**.

- A.** The Consumer first reported to the manufacturer, its authorized dealer, or its agent a defect pertaining to **the front end shaking and the vehicle stalling on the roadway, accompanied by a check engine warning light** on **July 30, 2015** with **4,490 miles** on the vehicle's odometer. Subsequent repair attempts for this defect and others occurred on:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
07-31-2015	4,525	front end shaking, accompanied by a check engine warning light
08-05-2015	4,541	front end shaking, accompanied by a check engine warning light
08-13-2015	4,867	front end shaking, accompanied by a check engine warning light
08-21-2015	4,890	front end shaking, engine lost power & stalled on road; check engine light
08-31-2015	4,890	front end shaking, accompanied by a check engine warning light
09-04-2015	5,059(?)	flashing check engine warning light

The above defect or defects continue to exist.

- B.** The vehicle has been out of service by reason of repair for a cumulative total of **41 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>
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Refer to the stalling episodes, as described above.

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II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject vehicle: an intermittent shaking of the front end and reduction in engine power while driving, an intermittent "Check Engine" warning light, and episodes whereby vehicle stalled while being driven. Said defects were said to continue to exist.

Eligibility and Reasonable Repair Attempts

The Consumer's Request for Arbitration revealed that the vehicle experienced an intermittent shaking and reduction in engine power while being driven, an intermittent "Check Engine" warning light illumination, an episode of a flashing "Check Engine" warning light, and the stalling of the vehicle while being driven on the roadway on two occasions within the statutory period, necessitating multiple visits to an authorized dealership for diagnosis, testing, and repair. Said defects met the statutory presumption for eligibility, as they were subject to multiple repair attempts during just the first 5,100 miles of ownership, as detailed in Part 1 of this decision. The vehicle therefore 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.

Due to the sudden shaking, loss of power, and stalling episodes, a safety concern was also proven by substantial evidence to exist. Said stalling concern was subject to two or more repair attempts, as set forth in Part 1 of this decision. The statutory presumption for eligibility based upon a safety-related concern, as set forth in Chapter 743b, was therefore also met.

Although the vehicle was deemed eligible for the number of repair attempts, and that initial eligibility was not contested by the Manufacturer through its representative Ms. Suzie Henry, the vehicle was also eligible for the forty-one (41) days that the vehicle was out of service for repairs during the statutory period. The Manufacturer stated that a settlement was appropriate in this case.

Substantial Impairment and Factual Discussion

In the present matter, this arbitrator holds that both a substantial impairment to use and a substantial impairment to safety exist 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 Michele Merced appeared and testified at the arbitration hearing. The Manufacturer was represented by Ms. Suzie Henry. The Consumer's 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 authorized dealership.

As shown in Part I of this decision, the Consumer first experienced a stalling of the vehicle while it was being driven, accompanied by a "check engine" warning lamp when the vehicle had been driven just 4,490 miles on July 30, 2015, when the vehicle was brought back to the selling dealership for diagnosis and repair. A combination of the vehicle shaking, a loss of power, a check engine lamp, and stalling issues, has remained a complaint since that time, and up through the date of the hearing. These issues occurred during the same driving conditions, so were assumed to be related. The Consumer testified to her apprehension with driving the vehicle, and detailed how she uses this larger-sized SUV to transport members of her school-aged cheerleading squad, as she is their coach. Safety was the Consumer's "paramount" concern.

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The written repair records and the oral testimony of both parties verified that an authorized dealership had performed diagnostic tests and had attempted to duplicate the Consumer's concerns. Various electrical system checks and software updates were performed, as well as swapping the ignition coil packs and wires, all to no avail. The very dangerous stalling episode re-occurred on August 21, 2015, as described in the repair orders and at the hearing.

The Consumer felt that she did not have the full use of the vehicle, and given the many episodes she experienced during daily driving when the check engine warning light illuminated and the front of the vehicle shook, as well as the documented stalling-out episodes, 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. A substantial loss of safety due to the intermittent loss of power and stalling out has also been proven by convincing evidence.

An equivalent replacement vehicle with similar options to the Consumer's Pilot Special Edition was said to be unavailable, due to the current Honda Pilot (model AWD EX-L RES) being a different design at a higher price point. The full MSRP difference would be \$4,585.00, but because the Consumer needs to be made whole by obtaining a new vehicle capable of performing the duties for which the subject Pilot was purchased to perform, a fair resolution would be to split the MSRP difference. Said cost is reflected in Part IV of this decision. The cost of any contracts entered into upon purchase of the subject nonconforming vehicle that can be pro-rated shall be refunded directly to the Consumer, if said contracts can be pro-rated. If said contracts cannot be pro-rated, then the Manufacturer shall be responsible for reimbursement of these costs in full to the Consumer.

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 **replacement 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.

02-29-2016
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 current vehicle with a new **Honda Pilot** with an **equivalent (as close as possible) MSRP value** to the original vehicle. The replacement vehicle **shall have similar options (to be chosen by the Consumer)**, as the original vehicle, or contain the replacement model year's equivalent trim level and options.

The replacement vehicle shall have no more than **225 miles** on the odometer at the time of delivery. If the underlying vehicle, or any vehicle option or option package chosen by the Consumer 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. The following dealer-installed options shall be included: **VIN Etching**, and **"Environmental Package" treatment (or equivalent)**.

The manufacturer shall provide at its expense a **warranty** for the new vehicle which shall be equivalent to, or better than, the warranty originally purchased by the Consumer, effective from the date of delivery of the replacement vehicle. A warranty equivalent to any purchased by the consumer, shall also be provided. The consumer shall leave all external decals in place (if any), and **all appurtenances** shall remain with the nonconforming vehicle.

Any increase between the MSRP cost of the original 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 Consumer.

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 Consumer The Manufacturer

Other Reimbursements Paid by the Manufacturer:

Lemon Law Filing Fee: \$50.00 Certified Mail Fees: \$7.18

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.

The exchange shall occur at (Consumer's choice): **Schaller Honda** located at 1 Veterans Drive in New Britain, Connecticut, 06051, OR at **the Consumer's home**.

The manufacturer stated that no new 2015 model year vehicles were available for exchange.

If the manufacturer provides a **2016 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 vehicle being delivered to the local 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 original 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 original vehicle at the time of receipt of the replacement vehicle.