STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
Automobile Dispute Settlement Program

Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrators, Brian Mund, Daniel Listwa, and Chelsea Lane-Miller having been duly sworn and having given due consideration to the proofs and allegations of the parties, hereby decide the following in regard to the above captioned matter:

I. FINDINGS OF FACT

Sonya D. Martin (the "Consumer") **leased** a **2016 Chevrolet Malibu Premier** (the "vehicle") from **Carter Chevrolet Co., Inc.** located at **1229 Main St., Manchester, CT 06040** (the "Dealer"). The Consumer took delivery of this vehicle on **July 24, 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, the arbitrators deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. **General Motors LLC**. (the "Manufacturer") did not contest the initial eligibility of the vehicle in this case. Said hearing was held on **Tuesday, February 28, 2017**. Mr. Tim Clark served as the State's Technical Expert. Also appearing at the hearing were the Consumer, Bruce Berin, witness for the Consumer, and Ms. Myleah Misenhimer, attorney for the Manufacturer. The record closed on **Tuesday February 28, 2017** with the submission of additional evidence concerning the malfunctioning of the vehicle's display and the property tax paid by the Consumer.

Eligibility under § 42-179(d)

The Consumer first reported to the manufacturer, its authorized dealer, or its agent a defect pertaining to malfunctioning "MyLink" integrated Bluetooth, radio and GPS system. The car underwent the following repair attempts for this defect and others:

Repair Date	Miles	Complaint
03-08-2016	985	Mylink system malfunctioning.
03-17-2016	989	Mylink system malfunctioning.
06-22-2016	5,495	Mylink system malfunctioning; loose driver's seat; abnormal transmission.
06-27-2016	5,606	Mylink system malfunctioning; abnormal transmission.
07-01-2016	5,651	Mylink system malfunctioning; clanking noise from wheel.
08-09-2016	7,292	Mylink system malfunctioning; key not recognized.
09-19-16	9,422	Mylink system malfunctioning.

The problems with the Mylink system continue to persist.

II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject vehicle: The vehicle's "MyLink" computing system fails to work properly, generating malfunctions with cell-phone pairing, the vehicle radio, GPS and internal

software. The problem was first reported on March 8, 2016, roughly one month after the lease purchase. Despite repeated technical repair efforts by the Dealer, the vehicle's defects were said to continue to exist as of the date of the hearing. The dealer did not contest the persistence of those defects as of the date of the hearing.

Eligibility and Reasonable Repair Attempts

The Request for Arbitration revealed that the nonconformities described above necessitated multiple visits to an authorized dealership for diagnosis, testing, and repair. Said defects met the statutory presumption for eligibility, as they were subject to seven repair attempts during the first two years or 24,000 miles of ownership. Given the documented repairs during the statutory period, the Consumers were found to have met the eligibility requirements set forth in Connecticut General Statutes Chapter 743b.

Vehicle Repurchase and Factual Discussion

The controversy is limited to the amount of the refund. The Manufacturer requested a reasonable allowance of use to account for the number of miles the vehicle has traveled, and urges the reasonable use calculation outlined in C.G.S.A. §42-179(d). The Consumer, however, requested a refund of all payments related to the vehicle due to the record of repeated visits to the dealership, fear for personal safety, and difficulties meeting professional commitments. In addition, the Consumer requests the reimbursement of property taxes owed under Connecticut law pursuant to ownership over the leased vehicle.

We find that a partial mileage deduction in favor of the manufacturer would be appropriate in this case. The Consumer first reported a defect on March 8, 2016 at 985 miles, when she brought the car to the Dealership due to problems with her MyLink system, including defective pairing between the Bluetooth technology and the Consumer's mobile phone, a malfunctioning GPS system that incorrectly located the vehicle in Detroit, Michigan, and an inability to program the radio channels. Within days after the weeklong service repair, the Consumer returned with the same problems; a malfunctioning system the Dealer has not successfully been able to fix. The Manufacturer does not contest that the MyLink system has continued to be defective in the Consumer's vehicle, despite seven total repair attempts. These nonconformities have persisted. Based on the testimony of the Consumer and the Manufacturer's concessions, we find that the vehicle's nonconformity--in this case the defective MyLink system--has "substantially impair[ed] the use, safety, or value of the motor vehicle." C.G.S.A. § 42-179(d). Thus, from March 8, 2016 and onwards, we find that the vehicle contained a defect that substantially impaired its use, safety, or value.

These facts inform our decision that a partial mileage deduction in favor of the Manufacturer is appropriate. After 985 miles, the Consumer brought in her vehicle to the Dealer. The Consumer signed the lease agreement on the last day of January, 2016 and first reported the defect roughly a month later on March 8, 2016. During this time, the consumer drove the car 788 miles (985 miles at the time of first repair less 197 miles on the car at the time of delivery). The Consumer utilized the vehicle over this period, and the record does not reveal that the Consumer reported any defects either to the Dealer or to the Manufacturer during this timeframe. However, after March 8, 2016, all parties concede the presence of a defect which led to substantial impairment to the Consumer's vehicle. While the Consumer continued to utilize the defective vehicle, the Consumer testified that she did not have an alternative vehicle authorized and insured for substitute use. Although the Consumer continued to utilize the vehicle for nearly another 14,000 miles, this use was marred by a substantial impairment. We find that the Manufacturer is not entitled to a reasonable use mileage refund during which time the Consumer could only operate the vehicle with a substantial impairment. Thus, we decline to grant a mileage deduction after March 8, 2016 (at which time the consumer had driven 788 miles on the car); the time at which all parties concede that a defect arose which led to substantial impairment.

III. CONCLUSION

Given that the Manufacturer has agreed to grant a refund to the Consumer, and considering the evidence and testimony submitted by the parties, we find that a partial mileage deduction in favor of the Manufacturer is appropriate.

The decision of these arbitrators 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.

Date: March 9, 2017

Brian Mund, Presiding Arbitrator **Daniel Listwa, Arbitrator** **Chelsea Lane-Miller, Arbitrator**

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

IV. REFUND AWARD

The Manufacturer has conceded liability and has agreed to repurchase the vehicle from the Consumer. Thus, in this case, the arbitrators are only addressing whether and to what extent the repurchase price should include a reasonable allowance for use as explained below.

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 March 8, 2016 repair attempt** (at 985 miles), minus the mileage at the time of delivery (197 miles), yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$34{,}406.28 \quad X \quad 788 \text{ miles } (985 - 197 \text{ miles})}{120{,}000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be: **$225.93**

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.

Expenses to be Reimbursed by Manufacturer:

Down Payment: $1,500 on 1/30/16 (including the first monthly payment for February 2016)

Monthly Payments: $3621.64 (13 monthly payments at $329.24 each for the months of March 2016 to March 2017 less $658.48 for the 2 monthly payments Manufacturer already refunded to Consumer).

Window Tinting: $300

Lemon Law Application Fee: $50

Total = $5471.64

Total Refund Award and Conditions:

The total refund amount is $5471.64 (total expenses) - $225.93 (reasonable use allowance in favor of Manufacturer) = **$5245.71** (five thousand two hundred forty five dollars and seventy one cents). The refund amount shall be increased by any additional monthly payments made by Consumer in order to remain in compliance with the lease contract. Specifically, the refund amount shall be increased by $329.24 if the Manufacturer has not bought the car back and issued the full refund to Consumer before Consumer's next monthly payment is due on March 31, 2017.

If Manufacturer has not already done so, Manufacturer shall waive the $395 fee for not purchasing the vehicle at the end of the lease, per item #4 on the lease contract.

Furthermore, at the time of arbitration, Consumer stated that the mileage was at nearly 15,000 miles. Consumer has had the car for 14 months, and thus drives the car just over 1000 miles/month on average. To allow for the time between the

arbitration and repurchase of the car (10 days for rendering of the decision + up to 30 days for Manufacturer to provide the refund), the Consumer may drive up to 1,500 additional miles without any reduction of the reward from Manufacturer to Consumer. However, so that the vehicle is delivered to the Manufacturer without an excessive amount of additional miles, the Manufacturer may reduce the damages owed consumer by 25 cents per mile for every mile over 16,500 miles. This is the price listed in the lease contract and agreed to by the Consumer for excessive mileage over 15,000 miles per year. This additional mileage allowance enables Consumer to drive the car according to her normal driving patterns for the 40 days following the date of the hearing.

Consumer also requested a refund equal to the property tax paid on the vehicle's lease. We find that the consumer failed to provide adequate evidence to justify the requested property tax refund.

The Consumer may surrender the vehicle to Manufacturer at any time to avoid any excess mileage charges, though Consumer shall not surrender the vehicle title to Manufacturer until the refund is provided. The Manufacturer shall provide the total refund to the Consumer within **15** days of receiving the vehicle from Consumer, or within **30** days of the Manufacturer's receipt of this arbitration decision. If Consumer has not already done so, the Consumer shall surrender the vehicle to the manufacturer upon receipt of the refund, or 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: **Carter Chevrolet Co., Inc., 1229 Main St., Manchester, CT 06040, OR** at a **local manufacturer-authorized dealership or other location agreed upon by both Manufacturer and Consumer**.