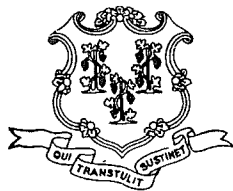


In the matter of arbitration entitled:

Levy vs. Mazda

Case Number: 2017-624



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

Gary and Kathy Levy (collectively, the "Consumers") purchased a 2016 Mazda CX-5 Grand Touring (the "Vehicle") from Whaling City Ford (the "Dealer") located at 1475 Broad Street in New London, Connecticut, 06320. The Consumers took delivery of this Vehicle on February 10, 2016. 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. Mazda North American Operations (the "Manufacturer") did not contest the initial eligibility of the Vehicle in this case. Said hearing was held on Monday, May 1, 2017.

- [X] A. The Consumers reported to the Manufacturer, its authorized dealer, or its agent a defect pertaining to the intermittent failure of the Vehicle's infotainment system, including the XM radio on 04-07-2016 with 2,764 miles on the Vehicle's odometer. Subsequent repair attempts for this defect and others occurred on:

Table with 3 columns: Repair Date, Miles, Defect. Rows include dates from 05-05-2016 to 01-30-2017 and descriptions of infotainment system failures.

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 \_\_\_ 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:

Table with 3 columns: Date, Miles, Defect. Two empty rows for recording additional defect information.

## **II. REASONING**

### **Nonconformity**

The Consumers complained of the following defect with the Vehicle: The intermittent failure of the Vehicle's infotainment system, which included, at various times, the Bluetooth connection, XM radio, navigation system, and USB connectivity. Said defect was said to continue to exist as of the date of the hearing.

### **Eligibility and Repair Attempts**

The Consumers' Request for Arbitration revealed that the Vehicle experienced an intermittent failure of its infotainment system on several occasions within the statutory period, necessitating multiple visits to the Dealer for diagnosis, testing, and repair. Said defect met the statutory presumption for eligibility, as it was subject to five repair attempts during the first 16,389 miles of ownership, as detailed in Part 1 of this decision. The Vehicle therefore met the statutory presumption of four (4) repairs before the first twenty four thousand (24,000) miles. The Consumers were therefore found to have met the eligibility requirements set forth in Chapter 743b. The Manufacturer had mistakenly told the Consumers that they were entitled to an additional repair attempt, but the Consumers knew they were not so obligated pursuant to Chapter 743b. At the start of the hearing, the Manufacturer did not contest the initial eligibility of the case, so the hearing proceeded on the merits.

### **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.

Mr. Gary Levy appeared and testified at the arbitration hearing for the Consumers. The Manufacturer was represented by Mr. David Fenske, with Jose Dangold and Jose Frausto attending remotely from California via telephone. The Consumers' Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the Vehicle defects experienced by the Consumers and the multiple repair attempts by the Dealer.

As shown in Part I of this decision, the Consumers first experienced an intermittent failure of the infotainment system when the Vehicle had been driven just 2,764 miles on April 7, 2016, when the Vehicle was brought back to the Dealer for diagnosis and repair. The Consumers testified to how they intended to use the Vehicle, and Mr. Levy in particular detailed how he uses this mid-sized SUV for his woodworking business, frequently traveling many hours to remote saw mills and customer locations in multiple New England states. The Vehicle was to be used in place of his large pickup truck to realize a savings in fuel costs.

Mr. Levy's testimony revealed that he purchased the Vehicle in large part due to his intended reliance upon the infotainment system installed in the Vehicle, particularly for GPS navigation, his preferred method of entertainment being XM radio, and use of the hands-free Bluetooth technology. Mr. Levy commented that the infotainment system was an optional system which added approximately \$1,500.00 to the initial cost of the Vehicle. He also commented that Connecticut law mandates the use of "hands-free" devices when driving with a cellular phone. This Arbitrator takes administrative notice of said law.

The written repair records and the oral testimony of both parties verified that the Dealer had performed diagnostic tests and had attempted to duplicate the Consumers' concerns. Various electrical system checks and software updates were performed, as well as the replacement of key components, all to no

In the matter of arbitration entitled:

**Levy vs. Mazda**

**Case Number: 2017-624**

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avail. The Dealer tested various smartphones to judge compatibility with the Vehicle, and although the Manufacturer produced a listing of compatible devices and claimed that the Consumers' two device models may not function with 100% compatibility, the Dealer did not impress upon the Consumers that they needed to change phones to a different model. The Consumers had used typical Android-based and Apple phones with the Vehicle, and each did not perform as intended. The testimony revealed that the list of compatible devices is updated on a Manufacturer website, and that the system software updates encompass new phone models and work to eliminate known issues and bugs.

The Consumers felt that they did not have the full use of the Vehicle, and given the many episodes they experienced during daily driving when the infotainment system froze and had to be re-booted, the XM radio did not work, the GPS navigation failed to provide directions, the Bluetooth failed, and the SD connection did not work, they are justified in their concerns. Based on the ongoing defects, which impact the Consumers' normal, everyday use of the Vehicle, I find a substantial loss of use in this case.

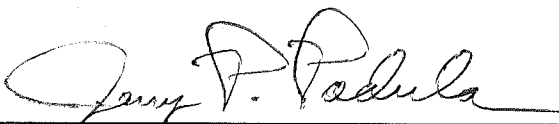
Although the Consumers have had to drive the Vehicle with a randomly functioning infotainment system, which was a major reason why he purchased the Vehicle, and that such system was to be used during the consumer Mr. Levy's work as a business owner driving in unfamiliar territories, said use is to be balanced against the number of miles on the odometer, as the record indicates a reasonable use of the Vehicle by the Consumers. The record also indicated a reasonable effort to repair the Vehicle. A mileage deduction shall be awarded in favor of the Manufacturer, based upon the mileage at the second repair attempt: 3,830 miles.

The cost of any warranty contracts entered into upon purchase of the Vehicle that can be pro-rated shall be refunded directly to the Consumers, 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 Consumers.

### **III. CONCLUSION**

Given that the Consumers presented substantial evidence that the Vehicle is not able to function normally, I hold for the Consumers in this case. A **refund**, 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.

05-16-2017  
Date

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

In the matter of arbitration entitled:

**Levy vs. Mazda**

**Case Number: 2017-624**

#### **IV. REFUND AWARD**

The arbitrator finds that the Consumers are 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 Consumers.) The total Vehicle price, as delivered, was **\$32,285.00**.

#### **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 Consumers' use of the Vehicle. It shall be calculated using the total mileage driven **at the time of the second repair attempt** (at 3,830 miles), minus the mileage at the time of delivery (5 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$32,285.00 \times 3,825 \text{ miles (3,830 miles - 5 miles)}}{120,000 \text{ miles}}$$

The allowance (reduction from contract price) for the Consumers' use of the Vehicle shall be: **\$1,029.08**.

#### **Finance Charges to be Reimbursed by Manufacturer:**

- The Consumer(s) shall be reimbursed for finance charges incurred on the following dates:  
\_\_\_\_\_
- The Consumer(s) shall be reimbursed for finance charges incurred from:  
\_\_\_\_\_ to \_\_\_\_\_
- The Consumer(s) **shall be** reimbursed for **all finance charges incurred**.
- The Consumer(s) shall not be reimbursed for finance charges.

#### **Additional Expenses to be Reimbursed by Manufacturer:**

Conn. Sales Tax: \$1,573.72	Title & Regis. Fees: \$214.00	Dealer Conveyance Fee: \$498.00
Remote Starter: \$302.68	Lemon Law Filing Fee: \$50.00	Certified Mail Fee: \$3.84

#### **Total Refund Award and Conditions:**

The total refund amount is **\$33,898.16** (thirty three thousand eight hundred ninety-eight dollars and sixteen cents). **In addition to the total refund amount indicated, the finance charges indicated above (and the warranties noted above, amounts to be determined) are to be paid by the Manufacturer.** A rental vehicle shall be provided by the Manufacturer, at the Manufacturer's sole cost, if the Vehicle is inoperable for any time after the hearing up through the time of the Vehicle exchange due to the named defect(s).

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

In the matter of arbitration entitled:

**Levy vs. Mazda**

**Case Number: 2017-624**

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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: **Whaling City Ford, located at 1475 Broad Street in New London, Connecticut, 06320 OR at a local Manufacturer-authorized dealer of the Consumers' choice.**