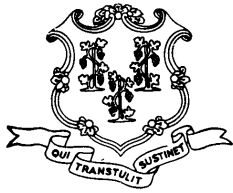


In the matter of arbitration entitled:

Norton vs. Volkswagen

Case Number: 2023-925



**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 allegations of the parties and the evidence presented, hereby decides the following in regard to the above captioned matter:

I. FINDINGS OF FACT

Kyle P. Norton (the "Consumer") purchased a **2022** model year **Volkswagen GTI** (the "Vehicle") from **Curran Volkswagen** (the "Dealer") located at **2785 Main Street** in **Stratford, Connecticut, 06615**. The Vehicle VIN Number is: **WVG87CD8NW202197**. The Consumer took delivery of the Vehicle on **June 16, 2022**. 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 arbitration was held remotely via the Microsoft Teams platform on **June 23, 2023, with a reconvene session held on August 3, 2023**. The Consumer appeared at the arbitration hearing, represented by **Vlad Hirnyk, Esq.** Appearing for **Volkswagen of America, Inc.** (the "Manufacturer") was **Steven A. Andreacchi, Esq.**, with witness **Mr. Stephen Webber**, an employee of the Manufacturer, and observer **Christopher DeBlank, Esq.** **Jane Garbus** was present as a court reporter. **Mr. Timothy Clark** served as the State's Automotive Technical Expert and performed a Vehicle test drive.

A. The Consumer reported to the Manufacturer, its authorized dealer, or its agent the following defects:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
01-10-2023	9,938	Travel assist & SOS safety feature malfunctions; continual chime noise; coolant leak
03-20-2023	12,884	Travel assist & SOS safety feature malfunctions; continual chime noise

The Consumer claimed that the above defect(s) continued to exist as of the time of the arbitration hearing.

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:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
(see above attempts for travel assist & safety feature warnings & malfunctions; incessant chime noise)		

II. REASONING

Nonconformity

The Consumer complained of the following nonconformities or defects with the Vehicle: the dashboard display regularly indicates malfunctions of the “travel assist” and “SOS” safety features, which includes the frontal collision warning feature and emergency braking system; the cited safety features were randomly shutting off while the Vehicle was being driven; and a chime noise that was continually being broadcast inside the cabin whenever the Vehicle ignition was on.

Eligibility and Repair Attempts

The Consumer took delivery of the Vehicle on June 16, 2022, when it had three hundred seven (307) miles on the odometer. The Request for Arbitration revealed that the Vehicle soon suffered from multiple safety system-related malfunctions and random shutdowns, as well as an incessant chiming noise heard inside the cabin, as indicated in Part I.A. of this decision.

The Consumer summarized his Vehicle complaints within the Request for Arbitration (see item No. 439) as follows (any typographical issues are from the original text):

Since last visit in January 2023 the vehicle still exhibits the following: MFI reads front assist not available, warning lights appear for travel assist and SOS, vehicle continuously sounds an audible alarm that increases in its frequency and intensity.

The Manufacturer objected to the initial eligibility of the Vehicle, arguing that the Vehicle had been subject to one repair attempt for one issue, that this issue was effectively repaired, and the Vehicle therefore did not meet the statutory eligibility requirements (refer to recording beginning at 15:05). This Arbitrator noted the objection but allowed the Consumer to proceed in order to demonstrate eligibility, with final eligibility to be determined after hearing additional facts and arguments of the parties due to the issue of eligibility being closely tied to the underlying facts of the case.

At approximately five thousand (5,000) miles, the Consumer alleged that he began to experience dashboard messages indicating faults with the travel assist system and the “SOS” system, actual malfunctions of those safety systems, and continual chime warnings when driving (refer to recording at 34:38). The Consumer contacted the Dealer during the month of November, 2022 to obtain a service appointment, but because no loaner vehicle could be provided by the Dealer at that time, a repair visit could not be arranged (refer to recording at 38:47).

The Consumer alleged that the Vehicle had been subject to two (2) repair attempts during the statutory period from delivery through two (2) years or 24,000 (twenty-four thousand) miles. The two (2) repair visits listed in the Request for Arbitration were confirmed by the written repair orders. The record indicated that the Consumer had also reached out to the Manufacturer several times regarding his claimed issues, as suggested by the Dealer. The Consumer testified that the Manufacturer told him to instead contact the Dealer for assistance, so the Consumer again contacted the Dealer. The Consumer further alleged that the malfunctions continued as of the date of the arbitration hearing, but that the dashboard warning messages, failures of the safety features, and chime noise had decreased in frequency since the steering wheel was replaced during the March, 2023 repair visit (refer to recording at 54:30).

The facts showed that the Vehicle could not be initially repaired by the Dealer due to a lack of parts, which led to the Vehicle being given back to the Consumer on January 12, 2023 in an unrepaired condition. The Vehicle returned to the Dealer in March, 2023 for the second repair attempt. The record indicated that the Consumer had contacted the Dealer and the Manufacturer for assistance in effectuating repairs, but the

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issues still existed. The number of repair attempts is found to be reasonable in this case to meet the statutory threshold for eligibility.

In addition, the random safety system failures are construed to be a safety issue, with malfunctions of these features, including false positive alerts and chimes, being possible causes of driver distraction and the possible cause of a serious accident because the features could not be normally relied upon by any driver. The Consumer's allegations satisfactorily met the alternate statutory eligibility presumption set forth within Chapter 743b for having two repairs for a safety related issue during the first year after delivery.

Substantial Impairment and Factual Discussion

In the present matter, this arbitrator holds that a substantial impairment to use and a substantial impairment to safety exist in the form of nonconformities or defects that 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.

In trading in a similar model vehicle, a 2016 GTI, for the Vehicle, the Consumer stated that he did so in order to obtain the various new safety features on the new model, as he has two small children and felt the new model would provide additional safety. The features of interest included the forward collision warning and emergency braking features, adaptive cruise control, and lane departure warning system, (refer to recording at 28:31; 30:52).

The Consumer first brought the Vehicle to the Dealer on January 10, 2023 when it had been driven 9,938 miles, as shown on Repair Order No. 12989. The Consumer testified, over the initial objection of the Manufacturer, that the Dealer's Service Advisor told him that the Dealer had eleven vehicles experiencing the same problem, and that some had been waiting for up to six months to have obtain the suggested repair of a new steering wheel. This part was ordered by the Dealer but was on back-order.

The Request for Arbitration, Manufacturer Statement, written repair records, and the oral testimony and other evidence provided at the hearing detailed the Vehicle defects experienced by the Consumer and the diagnostic efforts and repair attempts by the Dealer. Chapter 743b contains both objective and subjective standards when determining whether a defect or condition in a motor vehicle causes a substantial impairment to use, value, or safety to a particular consumer.

The Consumer argued that the Vehicle suffered from a substantial loss of use and safety due to the ongoing issues cited in Part I.A. of this decision and in the "Eligibility and Repair Attempts" section above. The Consumer testified that the Vehicle's safety features would experience many random malfunctions and that many features would become inoperable, including safety-related features such as the frontal collision warning feature. For this Arbitrator's consideration, the Consumer submitted videos to demonstrate the issues he complained. Said videos were viewed during the arbitration hearing (refer to recording at 1:11:33), and said evidence corroborated his written and oral testimony.

The Manufacturer refuted the Consumer's testimony and provided evidence and arguments to support a ruling of "no action." Evidence that the Vehicle has been successfully repaired was provided by Mr. Webber, the Manufacturer's expert. In addition, arguments were provided by the Manufacturer that the Consumer failed to demonstrate the existence of a substantial impairment to the Vehicle's use, value, or safety.

Given the conflicting evidence, this Arbitrator ordered an inspection of the Vehicle to be performed by Mr. Clark. Said inspection was performed on July 14, 2023 at the Dealer. The inspection report was received during the arbitration's reconvene session on August 3, 2023, and at such time, the parties also presented their analyses of Mr. Clark's report and added their closing statements. Mr. Clark performed a scan of the

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Vehicle's computer during his inspection, as instructed, with representatives of the parties present. This scan revealed that the Vehicle's computer had diagnostic trouble codes stored in the Vehicle's history (refer to reconvene session at 6:09). Mr. Clark further explained that the stored codes were communication errors which occurred on June 9, 2023 and again on July 5, 2023. The computer also stored the same trouble codes on March 3, 2023, the date the Vehicle went into the Dealer for the steering wheel replacement, and also stored a different steering wheel communication fault code after the replacement steering wheel was installed (refer to reconvene session at 8:47). These dates corroborated the Consumer's previous testimony that the claimed issues had occurred after the steering wheel replacement.

In addition, the Consumer submitted photographs of the Vehicle's dashboard revealing that the safety system warning messages had re-occurred twice after Mr. Clark's inspection (refer to reconvene session at 13:53). Mr. Clark confirmed that these newly submitted photographs showed the same warning messages that had been subject to diagnosis and repair at the Dealer (refer to reconvene session at 6:47). The inspection and additional photographs strongly supported the Consumer's argument that the Vehicle remained unrepaired despite the Dealer and Manufacturer having provided diagnosis and then having installed a new steering wheel in the Vehicle. The Manufacturer registered an objection to the new photographs becoming part of the record, but this Arbitrator found the photographs "to be highly relevant" and very closely tied to the underlying reason for the inspection, so the photographs were admitted into the record (refer to reconvene session at 19:37).

The Manufacturer did not offer convincing evidence to refute the continued existence of the ongoing defects complained of by the Consumer. Attorney Andreacchi asked the Manufacturer's expert Mr. Webber if he agreed with Mr. Clark's assessment that further diagnosis of the Vehicle would be needed, to which he testified "I would completely agree" and stated that additional diagnosis would be needed (refer to reconvene session at 20:54; 23:37; 27:21). However, Mr. Webber did not believe the specific diagnostic codes uncovered by Mr. Clark were related to the Vehicle complaints of the Consumer, and that the warning messages on the dashboard were of a generic nature and could be caused by environmental or other conditions. Mr. Clark clarified that one or more of the codes he found were "priority 4" as opposed to the lower "priority 6" level as posited by Mr. Webber, and that the timing of the codes was suspect, while reiterating that further diagnosis of the Vehicle was required (refer to reconvene session at 27:48).

Arguments advanced by the Manufacturer that the malfunctioning or inoperable Vehicle safety features were not related to safety as contemplated within Chapter 743b (refer to recording at 2:55:26) were not convincing. The relevant features and functions add to the overall safety of the Vehicle, they were a major factor in the Consumer purchasing the Vehicle as a newer model of his previous vehicle, and their malfunction or the generation of false positive alerts could reasonably cause an accident or serious bodily injury. Hence, the loss of safety is an additional factor in this matter, in addition to the loss of normal use.

The record indicated a substantial loss of use and a substantial loss of safety experienced by the Consumer in this matter, as the Consumer did not enjoy the full use of the Vehicle after having experienced the multiple safety feature failures and malfunctions since shortly after delivery, in addition to Mr. Clark's inspection revealing that the issue was still occurring as of August 3, 2023. The defects caused a lack of faith in the Vehicle for the Consumer, as well as many daily inconveniences and potentially dangerous distractions and system failures. This Arbitrator hereby orders the Manufacturer to provide the Consumer with a refund, as further described in Part IV of this decision.

As further described in Part IV of this decision, a credit for use or mileage shall be awarded to the Manufacturer which shall be calculated using the accumulated mileage as of the time of the Consumer first reported the malfunctions to the Dealer in November of 2022, estimated to be around 5,000 miles. The Vehicle's four worn tires, as cited by Mr. Clark (refer to reconvene at 7:26), shall be replaced prior to the exchange, either by: 1. placing new matching tires onto the existing aftermarket wheels; or 2. swapping the factory wheels fitted with tires of safe tread depth onto the Vehicle.

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Finance or lease charges and payments shall be awarded in full to the Consumer in this case, up through and including the date of the Vehicle exchange. The cost of any warranty contracts entered into upon purchase of the Vehicle that can be pro-rated shall be refunded directly to the Consumer, if said contracts can be pro-rated. The Manufacturer shall pay the warranty costs awarded in the arbitration directly to the Consumer. The Consumer shall cancel any pro-rated warranties directly with the warranty company, with the costs pro-rated as of the date of cancellation. If said contracts cannot be pro-rated, then the Manufacturer shall be responsible for reimbursement of these costs in full to the Consumer. In this matter, there were no extended warranties or other contracts purchased through the Dealer.

If the Vehicle remains or becomes inoperable, but no rental vehicle has been provided, then the Manufacturer shall commence direct payment for a rental vehicle from an authorized dealership or nationally recognized car rental establishment within two business days from the date of the arbitration decision. The rental vehicle shall be comparable in size, style, and seating capacity as the Vehicle. Any costs incurred by the Consumer prior to direct payment being made by the Manufacturer for the rental vehicle shall be reimbursed to the Consumer within seven calendar days after the Manufacturer commences payment. As of the time of the hearing, the Vehicle is determined to be **operable**.

III. CONCLUSION

Given that the Consumer presented substantial evidence that the Vehicle **contains substantial defects that impair the use and safety of the Vehicle**, this arbitrator holds for the Consumer in this case. A **refund**, as noted in Part IV of this decision, is appropriate given the facts presented. This order specifically considers the mileage at the time of the first repair and the mileage as of the date of the arbitration, the nature of the Vehicle defects, as well as the days out of service.

The decision rendered by 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 of 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.

If the Manufacturer fails to comply with the terms of this decision by the applicable dates of performance (See Part IV of this decision), and enforcement of the award has not been stayed pursuant to C.G.S. Section 52-420, **the Department of Consumer Protection may impose a fine of up to one thousand dollars (\$1,000.00) per day until the Manufacturer fully performs as specified in this arbitration decision**. If the Manufacturer fails to stamp a title as required by C.G.S. Section 42-179(g) within thirty (30) days of receipt of the title, **the Department of Consumer Protection may impose a fine not to exceed ten thousand dollars (\$10,000.00)**. Please note that there are no provisions within Connecticut General Statutes Chapter 743b that require the Consumer to sign a general release of all claims to receive payment ordered by this arbitrator. **This decision is an administrative order; it is not a settlement of this case.**



Jeffry P. Padula, Esq. - Arbitrator

29-August-2023

Date

(See Part IV of this decision, beginning on the following page, for the award.)

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IV. REFUND AWARD

This Arbitrator finds that the Consumer is 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 includes the **\$0.00** credit/rebate given to the Consumer.)

The Vehicle contract price, as delivered, was **\$31,533.00**.

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 Vehicle mileage/usage. The allowance shall be calculated from the time the Consumer first reported the malfunctions to the Dealer (5,000 miles), and then subtracting the miles at delivery (307 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$31,533.00 \quad \times \quad 4,693 \text{ miles}}{120,000 \text{ miles}}$$

The allowance (reduction from contract price) for the mileage/usage on the Vehicle shall be: **\$1,233.20**.

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: \$979.93 Dealer Conveyance Fee: \$399.00 Title & Registration Fees: \$322.35
"VSI" Charge: \$85.00 Lemon Law Filing Fee: \$50.00
Attorney Fees: (10.2hrs @ \$400.00/hr & 3.6hrs @ \$125.00/hr) = \$4,530.00**

Total Refund Award and Conditions:

The total refund amount is **\$36,666.08** (thirty-six thousand six hundred sixty-six dollars and eight cents). In addition to the total refund amount indicated, the finance charges indicated above (and the warranties and costs noted above, amounts to be determined), are to be paid by the Manufacturer.

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 in the amount of the balance of the refund. 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 refund. The Consumer shall surrender the Vehicle at the time of the refund. If the Vehicle is not financed, the Consumer 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 **within 30 days** of the Manufacturer's receipt of this arbitration decision. The Manufacturer shall **confirm compliance** with the Department of Consumer Protection at LemonLawCompliance@ct.gov and the Consumer **no later than the next business day after compliance**. The Consumer shall surrender the Vehicle to the Manufacturer upon 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: **The Consumer's home OR at a local Manufacturer-authorized dealership** of the Consumer's choice.