

In the matter of arbitration entitled:

Paulino vs. Jaguar Land Rover

Case Number: 2021-2069



**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

Nathaniel Paulino (the “Consumer”) **leased** a **2019** model year **Range Rover Velar S** (the “Vehicle”) from **Jaguar Land Rover Fairfield** (the “Dealer”) located at One Commerce Drive in Fairfield, Connecticut, 06825. The Consumer took delivery of the Vehicle on **July 9, 2019**. 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 online platform on **Wednesday, December 1, 2021**. Mr. Timothy Clark served as the State’s Technical Expert. The Consumer appeared at the hearing with his wife Nichole Paulino as a witness, and was represented by Attorney Vlad Hirnyk of Lemberg Law. **Jaguar Land Rover of North America, LLC** (the “Manufacturer”) appeared through representative Justin Moore.

- A.** The Consumer(s) reported to the Manufacturer, its authorized dealer, or its agent defects pertaining to: **Continual failures of the infotainment system touchscreen interface; rear camera producing blurry images; the auto stop-start feature malfunctioning; rear lights and daytime running lights malfunctioning; coolant pump failure; air conditioning failure; collision warning system malfunctioning; and windshield wiper malfunction** as listed below:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
09-09-2019	2,654	Infotainment system touchscreen randomly blacking out
11-11-2019	4,424	Infotainment touchscreen malfunction; Rear camera blurry; Stop-start malfunction
02-14-2020	7,399	Infotainment touchscreen malfunction; Rear lights & running lights malfunctioning
05-08-2020	8,950	The coolant pump failed
06-02-2020	9,353	Infotainment system touchscreen randomly blacking out
06-19-2020	9,707	Infotainment system touchscreen randomly blacking out; Air conditioning failure
09-13-2021	22,882	Side collision warning gave false positive alerts; windshield wiper malfunction

One or more of the above defects were claimed to continue 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 31 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:

Repair Date Miles Defect

II. REASONING

Nonconformity

The Consumer complained of the following nonconformities or defects with the Vehicle: continual failures of the infotainment system, including the touchscreen not functioning or blacking out; the rear camera producing blurry images; the auto stop-start feature malfunctioning; the rear lights and daytime running lights malfunctioning; coolant pump failure; air conditioning failure; collision warning system malfunctioning; and malfunctioning of the windshield wipers.

Eligibility and Repair Attempts

The Consumer took delivery of the Vehicle on July 9, 2019, when it had just thirty-nine (39) miles on the odometer. The Request for Arbitration revealed that the Vehicle suffered from continual failures of the infotainment system touchscreen, with loss of control of all associated functions; and other isolated defects set forth in Part I.A. of this decision.

At the time the infotainment system touchscreen began to black out, the Consumer first brought the Vehicle back to the Dealer on September 9, 2019, with two thousand six hundred fifty-four (2,654) miles on the odometer. The defects were confirmed, and a repair was performed which included reprogramming (See Repair Order No. 68985).

The touchscreen interface continued to black out, so the Vehicle was returned to the Dealer two months later, on November 11, 2019. In addition, the Consumer reported that the rear back-up camera images were blurry, and the auto stop-start function was malfunctioning. The defects were again confirmed by the Dealer at that time, with additional reprogramming efforts undertaken (See Repair Order No. 70267).

On February 14, 2020, the Consumer brought the Vehicle back to the Dealer to address the infotainment system failures, the right rear signal light intermittently malfunctioning, the rear lights having condensation inside the lenses, and a daytime running light flickering. The Vehicle had been driven seven thousand three hundred ninety-nine (7,399) miles at the start of this repair. Vehicle modules were reprogrammed, and the three rear light assemblies were removed and replaced during this six (6) day repair (See Repair Order No. 72054).

On May 8, 2020, the Vehicle was brought back to the Dealer when the coolant pump failed. Removal and replacement of this component was an eleven (11) day repair effort (See Repair Order 73081).

The Vehicle was returned to the Dealer on June 3, 2020 to again address the intermittent failure of the infotainment touchscreen interface. The Dealer was unable to duplicate the concern at that time, so no repair was undertaken (See Repair Order No. 3348).

Shortly thereafter, on June 19, 2020, the Consumer brought the Vehicle back to the Dealer to again address the infotainment touchscreen defects, and also reported the failure of the air conditioning system. It had been driven 9,707 miles at that time. The Dealer replaced an electrical component during this four (4) day repair.

On September 13, 2021, at 22,882 miles driven, the Vehicle was brought back to the Dealer to address: an error message that the side collision warning system was inoperable; the automatic rain-sensing windshield wiper function was not working; and broken seat trim clips. The Body Control Module was reprogrammed to address the warning system error, the rain sensor was replaced to fix the windshield wiper malfunction, and a trim piece was ordered.

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In addition to the Request for Arbitration and the live testimony of the Consumer and witness, the Consumer also produced videos which were admitted into the record noting the deficiencies with the infotainment system.

The Dealer and the Manufacturer had multiple opportunities to properly and fully repair the Vehicle. As listed in Part I.A. of this decision, the Vehicle's infotainment system was subject to four or more repair attempts during the statutory period of the first two years or 24,000 miles of ownership, thereby meeting the statutory eligibility requirement. The Vehicle had also been subject to thirty-one (31) days of repairs as of the time the Consumer filed the Request for Arbitration. Therefore, the Vehicle met the statutory eligibility requirement for being out of service by reason of repair for thirty (30) or more than days during the first two years or 24,000 miles of ownership.

At the start of the arbitration, the Manufacturer's representative stated that the Manufacturer did not contest the initial eligibility of the Vehicle. In addition, the Manufacturer was not contesting liability. The arbitration therefore proceeded as a hearing in damages.

Substantial Impairment and Factual Discussion

In the present matter, this arbitrator holds that a substantial impairment to use exists 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.

The Request for Arbitration, the written repair records, and the oral testimony provided at the arbitration detailed the Vehicle defect experienced by the Consumer and the diagnostic efforts and repair attempts by the Dealer. The Vehicle suffered from several defects, including the random malfunctioning of the infotainment touchscreen, which controls multiple vehicle functions including the radio, navigation system, rear back-up camera, and the heating and ventilation system.

The record revealed that Vehicle defects appeared shortly after delivery to the Consumers, with the Vehicle first suffering from random infotainment screen black outs and flickering. This defect continued up through the date of the arbitration, despite several repairs by the Dealer, and other defects and system failures also appeared during the term of the lease (summarized within Part I.A. of this decision). The Consumer claimed he and his family did not have the full use of the Vehicle. I agree with the Consumer's assessment in this case.

Despite multiple opportunities, the Manufacturer and the Dealer were unable to correct the underlying defects to bring the Vehicle into compliance with the warranty. Chapter 743b contains both objective and subjective standards when determining whether a defect in a motor vehicle causes a substantial impairment to use, value, or safety. The infotainment system touchscreen continually failing was documented as a substantial impairment to use that was subject to multiple repair attempts during the statutory period. A period was also documented when the rear lights, including the signaling and brake lights, were flickering and not functioning normally. This was a serious safety concern, but it was corrected by the Dealer.

The record revealed that the parties were set to settle this matter several months ago, when the Manufacturer's representatives suddenly stopped the process and did not respond to the Consumer and his counsel. For the failings of the employees involved, the Manufacturer's representative offered his apologies at the arbitration. The Manufacturer agreed that a refund was an appropriate resolution of this case.

Given the facts presented, this Arbitrator agrees that a refund award is a reasonable result in this matter. It is noted that the Vehicle's touchscreen defect appeared shortly after delivery, and said defect lasted up through the last repair effort. The Consumer did not experience any significant period of trouble-free

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driving. No mileage deduction for the miles driven shall be taken in this matter, due to the defect appearing so early and continuing for so long a time. Attorney's fees shall be granted, as listed in the Updated Itemization of Claim submitted by the Consumer's counsel Attorney Hirnyk. Said document lists the work performed in attempting to settle this matter with the Manufacturer, and the work to prepare for and follow through with the arbitration process.

Finance charges and payments shall be awarded in full to the Consumer in this case, up through 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 warrantee 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, a "Silver Package" extended warranty contract was purchased in the amount of **\$2,895.00** through the Dealer.

If the Vehicle 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 a substantial defect that impairs the Consumer's use of the Vehicle**, this arbitrator holds for the Consumer in this case. A **refund**, as noted in Section 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.

If the Manufacturer fails to comply with the terms of this decision by the applicable dates of performance, 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 the 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.**


Arbitrator - Jerry P. Padula, Esq. 27-Dec-2021
Date

(See Section IV of this decision, on the following page, for the Consumer(s) award.)

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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 (note that some of the costs and expenses listed below were paid by the Manufacturer Rebate in the amount of \$0.00):

- 1) All lease payments made by the Consumer since July 9, 2019 (the date of the lease agreement) with **no credit** due in favor of the Manufacturer for accumulated mileage [based upon the \$_____ per mile excessive wear figure multiplied by miles at _____].
- 2) All lease costs and expenses paid by the Consumer, including any down payment;
- 3) State sales/use taxes due at signing (upfront) in the amount(s) of \$128.18;
- 4) Vehicle title, registration, Clean Air Act, and Lemon Law fees in the amount of \$195.00;
- 5) Dealer documentation/conveyance fee paid at signing in the amount of \$365.00;
- 6) Acquisition fee due at signing in the amount of \$895.00;
- 7) Capitalized cost reduction due at signing in the amount of \$199.00;
- 8) VIN etching fee with "Plan B Benefit" paid at signing in the amount of \$199.00;
- 9) The Department of Consumer Protection Lemon Law filing fee of \$50.00;
- 10) Extended Warranty "Silver Package" (pro-rated refund amount to be determined); \$TBD; and
- 11) Reasonable attorney's fees (8.1 hours at \$325 & 13.0 hours at \$125) totaling \$4,220.00.

Regarding the Manufacturer and the Leasing Company

The Manufacturer shall pay the leasing company "**Land Rover Financial Group**" (lessor/assignee) the balance necessary to terminate the lease and release the Consumer from any further obligation of the lease within 30 days of this decision. The Manufacturer shall also pay the leasing company the "purchase option," and ownership shall revert to the Manufacturer. The Manufacturer shall obtain transfer of ownership documentation sufficient to evidence to the town where the Vehicle is registered that the Consumer is no longer liable for taxes due and payable for the Vehicle. The Manufacturer shall file such transfer of ownership documentation with the appropriate municipal tax official within ten (10) days of the date of the Vehicle exchange to ensure future tax liability is assumed by the Manufacturer rather than the Consumer or leasing company. The Manufacturer shall be responsible for any early termination 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 and Conditions

The Manufacturer shall provide the total refund to the Consumer and the leasing company, as their interests may appear. The exchange shall occur at **the Dealer or an authorized dealership of the Consumer's choice** 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, 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 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**.