

From: [REDACTED]
To: [EVOQ \(NHTSA\)](mailto:EVOQ@dot.gov)
Subject: Fwd: FW: Follow up to ODI Complaint ----- 11292568-----
Date: Thursday, February 27, 2020 11:08:57 AM
Attachments: [REDACTED]

Hello:

Please see the attached BBB Autoline Arbitration Decision for the repurchase of my vehicle due to defect.

----- Forwarded message -----

From: EVOQ (NHTSA) <EVOQ@dot.gov>
Date: Mon, Feb 3, 2020 at 6:45 AM
Subject: FW: Follow up to ODI Complaint ----- 11292568-----
To: [REDACTED]

Please see the attached copy of your recent complaint and instructions. Please make any necessary edits and return via email to dataquality@dot.gov or fax to (202) 366-1767. Due to the volume of complaints we receive and our limited resources, we cannot respond to every complaint.

NHTSA/Office of Defects Investigation



Lemon Law Reasons for Decision

Submitted Date: 02/26/20

VIN: 3KPFK4A78JE

Customer: - Hearing Date: 02/20/20

Arbitrator: Pamela Moine

Question 1

Fact Sheet

For each problem (current and past) listed on the Agreement to Arbitrate, indicate the following information. List briefly the relevant evidence in support of each of your conclusions (i.e., repair order numbers, dates, testimony, inspection and/or test drives, technical expert reports, etc.).

a Problem(s) (as listed on Agreement to Arbitrate):

Economy drive mode comes on by itself and there is no button to turn it off

b Does each problem exist now? (Please Explain)

Yes, at the time of the arbitration, a test drive was conducted and the economy drive mode light was illuminated and there was no button to turn it off.

c Number of repair attempts for each problem:

5

d Number of days out of service:

5

Question 2

For each problem listed on the Fact Sheet (question 1), please explain whether or not you believe the problem was caused by a defect in materials or workmanship covered by the manufacturer's new vehicle warranty. Please explain how you reached your conclusion.

I find that the "Economy drive mode coming on by itself" is a defect in materials or workmanship covered by the manufacturer's new vehicle warranty. The lack of a button to turn it off is not.

The manufacturer acknowledges that the ECO light has come on in the consumer's vehicle and states that Kia is continuing to work to address the concern. The attempted repair of defect has been covered under warranty.

As to the button issue, the manufacturer points out that the Kia model owned by the consumer is not equipped with a button to turn the ECO feature on and off. The Active Eco button that would permit the consumer to turn off the ECO drive mode is an optional feature. It was not part of the standard features on the consumer's vehicle. The manufacturer provided a vehicle sticker and printout of options in support the assertion that the button is an option that was not on the consumer's vehicle.

Question 3

For each problem you decided was caused by a defect in materials or workmanship covered by the manufacturer's new vehicle warranty, please explain whether or not you believe this problem is a substantial impairment of the use, value or safety of the vehicle.

The lemon law covers nonconformities. A nonconformity is defined as a defect or condition that substantially impairs the use, value or safety of a vehicle.

The following vehicle issues were submitted for arbitration:

Economy drive mode comes on by itself and there is no button to turn it off

The consumer alleges that the above listed issues were caused by defects in materials or workmanship covered by the manufacturer's new vehicle warranty and is a nonconformity as described in the Florida Lemon Law as they are defects or conditions that substantially impair the use, value or safety of the vehicle. The consumer requests repurchase of the vehicle.

The manufacturer argues that the vehicle fails to meet the criteria of the Florida Lemon Law.

The manufacturer acknowledges that the ECO light has come on in the consumer's vehicle and states that Kia is continuing to work to address the concern. However, the manufacturer alleges it does not amount to a significant impairment to the use, value or safety of the vehicle, pointing to the fact that the consumer drives approximately 20,000 miles per year and that the vehicle has been out of service for no more than one day for each repair visit. The manufacturer's representative stated that Kia has not denied any service for the vehicle and will continue to honor the warranty.

The consumer purchased the vehicle on March 3, 2018. The consumer, [REDACTED] testified that about a year and nine months after purchasing her vehicle, the way the vehicle drove began to change. She noticed that the ECO light on the dash had come on and that she looked for a way to shut off the ECO mode but was unable to do so. She brought the vehicle in for service on September 18, 2018 and was told by a Kia employee that the vehicle was fine to drive with the light on and that the ECO mode saves gas. Her complaint was not noted on the service order from that date. She brought the vehicle back to the dealership on October 17, 2019 and spoke to two service advisors. Although the vehicle had changed from ECO mode to Sport mode while driving to the dealership, the light went off when the vehicle was turned off. The service advisors told her there was nothing they could do. A few days prior to October 23, 2019, while yielding at a red light, the car hesitated and failed to accelerate. According to the consumer, this terrified her. She states this happened only once. On October 23, 2019, she again brought the vehicle in for service with the complaint that the ECO light and Sport lights turn on and that there is not a button to turn them off. The service technician opened a tech line inquiry with KMA. The consumer returned with the same complaint on November 27, 2019. The service technician reset the factory drive mode to the factory specifications and noted that the permanent symptom resolution was still under review per Kia. The consumer again returned to the dealership on December 5, 2019, and was turned away by a KIA Service employee who said he had no answer for her because the tech line had not gotten back to him. He wrote down the telephone number for Kia Consumer Affairs. He did not turn off the ECO drive mode on the vehicle and it remained on. The consumer returned to the dealership on December 31, 2019 with the same complaint - that the ECO mode light was on. The service technician reset the light. On January 2, 2020, the consumer contacted the U.S. Department of Transportation National Traffic Safety Administration to report her concerns about the vehicle's safety due to hesitation on acceleration, describing the incident that had occurred in October. On January 27, 2020, the ECO light came back on and remains on to this date.

The consumer states that when the ECO light is on, the vehicles' acceleration is sluggish. The responsiveness of the acceleration is fine when the ECO light is not on.

The manufacturer points out that the allegation that the ECO light affected the way the vehicle drives was never mentioned on any of the repair orders. The manufacturer states that although the drivability issue was not noted on the repair orders, Kia would be happy to investigate this additional concern. I find the consumer's testimony to be credible and find that she did complain about the drivability/safety of the vehicle during the visits to the dealership even though not noted on the repair orders.

The manufacturer recognizes that the ECO light has come on in the consumer's vehicle and states that they are continuing to address the concern. They argue, however, that it is not a substantial impairment to the use, safety or value of the vehicle. The manufacturer's representative pointed out that the consumer drives over 20,000 miles per year and that the vehicle has been out of service only one day for each repair attempt. The manufacturer representative also states that Kia will continue to honor the warranty.

A vehicle test drive and inspection were conducted on the date of the arbitration. At the time, the ECO light was illuminated. The arbitrator drove the vehicle for about 20 minutes both on city streets and on the highway. A hesitation was noted on acceleration at about 45 mph while entering traffic.

While the manufacturer's representative stated that the ECO light should not be coming on because the consumer's vehicle is not equipped with ECO mode, it appears that it does in fact have an ECO mode or that at least something is affecting the vehicle's acceleration when the ECO light is illuminated. The consumer credibly testified that acceleration decreases when the ECO light comes on. Hesitant acceleration was also observed during the test drive at the time of the arbitration.

As to the button issue, the manufacturer points out that the Kia model owned by the consumer is not equipped with a button to turn the ECO feature on and off. The Active Eco button that would permit the consumer to turn off the ECO drive mode is an optional feature. It was not part of the standard features on the consumer's vehicle. The manufacturer provided a vehicle sticker and printout of options in support the assertion that the button is an option that was not on the consumer's vehicle.

I find that the "Economy drive mode coming on by itself" is a defect in materials or workmanship covered by the manufacturer's new vehicle warranty. The lack of a button to turn it off is not.

The "Economy drive mode coming on by itself" is a nonconformity as described in the Florida Lemon Law as it substantially impairs the use of the vehicle. The use of the vehicle has been impacted by the five out of service days in less than four months. In addition, the consumer brought the vehicle to the dealership one additional time on December 5, 2019 and was turned away by a KIA Service employee who said he had no answer for her because the tech line had not gotten back to him. If the consumer were to keep the vehicle, there is reason to believe it would be out of service many more days as the manufacturer continues attempts to repair the issue. This constitutes a substantial impairment of use of the vehicle. The drivability also impacts the use of the vehicle. The vehicle's hesitation to accelerate when pulling out onto a highway or at an intersection also constitutes a substantial impairment of use of the vehicle.

The Florida Lemon Law requires repurchase of a vehicle only if the nonconformity causes the vehicle not to conform to the warranty. In this instance it has. Therefore, repurchase is appropriate.

Question 4

Please address the following aspects of your state's lemon law below:

- a** **During the applicable time period specified by this state's lemon law, the vehicle**

has been out of service by reason of repair to vehicle problems for a cumulative total of how many days?

5

b Has the standard for a reasonable number of repair attempts under this state's lemon law been met? (Yes or No)

yes

c Please explain how you reached this conclusion.

The Lemon Law provides a presumption of a reasonable number of repair attempts when the same nonconformity has been subject to repair at least three times. The ECO light issue has been subject to five repair attempts. Therefore, the consumer is entitled to this presumption of a reasonable number of repair attempts.

Repair Attempts:

1. September 18, 2019 – Statement signed by Service Advisor, dated October 17, 2019 (1 day out of service)

Complaints – ECO mode coming on, could not locate button to turn it off

Service – Not annotated on Invoice No. [REDACTED]

I find that this constitutes a repair attempt under the Florida Lemon Law even though there was no adjustment or replacement of a component because repair was justified based upon the subsequent service to the vehicle for this issue.

2. October 17, 2019 – Statement signed by Service Advisor, dated October 17, 2019 (1 day out of service)

Complaint – Customer does not like that vehicle goes in and out of ECO and Sport modes

Service – Not annotated

I find that this constitutes a repair attempt under the Florida Lemon Law even though there was no adjustment or replacement of a component because repair was justified based upon the subsequent service to the vehicle for this issue.

3. Invoice No. [REDACTED] – October 23, 2019 (1 day out of service)

Mileage – 34,363

Complaints – ECO light will turn on and sometimes the Sport light will turn on

Service – opened tech line with KIA

4. Invoice No. [REDACTED] – November 27, 2019 (1 day out of service)

Mileage – 36,259

Complaints – ECO light is on and the vehicle is not equipped with ECO drive mode

Service – reset factory drive mode

5. Invoice No. [REDACTED] – December 31, 2019 (1 day out of service)

Mileage – 38,736

Complaint – ECO light on when vehicle is not equipped

Service – reset ECO light and reopen tech line for symptom pending permanent resolution

- d Is this consumer entitled to a repurchase or replacement under all other provisions of this state's lemon law [i.e., eligible consumer, eligible vehicle, applicable time frames (if any), notice provisions (if any), reasonable number of repair attempts, etc.]? Please explain how you reached this conclusion.**

This vehicle is covered by the Florida Lemon Law as it is a vehicle used primarily for personal use and registered in the State of Florida to [REDACTED], the purchaser of the vehicle.

The Lemon Law Rights Period is the period ending 24 months after the date of original delivery of the vehicle. According to the documents and the testimony, the vehicle in this case was delivered on March 3, 2018. Therefore, the Lemon Law Rights Period for this vehicle would run until March 2020 and all repair attempts were performed within that period.

It is presumed that a reasonable number of repair attempts have been made if, during the Lemon Law Rights Period, the vehicle has been out of service by reason of repair of one or more nonconformities for a period of a total of 30 or more days, exclusive of downtime for routine maintenance. According to the repair records provided, the consumer's vehicle was out of service for 5 days. Therefore, the consumer is not entitled to this presumption of a reasonable number of repair attempts.

The Lemon Law gives the manufacturer the right to a final repair attempt after there are three repair attempts for the same nonconformity. After three attempts have been made to repair the same nonconformity, the consumer must give written notice to the manufacturer of the need to repair the nonconformity. In this case, the manufacturer was provided the requisite notice on January 6, 2020 of ECO light issue. While the manufacturer contacted the consumer on February 4, 2020 requesting the opportunity for a final repair attempt, the consumer did not respond. Kia was provided with the opportunity for a final repair attempt but failed to provide the request within the 10 day response period allowed under the Florida Lemon Law. The requirement for the manufacturer to be given a final repair attempt does not apply if the manufacturer does not properly respond to the consumer within 10 days of receipt of the consumer's notice.

Question 5

State your decision (i.e. Repurchase, Replacement, Interim Repair, Denial) and explain why it is appropriate.

Repurchase.

Pursuant to Florida lemon law, if a manufacturer cannot conform a vehicle to its warranty by repairing any nonconformity after a reasonable number of repair attempts, the manufacturer must either repurchase or replace the vehicle. The consumer has a right to choose repurchase rather than replacement. In this case, the consumer has chosen repurchase of the vehicle.

I find that the manufacturer has been unable to conform this vehicle repair the economy drive mode nonconformity after a reasonable number of repair attempts and must repurchase the vehicle.

Question 6

If awarding a repurchase or replacement:

- a Show the formula you used for making a reasonable use deduction and the amount deducted, or explain why no reasonable use deduction was made.**

\$19,495 less \$2,500 rebate = \$16,995 purchase price

(41,413 current mileage - 23 mileage at purchase) 41,390 divided by 120,000 x \$16,995 purchase price = \$5,861.85

- b List any damage to the vehicle beyond normal wear and tear, and explain how you arrived at any amount deducted for the damage.**

none

- c If you've decided not to award all collateral or incidental charges that were requested on the Agreement to Arbitrate, please indicate your reason for doing so.**

n/a

Question 7

The following materials and documents were submitted by the parties as part of this arbitration. Those marked with an asterisk ("*") were relied upon by the arbitrator(s) in making a decision in the case

a Materials/Documents Submitted by Customer

*BBB Customer Claim Form
 *Florida Motor Vehicle Registration
 Florida Automobile Insurance Identification Card
 *Consumer's Written Statement
 *Buyer's Order, Agreement & Information Form
 Retail Installment Contract
 Power of Attorney for a Motor Vehicle
 Odometer Disclosure Statement
 US Gap Guaranteed Asset Protection
 Application for Certificate of Title
 Limited Motor Vehicle Service Agreement
 *2018 Forte Vehicle Sticker
 Fla. Stat. Section 681.104 printout (provided at hearing)
 Office of the Attorney General, Florida New Motor Vehicle Arbitration Board, Quarterly Case Summaries (provided at hearing)
 *Invoice No. [REDACTED] - September 18, 2019
 *Statement, dated October 17, 2019
 *Invoice No. [REDACTED] - October 23, 2019
 *Invoice No. [REDACTED] - November 27, 2019
 *Kia Business Card, signed on back December 4, 2019
 *Invoice No. [REDACTED] - December 31, 2019
 Email printout, January 28, 2020
 *Motor Vehicle Defect Notification
 *Domestic Return Receipt
 *Email printout, January 2, 2020, ODT [REDACTED]
 *Email printout, January 2, 2020, Thanks for Letting Us Know About Your Vehicle
 *Email printout, January 20, 2020, Welcome to the NHTSA Recall Notification System
 *Email printout, January 22, 2020, BBB Auto Line Notification
 Email printout, February 4, 2020, [REDACTED] / Case # [REDACTED]
 *Agreement to Arbitrate
 Email Printout, February 3, 2020, Follow up to ODI Complaint
 DOT Auto Safety Hotline Vehicle Owner's Questionnaire
 *Manufacturer Response Form
 *Owner's Manual Page 5/29
 *Printout regarding Forte Sedan LX
 *2018 Forte LX Sticker
 [REDACTED] v. T-Mobile USA printout
 NAPA Know How Printout
 Internet printout, 4 pages
 Regional Acceptance Corporation Statement

b Materials/Documents Submitted by Manufacturer

*Manufacturer Response Form

Question 8

Please identify the mileage on the vehicle at the time of the hearing/inspection:

Mileage at time of arbitration was 41,413. Mileage at time of delivery was 23.

CASE: [REDACTED]
Arbitrator: Pamela Moine

Customer: [REDACTED]
Date: 02/26/20



Repurchase Decision (Owned Vehicle)

Submitted Date: 02/26/20

VIN: 3KPFK4A78JE

Customer: [REDACTED] Hearing Date: 02/20/20

Arbitrator: Pamela Moine

Question 1

Vehicle (Year, Make, Model):

2018 Kia Forte

Question 2

For the following amounts, the manufacturer shall repurchase the above ("vehicle") owned by the customer within 30 days after the manufacturer's receipt of the customer's acceptance of this decision:

- a The actual price paid for the vehicle
\$16,995.00
- b Reasonable use deduction, if any (explained in the Reasons for Decision)
\$5,861.85
- c Deduction based on vehicle damage not attributable to normal use, if any
0
- d Deduction based on negative equity, if any
0
- e SUBTOTAL
\$11,133.15

Question 3

Other eligible amounts:

- a Description/Amount
taxes \$1,200.09 \$50.00 \$140.84 \$77.35 fees \$499.95 \$6.50 \$368.85 service contract \$2,012.00 GAP \$695.00 finance charges TBD
- b Description/Amount
0
- c TOTAL AMOUNT (2e + 3a + 3b)
\$16,183.73 + finance charges TBD

At the time of the repurchase, the customer will be responsible for turning over the vehicle and providing clear title to the manufacturer. Vehicle shall be in a similar condition as it was at the time of the hearing, allowing for normal usage

Customer must also comply with all additional requirements in the section of the applicable manufacturer *Program Summary* that sets out customer responsibilities if a repurchase is awarded.

If there is a lienholder, payment of the amount set out above shall be made by the manufacturer to the customer and lienholder as their respective interests appear on the records of ownership. The manufacturer shall contact the customer to arrange a mutually agreeable location for the repurchase transaction.

CASE: [REDACTED]
Arbitrator: Pamela Moine

Customer: [REDACTED]
Date: 02/26/20