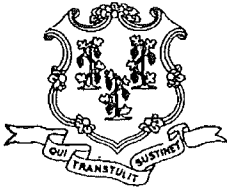


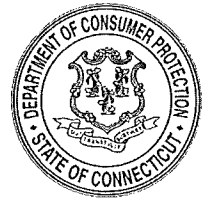
In the matter of arbitration entitled:

Canova vs. Nissan North America

Case Number: 2017-998



**STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
Automobile Dispute Settlement Program**



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrator, Dennis J. Plevyak, 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

Barry Canova ("the Consumer") purchased a **2017 Nissan Armada** from **Nissan of Norwich** located at **691 West Thames Street in Norwich, Connecticut, 06360** ("the Dealership"). The Consumer took delivery of this vehicle on **January 24, 2017**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. The manufacturer of the subject vehicle, **Nissan North America** ("the Manufacturer") did not contest the initial eligibility of the vehicle in this case. Said hearing was held on **Thursday, June 22, 2017**, at which Mr. Timothy Clark served as the State's Technical Expert.

II. VEHICLE COMPLAINT & ELIGIBILITY

The Consumer set forth the following complaint with the subject vehicle: That there existed an engine oil leak in the area of the engine block, cylinder head, and timing cover juncture. The Consumer claimed that the alleged defect continued to exist as of the date of the hearing.

The Consumer's Request for Arbitration set forth a complaint that the right side of the vehicle's engine had what appeared to be engine oil on the external surface. The Consumer stated in his Request for Arbitration that the oil appeared to originate at a point where the engine block, right cylinder head, and timing cover meet. This condition caused the Consumer to make multiple visits to an authorized dealership for diagnosis, testing, and repair. Said concern met the statutory presumption for eligibility, as the vehicle was subject to multiple repair attempts during the first two years of ownership. A listing of the visits to the dealership for this complaint follows below:

<u>Repair Date</u>	<u>Miles</u>	<u>Complaint</u>
<u>03-21-2017</u>	<u>1,594</u>	<u>Oil leak on right side of engine</u>
<u>04-03-2017</u>	<u>1,710</u>	<u>Oil leak on right side of engine</u>
<u>05-01-2017</u>	<u>2,041</u>	<u>Oil leak on right side of engine</u>

Consumer states he was refused further service after third dealership visit.

The Request for Arbitration stated that the Dealership took the car in for multiple repair attempts during the statutory period, but repeatedly was unable to identify the source of oil on the right side of the engine block. Each reasonable attempt by the Consumer to diagnose his complaint constitutes a repair according to Chapter 743b. The Consumer stated in his Request for Arbitration that after the third attempt at repair the Dealership refused any further attempt at repair unless the Consumer could identify the location of the source of the leaking oil. The Consumer's concern that a defect existed was reasonable, given the facts.

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The Consumer stated the vehicle was unavailable for his use for twenty four (24) days during these repair attempts. The Consumer was found to have met the substantial loss of use eligibility requirements of the statute in order to initiate an arbitration hearing in accordance with Chapter 743b of the Connecticut General Statutes.

A safety concern was also alleged by the Consumer in the Request for Arbitration. The Consumer stated loss of oil could lead to engine failure and resulting loss of power. The statutory presumption for eligibility based upon a safety-related concern, as set forth in Chapter 743b, was therefore also met.

The Consumer alleged loss of value should he attempt to trade-in or sell the vehicle because an inspection would indicate an oil leak and affect the appraised value. The statutory presumption for eligibility based upon a loss of value-related concern, as set forth in Chapter 743b, was therefore also met.

III. DECISION

The arbitrator **finds adversely to the Consumer** and orders that **no action** be taken by the Manufacturer.

IV. REASONING

The documents in the record and the testimony presented at the arbitration hearing do not indicate a violation of Connecticut General Statutes Chapter 743b. In analyzing the facts in this matter, this arbitrator carefully reviewed and considered the Consumer's Request for Arbitration, the Manufacturer's Statement, the written repair records, the Technical Expert's comments, and the oral testimony, photographic evidence and closing statements that the parties provided at the hearing. Benjamin Foss, District Technical Specialist, served as the representative of the Manufacturer. The Consumer represented himself at the hearing.

The Consumer stated he has thirty years of experience as an automobile and truck technician with ASE Master Technician certification. The Consumer performed an oil change on March 12, 2017 at approximately 1500 miles and observed motor oil on the right side of the engine. The consumer wiped the oil from the engine. The vehicle was brought to the selling Dealership on March 21, 2017 at 1,594 miles. On March 23, 2017 the Consumer was informed no leak was observed and it was suggested that UV dye be added to the engine oil, a common method of leak diagnosis. The dye is made visible by use of an ultraviolet light shined on the outside of an engine to indicate a leak. The Consumer was advised to drive the vehicle for several days and then return to the Dealership to examine the engine for an oil leak. On April 3, 2017 the vehicle was brought to the Dealership for diagnosis. On April 4, 2017 the Consumer was told no leak source was detected. At this time the UV dye did indicate the presence of engine oil on the right side of the engine but the source could not be determined. Also at this time the Dealer contacted the Manufacturer for technical assistance and the Consumer contacted Nissan Customer Assistance and was assigned a case number. The vehicle was returned to the Consumer on April 14, 2017. The Consumer stated that on April 18, 2017 Nissan Customer Assistance informed him that no representative of the manufacturer would be visiting the Dealer to inspect the vehicle. The Consumer stated at that time the UV dye was visible to the naked eye. On May 1, 2017 the vehicle was returned to the Dealership. The Dealership, as instructed by the Manufacturer, ran the vehicle on a lift and then shut off the vehicle and left cardboard under the vehicle to assist in locating any leak. On May 10, 2017 the vehicle was returned to the Consumer. He was informed no leak was detected and that the Manufacturer would provide no additional assistance. The Consumer was advised by the Dealership he would need to drive the vehicle and return if he could pinpoint the source of the leak. The Consumer provided a repair order confirming this statement. The Consumer stated he has lost confidence in the reliability of the vehicle and is concerned with possible future catastrophic failure. The Consumer stated should he trade in the vehicle he would suffer economic harm.

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The Manufacturer stated the Dealership had examined the vehicle and observed some wetness that could be attributed to engine oil. No oil had reached the bottom of the engine or reached the ground. The Manufacturer stated the Dealership had followed established leak detection protocol (i.e. UV dye) in an effort to pinpoint the source of the oil but repeated observation attempts had been unable to identify and isolate the source. The Manufacturer stated a modern V8 engine has multiple sealing surfaces and to attempt an effective repair at this point would be guess work. The most effective course of action would be for the Consumer to drive the vehicle, not clean off any oil he may observe, and allow any leak to manifest itself for identification and repair. The Manufacturer stated there was no refusal of service, but rather poor communication from the Dealership on a course of action that would lead to effective diagnosis and repair. The Manufacturer did not dispute a need for repair, stating it needed proper opportunity to affect a repair. It cannot be construed as a refusal of service for the Consumer to be told by the Dealership to drive the vehicle so that the UV dye test could be allowed to properly conclude. The Manufacturer stated Nissan was not negligent in its process and stands behind its warranty on the subject vehicle. To do so it must be allowed to confirm the source of oil. The Manufacturer stated no safety issue existed, as no oil is reaching the ground nor is any catastrophic failure imminent given the small amount of oil observed over the course of 1,700 miles between Dealership inspections.

This arbitrator did not order an inspection or a test drive by Mr. Clark, as neither would provide any additional evidence to aid in a finding in this matter.

This arbitrator construed all of the Consumer's claims in his favor, including all claims made within the Request for Arbitration, together with all statements at the hearing. However, even in giving heightened deference to all of the Consumer's assertions and arguments, there is no actionable claim for relief pursuant to Chapter 743b. The Manufacturer has taken reasonable steps to repair the vehicle and indicated its willingness to stand by its warranty and repair the vehicle given a proper opportunity.

The subject vehicle is not deemed to be "substantially impaired" in any way under the definition provided Chapter 743b of the Connecticut General Statutes. The vehicle has not been out of service for thirty or more days, no drivability concerns were brought forth by the Consumer, the Consumer offered no appraisal or other definitive proof of loss of value, and no safety defect that may be life threatening or likely to cause serious bodily injury exists, given that a small amount of engine oil seepage, as discovered by the Consumer during his period of ownership, would not lead to sudden, catastrophic engine failure.

V. CONCLUSION

Given the above facts, the Consumer did not present substantial evidence that the claimed defect caused a substantial impairment to the vehicle's use, value, or safety. Based upon the evidence, This Arbitrator does not find a violation of Chapter 743b. I agree with the Manufacturer's assessment of the vehicle, as presented during the arbitration hearing and as defined in their Manufacturer's Statement, and hold that the Consumer's application will not allow relief pursuant to Chapter 743b. Accordingly, no action is being ordered on this application.

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), U.S.C. 2301 et seq., as in effect on October 1, 1982. Either party to the dispute may apply to Connecticut 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, 52-419, and 52-420 of the Connecticut General Statutes.

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Dennis J. Plevyak - Arbitrator

06-28-2017

Date