

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

JIM LUPIENT COMPANY )  
d/b/a Lupient Infiniti of Golden Valley )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Nissan North America, Inc. )  
 )  
Defendant )  
\_\_\_\_\_ )

Case No.:

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Jim Lupient Company d/b/a Lupient Infiniti of Golden Valley (“Lupient”) brings this Complaint against the Defendant, Nissan North America, Inc., and hereby alleges as follows:

**Parties**

1. Plaintiff, Lupient, is a corporation organized and existing under the laws of Minnesota with its principal place of business in Golden Valley, Minnesota.
2. Lupient is a new motor vehicle dealer as defined by Section 80E.03(3), Minnesota Statutes, and operates an Infiniti franchised motor vehicle dealership, where it sells and services Infiniti products pursuant to a franchise, as defined by Section 80E.03(8), Minnesota Statutes.
3. Defendant, Nissan North American, Inc. (hereafter “Infiniti”) is a California corporation with its principal place of business located in Franklin, Tennessee. Through its Infiniti Division, Nissan manufactures Infiniti automobiles and franchises Infiniti automobiles. Infiniti conducts business in Minnesota through its multiple franchised dealerships. All of the underlying members are domiciled outside of the state of Minnesota.

4. Infiniti is a manufacturer and distributor, as defined by Sections 80E.03(4)-(5), Minnesota Statutes, as it manufactures *inter alia* Infiniti vehicles and sells, and offers to sell, those vehicles to new motor vehicle dealers (including Lupient) in this State.

**Jurisdiction**

5. This court has jurisdiction pursuant to 28 U.S.C. §1332(a)(1) in that there is complete diversity of citizenship and the amount in controversy exceeds the sum of \$75,000 exclusive of jurisdiction and costs.

6. Venue is proper in this district pursuant to 28 U.S.C. §1391(a) in that jurisdiction is founded solely on the basis of diversity, and Infiniti, by virtue of its systematic and continuous business contacts in this district, resides in this district.

**Facts Applicable to All Claims**

**Lupient's Warranty Service Obligations**

7. This action is based on Infiniti's refusal to honor Lupient's warranty reimbursement labor rate substantiated by its submission under Minnesota Statutes.

8. Under Minnesota law, when a dealership is required to perform free service work under a manufacturer's warranty, the manufacturer is also required to reasonably compensate the dealer for their labor and for the parts used during the work.

9. Pursuant to its franchise agreement for operation as an Infiniti dealership, Lupient is obligated to provide warranty service on all vehicles it is authorized to sell regardless of whether those vehicles were purchased from Lupient. *Infiniti Dealer Agreement*, Section 4 ("Dealer shall develop and maintain a quality service organization and shall render at the Dealership Facilities prompt, efficient and courteous service to owners and users of Infiniti Products, regardless of the origin or purchase, including without limitation, the specific obligations described in Section

4.A.”). Likewise, “[d]ealer shall promptly, courteously and efficiently perform (i) warranty repairs on each Infiniti Product which qualifies for such repairs under the provisions of any warranty furnished therewith by Seller or the manufacturer of the Infiniti Product: and (ii) such other inspections, repairs or corrections on Infiniti Products as may be approved or authorized by Seller to be made at Seller’s expense hereinafter referred to as ‘goodwill adjustments.’” *Id.*, Section 4.B.2.

10. In performing those “warranty repairs,” Lupient is required to use authorized Infiniti parts. *Id.*, Section 4.B.2. (“Dealer shall use Genuine Parts and Accessories unless Dealer receives prior authorization from Seller to use non-genuine parts or accessories.”) Accordingly, Lupient must also maintain “a stock of Genuine Parts and Accessories of an assortment and in quantities adequate to meet customer demand and for warranty repairs, goodwill adjustments and campaign corrections made pursuant to this Section 4.” *Id.* at Section 4.D.2.

11. To summarize, Lupient is required to provide warranty service to any customer that requests it on an Infiniti vehicle regardless of whether the vehicle was purchased from Lupient. Likewise, Lupient must stock sufficient Infiniti parts to perform warranty service and is required to use only Infiniti parts in the warranty service it performs.

#### Minnesota’s Retail Reimbursement Requirements

12. Minnesota Statute Chapter 80E is entitled “Motor Vehicle Sale and Distribution” and governs the relationship between manufacturers/distributors and dealers. The Chapter governs a wide variety of behavior including the manufacturer’s requirements to reimburse dealers for the warranty service (i.e. the labor time) and parts required of the dealer by the manufacturer. 80E.041(1), M.S.A.

13. State statutes governing the relationship between manufacturers and dealers are not a new creation. Minnesota's statutory scheme was enacted in 1981.<sup>1</sup> The Supreme Court has described the provisions as necessary due to the "disparity in bargaining power between automobile manufacturers and their dealers". *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 439 U.S. 96, 100 (1978). Statutes, such as Minnesota's, are designed "to protect retail car dealers from perceived abusive and oppressive acts by the manufacturers". *Id.*

14. Section 80E.041(1) provides that "[t]he manufacturer shall also compensate the new motor vehicle dealer for warranty service parts and labor required of the dealer by the manufacturer." Additionally, "[c]ompensation for labor used in warranty service must be reasonable and may at the election of the dealer be determined as described in subdivision 4." Subdivision four of the Section sets forth how compensation for labor is determined, stating: "[c]ompensation for warranty labor must equal the dealer's effective nonwarranty labor rate multiplied by the time allowances recognized by the manufacturer to compensate its dealers for warranty work. The effective nonwarranty labor rate is determined by dividing the total customer labor charges for qualifying nonwarranty repairs in the repair orders submitted under subdivision 2 by the total number of labor hours that generated those sales." 80E.041(4), M.S.A. Therefore, the manufacturer must reimburse its dealers for warranty service labor at a rate determined to be its average nonwarranty labor rate based on a submission of prior repair orders laid out in 80E.041(2), M.S.A.

15. Section 80E.041(2) sets out that the nonwarranty labor rate is determined by averaging the rate of a submission of 100 sequential nonwarranty customer-paid service repair

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<sup>1</sup> The warranty reimbursement statutes were amended effective August 1, 2018.

orders which contain warranty-like repairs, or 90 consecutive days of nonwarranty customer paid service repair orders, whichever is less.

16. The warranty reimbursement legislation “ensures that manufacturers pay market price when they would otherwise be sheltered from the market because of ‘the disparity in bargaining power between automobile manufacturers and their dealers.’” *Acadia Motors, Inc. v. Ford Motor Co.*, 844 F. Supp. 819, 824 (D. Me. 1994) (quoting *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 439 U.S. 96, 100 (1978)). “The manufacturers have demanded preferential pricing of warranty repairs as a sort of volume discount.” *Alliance of Auto. Mfrs. v. Gwadosky*, 430 F.3d 30, 33 (1st Cir. 2005). Accordingly, “[t]he statute thus protects the franchised dealer from being required to accept lower profits on repairs it is required to provide to warranty customers than it receives on repairs for retail customers for whom it provides exactly the same services.” *G/C Volkswagen Corp. v. Volkswagen of America, Inc.*, No. 97 CIV. 8364(JGK), 1998 WL 799174, at \*4 (S.D.N.Y. Nov. 16, 1998).<sup>2</sup>

17. Section 80E.041(4) provides what a manufacturer must do to dispute a retail labor rate after a dealer makes a submission. Subsection b states that “a manufacturer may disapprove a dealer’s effective nonwarranty labor rate if: (1) the disapproval is provided to the dealer in writing; (2) the disapproval is sent to the dealer within 30 days of the submission of the effective nonwarranty labor rate by the dealer to the manufacturer; (3) the disapproval includes reasonable substantiation that the effective nonwarranty labor rate submission is accurate, incomplete, or

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<sup>2</sup> Indeed, even the United States Congress has recognized the disparity in bargaining power that goes unchecked absent the statutory provisions. “As a result of the imbalance in bargaining power inherent in this relationship, manufacturers possess unparalleled leverage over dealers and potential franchisees.” S.Rep. No. 107-266 (2002), as reprinted in 2002 WL 32972956. Consequently, “[i]n recognition of the disparity in bargaining power between motor vehicle dealers and manufacturers, all States have enacted laws specifically designed to level the playing field between manufacturers and dealers and prevent unfair contract terms and practices.” *Id.* “Manufacturers also exercise considerable control over the flow of revenue to dealers, such as warranty payments.” *Id.*

unreasonable in light of comparison to the retail rate charged by other similarly situated franchised motor vehicle dealers in a comparable geographic area in the state offering the same line-make vehicles; and (4) the manufacturer proposes an adjustment of the effective nonwarranty labor rate.” Section 80E.041(4)(c) provides that “if a manufacturer fails to approve or disapprove the rate within this time period, the rate is approved.”

18. Section 80E.17 provides a right of action for any dealer that is harmed, or would be harmed, by a manufacturer’s violation of the Minnesota dealer franchise act. (“Notwithstanding the terms of any franchise agreement or waiver to the contrary, any person whose business or property is injured by a violation of sections 80E.01 to 80E.17, or any person injured because of the refusal to accede to a proposal for an arrangement which, if consummated, would be in violation of sections 80E.01 to 80E.17, may bring a civil action to enjoin further violations and to recover the actual damages sustained, together with costs and disbursements, including reasonable attorney’s fees.”)

**Lupient’s Request for Labor Reimbursement Pursuant to Minnesota Law  
and Infiniti’s Unlawful Denial**

19. On August 9, 2018, Lupient requested retail reimbursement for warranty labor pursuant to Section 80E.041 at a reimbursement rate of \$163.63 through a letter to Infiniti. Lupient’s Request is attached as Exhibit A. In conjunction with its request, Lupient also submitted to Infiniti the underlying information/documentation utilized in the calculation of its retail rate. These documents include the reports, repair orders relied upon, and analytical documentation, all of which supports Lupient’s requested labor reimbursement rate. Lupient’s request was based upon the clear requirements of Section 80E.041.

20. Infiniti responded to Lupient’s request through a letter dated August 29, 2018 and rejected Lupient’s request of warranty labor rate of \$163.63. Infiniti’s Response is attached as

Exhibit B. Infiniti rejected Lupient's statutory request and instead, proposed an alternate warranty labor reimbursement rate of \$139.00. Importantly, Infiniti did not challenge the accuracy or completeness of the warranty submissions, but only addressed the "reasonableness." Infiniti contended that "Infiniti intentions are to place all retailers with a reasonable warranty rate" and the requested rate was "above the nearest Infiniti competitive market average of \$132.00."

21. Lupient responded to Infiniti's denial (and proposed alternative rate) through their attorney in a letter dated September 14, 2018, and noted several reasons why Infiniti's analysis was incorrect and unlawful. For example, Infiniti's claim that the requested retail rate was unreasonable in light of a comparison to the retail rate charged by other Infiniti dealers in a comparable geographic area was unsubstantiated. The response failed to substantiate that Lupient's labor rate was unreasonable compared to the "retail rate" charged by other Infiniti dealers in the area and instead compared Lupient's retail rate to the *warranty reimbursement rate* of other dealers in the area.

22. Infiniti responded to Lupient's letter through a letter dated October 1, 2018. Infiniti reiterated that if the requested rate was unreasonable in comparison to the nearest Infiniti competitive average market.

23. On December 11, 2018, in compliance with Section 80E.041(4)(c), the parties followed the manufacturer's internal dispute resolution procedure and formally mediated this issue. The mediation ended in an impasse. Infiniti still refuses to lawfully compensate Lupient for its warranty service.

24. Infiniti's actions have damaged Lupient, and continue to damage Lupient as Infiniti's actions are ongoing.

**Count I (Violation of 80E.041)**

25. Lupient realleges and incorporates paragraphs 1-24 as set forth fully herein.

26. Minnesota Statute Section 80E.041 requires that Infiniti reimburse Lupient for warranty service labor at a reasonable rate and, at the election of the dealer, as determined by the process described in Section 80E.041(2)-(4).

27. Lupient requested that Infiniti reimburse it for labor used in warranty service at its retail rate of \$163.63 per hour and provided Infiniti with the underlying documentary support for its retail calculation. Infiniti has repeatedly refused to reimburse Lupient at its retail labor rate, and instead, without providing reasonable substantiation for its claim, stated that the requested rate is unreasonable in light of a comparison to the retail rate charged by other similarly situated franchised motor vehicle dealers.

28. In failing to provide reasonable substantiation for its claim as required by Section 80E.041(4)(b)(3) the requested rate is considered approved. *See* 80E.041(4)(c). Infiniti is also unable to provide reasonable substantiation for its claim that Lupient's requested labor rate is unreasonable in light of a comparison to the retail rate charged by other similarly situated franchise motor vehicles dealers in a comparable geographic area in the state offering the same line-make vehicles.

29. Infiniti's actions are a clear and purposeful violation of Section 80E.041.

30. Lupient has been damaged, and continues to be damaged, by Infiniti's actions.

31. Lupient has the right to bring this claim pursuant to Section 80E.17, which allows Lupient to recover damages as well as its attorney's fees. Lupient requests a judgment against Infiniti in the amount of its damages as well as its attorney's fees expended in pursuit of its claim.

**Count II (Declaratory Judgment of Labor Rate)**

32. Lupient realleges and incorporates paragraphs 1-31 as if set forth fully herein.

33. An actual controversy exists between Lupient and Infiniti as to the required warranty reimbursement labor rate for warranty work pursuant to Minnesota Statute Section 80E.041, conducted by Lupient and required by Infiniti.

34. Infiniti has failed to reimburse Lupient at the rate required by Minnesota law (i.e., Section 80E.041) for labor provided by Lupient and required by Infiniti in Lupient's provision of warranty service.

35. Lupient has been damaged by Infiniti's actions, and continues to be harmed each month that Infiniti's actions continue.

36. There exists a question and an actual controversy between Infiniti and Lupient as to Lupient's retail reimbursement labor rate warranty service, which is required by Section 80E.041, and whether Infiniti has substantiated its claim that the requested rate is unreasonable.

37. Lupient seeks a declaratory judgment pursuant to Title 28, United States Code, §2201, for the purpose of determining this question of actual controversy between the parties.

38. The damages that have been and will be caused to Lupient as a result of Infiniti's actions are greater than \$75,000.00.

WHEREFORE, Lupient demands a jury trial on all issues so triable and entry of a judgment against Infiniti:

- (i) finding that Infiniti has violated Minnesota Statute Section 80E.04;
- (ii) declaring the correct warranty reimbursement rate to be used by Infiniti when compensating Lupient for warranty service and parts; and
- (iii) awarding Lupient its damages as well as attorney's fees and costs.

Dated: December 26, 2018

/s/ Bryant D. Tchida  
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