

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CLASS ACTION: CASE NO. 1:14-CV-24728-CIV-SCOLA/OTAZO-REYEZ**

KENAI BATISTA, ANDY CHANCE, GERARDO  
TORRES, ANGELA MATLIN, AND TUNG  
NGUYEN, INDIVIDUALLY AND ON BEHALF  
OF THOSE SIMILARLY SITUATED,

PLAINTIFFS,

VS.

NISSAN NORTH AMERICA, INC.

DEFENDANT.

**UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT  
AND MEMORANDUM OF LAW**

Plaintiffs KENAI BATISTA, ANDY CHANCE, GERARDO TORRES, ANGELA MATLIN, and TUNG NGUYEN (“Plaintiffs”), pursuant to Federal Rule of Civil Procedure 23(e), move this Court for an Order granting final approval of the Amended Settlement Agreement (“Settlement”): (1) approving the Settlement as fair, adequate, and reasonable; (2) awarding \$5,000.00 as an incentive payment to each Plaintiff as agreed in the Settlement; and (3) awarding Class Counsel \$3,750,000.00 as reasonable attorneys’ fees and expenses. In support of this Unopposed Motion for Final Approval of Class Action Settlement and Memorandum of Law (“Motion”), Plaintiffs state:

**MEMORANDUM OF LAW**

**I. Introduction.**

Plaintiffs respectfully request final approval of the Settlement which provides a \$37—\$99 million dollar benefit to the Class<sup>1</sup> and includes a 24-month/24,000 mile extended warranty to owners and lessees of Class Vehicles. The Settlement is the result of protracted, good-faith

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<sup>1</sup> The Nissan CVT 24-month extended warranty’s value to the Settlement Class ranges from \$37 million to \$99 million, with a point estimate of \$65 million. (Declaration of Lee Bowron, ACAS, MAAA, ¶ 6, “Analysis of Retail Price” report attached thereto as Exhibit “B” (providing a retail price analysis of the Nissan CVT 24 month extended warranty)).

negotiations mediated by Rodney A. Max and is fully supported by the Plaintiffs and Class Counsel, who are well-informed about the strengths and weaknesses of this case.

## **II. Statement of the Facts and Procedural History.**

### **A. The Litigation**

Plaintiffs allege that 2013-2014 Nissan Pathfinders and 2013-2014 Infiniti JX35s/QX60s contain a defect in the continuously variable transmission (“CVT”) which causes the vehicles to judder. Plaintiffs assert various breach of warranty, statutory, and common-law claims arising under state and federal law.

On December 15, 2014, Plaintiff Kenai Batista, on behalf of herself and current and former owners and lessees of 2013-2014 Nissan Pathfinders, brought this suit against Nissan North America, Inc. (“NNA”) (Dkt. # 1). On October 8, 2015, Batista amended her complaint to add Plaintiffs Andy Chance and Crystal Quebral and expanded the class to include 2014 Infiniti QX60s. On March 30, 2015, Plaintiffs Gerardo Torres and Angela Matlin, on behalf of themselves and current and former owners and lessees of 2013-2014 Nissan Pathfinders, brought a similar class action lawsuit against NNA in the Central District of California (herein referred to as the “*Torres*” case). On March 18, 2016, Tung Nguyen, on behalf of himself and all current and former owners of 2013 and later Nissan Pathfinders, brought a similar class action lawsuit against NNA in the Middle District of Tennessee (herein referred to as the “*Nguyen*” case). On October 5, 2016, Plaintiffs in this case amended their complaint to add Gerardo Torres, Angela Matlin, Boyong Park, and Tung Nguyen, the representatives from the *Torres* and *Nguyen* cases, to effectuate a single, efficient nationwide class settlement.

Since filing the initial Complaint, Plaintiffs engaged in a contentious discovery process which included extended meet and confer efforts, three motions to compel (Dkt. # 30, 77, 92), and briefings on NNA’s objection to Magistrate-Judge Otaza-Reyez’s ruling (Dkt. # 49), which was overruled by this Court. (Dkt. # 62). Over 75,000 pages of responsive documents were produced in this case—about half of those were directly from NNA, with the remainder produced by JATCO (NNA’s third-party CVT supplier) and Nissan dealerships which sold and serviced the Class Vehicles. (See Declaration of F. Jerome Tapley, ¶¶ 35). Much of the production included technical and engineering documents, data from vehicle testing, incident reports of numerous consumer complaints with their Affected Vehicles, communications and presentations exchanged between Nissan and its component parts suppliers, electronic

communications regarding the CVT defect and its history of redesign and engineering countermeasures. (*Id.*) Obtaining those documents, i.e. persuading and compelling NNA to produce them, was an arduous and complex task which required thoughtfulness, diligence, organization, skill, persistence, time, skill, and teamwork. (*Id.*).

Since filing the Complaint, Plaintiffs engaged in a contentious discovery process which included three motions to compel and briefings on NNA's objection to Magistrate-Judge Otaza-Reyez's ruling (Dkt. # 49), which was overruled by this Court (Dkt. # 62). More than 35,000 pages of documents were produced by NNA, and another 40,000 pages by JATCO, NNA's sister company that manufactured the CVT. (*See* Declaration of F. Jerome Tapley, ¶¶ 47-50).

Moreover, for nine days, Plaintiffs deposed NNA's corporate representatives on topics which included the design, manufacture, and marketing of the CVT, warranty claims, and NNA's countermeasures to address the judder issue. (*Id.* at ¶¶ 42-43). Plaintiffs also deposed multiple Nissan dealership representatives about their experiences consumers who serviced juddering Class Vehicles. (*Id.* at ¶¶ 49-51).

Furthermore, Plaintiffs prepared and moved for class certification of a nationwide class and Florida sub-class of Class Vehicle owners on May 31, 2016. (*Id.* at ¶¶ 58-59) (Dkt. #109-112). In support of that motion, Plaintiffs filed approximately 1,000 pages of documentary and testimonial evidence including evidence from Plaintiffs' experts, Steven P. Gaskin and Dr. Robert G. Parker. (*Id.*).

After agreeing to mediate with Rodney A. Max, the parties first convened for settlement discussions on February 11, 2016. (Dkt. # 95). While mediation efforts reached an impasse that day, the parties resumed mediation in June and July of 2016 and included counsel in the *Torres* and *Nguyen* cases. (Declaration of Rodney A. Max, ¶ 12). After reaching an agreement in principle in August 2016, Plaintiffs began a six-week process of drafting, revising, and negotiating the Settlement Agreement, a second amended complaint to add Gerardo Torres, Angela Matlin, and Tung Nguyen as additional class representatives, and Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, (Dkt. # 141), which summarized the material terms of the Settlement Agreement.

This Court preliminarily approved the Settlement (Dkt. # 148, 151, 159). Having notified consumers of the Settlement per the Court's Second Amended Preliminary Approval Order of

Class Action Settlement (Declaration of Lana Lucchesi, ¶¶ 6-9), Plaintiffs now request final approval.

### **III. Terms of the Settlement.**

The Settlement confers significant benefit to the Settlement Class members by offering and facilitating a free, permanent repair and extending coverage of their powertrain warranty.

#### **A. The Settlement Class**

The Settlement Class consists of all current and former owners or lessees of 2013-2014 Nissan Pathfinders and 2013-2014 Infiniti JX35/QX60s equipped with the FK-\*k2 CVT in the United States and its territories, including Puerto Rico. (Dkt. # 156, ¶¶ 4, 31). Excluded from the Settlement Class are: (1) NNA, any entity or division in which NNA has a controlling interest, its/their legal representatives, officers, directors, assigns and successors; (2) any judge to whom this case is assigned and the judge's clerks and any member of the judge's immediate family; and (3) fleet and government purchasers and lessees. (*Id.*).

#### **B. Settlement Benefits**

First, the Settlement benefits the Settlement Class by extending their powertrain warranty coverage, as to the transmission assembly, by twenty-four (24) months or twenty-four thousand (24,000) miles, whichever occurs first. (*Id.* at ¶¶ 37, 48). This extended warranty transfers with each Class Vehicle until its expiration, providing time for a free repair of *all* affected Class Vehicles.

Second, the Settlement also facilitates repair of *all* juddering Class Vehicles through the extended warranty by notifying all Settlement Class members. The Settlement formally notifies all owners and lessees of Class Vehicles of the importance of obtaining a free software update designed to trigger a Diagnostic Trouble Code ("DTC")—e.g. illuminates the check engine light if a judder is detected. It further notifies owners that the update and any related repair for the judder are available at authorized Nissan dealerships for free under the extended warranty. (*Id.* at ¶ 50).

Third, to all qualifying former owners of Class Vehicles, the Settlement grants preferred reduced pricing on a new Nissan or Infiniti vehicle through Nissan's Vehicle Purchasing Program ("VPP") through March 15, 2018. (*Id.* at ¶¶ 51-52).

Fourth, the Settlement creates an expedited dispute resolution process through the Better Business Bureau ("BBB") Auto Line for any future warranty claims. (Dkt. # 156, ¶¶ 11, 81; Dkt.

# 156-1). This BBB process does not bind any Class Member unless NNA is required to repurchase their vehicle. (*See* Dkt. # 156-1). If the BBB's resolution does not require NNA to repurchase the Class Member's vehicle, the Class Member may accept the BBB's decision, appeal it, or file a lawsuit. (*Id.*). On the other hand, the BBB's decision is binding on NNA. (*Id.*). The BBB Auto Line will assist consumers in obtaining remedies from NNA in a free, efficient, and effective way.

### **C. Attorneys' Fees and Expenses**

Plaintiffs' respectfully requests \$3,750,000.00 in attorneys' fees and costs. NNA does not oppose that award. (Dkt. # 165, ¶ 90). The Parties did not negotiate attorneys' fees or expenses until they agreed on Class relief, (Max Decl., ¶ 17), and the Settlement Class's relief and benefits will not be reduced or affected. (*See* Dkt. # 156, ¶¶ 90-95). Additionally, the total unreimbursed expenses incurred by Plaintiffs' Counsel which were reasonable and necessarily for the prosecution of this case are \$436,071.09. (Tapley Decl., at ¶ 15; Declaration of C. Richard Newsome, ¶ 8; Declaration of Ronald P. Weil, ¶ 10; Declaration of Jordan Lurie, ¶ 15; Declaration of Lawrence Deutsch, ¶ 13; Declaration of Gregory F. Coleman, ¶ 11).

### **D. Class Representative Incentive Payments**

Per the Settlement, Plaintiffs respectfully request incentive payments to Class Representatives Kenai Batista, Andy Chance, Angela Matlin, Tung Nguyen, and Gerardo Torres of \$5,000.00. (Dkt. # 156, ¶ 90). While the Settlement is not conditioned on an incentive payment to those Plaintiffs, they each devoted a lot of time to their cases, admirably performed their class representative responsibilities, and obtained benefits for the Class (Batista Decl., Dkt. # 141-6, ¶¶ 5-8; Chance Decl., Dkt. # 141-7, ¶¶ 5-8; Torres Decl., Dkt. # 141-10, ¶¶ 6-9; Matlin Decl., Dkt. # 141-8, ¶¶ 6-9; Nguyen Decl., Dkt. # 141-9, ¶¶ 4-7).

### **E. Release of Claims Excluding Personal Injury Claims.**

Under the Settlement, each member of the Settlement Class will release claims, demands, rights, liabilities and causes of action of every nature and description, known or unknown, suspected or unsuspected, asserted or that might have been asserted by the Plaintiffs or any Settlement Class member against NNA based upon or related to "transmission judder" or transmission design, manufacturing or performance, including but not limited to all claims asserted in the Lawsuits. (Dkt. # 156, ¶ 28). Claims for personal injury, wrongful death, or property damage are not released. (*Id.* at ¶¶ 10, 28). The BBB Auto Line remains available to

resolve any future warranty claims. *See supra*, Sec. III.B, *Settlement Benefits*; (Dkt. # 156, ¶¶ 11, 81; Dkt. # 156-1).

#### **F. Nationwide Notice Has Been Accomplished.**

Per this Court's order (Dkt. # 159), Kurtzman Carson Consultants, LLC ("KCC") notified Settlement Class members of the Settlement via direct mail using addresses obtained through NNA and public records utilizing vehicle identification numbers ("VIN") (*See* Dkt. # 159) (Lucchesi Decl., ¶¶ 3-11). The website for the Settlement, [www.NissanCVTLitigation.com](http://www.NissanCVTLitigation.com), provides the supplemental short and long form notices, the Amended Settlement Agreement, and corresponding Release. (Lucchesi Decl., ¶ 11). An Interactive Voice Response system was created and is active to inform consumers about the Settlement, record requests for the long-form notice, and connect Class Members with a live call center agent. (*Id.* at ¶ 10). The appropriate governmental officials under the Class Action Fairness Act have been notified of the Settlement. (*Id.* at ¶¶ 3-5).

#### **IV. The Settlement Merits Approval by the Court.**

"There is an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex." *Ass'n for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) (citation omitted). "Settlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources, and achieve the speedy resolution of justice, for a just result is often no more than an arbitrary point between competing notions of reasonableness." *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1379 (S.D. Fla. 2007) (quoting *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 538 (S.D. Fla. 1988)). "A class action settlement accordingly should be approved so long as it is fair, adequate and reasonable and is not the product of collusion between the parties." *Ass'n for Disabled Ams.*, 211 F.R.D. 457 at 466 (citations and quotation omitted).

In determining whether the settlement is fair, adequate, and reasonable, courts in the Eleventh Circuit consider:

(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

*Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). “In evaluating these considerations, the district court should not try the case on the merits.” *Perez*, 501 F. Supp. 2d at 1380 (citations and quotations omitted). Instead, “the district court may rely upon the judgment of experienced counsel for the parties,” and “[a]bsent fraud, collusion, or the like, the district court should be hesitant to substitute its own judgment for that of counsel.” *Nelson v. Mead Johnson & Johnson Co.*, 484 F. App’x 429, 434 (11th Cir. 2012).

Where, as here, “the consent decree previously has been preliminarily approved, the decree is ‘presumptively reasonable,’ and an objector must overcome a ‘heavy burden’ to prove the settlement unreasonable.”<sup>2</sup> *Ass’n for Disabled Ams.*, 211 F.R.D. at 467 (citations and quotations omitted) (citations and quotations omitted). “And a small number of objectors from a plaintiff class of many thousands is strong evidence of a settlement’s fairness and reasonableness.” *Id.* (citations and quotations omitted).

**A. The Settlement Is The Product of Good-Faith, Arms-Length Negotiation.**

“There is a presumption of good faith in the negotiation process.” *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 692 (S.D. Fla. 2014). “Where the parties have negotiated at arm’s length, the Court should find that the settlement is not the product of collusion.” *Id.* The presumption of good faith has not been rebutted.

The record establishes that “[t]he Settlement Agreement was the result of arm’s-length negotiations, assisted by a well-known mediator for class actions, Rodney A. Max.” *Lee v. Ocwen Loan Servicing, LLC*, 2015 U.S. Dist. LEXIS 121998, at \*33 (S.D. Fla. Sep. 14, 2015); (Max. Decl., ¶¶ 1, 10-18). Mr. Max is a “highly respected mediator,” “one of the top mediators in Florida,” and “probably one of the top mediators in the country.” *Id.*; see also *Fresco v. Auto Data Direct, Inc.*, 2007 U.S. Dist. LEXIS 37863, at \*15 (S.D. Fla. May 11, 2007) (“Plaintiffs have submitted in support of their motion the affidavit of Rodney A. Max, an eminently qualified mediator appointed by this Court.”).

Mr. Max declares the Settlement “is the product of lengthy and particularly hard-fought negotiations which took place on an ongoing basis between July 2015 and September 2016.” (Max Decl., ¶ 12). The negotiations involved three in-person mediation sessions on February 11, 2016, June 30, 2016, and July 22, 2016 and included “extensive discussions between the parties

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<sup>2</sup> Pursuant to the Second Amended Preliminary Approval Order Of Class Action Settlement (Dkt. # 159), Plaintiffs’ Counsel will file responses to any Objections on or before June 7, 2017.



both before and during the mediation sessions.” (*Id.*). Mr. Max “never witnessed or sensed any collusiveness between the parties,” and “[t]o the contrary, at each point during these negotiations, the settlement process was conducted at arm’s-length, and while professionally conducted, was quite adversarial.” (*Id.* at ¶ 14). “The relief for class members was the focus of the vast majority of the settlement negotiations,” and “[t]here were no discussions of attorneys’ fees, costs, or incentive awards until the substantive terms of the settlement were negotiated and resolved.” (*Id.* at ¶ 15).

**B. The *Bennett* Factors Support Final Approval of the Settlement**

**1. The Significant Obstacles to Success at Trial Support Final Approval.**

In assessing the first *Bennett* factor, “[t]he likelihood of success on the merits is weighed against the amount and form of relief contained in the settlement.” *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1319 (S.D. Fla. 2005). The Court is “not called upon to determine whether the settlement reached by the parties is the best possible deal, nor whether class members will receive as much from a settlement as they might have recovered from victory at trial.” *Gevaerts v. TD Bank, N.A.*, 2015 U.S. Dist. LEXIS 150354, at \*16 (S.D. Fla. Nov. 5, 2015) (citations and quotations omitted). The Court is “not to decide the merits of the case or resolve unsettled legal questions.” *Canupp v. Sheldon*, 2009 U.S. Dist. LEXIS 113488, at \*28 (M.D. Fla. Nov. 23, 2009). “[A] trial court in approving class action settlements has neither the duty nor even the right to reach any ultimate conclusions on the issues of fact and law which underlay the merits of the dispute.” *Id.*

Although Plaintiffs’ claims are meritorious, Plaintiffs recognize significant obstacles to success exist. Notably, in *Torres*, Judge Klausner of the United States District Court for the Central District of California denied class certification regarding the same CVT issue in the Class Vehicles. *Torres v. Nissan N. Am., Inc.*, 2015 U.S. Dist. LEXIS 120381, at \*1 (C.D. Cal. Sep. 1, 2015). In doing so, that court identified several individualized issues that precluded certification for the warranty and consumer protection claims. *Id.* NNA would undoubtedly cite to *Torres* as persuasive precedent, and argue that Plaintiffs’ warranty and consumer protection claims should similarly not proceed as a class. While Plaintiffs respectfully disagree with *Torres* and can distinguish the claims and procedural posture in this case, the meaningful risk it created cannot be ignored.



Additionally, whether Plaintiffs could certify a nationwide class of consumers under the MMWA is uncertain, although that question is certainly full of factual and legal complexities. In denying class certification, another Court in this district found::

In short, varied state laws would govern the MMWA claims of class members across the country, imposing different legal requirements and overshadowing the common factual bases of the claims. Moreover, some of these laws would require individualized proof inappropriate for class treatment, such as proof of actual reliance upon VPX's advertisements. In light of the differences among applicable laws and the potential need for individualized proof, the Court finds that individualized legal and factual issues predominate over the common aspects of the Proposed Classes' MMWA claims, rendering class certification inappropriate under Rule 23(b)(3). *See Alligood*, 2009 U.S. Dist. LEXIS 131371, at \*13-16.

*Karhu v. Vital Pharms., Inc.*, No. 13-60768-CIV-COHN/SELTZER, 2014 U.S. Dist. LEXIS 26756, at \*23 (S.D. Fla. Mar. 3, 2014).

Based on the uncertainty of nationwide relief for the MMWA Class and the risk created by the *Torres* ruling, Plaintiffs' likelihood of success on the merits is arguably uncertain while the benefits of the Settlement to consumers are unquestionably strong.

**2. The Settlement is Within the Range of Possible Recovery that is Fair, Adequate, and Reasonable, Given the Circumstances of the Case.**

Courts combine the first and second *Bennett* factors by determining "the possible range of recovery," and then determining "where in this range of possible recovery do fair, adequate and reasonable settlements lie." *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 541 (S.D. Fla. 1988). The Settlement's recovery falls within the range of reasonableness when compared with the range of possible recovery at trial and the risks of protracted litigation.

Provable damages are inherently limited. The Class Vehicles were recently manufactured and covered by an initial powertrain warranty, making it unlikely that Class Members could prove any recoverable out-of-pocket expenses related to the judder issue. The Settlement, however, benefits the Class Members by extending their warranties without submission of individual claim forms and all receive the software and hardware repairs developed for the Class Vehicles on an extended basis. When compared with the real risk that the Class Members could receive no benefit if this case were successfully tried and given the limited nature of the provable damages, the Settlement provides a positive, substantial benefit to the Class Members.

Former owners might also be unable to obtain any recovery. In another economic loss case involving an alleged vehicle defect, Judge Cohn ruled that a consumer could not state a FDUTPA claim because she sold the vehicle “to an unsuspecting purchaser before the defect in the Door Locks had manifested.” *Licul v. Volkswagen Grp. of Am.*, No. 13-61686-CIV-COHN/SELTZER, 2013 U.S. Dist. LEXIS 171627, at \*14 (S.D. Fla. Dec. 5, 2013). As such, the Settlement confers a substantial benefit upon the former owners, particularly given the legal obstacles they would have faced in moving forward with litigation.

### **3. The Complexity, Expense, and Likely Duration of Continued Litigation Support Approval of the Settlement.**

The fourth *Bennett* factor “weighs in favor of settlement approval where the litigation, including the appellate process, involves numerous class members and significant time and expense.” *Morgan v. Pub. Storage*, No. 14-cv-21559, 2016 U.S. Dist. LEXIS 54937, at \*18 (S.D. Fla. Mar. 9, 2016). This factor is further supported where “[t]he claims and defenses are complex; litigating them has been difficult and time consuming,” and “recovery by any means other than settlement would require additional years of litigation in this Court and the appellate courts.” *Torres v. Bank of Am. (In re Checking Account)*, 830 F. Supp. 2d 1330, 1345 (S.D. Fla. 2011). Plaintiffs have already incurred \$436,071.09 in costs in prosecuting this action. (Tapley Decl., at ¶ 15; Newsome Decl., at ¶ 8; Weil Decl., at ¶ 10; Lurie Decl., at ¶ 15; Deutsch Decl., at ¶ 13; Coleman Decl., at ¶ 11).

This action involves complicated questions of fact and law. The facts underlying Plaintiffs’ claims are complicated engineering and design issues, resulting in the production and review of approximately 75,000 pages of highly technical engineering documents and blueprints. (See Declaration of F. Jerome Tapley, ¶¶ 35). Plaintiffs were preparing to take depositions of the engineers from the non-party CVT supplier, JATCO, when settlement negotiations began. This third-party discovery would have likely opened the door to additional discovery, further adding to the cost, expense, and complexity.

The Parties were also preparing to begin expert discovery at the time of settlement. Given the complexity of the facts, expert discovery would have demanded immense resources, including resources to prepare each expert for deposition, defending and taking the expert depositions, and preparing them to testify at trial. *See Francisco v. Numismatic Guar. Corp.*, 21 Fla. L. Weekly Fed. D101 (U.S. S.D. Fla. Jan. 30, 2008) (holding that the settlement met the

fourth *Bennett* factor where “[t]he cost of experts, technical consultants at trial, and other trial expenses would have been substantial.”).

Appellate practice must also be considered. Regardless of which side would potentially prevail, an appeal of any final ruling is almost certain. This action involved many contentious legal issues, including but not limited to: whether Plaintiffs are required to, or could, prove that NNA knew of the defect prior to selling the Class Vehicles; whether Plaintiffs could certify a nationwide class of consumers under the MMWA; whether the “shudder/judder” issue constituted a material defect actionable under FDUTPA, or whether it qualifies as a breach of an express or implied warranty; and what measure Plaintiffs could use to prove damages. These issues would have been hotly contested, and the existing precedent from the Eleventh Circuit and Florida’s appellate courts have left gray area regarding these substantive questions of law as it relates to Plaintiffs’ claims and evidence.

#### **4. Class Members, Class Counsel, and the Class Representatives Support Approval.**

“In determining whether a proposed settlement is fair, reasonable and adequate, the reaction of the class is an important factor.” *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005). “[A] low percentage of objections points to the reasonableness of a proposed settlement and supports its approval.” *Id.* This factor also supports approval where the objections “lack . . . substance.” *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1382 (S.D. Fla. 2007). Here, the Settlement Class exceeds 289,267 individuals (Lucchesi Decl., at ¶ 8). KCC “received 9 objections to the settlement,” and only 94 individuals have opted out. (*Id.* at ¶ 13, Exs. D-E). Seven additional objections were filed with the Court.<sup>3</sup> As such, the percentage of objectors and opt-outs is low, reflecting just .04% of the Settlement Class.<sup>4</sup>

Courts also look to “the opinions of class counsel” and “the class representatives” under this factor. *Wilson v. EverBank*, No. 14-CIV-22264-BLOOM/VALLE, 2016 U.S. Dist. LEXIS 15751, at \*21 (S.D. Fla. Feb. 3, 2016) (citing *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 n.6

<sup>3</sup> The additional objections filed with the Court are: Thompson, James W. (Dkt. # 160); Fairbanks, Rose M. (Dkt. # 164); Fritz, Robert (Dkt. # 172); Abraham, Amja (Dkt # 173); Abraham, Emmet (Dkt # 174); Peterson, Anitra (Dkt. # 175); and Cusack, Andrew (Dkt # 176).

<sup>4</sup> The filed objections lack substantive factual or legal basis, with most of the objections simply seeking additional monetary compensation or a longer warranty extension. *Perez*, 501 F. Supp. 2d at 1382 (rejecting the objections as lacking substance, and observing that most of the objectors either misunderstood the settlement, or simply “desired to have a better deal”).

(11th Cir. 1994)); *Cotton*, 559 F.2d at 1330 (the Court may rely on the judgment of counsel and, “should be hesitant to substitute its own judgment for that of counsel.”); *accord Perez*, 501 F. Supp. 2d at 1380. Class Counsel, who are highly experienced in class-action litigation and are well-informed about the strengths and weaknesses of the case, strongly endorse the Settlement because it confers “substantial benefits” upon the Settlement Class and is in the best interests of the Class Representatives and the Settlement Class. (Tapley Decl., at ¶ 2-10, 70; Newsome Decl., at ¶ 23; Weil Decl., at ¶ 12; Lurie Decl., at ¶ 20; Deutsch Decl., at ¶ 33; Coleman Decl., at ¶ 13) (*see also* Max Decl., at ¶ 16 (“In my opinion, the settlement negotiations in this case resulted in a resolution that is fair, reasonable and adequate for class members.”)). The Class Representatives closely supervised this litigation and similarly endorse it. (Batista Decl., Dkt. # 141-6, ¶¶ 6-8; Chance Decl., Dkt. # 141-7, ¶¶ 6-8; Matlin Decl., Dkt. # 141-8, ¶¶ 7-9; Torres Decl., Dkt. # 141-10, ¶¶ 7-9; Nguyen Decl., Dkt. # 141-9, ¶¶ 5-7). The fourth *Bennett* factor, therefore, supports approval.

#### **5. The Settlement Was Achieved After Substantial Discovery and Motion Practice.**

“The last *Bennett* factor is the stage of the proceedings at which Settlement was achieved.” *Oakes v. Blue Cross & Blue Shield of Fla., Inc.*, 2016 U.S. Dist. LEXIS 147252, at \*5 (S.D. Fla. Oct. 21, 2016). “A court evaluates the stage of the proceedings at the time of settlement to ensure that the plaintiffs have access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of the settlement against further litigation.” *Perez*, 501 F. Supp. 2d at 1383.

The Parties engaged in a contentious discovery process, involving multiple motions to compel; extensive document discovery, some of which required translation; nine days of deposition testimony from NNA; and multiple Nissan dealership depositions. Plaintiffs further prepared and moved for class certification with well-supported affidavits from experts Steven P. Gaskin and Robert G. Parker, Ph.D., and documents and testimonial evidence. Class Counsel became well-informed about the merits of the case through the extensive discovery and motion practice which took place in this litigation. Accordingly, Class Counsel were able to properly weigh the benefits of settlement against further litigation. The final *Bennett* factor supports approval of the Settlement.

**V. The Court Should Approve An Award of \$3.75M in Attorneys' Fees and Expenses.**

**A. Under Eleventh Circuit Law, Class Action Attorneys' Fee Awards are Calculated as a Percentage of the Recovery Obtained for the Class.**

In the Eleventh Circuit, “[a]ttorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1242 (11th Cir. 2011) (quoting *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 772-775 (11th Cir. 1991)). In *Camden*, the court rejected use of the lodestar method in common fund cases. 946 F.2d at 774 (noting the lodestar method applies to statutory fee-shifting awards); *see also In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2011) (in common fund cases, “[t]he lodestar approach should not be imposed through the back door via a ‘cross-check.’”).

A settlement with ascertainable benefits may be treated as a “common fund” from which a percentage fee may be awarded. *See Poertner v. Gillette Co.*, 618 F. App’x 624, 628-29 (11th Cir. 2015) (per curiam) (finding value of nonmonetary relief and cy pres award to be part of the “settlement pie” from which percentage of fund for fee award was calculated). A court should award fees “based on a percentage of the total benefits made available, regardless of the actual payout to the class.” *Wilson v. EverBank*, No. 14-CIV-22264, 2016 WL 457011, at \*13 (S.D. Fla. Feb. 3, 2016); *see also Carter v. Forjas Taurus S.A.*, No. 1:13-CV-24583-PAS, 2016 WL 3982489, at \*14 (S.D. Fla. July 22, 2016) (including the value of an “enhanced warranty” in the total benefits provided to the class); *David v. Am. Suzuki Motor Corp.*, No. 08-CV-22278, 2010 WL 1628362, at \*2 (S.D. Fla. Apr. 15, 2010) (including extended warranty and credits available for the purchase of new vehicles or parts to be part of the settlement benefits).

Application of the “common fund” approach remains appropriate where attorneys’ fees are paid by the defendant separate from the common fund. *See Carter*, 2016 WL 3982489, at \*13; *David*, 2010 WL 1628362, n.14 (applying common fund principles to a negotiated fee agreement even though the fee award was “paid separately by [d]efendants and [was] not drawn from a ‘common fund’ in the traditional sense”).

“There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case.” *In re Checking Account Overdraft Litig.*, 2014 WL 12557836, at \*10. The Eleventh Circuit has recently reaffirmed that twenty-five percent of the settlement benefits is a “bench

mark” attorneys’ fee award. *See Poertner*, 618 F. App’x at 628 (citing *Camden*, 946 F.2d at 775); *see also Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210 (S.D. Fla. 2006) (“federal district courts across the country have, in the class action settlement context, routinely awarded class counsel fees in excess of the 25% ‘benchmark,’ even in so-called ‘mega-fund’ cases.”).

“‘But because the appropriate percentage to be awarded as a fee in any particular case will undoubtedly vary,’” courts may also “‘consider the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir.1974) . . . as well as [o]ther pertinent factors,’ including ‘any non-monetary benefits conferred upon the class by the settlement [ ] and the economics involved in prosecuting a class action,’ in determining the reasonableness of a fee award.” *Id.* (quoting *Camden*, 946 F.2d at 775); *see also Faught*, 668 F.3d at 1242 (“this court has often stated that the majority of fees in these cases are reasonable where they fall between 20–25% of the claims. Where the requested fee exceeds 25%, the court is instructed to apply the twelve *Johnson* factors.”) (citation omitted).<sup>5</sup>

**B. Under the Percentage Fee Approach in the Eleventh Circuit, \$3.75M for Attorneys’ Fees and Costs is a Conservative Award.**

This Settlement provides Class Members with ascertainable benefits from which a percentage fee may be awarded. *See Poertner*, 618 F. App’x at 628-29. As provided in section III(B) above, the benefits include: (1) an extended New Vehicle Limited Warranty for twenty-four (24) months or twenty-four thousand (24,000) miles; (2) notice to all owners and lessees of the Class Vehicles to obtain a software update to detect a judder and provide a free repair; and (3) preferred reduced pricing on a new Nissan or Infiniti vehicle for qualifying former owners through March 15, 2018. (Dkt. # 156, ¶¶ 48-53; Dkt. # 156-1). Additionally, the Settlement creates an expedited dispute resolution process through the BBB Auto Line for any future warranty claims, and it preserves the right to file a lawsuit for those unsatisfied with the result. (Dkt. # 156-1).

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<sup>5</sup> “The *Johnson* factors include: (1) the time and labor required; (2) the difficulty of the issues; (3) the skill required; (4) the preclusion of other employment by the attorney because he accepted the case; (5) the customary fee in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.” *Faught*, 668 F.3d 1233 at 1242–43.



Plaintiffs' requested \$3.75M award represents between 3.8% and 10.1% of the \$37 to \$99 million dollar value of the extended warranty, which does not even account for the additional benefits conferred upon the Settlement Class. (*See* Declaration of Lee Bowron, ACAS, MAAA, ¶ 6, Ex. B). The requested award is far below the Eleventh Circuit's 25% benchmark for common fund class action settlements. *See Poertner*, 618 F. App'x at 628. Moreover, the requested award is comparable to attorneys' fees awarded in other product defect class actions. *See, e.g., David*, 2010 WL 1628362, at \*8 (awarding 20% of the monetary value of the settlement); *Carter*, 2016 WL 3982489, at \*14 (awarding 12.2 percent of the settlement's total potential value).<sup>6</sup>

**C. The Requested Fee is Also Reasonable Given the *Johnson* Factors.**

Because Plaintiffs' requested \$3.75M award is far below the 25% benchmark, it is reasonable without reference to the *Johnson* factors. *See Faught*, 668 F.3d at 1233, 1242. Even so, the *Johnson* factors further support the reasonableness of such an award. *See Martin v. Glob. Mktg. Research Servs., Inc.*, No. 614CV1290ORL31KRS, 2016 WL 6996118, at \*2 (M.D. Fla. Nov. 30, 2016) ("The most significant of the 12 *Johnson* factors include the time and skill required, the risk of prosecuting a contingent fee case, and the results obtained.").

**1. Time and Labor; Contingent Fee.**

Substantial time and labor was required, and Class Counsel assumed great risk, to achieve the Settlement. Class Counsel spent 6,727.3 hours prosecuting this case on behalf of the Class on a purely contingent basis, and incurred \$436,071.09 in expenses. (Tapley Decl., at ¶¶ 11-15; Newsome Decl., at ¶¶ 5-8; Weil Decl., at ¶¶ 7-10; Lurie Decl., at ¶¶ 14-18; Deutsch Decl., at ¶ 7-10, 13; Coleman Decl., at ¶¶ 6-7, 11. Class Counsel investigated the claims;

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<sup>6</sup> Courts in the Southern District regularly approve attorney fee awards at or above the 25% benchmark. *See Waters*, 190 F.3d at 1291 (affirming award of 33 1/3 percent of settlement benefits); *Gevaerts v. TD Bank, N.A.*, No. 11:14-cv-20744-RLR, 2015 U.S. Dist. LEXIS 150354 (S.D. Fla. Nov. 5, 2015) (awarding counsel 30% of the settlement benefits); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1358-59 (S.D. Fla. 2011) (awarding 30% of the recovery net of expenses as fees); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334 (S.D. Fla. 2007) (attorney fee award of 30% was reasonable); *In re: Terazosin Hydrochloride Antitrust Litigation*, 99-1317 (S.D. Fla. Apr 19, 2005) (awarding fees of 33 1/3 % of settlement benefits); *In re: Managed Care Litig. v. Aetna*, MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (awarding fees and costs of 35.5% of settlement benefits); *Gutter v. E.I. DuPont De Nemours & Co.*, No. 95-2152 (S.D. Fla. May 30, 2003) (awarding fees of 33 1/3 % of settlement benefits).



prepared and filed complaints; conducted substantial fact and expert discovery (including filing several meritorious motions to compel discovery); attended numerous court hearings; participated in frequent conferences with co-counsel, experts, and defense counsel regarding various matters; prepared and moved for class certification; engaged in extensive settlement negotiations that led to the Settlement; and drafted papers and notices to support the Settlement. (Tapley Decl., at ¶¶ 12, 16-68; Newsome Decl., at ¶¶ 3-4; Weil Decl., at ¶¶ 5-6, 11; Lurie Decl., at ¶¶ 3-10; Deutsch Decl., at ¶¶ 14-32; Coleman Decl., at ¶¶ 8-9, 12). The significant time Class Counsel spent on the case provides a strong basis for granting counsel the maximum award permitted under the Parties' settlement agreement. *See Carter*, 2016 WL 3982489, at \*14 ("Given the amount of time and effort spent on this matter, as well as the risks of a contingency fee arrangement, the Court finds the requested fee award to be reasonable.").

In addition, the \$3.75 million attorneys' fee award is comparable to the lodestar value of Class Counsel's time,<sup>7</sup> and substantially less than the \$5,478,860.00 attorneys' fee award that results from applying a conservative 1.56 risk multiplier. (Tapley Decl., at ¶¶ 11-12; Newsome Decl., at ¶ 5; Weil Decl., at ¶¶ 7-8; Lurie Decl., at ¶¶ 13-14; Deutsch Decl., at ¶ 7-10; Coleman Decl., at ¶¶ 6-7). Counsel who pursue class actions on a contingency basis are often awarded more than their lodestar to compensate them for the litigation risk. *See Poertner*, 618 F. App'x at 626-27 (affirming award to class counsel of 1.56 times their lodestar). The time, labor, and contingent fee arrangement strongly support the *Johnson* factors and approval of Class Counsel's requested fee award.

## **2. The Amount Involved and the Results Obtained.**

This case concerns approximately 241,000 vehicles that Plaintiffs and Settlement Class members purchased or leased by spending substantial money. Plaintiffs and Settlement Class members that own/lease these vehicles rely upon the vehicles for regular and safe transportation. Class Counsel pursued this case after hearing from Plaintiffs and other Settlement Class members that their vehicles' transmissions juddered, and observing hundreds of similar complaints online.

While the parties have not precisely calculated the "amount involved," given (1) the number of vehicles at issue; (2) the substantial sums that Plaintiffs and the Class paid/leased for

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<sup>7</sup> The \$3.75 million attorneys' fee award is substantially less than the lodestar value when taking into account Class Counsel's \$436,071.09 in out-of-pocket costs.

them; (3) the importance to Plaintiffs and the Class of having safe transportation; and (4) that one of the Settlement's benefits is valued between \$37 - \$99 million, (*see* Bowron Decl., ¶ 6, Ex. B), this case is fairly characterized as involving a substantial amount.

A testament to the strength of the result obtained is that, due to the recent manufacture of Class Vehicles and the terms of the powertrain coverage in the Vehicles' Limited Warranties, Class Members likely have not expended any out-of-pocket expenses because of the judder. Further attesting to the strength of the Settlement, KCC only "received 9 objections to the settlement," only 7 objections were filed with the Court,<sup>8</sup> and only 94 individuals have opted out. (Lucchesi Decl., ¶ 13, Exs. D-E). That this sizeable class has asserted so few objections supports the fee request. *See Pinto*, 513 F. Supp. 2d at 1343 ("A small number of objections indicates the support of the Class."); *Elkins v. Equitable Life Ins. of Iowa*, No. CIV96-296-CIV-7-17B, 1998 WL 133741, at \*28 (M.D.Fla. Jan.27, 1998) ("There have been only six objections received from a Class of approximately 109,000 policy owners, which is a *de minimus* number" relative to the size of the class).

The amount resolved and results obtained *Johnson* factors strongly support approval of Class Counsel's requested fee award.

### **3. The Difficulty of the Issues; the Skill Required; and the Experience, Reputation, and Ability of the Attorneys.**

As detailed in Class Counsels' declarations, Class Counsel are nationally-recognized in complex litigation, including consumer product liability class actions, and put all of their skill and experience to work in the service of Plaintiffs and Class Members. (Tapley Decl., at ¶¶ 2-10, Ex. A; Newsome Decl., at ¶¶ 9-21; Weil Decl., at ¶¶ 2-5; Lurie Decl., at ¶¶ 11-13, Ex. 1; Deutsch Decl., at ¶¶ 2-6, Ex. A; Coleman Decl., at ¶¶ 2-4, Ex. A). Class Counsel's highly-informed, diligent, and efficient prosecution was necessary to address many difficult issues, including litigating three motions to compel to favorable resolution. (*See* Max Decl., ¶¶ 12, 14-16).

Class Counsel also analyzed technical engineering documents, data from vehicle testing, numerous consumer complaints, internal NNA reports, communications and presentations exchanged between NNA and its component part suppliers, and communications regarding the transmission defect and its history of redesign and engineering countermeasures. To understand

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<sup>8</sup> *See supra* note 3.

evidence, develop Plaintiffs' liability theory, and depose NNA's corporate representatives, Class Counsel heavily consulted with experts well-versed on engineering issues.

Resolving this case at mediation also demanded Class Counsel's skill and experience with class action litigation to maneuver past impediments to settlement while benefitting Class Members. (*See id.* at ¶¶ 12-16 (outlining mediation settlement negotiations)). It is also important to consider Class Counsel's work in light of the quality of their opposing counsel.<sup>9</sup> As the Court is aware, NNA is represented by experienced and skilled attorneys from large, national law firms with excellent reputations, and who demonstrated vigorous advocacy in its defense.

The *Johnson* factors—the difficulty of the issues; the skill required; and the experience, reputation, and ability of the attorneys—strongly support the requested fee.

#### **4. Awards in Similar Cases.**

As discussed above in Section 5.B-C, the attorneys' fee award requested here is conservative compared to awards in similar cases. *See, e.g., Allapattah*, 454 F. Supp. 2d at 1210 (noting that courts "routinely award[ ] class counsel fees in excess of the 25 percent 'benchmark'"). And since this amount will be paid to Class Counsel by NNA, the attorneys' fee and expense award will not diminish the Settlement Class's benefits, unlike many other common fund cases. The awards in similar cases strongly support this *Johnson* factor and the requested fee.<sup>10</sup>

#### **VI. The Court Should Approve Class Representative Incentive Payments.**

Plaintiffs respectfully request the Court to approve incentive payments of \$5,000 to each class representative for their service to the Class, to be paid separately by NNA. NNA does not

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<sup>9</sup> *In re KeySpan Corp. Sec. Litig.*, No. CV 2001-5852 (ARR) (MDG), 2005 U.S. Dist. LEXIS 29068, at \*35 (E.D.N.Y. Aug. 25, 2005) ("The quality of opposing counsel is also important in evaluating the quality of Class Counsel's work.").

<sup>10</sup> Not all *Johnson* factors are relevant to a Court's attorneys' fee award analysis in every case. For example, here, the factors relating to the preclusion of other employment by the attorney because he accepted the case; the customary fee in the community; time limitations imposed by the client or circumstances; the undesirability of the case; and the nature and length of the professional relationship with the client should not positively or negatively impact Class Counsels' attorneys' fee award. *See, e.g., In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1336 (S.D. Fla. 2001) ("There is no evidence that these attorneys have any prior relationship with any of the plaintiffs. Therefore, this factor does not support any adjustment to the benchmark."); *see also In re Xcel Energy*, 364 F. Supp. 2d at 993 ("Plainly, not all of the individual *Johnson* factors will apply in every case, so the court has wide discretion as to which factors to apply and the relative weight to assign to each.").

object to an incentive award up to \$5,000. Incentive awards “compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *Allapattah Servs. Inc.*, 454 F. Supp. 2d at 1218. “[T]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action.” *David*, 2010 WL 1628362, at \*6 (approving incentive award of \$5,000 and a new motorcycle). “Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives.” *Gevaerts*, 2015 WL 6751061, at \*9 (approving service awards of \$10,000).

The factors for determining an incentive award include: (1) the actions the class representatives took to protect the interests of the class; (2) how much the class benefited from those actions; and (3) the time and effort the class representatives expended in pursuing the litigation. *Id.* at \*9. Applying these factors, \$5,000 for each Class Representative is fair and reasonable. *See In re Checking Account Overdraft Litig.*, 2014 WL 12557836, at \*10 (awarding \$5,000 for each plaintiff); *Diakos v. HSS Sys., LLC*, No. CV 14-61784-CIV, 2016 WL 3702698, at \*7 (S.D. Fla. Feb. 5, 2016) (awarding \$10,000 to the class representative); *Wilson*, 2016 WL 457011, at \*15 (awarding \$5,000 to each class representative); *Carter*, 2016 WL 3982489, at \*15 (awarding the class representative \$15,000).

Each Class Representative contributed to this litigation, and benefitted the Class, far beyond their individual financial interests. Each Class Representative contributed at least forty hours to advance the interests of the Class. They all contributed to pre-suit investigation by sharing their experiences and evidence with Class Counsel, and participated in calls and meetings with Class Counsel. (Batista Decl., Dkt. # 141-6, ¶¶ 6-8; Chance Decl., Dkt. # 141-7, ¶¶ 6-8; Torres Decl., Dkt. # 141-10, ¶¶ 7-9; Matlin Decl., Dkt. # 141-8, ¶¶ 7-9; Nguyen Decl., Dkt. # 141-9, ¶¶ 5-7). In addition, each Class Representative reviewed court documents filed on their behalf, including reviewing and providing comments for their complaints.<sup>11</sup> The Class Representatives worked with Class Counsel to preserve evidence, made required disclosures, answered discovery, and provided deposition testimony.<sup>12</sup> They also kept themselves informed regarding the litigation by participating in: calls with Class Counsel, settlement negotiations, and

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<sup>11</sup> Batista Decl., Dkt. # 141-6, ¶¶ 6-8; Chance Decl., Dkt. # 141-7, ¶¶ 6-8; Torres Decl., Dkt. # 141-10, ¶¶ 7-9; Matlin Decl., Dkt. # 141-8, ¶¶ 7-9; Nguyen Decl., Dkt. # 141-9, ¶¶ 5-7.

<sup>12</sup> *Id.*

the terms of the settlement agreement.<sup>13</sup> Because of the substantial efforts by each Class Representative, Plaintiffs respectfully request the full incentive award of \$5,000 for each Class Representative.

## **VII. Plaintiffs Provided Due Process to the Class and Complied with Rule 23's Notice Requirements.**

Notice to the Settlement Class of the proposed Settlement satisfied Rule 23's requirement of "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173–75 (1974). The Notice also satisfied Rule 23(e)(1)'s requirement that notice of a settlement be "reasonable"—i.e., it must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores, Inc. v. Visa U.S.A.*, 396 F.3d 96, 114 (2d Cir. 2005); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Due process is satisfied "so long as the court reasonably selected a means likely to apprise interested parties." *Juris v. Inamed Corp.*, No. 10-12665, 2012 WL 2681445, \*19 (11th Cir. July 6, 2012).

The notice's substance and its method of dissemination satisfied these standards. Since the Court approved KCC's notice plan (Dkt. # 159) (Lucchesi Decl., ¶¶ 2-11), KCC mailed more than 289,267 postcard notices by first-class mail to individual Class Members and promptly re-mailed notices to updated addresses. (Lucchesi Decl., ¶¶ 7-9). KCC also established an Interactive Voice Response and website for easy access to information about the Settlement, related deadlines and downloadable notice-related documents and court filings. (*Id.* at ¶¶ 10-11). Mailing notices, creating an Interactive Voice Response system, and a settlement website is "the best notice . . . practicable under the circumstances," satisfying Rule 23 and due process.

## **VIII. The Court Should Grant Final Approval.**

For all the reasons cited above, the Court should grant final approval, award attorneys' fees and expenses in the amount of \$3.75 million, and award incentive payments to all Class Representatives in the amount of \$5,000.

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<sup>13</sup> *Id.*

DATED: May 24, 2017

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**CERTIFICATE OF SERVICE**

I HERBY CERTIFY that on May 24, 2017, I electronically filed the foregoing with the U.S. District Court Southern District of Florida, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record and/or pro se parties of record electronically or by another manner authorized by the Federal Rules of Civil Procedure 5(b)(2).

/s/ F. Jerome Tapley  
F. Jerome Tapley



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

KENAI BATISTA, ANDY CHANCE,  
GERARDO TORRES, ANGELA  
MATLIN, AND TUNG NGUYEN,  
*individually and on behalf of those similarly  
situated,*

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.,

Defendant.

Class Action Case No. 1:14cv 24728-civ-  
Scola/Otazo-Reyes

**DECLARATION OF F. JEROME  
TAPLEY IN SUPPORT OF MOTION  
FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

I, F. Jerome Tapley, declare as follows:

1. I am a principal with the law firm of Cory Watson, P.C (“Cory Watson”), and co-lead our firm’s class action litigation group with Hirlye R. “Ryan” Lutz. I make this Declaration in support of the Unopposed Motion for Final Approval of Class Action Settlement. I have personal knowledge of the facts stated below and, if called upon, could and would competently testify thereto.

**Background**

2. Cory Watson represents plaintiffs in complex litigation, including class actions, in federal and state courts. While our firm is located in Birmingham, Alabama, our firm litigates cases nationwide. Our firm’s practice areas include consumer fraud, credit discrimination, securities fraud, mass torts, and products liability claims. Cory Watson is among a few law firms in the country handling large, complex cases on a contingent basis. Our compensation is almost exclusively from court-awarded fees, court-approved settlements, and contingent fee agreements.

3. I am admitted to practice before courts in Alabama and Florida. I have also been admitted to practice before the United States Court of Appeals for the Eleventh and Ninth Circuits and the United States District Courts for the Southern District of Florida, Middle District of Florida, Northern District of Florida, Northern District of Alabama, Middle District of Alabama, Southern District of Alabama, Southern District of Indiana, and Western District of Wisconsin.

**KENAI BATISTA et al. vs.  
NISSAN NORTH AMERICA, INC.**

4. I am counsel on behalf of numerous putative class cases and automotive products liability cases currently pending in state and federal courts, including *Cox v. Porsche Financial Services, Inc., et al.*, 16-CV-23409-DPG (S.D. Fla.), and *Cruz, et al. v. Nissan North America, Inc., et al.*, BC 493949 (consolidated with BC 529912 and BC 577815) (Cal. Super. Ct., Los Angeles County). I have received the following recent class action appointments: Class Counsel, *Banks et al., v. Nissan North America, Inc.*, 11-CV-02022-PJH (N.D. Cal.); Co-Lead Class Counsel, *Rotandi v. Miles Industries, Ltd.*, 11-CV-02146-EDL (N.D. Cal.); Co-Lead Plaintiffs' Counsel, *In re: Google Inc. Gmail Litigation*, MDL No. 2430, Case No. 5:13-MD-002430-LHK (N.D. Cal.); Co-Lead Class Counsel, *Keilholtz et al. v. Superior Fireplace Company*, Case No. 4:08-CV-00836-CW (N.D. Cal.); Class Counsel, *Craft v. North Seattle Comm. College Foundation*, Case No. 3:07-cv-132-CDL (M.D. Ga.); Plaintiffs' Steering Committee, *In Re: General Motors Corporation Dex-Cool Products Liability Litigation*, MDL No. 1562; and Class Counsel *In Re: Thomas Denney, et al v. Jenkins & Gilchrist, et al*, No 03-CV-5460 (S.D.N.Y.).

5. Besides the members of my firm active in the subject litigation, many of the twenty (20) other lawyers in our firm are experienced in complex litigation and/or class actions. Lawyers in our firm have recently received the following appointments: Lead Counsel, Plaintiffs' Executive Committee, *In re: Viagra (Sildenafil Citrate) and Cialis (Tadalafil) Products Liability Litigation*, MDL No. 2691; Co-Lead Counsel, Joint Settlement Committee, *In re: Abilify Products Liability Litigation*, MDL No. 2734; Co-Lead Counsel and Plaintiffs' Executive Committee, *In Re: E.I. DuPont de Nemours and Company C-8 Personal Injury Litigation*, MDL No. 2433, Lead Counsel, Plaintiffs' Executive Committee, Plaintiffs' Steering Committee, Co-Chair of the Discovery Committee, and Chair of the Bellwether Committee, *In Re: Chantix (Varenicline) Products Liability Litigation*, MDL No. 2092; Plaintiffs' Steering Committee, *In Re: Trasylol Products Liability Litigation*, MDL No. 1928; Co-Lead Counsel, *In re: Kugel Mesh Hernia Patch Product Liability Litigation*, MDL No. 1842; Co-Lead counsel in the *State of Rhode Island Kugel Products Liability Litigation*; Plaintiffs' Steering Committee and Co-Chair of Science Committee, *In Re: Fosamax, Products Liability Litigation*, MDL No. 1789; Plaintiffs' Steering Committee and Co-Chair for the Discovery Committee, *In Re: Bausch & Lomb Contact Lens Solution Products Liability Litigation*, MDL No. 1785; and Lead Counsel *In Re: ProteGen Sling and Vesica Systems Products Liability Litigation*, MDL No. 1387.

6. A profile of our firm's experience in complex class action, products liability, and mass tort cases is attached as *Exhibit A*.

**KENAI BATISTA et al. vs.  
NISSAN NORTH AMERICA, INC.**

7. In addition to me, the following lawyers are also counsel of record, i.e. Class Counsel, for the Plaintiffs Kenai Batista, Andy Chance, and Crystal Quebral throughout the duration of this case:

- a. Hirlye R. “Ryan” Lutz, III, a partner in my firm’s Class Action Litigation Group;
- b. Adam W. Pittman, an associate in our firm’s Class Action Litigation Group;
- c. C. Richard Newsome,<sup>1</sup> a principal of Newsome Melton;
- d. William Ourand, an attorney at Newsome Melton;
- e. Ronald P. Weil,<sup>2</sup> a principal of Weil Quaranta, P.A.; and
- f. Mary V. Olszewska, an attorney at Weil Quaranta, P.A.

8. Later in the case, the following lawyers joined as counsel of record for the Class:

- a. Jordan Lurie<sup>3</sup> of The Capstone Law APC represented Gerardo Torres, Jr., and Angela Matlin and the Class in the “*Torres*” case, the class action complaint styled *Torres et al. v. Nissan North America, Inc.* filed on or about March 30, 2015 in Los Angeles County Superior Court which was removed to the United States District Court for the Central District of California, Case No. 2:15-cv-03251-RGK-FFM; and
- b. Lawrence Deutsch<sup>4</sup> of Berger & Montague, PC, along with its co-counsel, Greg Coleman Law, PC, represented Tung Nguyen and the Class in the “*Nguyen*” case, the class action complaint styled *Nguyen v. Nissan North America, Inc.* filed on or about March 18, 2016 in the United States District Court for the Middle District of Tennessee, Case No. 3:16-cv-00624.

9. As a group, the Class has been represented by some of the most knowledgeable, creative, skilled, considerate, prominent, and ethical plaintiff and class action lawyers in the United States.

10. Since 2006, Ryan Lutz has been involved in complex litigation including class action, product liability, and mass tort litigation and received the following appointments: Class

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<sup>1</sup> A separate declaration will be concurrently submitted by C. Richard Newsome of Newsome Melton.

<sup>2</sup> A separate declaration will be concurrently submitted by Ronald P. Weil of Weil Quaranta.

<sup>3</sup> A separate declaration will be concurrently submitted by Jordan Laurie of Capstone Law APC.

<sup>4</sup> A separate declaration will be concurrently submitted by Lawrence Deutsch of Berger & Montague.

**KENAI BATISTA et al. vs.  
NISSAN NORTH AMERICA, INC.**

Counsel, *Banks et. al., v. Nissan North America, Inc.*, 11-CV-02022-PJH (N.D. Cal.); Co-Lead Class Counsel, *Rotandi v. Miles Industries Ltd.*, 11-CV-02146-EDL (N.D. Cal.); and Class Counsel, *Keilholtz vs. Lennox Hearth Prods., et al.*, and is counsel on behalf of numerous putative classes pending in federal courts. Jamie Taylor is a paralegal in my firm's Class Action Litigation Group who has been actively involved in the subject case.

11. The hourly rates for our firm's attorneys and paralegals are: \$750.00 for Jerome Tapley, \$650.00 for Ryan Lutz, \$450.00 for associates including Adam Pittman, and \$125.00 for paralegals including Jamie Taylor. Our firm does not track legal assistant's time; conservatively, they devoted hundreds of hours to this case. These rates reflect current market rates by private attorneys and paralegals of similar experience, expertise, and reputation for comparable work.

12. Since the inception of this case, my firm has devoted a total of 2,366.4 attorney and paralegal hours to this case which were reasonable and necessary to prosecute the case:

	<b>Hourly Rate x Hours</b>	<b>Total Fee</b>
F. Jerome Tapley	\$750.00 x 622 hours	\$466,500.00
Ryan Lutz	\$650.00 x 674 hours	\$438,750.00
Adam Pittman	\$450.00 x 920.4 hours	\$414,180.00
Paralegal	\$125.00 x Est. 150	\$18,750.00
<b>Total</b>		<b>\$1,338,180.00</b>

Specifically, our firm with co-counsel made the following contributions on behalf of the class: initial investigative work, legal research, preparation and filing of the complaint, undertaking discovery, propounding discovery to Defendant Nissan North America, Inc. ("Nissan"), propounding discovery on nonparties, reviewing written discovery responses including extensive review, coding, organizing, and analysis of approximately 75,000 pages of documents, deposing Rule 30(b)(6) witnesses, preparing the Plaintiffs for deposition, defending Plaintiffs' depositions, attending court hearings, preparing Plaintiffs' motion for class certification, numerous conferences with co-counsel and defense counsel, preparing for and attending three full-day, in-person mediation sessions, locating and consulting with expert witnesses about engineering and design defects, participation in numerous extensive settlement negotiations, and drafting of routine day-to-day correspondence, pleadings, filings, and settlement and notice documents. This case was a massive undertaking which required skillful coordination of a team of lawyers.

13. To the best of our abilities, Class Counsel have minimized duplication of services and no unnecessary duplication occurred. Where multiple attorneys participated, joint participation

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was necessary because of time constraints, the complexity of the issues, or for effective, efficient communication between several firms essential for informed, group decision-making.

14. We participated in this case on a contingency fee basis which involved risk of not prevailing and therefore not being paid for our work. On the other hand, we also understood that the law would compensate us for such risk if and when we prevailed. We could not take such a risk without assurances of adequate compensation for favorable results for the Class. Moreover, while we anticipated the lengthy, intensive, and protracted litigation track which transpired, the time and resources dedicated to this case prevented Class Counsel from taking and working on other matters.

15. Our firm expended \$177,892.10 in unreimbursed expenses which were reasonable and necessarily for the prosecution of this case. These expenses are accurately reflected in our firm's books and records.

**Pre-Filing Investigation**

16. Plaintiff Kenai Batista contacted Weil Quaranta, Class Counsel in Miami, Florida, in October 2014 after a year of unsuccessful attempts to fix her 2014 Nissan Pathfinder's judder condition; her initial contact was made shortly after Nissan refused to buy back her vehicle. Ms. Batista learned and advised Weil Quaranta that the judder condition with the 2014 Nissan Pathfinders was much larger than just her vehicle. Specifically, during discussions about the judder condition with parents at her child's soccer practice, she learned that other parents who also owned 2013-2014 Nissan Pathfinders were struggling with the same condition.

17. Weil Quaranta researched the history of Ms. Batista's vehicle including its purchase and service records and advised Ms. Batista of the potential to bring a class action lawsuit. Because of the large amount of resources (i.e. lawyers, time, and money) necessary to effectively prosecute this case as a class action, Weil Quaranta asked Newsome Melton and our firm to join as Class Counsel.

18. As part of the pre-filing investigation process, besides researching and discussing the viability of Ms. Batista's claims, Class Counsel researched and discussed whether the defect causing the 2013-2014 Nissan Pathfinders' JATCO CVT8HT ("CVT") transmission to judder met the certification requirements, reviewed thousands of National Highway Traffic Safety Administration ("NHTSA") complaints about those vehicles, reviewed Nissan's Technical Service Bulletins, and developed a nation-wide litigation strategy. After determining Ms. Batista's case

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could and should be brought as a class action, Class Counsel drafted her complaint and developed a discovery plan.

**Complaint, Service on Nissan, Appearances, and First Amended Complaint**

19. On December 15, 2014, about two months after first speaking to Ms. Batista, Class Counsel filed her seventy-seven-page Consumer Class Action Complaint (“Complaint”) [DE 1] against Defendant Nissan that included details of Nissan’s knowledge of consumers’ complaints and concerns about the CVT transmission judder.

20. Ronald Weil and Mary Olszewska of Weil Quaranta PA, Richard Newsome of Newsome Melton LLP, and I appeared as counsel for Plaintiff and the Class on the face of the Complaint.

21. On December 30, 2014, the Summons [DE 6] and Complaint [DE 1] were served on Nissan. That same day, Ryan Lutz and Adam Pittman of my firm moved to appear pro hac vice for Plaintiff Batista which was granted by this Court [DE 10]. Nissan filed its Answer [DE 16] on February 17, 2015.

22. Although the original definition of Affected Vehicles in Plaintiff’s Complaint [DE 1] was limited to 2013-2014 Nissan Pathfinders sold or leased to consumers, through discovery and calls from consumers, Class Counsel learned that the 2014 Infiniti QX60s—Nissan’s luxury vehicle division—had the same CVT transmission, were suffering from the same juddering condition, and were subject to the same ineffective investigation and countermeasure campaigns.

23. Therefore, in October 2015, to promote efficient resolution of all issues pertaining to the defective CVT transmissions, Class Counsel drafted and amended the Complaint and moved for to leave to amend the definition of Affected Vehicles in the Complaint to include 2014 Infiniti QX60s and add two class representatives, Crystal Quebral (2014 Infiniti QX60 owner) and Andy Chance (2013 Nissan Pathfinder owner) [DE 44]. This Court granted Plaintiff’s motion [DE 47] and Plaintiff filed its First Amended Consumer Class Action Complaint (“Complaint”) [DE 48] on October 8, 2015. Nissan Answered it on October 29, 2015 [DE 52].

**Discovery**

24. Upon receipt of this Court’s scheduling order and order of referral to mediation [DE 19], the parties began discussing case management and other discovery issues, proposing mediators, and negotiating and stipulating to a Protective Order Governing Confidential Material which governed this case. [DE 21 & 23]. Fruitful, efficient discovery required extensive,

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continuous engagement with Nissan's counsel, including numerous meet and confer letters, e-mails, and phone calls initiated by Class Counsel to drive discovery and push Nissan to produce substantive written discovery responses, responsive documents, and three corporate representatives for nine days of depositions. Additionally, Class Counsel engaged in extensive third-party discovery directed to Nissan's dealerships, which sold and serviced the Class Vehicles, and JATCO, the CVT manufacturer. Overall, Class Counsel expended a vast amount time, effort, and resources to discover evidence supporting Plaintiffs' claims and certification of a Florida and nationwide class.

25. In March of 2015, shortly after Nissan answered Plaintiff's Complaint, Class Counsel served initial written discovery including 58 requests for production of documents and 18 interrogatories seeking information about the design, manufacture, and distribution of the CVT transmission and Nissan's knowledge of the defect. While Nissan responded on June 1, 2015 (document requests) and June 8, 2015 (interrogatories), it objected to nearly all of the requests. Class Counsel then began the meet and confer process before engaging in extensive motion practice to compel the production of the discoverable, relevant, and critical information.

**Plaintiffs' Requests for Documents to Nissan and Corresponding Motion Practice**

26. After a lengthy meet and confer process on Plaintiff's document requests which began in mid-June 2015 and included five separate conference calls, multiple meet and confer letters, and weeks of waiting on Nissan's updated positions, Plaintiffs advised Nissan of the parties' impasse on the remaining disputed requests on August 6, 2015. Although Nissan supplemented its responses to the requests for production a week later—on August 14, 2015—it failed to remedy the deficiencies discussed during meet and confer efforts, providing grounds for Plaintiff's Motion to Compel Discovery from Defendant Nissan North America and to Strike its Improper Objections [DE 30] filed on September 4, 2015.

27. After hearing argument of counsel on September 30, 2015, Magistrate Judge Otazo-Reyes recommended the motion be granted, in part, and denied, in part, and that Nissan be ordered to obtain documents from its parent and sister companies [DE 43]. Judge Otazo-Reyes further directed the parties to continue to meet and confer [DE 43].

28. Nissan objected to Judge Otazo-Reyes' Report and Recommendations on October 15, 2015 [DE 49], Class Counsel filed a response in opposition to Nissan's objections on November 3, 2015 [DE 55], and Nissan replied on November 10, 2015 [DE 58].



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29. This Court overruled Nissan's objections on December 7, 2015 [DE 62]. See also *Batista v. Nissan N. Am., Inc.*, Civil Action No. 14-24728-Civ, 2015 U.S. Dist. LEXIS 177227 (S.D. Fla. Dec. 7, 2015).

30. Despite another five month effort to obtain compliance with the Court's discovery order [DE 43] and because the delays were jeopardizing Class Counsel's ability to depose witnesses and meet deadlines for class certification, Class Counsel noticed a second hearing on the discovery issues for March 18, 2016 [DE 67]. This Court responded by entering an order expounding strict guidelines and deadlines for the subject written discovery [DE 71]. The Court further ordered the parties to engage in a meet and confer call with all counsel and their respective technical experts. [DE 71].

31. Class Counsel extensively prepared for the technical meet and confer call for the several weeks. On Friday, April 29, 2016, the three hour phone call went forward. During the call, C. Richard Newsome, questioned Nissan's counsel and engineers about various documents which were not produced, including the top-level assembly drawings, testing documents, specification documents, interoffice communications, and other technical materials.

32. After Plaintiff's initial request for documents, Class Counsel drafted and served the following additional document requests related to issues which surfaced during discovery:

- a. *Plaintiffs' Second Request for Production to Nissan North America Inc.* served on August 24, 2015;
- b. *Plaintiffs' Third Request for Production to Nissan North America Inc.* served on September 18, 2015, and
- c. *Plaintiffs' Fourth Request for Production to Nissan North America Inc.* served on November 23, 2015.

33. Upon receiving Nissan's responses and objections to *Plaintiff's Fourth Request for Production to Nissan North America, Inc.*, another lengthy meet and confer process ensued, which included eight letters between the parties and a three hour discovery phone call on February 23, 2016. Because the parties had reached an impasse and Class Counsel knew Nissan was withholding relevant, responsive documents related to the design changes to the CVT transmission to eliminate the judder condition in the Affected Vehicles, Class Counsel drafted and filed *Plaintiffs' Second Motion to Compel Discovery* [DE 77] on April 15, 2016. After full briefing by the parties and hearing argument of counsel on May 2, 2016, Magistrate Judge Otazo-Reyes ordered Nissan to produce the requested top level assembly drawings [DE 88].

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34. Additionally, because Nissan had not produced any of its Meeting Materials (e.g. minutes, agendas, presentations) related to the judder problem as requested in *Plaintiffs' Fourth Request for Production to Nissan North America Inc.*, Class Counsel drafted and filed *Plaintiffs' Third Motion to Compel Discovery* [DE 92]. After full briefing by the parties and hearing argument of counsel on May 27, 2016, this Court granted Plaintiffs' motion and compelled production of the requested documents within 30 days [DE 113].

35. Over 75,000 pages of responsive documents were produced in this case—about half of those were directly from Nissan, with the remainder produced by JATCO (Nissan's third-party CVT supplier) and Nissan dealerships which sold and serviced the Class Vehicles. Much of the production included technical and engineering documents, data from vehicle testing, incident reports of numerous consumer complaints with their Affected Vehicles, communications and presentations exchanged between Nissan and its component parts suppliers, electronic communications regarding the CVT defect and its history of redesign and engineering countermeasures. Obtaining those documents, i.e. persuading and compelling Nissan to produce them, was an arduous and complex task which required thoughtfulness, diligence, organization, skill, persistence, time, skill, and teamwork.

36. Reviewing, organizing, and analyzing the documents required similar thoughtfulness, diligence, organization, skill, persistence, time, and teamwork to understand the sophisticated issues, knowledgably meet and confer on discovery, draft discovery motions to compel production of important documents, prepare for depositions, and support Plaintiffs' motion for class certification with explanatory and persuasive evidence [DE 109]. This was an exorbitant effort of hundreds of hours on behalf of Class Counsel, their consultants, and their experts.

**Plaintiffs' Interrogatories to Nissan**

37. After a meet and confer process which began in mid-June 2015 on Nissan's objections and deficiencies to Plaintiff's First Interrogatories to Defendant Nissan North America, Inc., Nissan supplemented its responses multiple times, with the last supplement served on March 23, 2016.

38. After that initial set of interrogatories, Class Counsel served Plaintiffs' Second Interrogatories to Defendant Nissan North America, Inc. on November 23, 2015 seeking specific information about the defective CVT and seeking to quantify the number of Affected Vehicles sold to determine the size of the class and damages. Nissan responded with objections on January

15, 2016. Following the meet and confer process initiated by Class Counsel which included four letters (February 15, February 24, March 8, and March 11, 2016) and lengthy conference calls (one lasting three hours), Nissan supplemented its interrogatory responses on January 25, again on March 4, and again on April 5, 2016.

#### **Plaintiffs' Timely Responses to Nissan's Discovery Requests**

39. Besides written discovery efforts to prove Plaintiffs' claims, Class Counsel also worked diligently to timely respond to Nissan's discovery requests to the plaintiffs. Class Counsel worked with Kenai Batista, Andy Chance, and Crystal Quebral to finalize and serve complete responses to Nissan's interrogatories and requests for production. Specifically:

- a. In addition to serving Plaintiff's initial disclosures on March 30, 2015, Ms. Batista also responded to Nissan's interrogatories and document requests (served on March 24, 2015) on May 11, 2015;
- b. Mr. Chance responded to Nissan's interrogatories and document requests (served on October 21, 2015) on November 25, 2015.
- c. Ms. Crystal Quebral responded to Nissan's interrogatories and document requests (served on October 21, 2015) on November 25, 2015.

40. Plaintiffs' responses did not necessitate any motions to compel.

#### **Depositions of Plaintiff Class Representatives**

41. Class Counsel defended the depositions of Plaintiffs Andy Chance, Crystal Quebral, and Kenai Batista on December 1, 3, and 15, 2015, respectively. Before each deposition, Class Counsel prepared each witness for the deposition, both telephonically and in-person.

#### **Depositions of Nissan's Corporate Representatives**

42. In August 2015, Class Counsel served deposition notices pursuant to Federal Rule of Civil Procedure 30(b)(2) and (6) identifying approximately 120 categories of testimony needed to prove Plaintiffs' claims and the claims of the putative class. On August 28, 2015, Nissan informally objected to the notices and the parties began a two month meet and confer process on the deposition topics. That process included at least six lengthy conference calls and several correspondences including email exchanges of a detailed chart of the deposition topics, redlined changes, and statements memorializing the parties' positions.

43. On October 21-22, 2015, January 26 & 27, 2016, May 9-11, 2016, and May 18-19, 2016, Class Counsel deposed Nissan's corporate representative(s):

- a. Mr. James Blenkarn,
- b. Mr. Richard Madden,
- c. Ms. Krystyn Lau, and
- d. Mr. Jackson Hisey

Over the course of nine days, the depositions covered the below condensed topics and introduced and examined 157 exhibits:

- a. Nissan's corporate structure and records;
- b. Sales publicity, marketing, and advertising of the Affected Vehicles;
- c. The Technical Service Bulletins related to the CVT's judder condition;
- d. Warranty, goodwill, and service claims, processes, communications, costs, and data related to the subject CVTs including the creation of Nissan's Powertrain Call Center staffed with JATCO employees;
- e. Dealer Advisory Board meetings discussing the Affected Vehicles and the subject CVTs;
- f. Corporate or executive meetings discussing the Affected Vehicles and the subject CVTs;
- g. The failure analysis, root cause investigations, and countermeasures related to the subject CVTs;
- h. Communications with JATCO and Nissan Motor Co., Ltd. about the subject CVT;
- i. Performance of the Affected Vehicles;
- j. Design, manufacture, production, and testing of the Affected Vehicles and the subject CVTs; and
- k. Claims, lawsuits, and settlements related to the Affected Vehicles and the subject CVTs.

Preparation for each of these depositions required careful review, categorization, and selection of documents from the tens of thousands of pages of document production, including reviewing of voluminous technical and engineering documents and obtaining translations of important documents produced in Japanese. Document review was particularly challenging and time consuming because of constant rolling production that continued up to and after the first three days of depositions. Such rolling production required careful divisions of labor between counsel, effective organization, and constant communication among Class Counsel. Moreover, due to the

technical nature of the engineering documents produced and the engineering process at issue with the defect in this case, Class Counsel had to heavily rely upon and consult with its experts to understand the engineering issues and properly prepare for these depositions.

**Subpoenas for Records from Nonparty JATCO and Depositions**

44. In addition to obtaining documents from Nissan, Class Counsel also sought discovery from JATCO, Nissan's sister company that designed and developed the CVT transmission.

45. In December 2015, Class Counsel served subpoenas on JATCO U.S.A. to obtain documents and testimony from its corporate representative(s) and Chairman, Mr. William Krueger, regarding the design of the CVT transmission including the design changes to subsequent models to eliminate and fix the judder condition. Class Counsel sought documents and testimony on the following topics:

- a. Design, manufacture, and testing of the subject, defective CVT transmission and the redesigned, subsequent CVT;
- b. Investigations, countermeasures, and root cause of the judder condition in the subject, defective CVT;
- c. Safety and performance of the subject CVT transmission and the redesigned, subsequent CVT;
- d. Meetings and minutes discussing the subject CVT transmission and the redesigned, subsequent CVT including warranty and cost analyses;
- e. JATCO's knowledge and notice of the CVT judder condition; and
- f. Any warranty and cost analyses, failure rates, life expectancy of the transmission and its component parts, and performance goals of the subject, defective CVT transmission.

46. JATCO U.S.A. objected to producing the aforementioned documents. As a result, Plaintiffs and Class Counsel filed a separate action in the U.S. District Court for the Eastern District of Michigan, Case No.: 2:16-mc-50277, for the purposes of serving the subpoena on JATCO U.S.A. in its home state to obtain the requested documents.

47. In response, JATCO U.S.A. produced more than 40,000 pages of documents in late May 2016. Class Counsel was required to pay \$32,000 in costs to obtain JATCO's substantial production.

48. Over the next several weeks, Class Counsel reviewed the 40,000 pages of JATCO production in preparation for upcoming depositions of its engineers and executive officers scheduled for the summer of 2016, including Senior Vice President William Krueger, and, Jun Shiomi, the CVT Chief Engineer and JATCO U.S.A. President.

#### **Subpoenas For Records From Nonparty Dealerships and Depositions**

49. Concurrent with discovery from JATCO, Class Counsel served four subpoenas for the production of documents on Nissan and Infiniti dealerships who serviced the Plaintiffs' vehicles: Bill Seidle's Nissan, Inc., TT of Sanford, Inc. ("Sanford Infiniti"), TT of Orlando, Inc. ("Orlando Infiniti"), and Nissan of St. Augustine, Inc. These subpoenas sought information about the sale and service of each of the Plaintiff's Affected Vehicles and the diagnosing, servicing, and repairing the judder condition of the CVT transmissions in the Affected Vehicles including Technical Service Bulletins and other communications with Nissan. In response, the dealerships produced several hundreds of pages of documents.

50. To ensure each dealership's appearance and prepare for its testimony, Class Counsel drafted and served subpoenas for deposition upon each of the four dealerships, reviewed and analyzed their responsive documents, reviewed and analyzed Plaintiffs' responsive documents, reviewed and analyzed selections of the 35,000 pages of documents produced by Nissan, and interviewed the Plaintiffs about their experiences with the dealerships.

51. The depositions of the dealership proceeded on the following dates and locations:
- a. February 9, 2016: Patrick Richard of Nissan of St. Augustine, Inc., St. Augustine, Florida;
  - b. February 10, 2016: Scott Barber of Sanford Infiniti, Orlando, Florida;
  - c. February 11, 2016: Ariel Perera of Bill Seidle's Nissan, Inc., Miami, Florida; and
  - d. February 12, 2016: Peter Wilson of Orlando Infiniti, Orlando, Florida.

#### **Experts**

52. Beginning in December 2014, within 2 weeks of filing the Complaint, Class Counsel began searching for experts to assist in the prosecution of this case. Class Counsel specifically sought an expert well-versed in the types of failures modes associated with the CVT transmissions at issue. Class Counsel reviewed technical publications and scholarly articles on

CVT transmissions, consulted with several colleagues, and evaluated and interviewed multiple potential experts.

53. Class Counsel's search resulted in retaining Plaintiffs' lead CVT design expert, Robert G. Parker, Ph.D. in December 2015. Dr. Parker is a mechanical engineer at Virginia Tech. He received a B.E. (summa cum laude) in Mechanical Engineering from the State University of New York, Stony Brook in 1986; a M.S. degree in Mechanical Engineering from the University of California, Berkeley in 1988; and a Ph.D. in Mechanical Engineering in 1995, also from the University of California, Berkeley. His career focus has been studying and troubleshooting vibration issues in mechanical systems, especially power transmission systems like the one in this case. Multiple large auto, helicopter, aircraft, and wind turbine manufacturers have retained him to solve significant vibration problems including Ford Motor Company, Volvo, General Motors, Achates Power, General Electric, Windflow, Orbital2, Sikorsky, Boeing, and Ramgen. Dr. Parker was awarded the Ford Motor Company Chief Engineer Award after he was able to successfully resolve a major problem related to gear noise Ford vehicles. Ford rarely confers this high distinction on individuals who are not Ford employees.

54. Given his real academic credentials and significant real world experience, including his extensive background in consulting for automotive companies, Dr. Parker was the perfect fit for this case. Class Counsel worked extensively with Dr. Parker in:

- a. Reviewing the complicated technical engineering documents produced in this case;
- b. Identifying gaps in production based on standard engineering protocols and procedures;
- c. Preparing for the technical corporate representative depositions of Mr. Blenkarn and Mr. Madden;
- d. Preparing for and participating in the technical "meet and confer" call ordered by Judge Otaza-Reyes and conducted on April 29, 2016; and
- e. Preparing an extensive 52 page declaration in support of Plaintiffs' Motion for Class Certification.

55. Class Counsel's search also resulted in retaining Steven P. Gaskin, Plaintiffs' lead damages expert. Mr. Gaskin is a Principal at Applied Marketing Science, Inc., a marketing and consulting firm. He earned a Bachelor of Science and Master of Science degrees in Management from Sloan School of Management at Massachusetts Institute of Technology ("MIT"). Mr. Gaskin



was retained to create the conjoint analysis to determine the difference in value between what the putative class members thought they were receiving in the bargain with the Affected Vehicles they actually received; thus, he could determine the Class's damages.

56. The selection and retention of Mr. Gaskin as a damages expert in this case followed an extensive and rigorous analysis of the law and facts to determine recoverable damages. One of the major challenges in a consumer fraud class action involving a defective product is how to quantify and prove actual damages — which typically requires showing the difference in value between the product without the defect versus the value of the product with the non-disclosed defect. Class Counsel studied and reviewed other cases advancing similar theories, and determined that Mr. Gaskin's analysis would provide a valid and thorough assessment of the Class's damages. Examples of analogous cases applying Mr. Gaskin's conjoint analysis, and review by Class Counsel prior to or after retaining Mr. Gaskin, include: *Khoday v. Symantec Corp.*, 93 F. Supp. 3d 1067 (D. Minn. 2015) (holding that "Gaskin's conjoint analysis is generally a permissible method for calculating damages"); *Sanchez-Knutson v. Ford Motor Co.*, 181 F. Supp. 3d 988 (S.D. Fla. 2016) (holding that Mr. Gaskin's conjoint analysis was "permissible for determining actual damages in the FDUTPA context" in an automotive defect case, and declining to exclude Mr. Gaskin as an expert witness); and *Sanchez-Knutson v. Ford Motor Co.*, 310 F.R.D. 529 (S.D. Fla. 2015) (granting preliminary approval of proposed class and explaining that the Court accepted Mr. Gaskin's "proposed conjoint analysis damages model for purposes of class certification, finding that it is sufficiently tied to Plaintiff's legal theory and her proffered evidence that her Explorer shares the same defect as all others in its product line, and meets the predominance requirement under the Supreme Court's holding in Comcast").

57. Class Counsel worked extensively with Mr. Gaskin in developing a proposed conjoint study to serve as the damages model in this case. This proposed study was outlined in detail in Mr. Gaskin's affidavit submitted in support of Plaintiffs' Motion for Class Certification [DE 109 – 111, Exhibit L].

#### **Plaintiffs' Motion for Class Certification**

58. On May 31, 2016, Class Counsel filed Plaintiffs' Motion for Class Certification [DE 109]. In support of that motion, Class Counsel prepared and filed approximately 1000 pages of documentary evidence and declarations and testimony of the following individuals:

- a. Declaration of Class Counsel F. Jerome Tapley, C. Richard Newsome, and Ronald P. Weil;
- b. Declarations of Plaintiffs Kenai Batista [Exhibit H], Andy Chance [Exhibit J], and Crystal Quebral [Exhibit I];
- c. Declarations of Plaintiffs' experts Robert G. Parker, Ph.D. [Exhibit K], and Steven P. Gaskin [Exhibit L];
- d. Declarations of Settlement Administrators, Kurtzman Carson Consultants, LLC, Patrick M. Passarella and Lacey Racines [[Exhibits Q and R];
- e. Deposition Excerpt(s) of Nissan's Corporate Representative, James Blenkarn [Exhibits A & B];
- f. Deposition Excerpt(s) of Nissan's Corporate Representative, Richard Madden [Exhibit C];
- g. Deposition Excerpt(s) of Plaintiff Kenai Batista [Exhibit D];
- h. Deposition Excerpt(s) of Plaintiff Crystal Quebral [Exhibit E];
- i. Deposition Excerpt(s) of Plaintiff Andy Chance [Exhibit F];
- j. Deposition Excerpt(s) of Nissan of St. Augustine, Inc.'s Corporate Representative, Patrick Richard [Exhibit M];
- k. Deposition Excerpt(s) of Sanford Infiniti's Corporate Representative Scott Barber [Exhibit N];
- l. Deposition Excerpt(s) Bill Seidle's Nissan, Inc.'s Corporate Representative Ariel Perera [Exhibit O]; and
- m. Deposition Excerpt(s) of Orlando Infiniti's Corporate Representative Peter Wilson [Exhibit P].

59. A quick review of Plaintiffs' Motion for Class Certification evidences the immense resources – time, labor, finances, and skill – devoted by Class Counsel in researching, analyzing, and drafting its difficult and technical arguments and facts [DE 109 – 112]. The approximately 1000-page motion package required Class Counsel to work closely with their experts, Robert G. Parker, Ph.D., and Steven P. Gaskin, to explain and document their opinions on the defective CVTs. Dr. Robert G. Parker opined about numerous technical issues regarding the defective CVT, including the inherent design defects, their consequences in Affected vehicles, and Nissan's and JATCO's knowledge. Dr. Gaskin opined about the methodology to quantify damages suffered by the class.

**Mediations, Settlement, and Motion for Preliminary Approval of the Settlement**

60. Under this Court's Scheduling Order an Order of Referral to Mediation [DE 19], in July 2015, after considering several mediators, the parties agreed to begin mediation efforts with Rodney A. Max of Upchurch Watson White & Max Mediation Group [DE 22].

61. While the parties initially agreed to mediate on December 9, 2015, pre-mediation discussions revealed that, despite the parties' best efforts, we were not yet in a position to mediate and requested permission to reschedule the mediation to February 11, 2016 [DE 60]. The Court granted the parties' request [DE 61] and Class Counsel and defense counsel convened in Miami, Florida for a full day of mediation on February 11, 2016.

62. While the parties reached an impasse that day, good-faith discussions and sufficient progress encouraged agreement to continue discussions. During this first day of mediation, Class Counsel met counsel for Plaintiff Gerardo Torres in the related *Torres* case, styled *Gerardo Torres v. Nissan North America, Inc.*, No. 2:15-cv-03251-RGK (C.D. Cal.), and began complex discussions about a joint prosecution and resolution. After that first day of mediation, as memorialized in the Joint Mediation Status Report of May 17, 2016 [DE 95], Mr. Max remained actively engaged in continued discussions and requested agreement between the parties to time parameters to ensure progress.

63. On June 30, 2016, the parties reconvened in Miami for a second day of mediation. Besides Class Counsel for the Plaintiffs in this case, i.e. originally styled *Kenai Batista et al v. Nissan North America*, counsel for Plaintiffs Gerardo Torres, Angela Matlin<sup>5</sup>, and Tung Nguyen<sup>6</sup> also participated in an attempt to jointly resolve all of the issues with the Plaintiffs' vehicles and a nationwide class. Despite reaching impasse, the parties made significant progress and agreed to return for a third in-person session on July 22, 2016, which proceeded as scheduled. After the third session, the parties submitted another Joint Mediation Status Report [DE 128] requesting a two week stay to allow the parties additional time to negotiate without Nissan incurring expert fees and attorneys' fees related to responding to Plaintiffs' Motion for Class Certification. On August 24,

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<sup>5</sup> Gerardo Torres and Angela Matlin filed suit against Nissan in the Los Angeles County Superior Court on behalf of themselves and all current and former owners of 2013-2014 Nissan Pathfinder vehicles and the case was removed to the United States District Court for the Central District of California, Case No. 2:15-cv-RGK-FFM.

<sup>6</sup> Tung Nguyen filed suit against Nissan in the Middle District of Tennessee, Case No. 3:16-cv-00624, on behalf of himself and all current and former owners of 2013 and later model year Nissan Pathfinder vehicles.

2016, the parties (including counsel for Gerardo Torres, Angela Matlin, and Tung Nguyen) reached a settlement agreement, in principle [DE 130].

64. Throughout the mediation process, Class Counsel informed and engaged Plaintiffs Kenai Batista, Andy Chance, and Crystal Quebral.

65. While the parties reached an agreement in principle in August 2016, drafting and finalizing the written settlement agreement and proposed class notices were additionally onerous and time consuming. For months, Class Counsel exchanged numerous lengthy drafts of redlined changes to the agreement and notice documents, meticulously negotiating their terms to benefit the class. This process included numerous emails and phone calls between and among Class Counsel, counsel for Gerardo Torres, Angela Matlin, and Tung Nguyen, and defense counsel.

66. After six weeks of drafting, revising, and negotiations, Class Counsel filed the executed Settlement Agreement which affords relief to a national class of Affected Vehicle owners [DE 146], Plaintiffs' Second Amended Consumer Class Action Complaint [DE 138] which added Gerardo Torres, Angela Matlin, and Tung Nguyen as additional class representatives, and Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement [DE 141] which summarized the material terms of the Settlement Agreement, including the benefits to the class, attorneys' fees and expenses, class representative incentive payments, releases of claims, the details of the plan for notifying the class members, and the legal standards and argument requesting the Court's preliminary approval of the parties' Settlement Agreement. The motion for preliminary approval was also supported by declarations of Class Counsel (F. Jerome Tapley (Cory Watson, P.C.), Ronald P. Weil (Weil Quaranta, P.A.), C. Richard Newsome (Newsome Melton, P.A.), Robert K. Friedl (Capstone Law APC), and Lawrence Deutsch (Berger & Montague, P.C.)), declarations of Plaintiffs (Kenai Batista, Andy Chance, Gerardo Torres, Angela Matlin, and Tung Nguyen), and other relevant records and filings.

67. This Court granted Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement [DE 141] on October 25, 2016 [DE 148]. Because the Settlement Administrator, Kurtzman Carson Consultants LLC ("KCC"), needed additional time to obtain nationwide vehicle registration data and mailing addresses for owners of Affected Vehicles, the parties requested a 90-day extension of the deadline for mailing the class notices and other deadlines related to final approval of the settlement [DE 149]. This Court granted that request [DE 150] and entered its Amended Preliminary Approval Order of Class Action Settlement [DE 151]. Because the parties were negotiating modifications to the class notice previously approved by the

Court, the parties requested a second joint extension of time to mail the class notices [DE 154][DE 158] and filed the parties' Amended Settlement Agreement [DE 156] and Plaintiffs' Motion for Preliminary Approval of Amended Settlement Agreement [DE 157] which was granted by this Court [DE 159].

**Motion for Final Approval of the Settlement Agreement**

68. Concurrent with the filing of this declaration, Class Counsel will have also prepared and moved for final approval of the class action settlement and supported that motion with law, responses to any objection(s) by Class Members, and Class Counsel's declarations. Subsequent to the filing of that motion, Class Counsel will need to prepare for and attend the Court's scheduled June 21, 2016 final approval and fairness hearing [DE 159]. Class Counsel will continue to expend additional hours to guide the settlement after final approval, including oversight of the settlement administration process.

**Hundreds of Phone Calls from Putative Class Members**

69. Throughout this litigation, Class Counsel has diligently fielded hundreds of calls from putative class members and those calls continue to date. Early in the litigation, many had questions about the case and wanted to participate. Since preliminary approval of the settlement agreement, consumers have inquired about their benefits as class members and Class Counsel has spent a lot of time helping these consumers.

**Conclusion**

70. I am proud of the result achieved on behalf of the Class. I am proud that as a result of this litigation, all current and former owners receive substantial benefits and received notice of and a remedy for the CVT defect and judder condition. Based on my experience, the Settlement is fair, reasonable, and adequate, that it treats Class Members equitably. I remain hopeful that the Court will approve the Settlement achieved on behalf of the Class resulting from this hard-fought and highly technical litigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 24, 2017 in Birmingham, Alabama.

Respectfully submitted,

By:   
F. Jerome Tapley FBN 22066

**KENAI BATISTA et al. vs.  
NISSAN NORTH AMERICA, INC.**

jtapley@corywatson.com  
CORY WATSON, P.C.  
2131 Magnolia Avenue  
Birmingham, Alabama 35205  
T: (205) 328-2200 F: (205) 324-7896

# **Exhibit “A”**





2131 Magnolia Avenue South  
Birmingham, Alabama 35205  
(205) 328-2200 (telephone)  
(205) 324-7896 (facsimile)  
[www.CoryWatson.com](http://www.CoryWatson.com)

## **FIRM PROFILE**

Cory Watson, P.C. has a nationally recognized practice in complex litigation including class actions, products liability, business and securities litigation, environmental litigation and mass torts litigation of defective medical devices and pharmaceutical drugs. Cory Watson was the first Alabama law firm to establish a mass torts division devoted exclusively to representing multiple clients injured by environmental contamination and manufacturers of harmful medical devices and drugs.

The firm has represented clients in litigation involving more than one hundred mass torts over the past twenty years including products such as Chantix, DePuy hip implants, Kugel Mesh, Vioxx, Baycol, Prempro, Medtronic pacemakers, Guidant pacemakers, Ortho-Evra, Fosamax, Bextra, silicone gel breast implants, Phen Fen, and GranuFlo Kidney Dialysis. The firm has also led litigation on behalf of individuals injured by toxins including PCBs and MTBE.

Cory Watson attorneys frequently serve as Court Appointed Lead Plaintiffs' Counsel, Class Counsel, and as Trial Counsel in pivotal litigation. Cory Watson attorneys have served on numerous Plaintiffs' Executive Committees, Steering Committees, and Discovery Committees. The firm represents clients worldwide, securing successful outcomes for clients in Europe, South America, Central America, Canada, and Africa.

## **CLASS COUNSEL AND LITIGATION APPOINTMENTS AND EXPERIENCE**

### **Medical Device Litigation**

*In Re: DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation*, MDL No. 2197; Cory Watson shareholder Annesley H. DeGaris appointed to the Science Committee.

*In Re: Kugel Mesh Hernia Patch Products Liability Litigation*, MDL No. 1842; Cory Watson shareholder Ernest Cory appointed Co-lead Plaintiffs' Counsel, and Cory Watson shareholder Jon C. Conlin appointed Chair of the Discovery Committee.

*In Re: Medtronic Inc., Sprint Fidelis Leads Products Liability Litigation*, MDL No. 1905; Cory Watson shareholder Leila H. Watson appointed to the Plaintiffs' Steering Committee.

*In Re: ProteGen Sling and Vesica System Products Liability Litigation*, MDL No. 1387; Cory Watson shareholder Ernest Cory appointed Lead Plaintiffs' Counsel and Plaintiffs' Liaison Counsel.

*In Re: Bausch & Lomb, Inc. Contact Lens Solution Products Liability Litigation*, MDL No. 1785; Cory Watson shareholder Ernest Cory appointed to the Plaintiffs' Steering Committee and Co-Chair of Discovery Committee, Cory Watson attorney Stephen Hunt appointed to Discovery Committee.

## Pharmaceutical Litigation

*In re: Viagra (Sildenafil Citrate) and Cialis (Tadalafil) Products Liability Litigation*, MDL No. 2691; Cory Watson shareholder Ernest Cory appointed Plaintiffs' Lead Counsel; Cory Watson shareholder Kristian Rasmussen appointed to the Plaintiffs' Executive Committee.

*In re: Abilify Products Liability Litigation*, MDL No. 2734; Cory Watson shareholder Ernest Cory appointed to the Joint Settlement Committee; Cory Watson shareholder Kristian Rasmussen appointed Plaintiffs' Co-Lead Counsel and named to the Plaintiffs' Executive Committee; Cory Watson shareholder Stephen Hunt, Jr. appointed to the Joint Discovery Committee.

*In Re: Chantix (Varenicline) Products Liability Litigation*, MDL No. 2092; Cory Watson shareholder Ernest Cory appointed Lead Plaintiffs' Counsel and named to Plaintiffs' Executive Committee; Cory Watson shareholder Kristian Rasmussen appointed to Plaintiffs' Steering Committee, Co-Chair of Discovery Committee and to Science/Expert Committee and Law Committee; Cory Watson attorney Stephen Hunt appointed to Discovery Committee and Law Committee; Cory Watson attorney Elizabeth Chambers appointed to Science/Expert Committee.

*In Re: Fosamax, Products Liability Litigation*, MDL No. 1789; Cory Watson shareholder Annesley H. DeGaris appointed to Plaintiffs' Steering Committee and Co-chair of Science Committee.

*In Re: Trasylol Products Liability Litigation*, MDL No. 1928; Cory Watson shareholder Ernest Cory appointed to Plaintiffs' Steering Committee.

*In Re: Bextra and Celebrex Marketing, Sales Practices and Product Liability Litigation*, MDL No. 1699; Cory Watson shareholder Kristian Rasmussen appointed to Plaintiffs' Steering Committee and Co-chair of the Discovery Committee.

## Environmental Litigation

*In Re: E.I. DuPont de Nemours and Company C-8 Personal Injury Litigation*, MDL No. 2433; Cory Watson Shareholder Jon C. Conlin appointed Co-Lead Counsel and named to Plaintiffs' Executive Committee.

## Class Actions

*Banks v. Nissan*, USDC Northern District of California, 11-CV-02022; Cory Watson shareholder F. Jerome Tapley appointed Co-Lead Class Counsel.

*Rotandi v. Miles*, USDC Northern District of California, 11-CV-02146; Cory Watson shareholder F. Jerome Tapley appointed Co-Lead Class Counsel.

*In Re: Google Inc. Gmail Litigation*, MDL No. 2430; Cory Watson Shareholder F. Jerome Tapley appointed Co-Lead Counsel.

*Keilholtz v. Lennox, et. al.*, USDC Northern District of California, 08-CV-00836; Cory Watson shareholder F. Jerome Tapley appointed Co-Lead Counsel for the Class.

*Craft v. North Seattle Comm. College Foundation*, USDC Middle District of Georgia, 3:07-cv-132-CDL; Cory Watson shareholder F. Jerome Tapley appointed Class Counsel.

*In Re: General Motors Corporation Dex-Cool Products Liability Litigation*, MDL No. 1562; Cory Watson shareholder Ernest Cory and Cory Watson shareholder F. Jerome Tapley appointed to the Plaintiffs' Executive Committee.

*In Re: High Sulfur Content Gasoline Products Liability Litigation*, MDL No. 1632; Cory Watson shareholder Kristian Rasmussen appointed to the Plaintiffs' Steering Committee and Co-Lead Trial Counsel.

*Denney v. Jenkins & Gilchrist, et al.*, USDC Southern District of New York, CV 03-5460; Cory Watson shareholder Ernest Cory appointed Class Counsel.

### **Complex Multi-Party Litigation**

*In Re: Jeddah Air Disaster*, Cory Watson represented the families of 247 passengers who died in Jeddah, Saudi Arabia.

*In Re: BellSouth Corp. ERISA Litigation*, USDC Northern District of Georgia; Cory Watson shareholder Ernest Cory appointed to the Plaintiffs' Executive Committee.

### **Products Liability**

*In Re: Yamaha Motor Corp. Rhino ATV Products Liability Litigation*, MDL No. 2016; Cory Watson shareholder Jason A. Shamblin appointed to the Plaintiffs' Executive Committee.

*In Re: Hydroxycut Marketing and Sales Practices Litigation*, MDL No. 2087; Cory Watson shareholder Annesley H. DeGaris appointed to the Plaintiffs' Steering Committee.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**MIAMI CIVIL DIVISION: SCOLA/OTAZO-REYES  
CASE NO. 1:14-CV-24728-RNS**

KENAI BATISTA, ANDY CHANCE, and  
CRYSTAL QUEBRAL, individually and on  
behalf of those similarly situated,

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.

Defendant.

---

**DECLARATION OF C. RICHARD NEWSOME**

I, C. Richard Newsome, declare as follows:

**Introduction**

1. I am an attorney-at-law of the State of Florida and the senior partner of the Newsome Melton, P.A. law firm ("Newsome Melton"). My practice is limited to complex litigation, including products liability, mass torts, qui tam whistleblower claims, and class actions.

2. I was retained to serve as co-counsel to represent Kenai Batista before this action was filed. Since then, I have worked extensively with my co-counsel Ronald Weil of Weil Quaranta, P.A. ("Weil Quaranta") and F. Jerome Tapley of Cory Watson, P.C. ("Cory Watson") in all aspects of this case, beginning from the pre-suit investigation, through the filing of the lawsuit and discovery, the filing of Plaintiffs' Motion for Class Certification, the settlement discussions including mediation, and up through the filing of Plaintiffs' Motion for Final Approval.

3. In an attempt to obtain a comprehensive, nationwide resolution of legal claims concerning the 2013-2014 Nissan Pathfinder and 2013-2014 Infiniti JX35/QX60 vehicles equipped with the FK-\*k2 CVT transmission at issue in this case, our mediation and settlement

discussions included the firms of Berger and Montague, P.C., of Philadelphia, PA, and Capstone Law, APC, of Los Angeles, CA, who filed similar class action claims in Tennessee and California.

4. For greater detail concerning the work performed by Counsel, and to reduce repetition, I would refer the Court to the Declaration of F. Jerome Tapley. Our firm was intricately involved in all aspects of the pre-suit investigation and litigation work described in the Tapley Declaration. Among other things, our Firm took the lead or was substantially involved in the following specific aspects of the investigation and litigation:

- a. Identifying, hiring, coordinating, and paying for **all experts** in this case. To date, our firm has expended approximately **\$160,000.00** on the experts, and has not been reimbursed for any of these costs;
- b. Utilizing the professional contacts and relationships I have fostered over the course of my career to locate and retain the experts, including:
  - i. Robert G. Parker, Ph. D., who was the perfect fit for this case based on his experience and credentials. Dr. Parker is a full-time professor at the Virginia Tech College of Engineering, and has extensive experience consulting for automobile manufacturers. He was awarded Ford's prestigious "Engineer of the Year Award" for his work performed as an outside consultant. This award is rarely conferred on individuals who are not Ford employees. Dr. Parker had never previously testified in this type of civil litigation; he had only previously testified for manufacturers in international patent disputes. If not for my professional contacts and reputation, Dr. Parker would not have been located, and would not have agreed to serve as the testifying expert for the Plaintiffs in this case. This was a particularly significant contribution as Class Counsel could not locate any other plaintiff-oriented experts with Dr. Parker's level of credentials and technical expertise regarding CVTs.
  - ii. Steven Gaskin, who also served as the damages expert in *Sanchez-Knutson v. Ford Motor Co.*, currently pending before Judge Dimitrouleas. Mr. Gaskin's conjoint analysis was an integral part

of the class certification obtained in that case. His conjoint analysis also survived a Daubert challenge filed by Ford. I have a long professional history with John Uustal, Esq., who is class counsel in *Sanchez-Knutson*, and became acquainted with Mr. Gaskin through that relationship.

- iii. Lee Bowron, ACAS, MAAA, of Kerper Bowron, who I became acquainted with through a mutual friend and colleague. Mr. Bowron is a well-qualified actuary with extensive experience in automotive extended service contracts. Our firm worked with Mr. Bowron to develop the comprehensive report as to the value of the warranty extension to the Class that is being submitted in support of Plaintiffs' Motion for Final Approval. Mr. Bowron rarely testifies in civil litigation, and he would not have been located, and would not have agreed to prepare the Report submitted in this case, if not for my professional contacts and reputation.
- c. Preparing for and conducting the deposition of Richard Madden, Nissan's corporate representative who testified as to design, manufacturing, and testing issues related to the Subject CVTs. The admissions and testimony obtained during Madden's deposition were quoted and cited extensively in Plaintiffs' Motion for Class Certification;
- d. Working with Dr. Parker and Steven Gaskin to develop detailed declarations in support of Plaintiffs' Motion for Class Certification;
- e. Conducting the initial review of approximately half of the more than 75,000 pages of documents produced in this litigation, and as part of that initial review, flagging all important documents for use in the litigation or which needed follow-up actions such as additional discovery requests, motions to compel, or translation;
- f. Preparing for and conducting the Court-ordered technical "meet and confer" call with both our expert, Dr. Parker, and Nissan's counsel and their in-house engineers. The call took place on Friday, April 29, 2016, and was preceded by several weeks' worth of dedicated preparation;

- g. Pre-suit investigation of the defect, including extensive research into consumer complaints of the defect and comprehensive review and analysis of the many complaints on file with the National Highway Traffic Safety Administration (“NHTSA”);
- h. Primary drafting responsibility for the extensive set of initial written discovery served on Nissan North America, Inc. (“NNA”), which comprised 58 separate requests for production and 18 detailed interrogatories, many of which contained several subparts;
- i. Conducting the corporate representative depositions of two separate dealerships which sold and serviced Class Vehicles;
- j. Assisting with all Motions to Compel filed in this action, including by identifying gaps in production, deficient responses, and improper objections, in addition to conducting legal research and drafting arguments in support of the Motions;
- k. Working extensively with Dr. Parker to identify gaps in NNA’s production, including the types of documents which have not been produced and which he would normally expect to see based on his personal experience as an engineer and as a consultant for major automotive manufacturers;
- l. Drafting multiple “meet and confer” letters to NNA regarding deficiencies in production and improper objections;
- m. Conducting and participating in multiple “meet and confer” phone conversations with NNA’s counsel to obtain needed discovery to move the litigation forward;
- n. Review, revision, and legal research for the major pleadings and motions filed in this action;
- o. Assisting with preparing the Class Representatives for their depositions, and attending and participating in the Class Representative depositions;
- p. Working with Class Representatives to preserve, obtain, and produce documents in this action;



- q. Communicating and working with Class Representative Andy Chance during all phases of the litigation;
- r. Attending and participating in all mediations and settlement negotiations;
- s. Fielding many phone calls from prospective class members who saw or heard about the class action litigation; and
- t. Researching and preparing the initial draft of the portions of the Motion for Final Approval relating to the standard for approval and the application of the *Bennett* factors.

5. The hourly rates for our firm's attorneys and paralegals are: \$1,000.00 for C. Richard Newsome, Esq. and \$450.00 for William Ourand, Esq. Our firm does not track legal assistant's time; conservatively, they devoted hundreds of hours to this case. These rates reflect current market rates by private attorneys and paralegals of similar experience, expertise, and reputation for comparable work. Since the inception of this case, my firm has devoted a total of 1352.50 attorney hours to this case which were reasonable and necessary to prosecute the case:

<b>Attorney</b>	<b>Hourly Rate x Hours</b>	<b>Total Fee</b>
C. Richard Newsome, Esq.	\$1,000 x 287.8	\$287,800.00
William C. Ourand, Esq.	\$450 x 1034.7	\$465,615
<b>Total</b>		<b>\$753,415</b>

6. To the best of our abilities, Class Counsel have minimized duplication of services and no unnecessary duplication occurred. Where multiple attorneys participated, joint participation was necessary because of time constraints, the complexity of the issues, or for effective, efficient communication between several firms essential for informed, group decision-making.

7. We participated in this case on a contingency fee basis which involved risk of not prevailing and therefore not being paid for our work. On the other hand, we also understood that the law would compensate us for such risk if and when we prevailed. We could not take such a risk without assurances of adequate compensation for favorable results for the Class. Moreover, while we anticipated the lengthy, intensive, and protracted litigation track which transpired, the

time and resources dedicated to this case prevented Class Counsel from taking and working on other matters.

8. Our firm expended \$226,493.87 in unreimbursed expenses which were reasonable and necessarily for the prosecution of this case. These expenses, which are accurately reflected in our firm's books and records, include the following:

Court Reporter:	\$4,124.89
Consultants/Experts:	\$159,729.50
Research:	\$2,575.38
Postage/Facsimile/Express Delivery:	\$971.37
Investigation:	\$1,850.58
Copying Charges & Printing:	\$4515.70
Travel/Meals/Lodging:	\$21,175.94
Mediation:	\$900.00
Misc.:	\$962.93
Evidence Purchase:	\$26,332.83
Storage:	\$3,354.75
<b>TOTAL</b>	<b>\$ 226,493.87</b>

### **Background**

9. I attended the Florida State University where I received a bachelor's degree in Political Science and Economics in 1986. I then received my Juris Doctor from the University of Florida College of Law in 1989. While at both FSU and the University of Florida, I worked for the Florida House Minority Office.

10. After graduating from law school, I worked as an Assistant United States Attorney for the U.S. Attorney's Office in the Northern and Middle Districts of Florida. During my time with the U.S. Attorney's Office, I prosecuted a variety of cases ranging from white collar fraud to narcotic conspiracies. I was honored to receive the United States Department of Justice Special Achievement Award in 1991.

11. I left the U.S. Attorney's Office in 1993 and went to work for a large product liability defense firm in Orlando, where I represented manufacturers.

12. After defending a manufacturer in a case brought by a family who lost a child, I felt compelled to leave the defense practice, and began representing only families and individuals. Since then, for more than 20 years, my practice has been focused on representing

people who have suffered catastrophic or fatal injuries caused by defective products. I have won numerous large verdicts and settlements for my clients.

13. I have dedicated my time in civil practice to handling complex matters, including products liability cases involving catastrophic injuries and deaths, as well as consumer class actions, mass torts, and qui tam whistleblower claims.

14. While representing Corey Burdick and other individuals severely injured by Takata airbags, I formed the Takata State Court Coalition, which grew to include virtually all plaintiff attorneys who had pending state court Takata airbag injury cases at the time. The Coalition's purpose was to ensure the efficient and effective prosecution of Takata state court cases, and prevent those cases from being indefinitely stayed or otherwise delayed in deference to the federal multi-district litigation ("MDL"). Because of the Coalition's efforts, including my firm's filing of an amicus brief and my personal appearance and argument before a state court Judge in Jacksonville, Florida, the Coalition members were able to obtain discovery and take depositions outside of, and prior to, the same discovery occurring in the MDL.

15. I was honored to receive the Steven J. Sharp Public Service Award in 2015 in recognition of my representation of Corey Burdick. The Steven J. Sharp Public Service Award is presented annually by the American Association of Justice ("AAJ") to a lawyer who represents the plaintiff in a case which tells the story of the American civil justice system, and helps educate state and national policy makers and the public about the importance of consumers' rights.

16. As a result of my extensive experience and success in representing consumers in complex matters, I have been chosen by my peers to serve in several key leadership capacities in prominent professional organizations and bodies, including as:

- a. President of the Florida Justice Association, Florida's statewide trial lawyer's organization, from 2010-2011;
- b. Member of the Board of Governors for the American Association for Justice, from 2007-2008;
- c. Executive Committee Member of the Florida Justice Association, from 2005-2012;
- d. President of the Central Florida Trial Lawyers Association in 2004;
- e. 5<sup>th</sup> District Court of Appeal Judicial Nominating Commission, Member and Chairman, from 1999 through 2002; and

f. President, Orlando Chapter of the Federal Bar Association, 1996.

17. I have also received numerous Honors and Awards in recognition of my work representing consumers. Most recently, I was recognized by *Orlando Magazine* as the 2016 Plaintiffs “Lawyer of the Year” for Orlando Personal Injury Litigation. This award is given to only one lawyer of a particular practice type in a geographic location each year.

18. My other awards and recognitions include:

- a. Member of the Summit Council, an exclusive group of the top civil justice attorneys from across the country, from 2012 to present;
- b. The Best Lawyers in America, from 2003 to present;
- c. Best Lawyers in Orlando, *Orlando Magazine*, from 2004 to present;
- d. AV Rated Attorney by Martindale-Hubbell, from 2004 to present;
- e. Florida’s Legal Elite by *Florida Trends Magazine*, from 2005 to present;
- f. Florida Lawyer’s Action Group, Chairman’s Outstanding Electoral Achievement Award, 1999;
- g. Million Dollar Advocates; and
- h. The National Trial Lawyers Top 100 Trial Lawyers, from 2013 to Present.

19. In addition, my associate William Ourand has expended a significant amount of time and effort on this case during all phases of the litigation, beginning from the pre-suit investigation up through the filing of Plaintiffs’ Motion for Class Certification, and continuing through the filing of Plaintiffs’ Motion for Final Approval.

20. Mr. Ourand graduated *Magnum Cum Laude* and Order of the Coif from the Florida State University College of Law in 2011. While in law school he served for two years on the Law Review’s Editorial Board, first as an Assistant Articles Selection Editor, and later as the Senior Articles Selection Editor. He also served as Professor Dan Markel’s Research Assistant during his second and third years. After graduation, he was invited to speak at the Third District Court of Appeal Bar Induction Ceremony due to having received one of the highest scores on the Florida Bar Exam.

21. Mr. Ourand has dedicated his professional practice to complex civil litigation. He began his career in Jacksonville, working on insurance coverage disputes and bad faith litigation. He then joined our law firm in May 2012. Since joining our firm, he has dedicated his practice to representing consumers in products liability, class action, and qui tam whistleblower cases.

**Conclusion**

22. Both William Ourand and myself have worked with Kenai Batista and Andy Chance in this case. These plaintiffs participated actively through the entirety of the lawsuit, assisting in the preparation of documents including the complaints and declarations, locating documents and compiling information necessary in anticipation of written discovery requests, communicating with myself and co-counsel in as timely fashion as necessary. William Ourand of my office has personal knowledge that Plaintiff Andy Chance regularly and substantially contributed to our settlement discussions with the goal of obtaining fair and reasonable relief for a nationwide class.

23. William Ourand and I believe that the settlement memorialized in the Settlement Agreement and Release confers substantial benefits upon the Settlement Class. We further believe that the Settlement Agreement and Release are fair, reasonable, and adequate, and in the best interests of Plaintiffs and the Settlement Class. I am aware that all Class Counsel share this belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24<sup>th</sup> day of May 2017 in Orlando, Florida.

/s/ C. Richard Newsome  
C. Richard Newsome

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

KENAI BATISTA, ANDY CHANCE,  
GERARDO TORRES, ANGELA  
MATLIN, AND TUNG NGUYEN,  
*individually and on behalf of those similarly  
situated,*

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.,

Defendant.

Class Action Case No. 1:14cv 24728-civ-  
Scola/Otazo-Reyes

**DECLARATION OF ROANALD P.  
WEIL IN SUPPORT OF MOTION FOR  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

I, Ronald P. Weil, declare as follows:

1. I am an attorney-at-law authorized and licensed to practice law in the State of Florida. I am the founding partner of the Weil Quaranta, P.A. ("Weil Quaranta") in Miami, Florida. I make this Declaration in support of the Unopposed Motion for Final Approval of Class Action Settlement. I have personal knowledge of the facts stated below and, if called upon, could and would competently testify thereto.

**Weil Quaranta's Qualifications and Experience**

2. Over the past 40 years my practice has focused on complex litigation, including consumer fraud, violations of the Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), violations of federal and state banking and insurance laws, business torts, and commercial disputes involving mass plaintiff groups and whistleblower mass employment actions.

3. I am a graduate of Oberlin College, class of 1969 with B.A. in History. I am also a graduate of the University of Kansas Law School, class of 1973. Following graduation in 1973, I began my career with Fowler White, Burnett, Hurley and Banick, P.A. specializing in complex litigation matters involving the defense of banking and commercial entities, insurance defense work, and business disputes of all types. When I left that firm in 1983, I was an equity partner. During my law career thereafter I have been partner in several other South Florida law firms: "Weil, Lucio", "Aragon Burlington Weil", and now the firm which I founded 11 years ago. My

**KENAI BATISTA et al. vs.  
NISSAN NORTH AMERICA, INC.**

clients have ranged from homeowner groups bringing consumer fraud actions, to the representation of Dow Chemical in South Florida and the Caribbean in a large variety of commercial disputes in the Federal Courts in Florida and the District Courts of Puerto Rico. In addition to my practice before the Florida District Courts, I have been admitted to practice in the Federal Courts in New York and District Court of Puerto Rico. As well, my practice and that of my law firm has included international law inclusive of the attempted domestication of a \$100 million judgment in favor of farm workers entered by a Nicaraguan court against several chemical manufacturers inclusive of Dow Chemical. Finally, beginning in the early 1990s, my firm and I have been at the forefront representing victims of sexual abuse. Most recently in 2014 our firm obtained a \$12.5 million verdict in Lake County, Florida, on behalf of one such victim. I have appeared as a legal commentator on MSNBC, CNN, and have been featured in Time Magazine and the New York Times for our firm's work. Our firm is listed in the following: The Best Lawyers in America, Super Lawyers, National Association of Distinguished Counsel (Top 1%), Florida Legal Elite, and US News Best Law Firms. In 2006 and again in 2015 our firm was recognized by the National Law Journal Big Money Wins for having obtained one of the top 100 jury awards nationally for each of those years.

4. Mary Olszewska, an attorney at my firm who has been involved in this case since before it was filed, received a Juris Doctor with honors from Florida International University College of Law in 2009. She began working for my firm as a clerk prior to graduating from law school and currently serves as a leader on our firm's trial team, preparing and successfully trying several cases including:

- a. *Randall Hill vs. Patrick Riley*, case no. 08-63878-CA-21, pending in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, before the Honorable William Thomas (resolved after presentation of the case prior to jury verdict Dec. 2010);
- b. *D.F. v. Ian Wilkinson*, case no. 02-23988-CA-10, pending in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, before the Honorable Peter R. Lopez (verdict Nov. 2011);
- c. *C.E. v. Florida Baptist Convention*, case no. 07-001353-CA, pending in the Circuit Court of the 5th Judicial Circuit in and for Lake County, Florida, before the Honorable G.



**KENAI BATISTA et al. vs.  
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Richard Singeltary (liability verdict May 2012; damage verdict Jan. 2014).

She has been honored by Super Lawyers as a 2016 and 2017 Southern California Rising Star and as a Top Women Attorney in Southern California.

**Weil Quaranta's Work, Hours, and Expenses in the Batista Case**

5. Our firm was initially retained to bring this class action by Plaintiff Kenai Batista. We began our investigation of the claim and potential causes of action immediately. We had determined that a substantial number of consumers were similarly affected. An anticipated class action would necessarily require additional resources and staffing to effectively bring and conclude such litigation. We identified other law firms to assist us in bringing suit on behalf of Ms. Batista. We contacted Newsome Melton LLC ("Newsome Melton") with whom we had worked previously and Cory Watson P.C. ("Cory Watson") who we identified as having had recent experience with Defendant Nissan in a consumer class context and reached agreement with them to jointly prosecute Ms. Batista's class claims. We believe each firm brought their own specialized skill and knowledge to the team we had assembled. Our firm worked extensively with both firms in prosecuting and strategizing all aspects of this matter including pre-suit investigation, the filing of the lawsuit and discovery, document review and discovery motion practice, the filing the Plaintiffs' Motion for Class Certification, settlement discussions including the mediations, and the motions for preliminary and final approval of the settlement.

6. To reduce repetition and for greater detail concerning the work performed by Class Counsel including our firm, I refer the Court to the Declaration of F. Jerome Tapley in Support of Motion for Final Approval of Class Action Settlement.

7. The hourly rates for our firm's attorneys are: \$1000.00 for Ronald P. Weil; \$700.00 for John Quaranta; and \$450.00 for Mary Olszewska and Mark Schweikert. Our firm does not track legal assistant's time; conservatively, they devoted hundreds of hours to this case. These rates reflect our current rates and market rates for attorneys of similar experience, expertise, and reputation for comparable work. Since the inception of this case, my firm's attorneys have devoted 805.6 hours to this case which were reasonable and necessary to prosecute this case.

<b>Attorney</b>	<b>Hours</b>	<b>Fee</b>
Ronald P. Weil	184.2 x \$1,000/Hr.	\$184,200.00

KENAI BATISTA et al. vs.  
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John Quaranta <sup>1</sup>	54.1 x \$700/Hr.	\$37,870.00
Mary Olszewska	558 x \$450/Hr.	\$251,100.00
Mark Schweikert <sup>2</sup>	9.3 x \$450/Hr.	\$4,185.00
<b>Total:</b>	<b>805.6 Hours</b>	<b>\$477,355.00</b>

8. To the best of our abilities, Class Counsel have minimized duplication of services and no unnecessary duplication occurred. Where multiple attorneys participated, joint participation was necessary because of time constraints, the complexity of the problems, or for effective, efficient communication between several firms essential for informed, group decision-making.

9. We participated in this case on a contingency fee basis which involved risk of not prevailing and therefore not being paid for our work. On the other hand, we also understood that the law would compensate us for such risk if we prevailed. We could not take such a risk without assurances of adequate compensation for favorable results for the Class. Moreover, while we anticipated the lengthy, intensive, and protracted litigation track which transpired, the time and resources dedicated to this case prevented our firm from taking and working on other matters.

10. Our firm also expended \$7,464.02 in unreimbursed expenses which were reasonable and necessary for the prosecution of this case. These expenses, which are accurately reflected in our firm's books and records, include the following:

Filing Fees	\$550.00
Court Reporters & Processor Fees	\$2,758.80
Travel Expenses	\$2,545.05
Westlaw Legal Research	\$849.56

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<sup>1</sup> John Quaranta is a partner and trial lawyer at Weil Quaranta, P.A. He has been practicing for 26 years since graduating *magna cum laude* from the University of Miami in 1991. Currently, his practice focuses on complex commercial, consumer class-action, and employment litigation.

<sup>2</sup> Mark Schweikert is a trial lawyer, who has been practicing law since 2009. After graduating law school, Mr. Schweikert worked as a litigation associate with Shook, Hardy & Bacon LLP in Miami for approximately three and a half years. He then spent two and a half years clerking for three federal judges in the United States District Court for the Southern District of Florida. Since September 2015, Mr. Schweikert has been an attorney with Weil Quaranta, P.A., where he litigates diverse civil matters on behalf of businesses and individuals alike.

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Printing, Scanning, & Photocopying	\$708.36
Couriers Fees to Courthouse	\$52.25
<b>Total</b>	<b>\$7,464.02</b>

11. Throughout the entire case our firm has worked closely with Plaintiffs Kenai Batista and Andy Chance. These plaintiffs participated actively through the entirety of the lawsuit, assisting in the preparation of documents including the complaints and declarations, locating documents and compiling information necessary in anticipation of written discovery requests, communicating with me and co-counsel in a timely fashion as necessary. Mary Olszewska of my office has personal knowledge that Plaintiff Kenai Batista regularly and substantially contributed to our settlement discussions with the goal of obtaining fair and reasonable relief for a nationwide class.

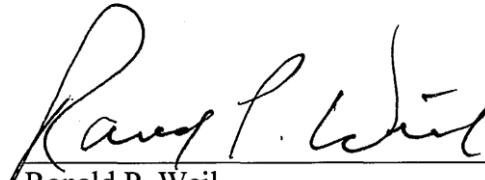
**Conclusion**

12. My associate Ms. Mary Olszewska and I believe that the settlement confers substantial benefits upon the Settlement Class. We further believe that the Settlement Agreement is fair, reasonable and adequate, and in the best interests of Plaintiffs and the Settlement Class. I am aware that all Class Counsel share this belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 24, 2017, in Miami, Florida.

**Dated: May 24, 2017**

Respectfully submitted,



Ronald P. Weil

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

KENAI BATISTA, ANDY CHANCE,  
GERARDO TORRES, ANGELA MATLIN,  
AND TUNG NGUYEN, *individually and on  
behalf of those similarly situated,*

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.,  
Defendant.

Class Action Case No. 1:14cv 24728-civ-  
Scola/Otazo-Reyes

**DECLARATION OF JORDAN L. LURIE  
IN SUPPORT OF MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

I, Jordan L. Lurie, declare as follows:

1. I am Of Counsel at Capstone Law APC, counsel of record for Plaintiffs Gerardo Torres, Jr. and Angela Matlin in the above-captioned matter. I make this Declaration in support of the Unopposed Motion for Final Approval of Class Action Settlement. Unless the context indicates otherwise, I have personal knowledge of the facts stated below and, if called upon, could and would competently testify thereto.

2. On October 25, 2016, this Court entered an order preliminarily approving the settlement of three putative class action cases<sup>1</sup> as related to alleged defects in 2013-2014 Nissan Pathfinder and 2013-2014 Infiniti JX35/QX60 vehicles equipped with the FK-\*k2 CVT transmission. The Order was amended, at the request of the parties, on November 7, 2016 to provide new dates for class notice and a final fairness hearing. Capstone was one of the firms appointed as Class Counsel.

**Procedural History of the Torres Case**

3. In 2013, Capstone Law opened an investigation into complaints relating to the CVT transmission in certain 2013 model year Nissan Vehicles equipped with the XTRONIC CVT

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<sup>1</sup> *Batista et al v. Nissan North America, Inc.*, Case No. 14-cv-24728-RNS, pending in the United States District Court for the Southern District of Florida; *Torres et al. v. Nissan North America, Inc.*, Case No. 2:15-cv-03251-RGK-FFM, pending in the United States District Court for the Central District of California; and *Nguyen et al v. Nissan North America, Inc.*, Case No. 3:16-cv-00624, pending in the United States District Court for the Middle District of Tennessee.

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transmission. As part of its investigation, Capstone reviewed publicly available consumer complaints, technical service bulletins, a service campaign, recall documents, and other information made available by the National Traffic Highway Safety Administration (“NHTSA”). In conducting class outreach, Capstone interviewed and drafted memoranda regarding the repair histories of scores of class members who contacted Capstone about problems with their Nissan CVT transmissions. Capstone responded to over 500 inquiries from class members throughout the pendency of the litigation.

4. On March 30, 2015, Gerardo Torres and Angela Matlin filed a lawsuit against Nissan North America (“Nissan”) in the Los Angeles County Superior Court on behalf of themselves and all current and former owners of 2013-2014 Nissan Pathfinder vehicles. Nissan removed that action to federal court on April 30, 2015, pursuant to the Class Action Fairness Act. (Hereinafter, the *Torres Case*.)

5. The complaint in the *Torres Case* alleges fraudulent omissions in violation of the California Legal Remedies Act (“CLRA”) (Cal. Civ. Code §§ 1750, et seq.), violations of the “fraudulent,” “unfair” and “unlawful” prongs of the Unfair Competition Law (“UCL”) (Cal. Bus. & Prof. Code §§ 17200 et seq.), for breach of implied warranty under both the Song-Beverly Consumer Warranty Act (Cal. Civ. Code §§ 1792 and 1791.1 et seq.), for breach of express warranty under Cal. Com. Code § 2313, and for unjust enrichment.

6. The *Torres* Plaintiffs then conducted discovery to investigate their claims. The *Torres* Plaintiffs served Nissan with a Notice of 30(b)(6) Deposition and Requests for Production of Documents. The discovery sought information about the design of the CVT Transmission and its Control Unit, any software updates that Nissan’s dealers performed, and the failure rate, root cause analysis, and warranty data. In response, Nissan produced over 15,000 pages of discovery.

7. In the Central District of California, there is a 90-day deadline to move for class certification. This deadline is ordinarily waived by the district court judge, as most class actions require discovery that cannot be concluded within 90 days. However, in the *Torres* case, the Court denied the parties’ stipulation to continue the certification deadline, and the *Torres* Plaintiffs filed their Motion for Class Certification on July 29, 2015, even though discovery was wholly incomplete. The Court denied certification on September 1, 2015.

8. The *Torres* Plaintiffs filed a *Petition for Permission to Appeal* the denial of certification in the Ninth Circuit on September 15, 2015. The Ninth Circuit granted Plaintiffs’

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request. Among the issues on appeal was whether the Court abused its discretion by denying Plaintiffs a continuance to file their motion for class certification. Briefing deadlines on the appeal have been vacated following the global settlement.

9. The *Torres* Plaintiffs and their counsel joined in the *Batista et al. v. Nissan North America, Inc.* case in early 2016. Among other work, Capstone researched and drafted the sections of the *Motion for Class Certification* [DE 109] pertaining to breach of warranty claims. My firm also attended and participated in the mediations to obtain a comprehensive, nationwide resolution of the legal claims concerning the 2013-2014 Nissan Pathfinder vehicles equipped with the FK-\*2 CVT transmission. Following multiple mediation sessions with respected mediator Rodney Max, the parties, including the *Torres* Plaintiffs, reached a global settlement with Nissan.

10. Capstone informed and engaged Plaintiffs Gerardo Torres, Jr. and Angela Matlin throughout the mediation process.

#### **Capstone's Qualifications and Experience**

11. Short biographies summarizing my experience and that of other attorneys at Capstone is set forth in the firm resume attached as Exhibit 1. Also in the firm resume are Capstone's accomplishments since its creation in 2012. One of the largest California firms to prosecute aggregate actions on a wholly contingent basis, Capstone, as lead or co-lead counsel, has obtained final approval of sixty class actions valued at over \$100 million dollars. Recognized for its active class action practice and cutting-edge appellate work, Capstone's recent accomplishments have included three of its attorneys being honored as California Lawyer's Attorneys of the Year ("CLAY") in the employment practice area for 2014 for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014).

12. Capstone has an established practice in automotive defect class actions and currently serves as certified class counsel in *Falco v. Nissan N. Am. Inc.*, No. 13-00686-DDP, 2016 WL 1327474 (C.D. Cal. Apr. 5, 2016) (certifying a class of owners/lessees of Nissan vehicles with alleged timing chain defect on contested motion). Capstone has also been appointed Lead Class Counsel in a major settlement against Ford Motor Company. *See Vargas v. Ford Motor Co.*, Case No. 2:12-cv-08388-AB (C.D. Cal. Apr. 25, 2017), ECF No. 133 (preliminary approval granted). Capstone has served as class counsel in class action settlements finally approved by district courts involving automotive defects on many occasions over the past four years. *See, e.g., Klee v. Nissan N. Am., Inc.*, No. 12-08238-AWT, 2015 WL 4538426, at \*1 (C.D. Cal. July 7, 2015)

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(settlement involving allegations that Nissan Leaf's driving range, based on the battery capacity, was lower than was represented by Nissan); *Asghari v. Volkswagen Group of America, Inc.*, Case No. 13-cv-02529-MMM-VBK (C.D. Cal.) (class action settlement providing repairs and reimbursement for oil consumption problem in certain Audi vehicles); *Aarons v. BMW of N. Am., LLC*, No. CV 11-7667 PSG, 2014 WL 4090564 (C.D. Cal. Apr. 29, 2014), objections overruled, No. CV 11-7667 PSG CWX, 2014 WL 4090512 (C.D. Cal. June 20, 2014) (C.D. Cal.) (class action settlement providing up to \$4,100 for repairs and reimbursement of transmission defect in certain BMW vehicles).

13. I, personally, am an attorney licensed to practice before all courts of the State of California and admitted *pro hac vice* to practice in the Southern District of Florida.

**Capstone's Hours and Expenses in the *Torres* and *Batista* Cases**

14. Since the inception of the *Torres* case, my firm has devoted a total of 970.1 attorney hours to this case which were reasonable and necessary. The following is a summary of the work billed to the *Torres* and *Batista* cases by Capstone's attorneys. The below summary reflects entries of tasks performed by attorneys and entered contemporaneously into a computer time-recording program including time spent on drafting pleadings, propounding and reviewing discovery, preparing the class certification motion, and preparing the petition for permission to appeal:

Lawyer	Rate	Hours	Fees
Jordan Lurie <sup>2</sup>	\$695	296.5	\$206,067.50
Robert Friedl <sup>3</sup>	\$695	253.3	\$176,043.50
Tarek Zohdy <sup>4</sup>	\$495	165.8	\$82,071.00
Katherine Kehr <sup>5</sup>	\$570	114.5	\$65,265.00

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<sup>2</sup> For additional information about Jordan Lurie's experience and qualifications, please see the attached Exhibit 1, pp. 5-6.

<sup>3</sup> For additional information about Robert Friedl's experience and qualifications, please see the attached Exhibit 1, p. 7.

<sup>4</sup> For additional information about Tarek Zohdy's experience and qualifications, please see the attached Exhibit 1, p. 12.

<sup>5</sup> For additional information about Katherine Kehr's experience and qualifications, please see the



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Cody Padgett <sup>6</sup>	\$370	140.0	\$51,800.00
<b>Total</b>		<b>970.1</b>	<b>\$581,247.00</b>

15. Our firm also expended \$12,668.85 in unreimbursed expenses which were reasonable and necessary. These are costs and charges incurred that would ordinarily be billed to a paying client and are not included in the firm's overhead.

<b>Cost &amp; Expense Categories</b>	<b>Amount</b>
Copying, Printing, & Scanning	\$93.50
Court Fees, Filings & Service of Process	\$2,353.58
Legal Research Services (PACER, Lexis, etc.)	\$331.20
Postage & Mailings	\$3,625.30
Telephone (Long distance, conference calls)	\$5.72
Travel-Related Costs and Expenses	\$6,259.55
<b>Total</b>	<b>\$12,668.85</b>

16. The hourly rates for Capstone's attorneys are within the range of comparable attorneys in Capstone's geographic market. In the past several years, Capstone's hourly rates have been judicially approved by numerous California courts for automotive defect cases, including the specific attorneys here. *See, e.g., MacDonald v. Ford Motor Co.*, No. 13-CV-02988-JST, 2016 WL 3055643, at \*9 (N.D. Cal. May 31, 2016) (finding rates of \$595-\$695 for senior attorneys, including Lurie and Friedl, and \$370-\$495 for non-senior attorneys, including Zohdy and Padgett, to be reasonable in contested catalyst fee motion); *Klee v. Nissan N. Am., Inc.*, No. 12-08238-AWT, 2015 WL 4538426, at \*13 (C.D. Cal. July 7, 2015) (approving rates of \$370 to \$695 for attorneys at Capstone in an automotive defect case, including for Lurie, Zohdy and Padgett); *Aarons v. BMW of North America*, No. 11-7667-PSG, 2014 U.S. Dist. LEXIS 118442, \*40-41 (C.D. Cal. Apr. 29, 2014) (also approving rates of Capstone).

17. The hourly rates for Capstone attorneys have been generally approved by numerous federal district courts and state courts over the past several years. *See, e.g., Emmons v. Quest*

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attached Exhibit 1, p. 7.

<sup>6</sup> For additional information about Cody Padgett's experience and qualifications, please see the attached Exhibit 1, p. 11.

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*Diagnostics Clinical Laboratories, Inc.*, No. 1:13-cv-00474-DAD-BAM (E.D. Cal. Feb. 27, 2017) (approving Capstone's rates for Associates (\$370-\$495) and Senior Counsel/Partners (\$545 to \$695), including for Kehr); *Newberry v. Cotti Foods California, Inc.*, No. RIC1504918 (Riverside County Superior Court Feb. 9, 2017) (approving Capstone's rates for Associates (\$245-\$470) and Senior Counsel/Partners (\$570 to \$695)); *Rickerd v. OneWest Resources LLC*, No. BC562538 (Los Angeles County Superior Court Jan. 19, 2017) (approving Capstone's rates for Associates (\$245-\$470) and Senior Counsel/Partners (\$595 to \$695)); *Carter v. GMRI, Inc.*, No. RIC1506085 (Riverside County Superior Court Jan. 10, 2017) (approving Capstone's rates for Associates (\$345-\$470) and Senior Counsel/Partners (\$570 to \$695)); *Nunnally v. Dave & Busters, Inc.*, No. 8:16-cv-00855-DOC-KES (C.D. Cal. Jan. 9, 2017) (approving Capstone's rates for Associates (\$395-\$495) and Senior Counsel/Partners (\$545 to \$695)); *Ford v. CEC Entertainment Inc.*, No. 3:14-cv-00677-JLS-JLB (S.D. Cal. Dec. 14, 2015) (approving Capstone's rates for Associates (\$370-\$495) and Senior Counsel/Partners (\$595 to \$695)); *Gutierrez v. Shiekh LLC*, Case No. CIV RS1206525 (San Bernardino County Superior Court Dec. 14, 2015) (approving Capstone's rates for Associates (\$370-\$470) and Senior Counsel/Partners (\$545-\$695)); *Moore v. PetSmart, Inc.*, No. 5:12-CV-03577-EJD, 2015 WL 5439000, at \*12 (N.D. Cal. Aug. 4, 2015) (approving rates of \$595-\$695 for partners, \$520-\$670 for senior counsel, and \$395-\$470 for associates); *Quintana v. Claire's Stores*, No. 13-00368-PSG (N.D. Cal. Dec. 1, 2015) (approving Capstone's rates for Senior Counsel/Partners (\$545 to \$695) and Associates (\$370 to \$470); "Plaintiffs have also provided sufficient evidence to establish that the award is reasonable in light of their lodestar cross-check, which the Court finds to be the product of reasonable billing rates and hours billed to the litigation"); *Macias v. Recreational Equipment, Inc.*, No. 5:14-cv-00300-PSG (N.D. Cal. Oct. 6, 2015) (approving Capstone's rates for Associates (\$420-\$470) and Senior Counsel/Partners (\$570-\$695)); *Reyes v. Jo-Ann Stores, Inc.*, No. 30-2012-00560070-CU-OE-CXC (Orange County Super. Ct. April 2, 2015) (approving Capstone's hourly rates for Associates and Senior Counsel/Partners); *King v. Burke Williams, Inc.*, No. BC467906 (L.A. County Super. Ct. Mar. 4, 2015) ("the Court finds that the rates and hours billed to the litigation are fair and reasonable"); *Morales v. Daniel's Jewelers*, Case No. BC513353 (L.A. County Super. Ct. February 4, 2015) ("the award [of attorneys' fees is] reasonable in light of [Capstone's] actual lodestar, which the court finds to be based on reasonable market rates . . .").

18. Plaintiffs' Counsel's hourly rates are also consistent with the judicially-approved

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hourly rates of comparable plaintiffs'-side attorneys based in Southern California, such as Baron & Budd (rates ranging from \$775 for the requested partner to \$390-\$630 for non-partners), Wasserman Comden Casselman & Essensten (rates ranging from \$670-750 for partners and \$300-500 for associates), and Blood Hurst & Reardon (\$510-695 for partners). See also, *Magsafe Apple Power Adapter Litig.*, No. 09-1911-EJD, 2015 U.S. Dist. LEXIS 11353, at \*14 (N.D. Cal. Jan. 30, 2015) (finding reasonable rates for attorneys ranging from \$560 to \$800 for partners and \$285 to \$510 for associates); *Rose v. Bank of Am. Corp.*, No. 5:11-CV-02390-EJD, 2014 U.S. Dist. LEXIS 121641, at \*12 (N.D. Cal. Aug. 29, 2014) (finding reasonable partners rates between \$350 - \$775 per hour; associates at \$325 - \$525 per hour; and paralegal rates between \$100 - \$305 per hour); *Kim v. Space Pencil, Inc.*, No. C 11-03796 LB, 2012 WL 5948951, at \*8 (N.D. Cal. Nov. 28, 2012) (finding reasonable partner rates of \$725 - \$797 per hour; associates and counsel at \$350 - \$580 per hour); *Faigman v. AT&T Mobility LLC*, 2011 U.S. Dist. LEXIS 15825, \* 2 (N.D. Cal. Feb. 15, 2011) (approving hourly rates of \$650 an hour for partner services and \$500 an hour for associate attorney services); *Luquetta v. Regents of Cal.*, CGC-05-443007 (San Francisco Super. Ct.) (approving 2012 partner rates between \$550 and \$850 per hour); *Holloway v. Best Buy Co.*, C-05-5056-PJH (MEJ) (N.D. Cal.) (approving 2011 partner rates of \$825 to \$700 an hour, associate rates between \$355 and \$405 per hour); *Kearney v. Hyundai Motor Am.*, 2013 U.S. Dist. LEXIS 91636, \*24 (C.D. Cal. June 28, 2013) (approving hourly rates of \$650-\$800 for senior attorneys in consumer class action); *Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160, 1172 (C.D. Cal. 2010) (approving hourly rates between \$445 and \$675); *Barrera v. Gamestop Corp.* (C.D. Cal. Nov. 29, 2010, No. CV 09-1399) (\$700 an hour for partners; \$475 an hour for associates); *Anderson v. Nextel Retail Stores, LLC* (C.D. Cal. June 20, 2010, No. CV 07-4480) (\$655 to \$750 an hour for partners; \$300 to \$515 an hour for associates); *Richard v. Ameri-Force Mgmt. Servs., Inc.* (San Diego Super. Ct., August 27, 2010, No. 37-2008-00096019) (\$695 to \$750 an hour for partners; \$495 an hour for associates).

19. Capstone regularly litigates against prominent defense firms in Los Angeles and San Francisco, including Sheppard, Mullin, Richter & Hampton (\$490 - \$875 for partners and senior counsel; \$275 to \$535 an hour for associates), Cooley (\$660 - \$ 990 for partners, \$525 average rate for associates), and Morrison & Forester (\$595 - \$1195 for partners, \$525 average rate for associates).

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**Conclusion**

20. Based on my experience and my evaluation of the strengths and weaknesses of this case, I believe that the proposed Settlement, which offers an extended warranty to all Class Members, provides strong relief to the Class and is fair, reasonable and adequate. The proposed Settlement should be finally approved.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 24, 2017 in Los Angeles, California.

Respectfully submitted,

By: 

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Los Angeles, CA 90067  
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## FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With thirty-two seasoned attorneys, many formerly with prominent class action or defense firms, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining tens of millions of dollars in recovery for employees and consumers. The firm's accomplishments include:

- In February, 2015, three Capstone attorneys, Glenn A. Danas, Raul Perez, and Ryan H. Wu, were honored with the prestigious California Lawyer of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.
- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for several precedential decisions in this area. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone attorneys successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act. And Capstone is currently lead counsel in *Williams v. Superior Court (Marshalls of Calif.)*, No. S227228, on the scope of discovery for PAGA claims pending before the California Supreme Court.
- In April 2017, Capstone obtained another landmark decision, *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017). In *McGill*, the California Supreme Court held that the right to seek public injunctive relief under the state's consumer protection laws cannot be waived by agreement and that consumers need not satisfy class certification requirements to enjoin unfair business practices on behalf of the public.
- Capstone serves as class counsel in a number of significant wage and hour settlements, including \$12 million on behalf of a nationwide class of nonexempt tellers and personal bankers in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$6 million on behalf of non-exempt hourly workers in *Sheldon v. AHMC Monterey Park Hospital LP*, Case No. BC440282 (L.A. Super. Ct.).
- Capstone is class counsel in a number of significant consumer actions, including *Aarons v. BMW of North America*, Case No. 11-7667 (C.D. Cal.), *Asghari v. Volkswagen Group of America*, No. 13-02529 (C.D. Cal.), *Klee v. Nissan North America*, Case No. 12-08238 (C.D. Cal.), *MacDonald v. Ford Motor Co.*, 142 F. Supp. 3d 884 (N.D. Cal. 2015) (finding action was catalyst for nationwide recall), *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.), *Fernandez v. Home Depot U.S.A.*, No. 13-648 (C.D. Cal.), and *Ford v. CEC Entertainment*, No. 14-677 (S.D. Cal.), that have conferred benefits to class members valued in the tens of millions. These benefits include cash payments for statutory violations, complementary automotive repairs, costs reimbursement, parts replacement and extension of express warranties.



## SUMMARY OF SIGNIFICANT SETTLEMENTS

In the past four years, Capstone has settled over 60 high-stakes class actions totaling over \$100 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of California.

The following is a representative sample of Capstone's settlements:

- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of \$12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Moore v. PetSmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of \$10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 nonexempt employees;
- *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- *Felix v. Auto Club of Southern Calif.*, Case No. 07CC01421 (Orange Cty. Super. Ct.): \$3.5 million settlement fund on behalf of over 2,000 insurance sales persons for wage and hour claims after taking this certified class action to trial;
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over \$10 million.





## PROFESSIONAL BIOGRAPHIES

### Partners

**Rebecca Labat.** Rebecca Labat is the managing partner of Capstone Law APC. She supervises the pre-litigation phase for all of the firm's cases, including investigation, analysis, and client consultation. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 35 cases, delivering tens millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

**Raul Perez.** A partner at Capstone, Raul Perez has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in tens of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.); *Tameifuna v. Sunrise Senior Living Managements, Inc.*, Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4<sup>th</sup> 348 (2014), Mr. Perez, along with Mr. Danas and Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.

**Matthew Theriault.** Mr. Theriault is a partner at Capstone. An expert in wage-and-hour law and litigation strategy, Mr. Theriault currently manages and assists Capstone's class action certification efforts and trials.





Recently, Mr. Theriault was lead trial counsel in a rarely-seen class action trial, representing a certified class of insurance salespersons alleging unpaid wages and break premiums in *Felix v. Auto Club of Southern Calif.*, Case No. 07CC01421 (Orange Cty. Super. Ct.). The parties ultimately reached a multi-million dollar settlement in the middle of trial.

Over the course of his career, he has successfully certified numerous employee classes for claims involving misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. Cases where Mr. Theriault was certified as class counsel include *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.), *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.), *In re: Taco Bell Wage And Hour*, 2013 U.S. Dist. LEXIS 380 (N.D. Cal.), *In Re: Autozone, Inc., Wage and Hour Employment Practices Litigation*, Case No.: 3:10-md-02159-CRB (E.D. Cal.), *Mansfield v. Brackenhoff Mgmt. Group, Inc.*, No. BC356188 (L.A. Super. Ct.), and *Blair v. Jo-Ann Stores, Inc.*, Case No. BC394795 (L.A. Super. Ct.).

Mr. Theriault graduated from the Western New England School of Law in Springfield, Massachusetts, and received his undergraduate degree with honors from the University of Connecticut. After graduation, Mr. Theriault practiced law in Connecticut starting in 2001. He litigated primarily consumer actions involving allegations of auto dealership fraud, loan financing, and unlawful debt collection practices. After moving to California, Mr. Theriault joined a large plaintiffs firm, where he litigated wage and hour class actions and was eventually made partner.

**Glenn A. Danas.** A partner at Capstone, Glenn A. Danas heads the complex motion and appeals practice group. A leading authority on arbitration law and PAGA actions, Mr. Danas was recently honored with the CLAY award for his work as lead counsel in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014). Mr. Danas briefed and argued this closely-watched case before the California Supreme Court, which resulted in a landmark decision that preserved employees' right to pursue PAGA actions notwithstanding a waiver in an arbitration agreement. Mr. Danas was also recognized by The Daily Journal as one of California's Top 20 Lawyers Under 40 for 2013.

Mr. Danas has argued over twenty appeals in the California Court of Appeal, the California Supreme Court, and the Ninth Circuit Court of Appeals, and has served as lead appellate counsel in many more. While at Capstone, Mr. Danas argued before the California Supreme Court in *Iskanian*, *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), and *Williams v. Superior Court*, No. 227228 (2017). He also argued in the Ninth Circuit in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), *Chavarria v. Ralphs Grocery Co.*, 733 F.3d 916 (2013), which held that arbitration agreements may not be enforced if found unconscionable under general state contract law, and *Allen v. Bedolla*, 787 F.3d 1218 (9th Cir. 2015), which made law on judicial scrutiny of class action settlements. Prior to joining Capstone, Mr. Danas successfully briefed and argued the precedent-setting appeal in *Brown v. Ralph's Grocery Co.*, 197 Cal. App. 4th 489 (2011), regarding the unenforceability of PAGA waivers. Mr. Danas also successfully defeated an appeal of a motion to remand under the CAFA "local controversy exception" in *Coleman v. Estes Express Lines, Inc.*, 631 F.3d 1010 (9th Cir. 2011), establishing a new standard on when the circuit court may grant review in a discretionary appeal under CAFA.

Mr. Danas graduated from Emory University School of Law in 2001 with honors and authored *The Interstate Class Action Jurisdiction Act of 1999: Another Congressional Attempt to Federalize State Law*, 49 EMORY L.J. 1305 (2000), which was selected by the ABA as one of the top three student-written law journal articles in its annual nationwide competition. He received his undergraduate degree in Industrial and Labor Relations from Cornell University. After law school, he clerked for the Honorable U.W. Clemon, Chief U.S. District Judge



for the Northern District of Alabama and began his career at an international law firm in New York City, where he primarily focused on antitrust and securities litigation.

**Melissa Grant.** Melissa Grant is a partner at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions. The author of numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on four certified class actions currently on track for trial, representing over 140,000 California employees in pursuing their wage and hour claims. She is also at the forefront in developing the law on PAGA, including administrative exhaustion, the scope of discovery, and PAGA trials. In *Williams v. Veolia Transp. Svcs.*, Case No. 08-02582 (C.D. Cal.), Ms. Grant's tenacious prosecution led to a settlement with civil penalty payment of \$230,000, one of the largest on record for a PAGA enforcement action.

Prior to joining Capstone, Ms. Grant worked at the Securities and Exchange Commission as a staff attorney in the Enforcement Division, investigating ongoing violations of federal securities regulations and statutes and for Quinn Emanuel Urquhart & Sullivan, LLP, where she was an associate on the trial team that prosecuted the *Mattel v. Bratz* case. Ms. Grant began her legal career as a law clerk to the Honorable Harry Pregerson, Justice of the Ninth Circuit Court of Appeals before joining Sidley & Austin as an associate. She graduated from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review, and graduated *summa cum laude* and first in her class. Ms. Grant earned her undergraduate degree from Cornell University, where she received the JFK Public Service Award and the Outstanding Senior Award. Her published articles include: *Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review*, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: *Early Decisions on Commencement and Removal of Actions* (2006).

### **Of Counsel**

**Jordan Lurie.** A renowned class action litigator, Jordan Lurie heads the automotive defect litigation practice group at Capstone, prosecuting cases involving violations of state and federal consumer protection laws, the Fair Credit Reporting Act, federal and state privacy laws, and federal securities law. Mr. Lurie has prosecuted class actions against major car manufacturers, including Ford, Nissan, Toyota, VW, Fiat Chrysler and GM, alleging failures to disclose material design defects in their cars.

Over his distinguished career, Mr. Lurie also has obtained settlements in excess of \$100 million in actions where he was lead or co-lead counsel. Notable cases where Jordan served as lead counsel include: *In re: Apria Healthcare Group Secs. Litig.*, where Jordan settled on behalf of investors for \$42 million in a securities fraud class action; *Morganstein v. Aura Systems*, where he settled claims for \$18 million in a securities fraud class action; *In re Quintus Secs. Litig.*, a securities fraud class action which settled for \$10.1 million; and *In re Southern Pacific Funding Corp., Sec. Litig.*, Case No. Civ. 98-1239-MA, (D. Or.), where he settled a class action for \$19.5 million. Mr. Lurie has been selected as one of Southern California's "Super Lawyers" every year from 2012 through 2016.

Prior to joining Capstone, Mr. Lurie spent most his career at a national plaintiffs' law firm specializing in corporate securities and consumer class actions, where he was the managing partner of the firm's Los Angeles office. Mr. Lurie graduated from the University of Southern California Gould School of Law in 1987, where he was Notes Editor of the University of Southern California Law Review. He received his undergraduate degree with honors from Yale University. When not litigating, Mr. Lurie is an active educator and community leader. Jordan participated in the first Wexner Heritage Foundation leadership program in Los



Angeles and holds leadership and executive positions in various organizations in the Los Angeles community. He has also been the featured speaker at California MCLE seminars regarding securities fraud and class actions, and has authored several publications for the California Continuing Education of the Bar.

### **Senior Counsel**

**Jennifer Bagosy.** Jennifer Bagosy is a senior counsel with Capstone Law, specializing in employment and consumer class action litigation, with an emphasis on trial preparation. She began her career as a litigation associate with Howrey LLP, first in Washington, D.C., and then in Irvine, California. At Howrey, she participated in two trials and two appeals in *Fifth Third Bank v. United States*, a breach of contract case arising from the S&L crisis of the 1980s, winning and upholding on appeal a \$76.5 million verdict for the client. She also participated in trial in *Imageexpo v. Microsoft*, a patent infringement case, which resulted in a \$62 million verdict for the client. Ms. Bagosy joined the firm of Morgan, Lewis & Bockius in 2011, where she specialized in securities litigation, D&O liability litigation, bank-failure related litigation, and professional liability. Jennifer graduated from Georgetown University Law Center in 2002. She received her undergraduate degree in Political Science from Bradley University, where she graduated summa cum laude.

Ms. Bagosy is admitted to practice law in California and before the United States District Court for the Eastern, Central, and Southern Districts of California, as well as the Ninth Circuit Court of Appeals, the Federal Circuit Court of Appeals, and the United States Supreme Court. She is actively involved in the Orange County Bar Association, where she is a member of the Professionalism & Ethics Committee.

**Liana Carter.** Liana Carter is a senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included successfully defeating a challenge to overturn the denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Along with Mr. Danas, Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, as well as the petition for review and briefing on the merits in *Williams v. Superior Court*, No. S227228. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

**Robert Drexler.** Robert Drexler is a senior counsel with Capstone Law where he leads one of the firm's litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California's "Super Lawyers" every year from 2009 through 2015.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law



Review and authored Defective Prosthetic Devices: Strict Tort Liability for the Hospital? 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at Ohio State University where he graduated *cum laude*. Mr. Drexler is a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC's Forum Magazine and The Daily Journal.

**Robert Friedl**. Robert Friedl is a senior counsel at Capstone, where he devotes most of his time to the briefing and litigation strategy of consumer protection cases. Mr. Friedl has over 20 years of experience representing plaintiffs and defendants in consumer class actions, insurance coverage and defense, employment law, and personal injury. His lengthy service as an appellate attorney has yielded several published cases, including successful outcomes in *Goldstein v. Ralphs*, 122 Cal. App. 4th 229 (2004), *Morgan v. AT&T*, 177 Cal. App. 4th 1235 (2009), and *Hecimovich v. Encinal School Parent Teacher Organization*, 203 Cal. App. 4th 450 (2012). At Capstone, Mr. Friedl was responsible for the appellate win in *Grant v. Unifund CCR, LLC*, 577 Fed. Appx. 693 (9th Cir. 2014).

Prior to joining Capstone, Mr. Friedl was a partner at civil litigation boutique, where he handled the firm's most complex briefing. He is a graduate of the University of Connecticut, and received his law degree from Southwestern School of Law, where he earned an American Jurisprudence Book Award.

**Stan Karas**. Stan Karas is a senior counsel at Capstone Law, where he focuses on many of the firm's most complex and high profile matters. He works on every stage of these cases from pleading challenges to class certification proceedings to trial and appeal. Mr. Karas is currently prosecuting four certified class actions. Mr. Karas started his legal career at Paul Hastings Janofsky and Walker, where he handled complex commercial and real estate litigation. Subsequently, he joined Quinn Emanuel Urquhart & Sullivan, where he specialized in class action and intellectual property litigation. Among other successes, Mr. Karas obtained a \$3 million jury verdict for a client, along with a finding that the defendant was liable for punitive damages. In another trial, the court granted non-suit in favor of his client after he delivered the opening argument. Mr. Karas has also obtained multi-million dollar settlements for his clients, including settlements that fully compensated his client for all claimed losses.

Mr. Karas is a graduate of Stanford University, where he received a degree in History and Literature and was elected to Phi Beta Kappa. He graduated from Boalt Hall School of Law at UC Berkeley. In law school, Mr. Karas served as Articles Editor of the California Law Review and Notes and Comments Editor of the Berkeley Technology Law Journal. Mr. Karas has published on class action and privacy law issues including Privacy, Identity, Databases, 52 Am. U. L. Rev. 393 (2002) and The Role of Fluid Recovery in Consumer Protection Litigation, 90 Cal. L. Rev. 959 (2002). He is a member of the California Employment Lawyers Association (CELA), the Consumer Attorneys Association of Los Angeles (CAALA) and the National Employment Lawyers Association (NELA).

**Katherine Kehr**. A senior counsel at Capstone, Katherine Kehr prosecutes aggregate actions on behalf of California workers, handling all aspects of wage and hour litigation. While at Capstone, Ms. Kehr developed expertise on issues relating to arbitration and PAGA issues. At Capstone, Ms. Kehr was the primary attorney on *Brown v. Super. Ct. (Morgan Tire)*, 216 Cal. App. 4th 1302 (2013) (superseded by grant of review), as well as the primary drafter of the intermediate court briefing in *Iskanian*. Recently, Ms. Kehr was one of the primary drafters of a contested motion for class certification, by which Capstone successfully certified a class and was appointed class counsel in *Romo v. GMRI, Inc.*, Case No. 12-cv-00715-JLQ-SP (C.D. Cal.).



Ms. Kehr graduated from the University of Southern California Gould School Of Law in 2002, where she was a member of the Moot Court Honors Program. After law school, she clerked for the Honorable Richard D. Savell of the Alaska Superior Court and the Honorable Anthony J. Mohr of the Los Angeles Superior Court. Ms. Kehr received her undergraduate degree in French literature *cum laude* from Bryn Mawr College. She received her training as an associate at Selman Breitman LLP, where she handled all aspects of pre-trial litigation, in both state and federal court.

**Bevin Allen Pike.** Bevin Allen Pike is a senior counsel with Capstone Law where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

**Andrew Sokolowski.** Mr. Sokolowski is a senior counsel with Capstone Law where he focuses on assisting litigation teams with positioning the firm's high-value cases for trial. He concentrates his practice on wage-and-hour and consumer protection class actions and has successfully litigated numerous class actions resulting in millions of dollars in recovery for class members. Mr. Sokolowski also has first-chair trial experience in state and federal court. Mr. Sokolowski began his career in 2003 as a litigation associate at the international law firm Orrick, Herrington & Sutcliffe LLP. He later joined the plaintiffs' bar, pursuing consumer protection and securities fraud class actions as an associate at Milberg LLP.

Mr. Sokolowski graduated from Loyola Law School, Los Angeles, cum laude and Order of the Coif in 2003, and was ranked in the top 5% of his class. He received his undergraduate degree in History from UCLA in 1997. Following college, Mr. Sokolowski served in the United States Army for three years as an infantryman before attending law school. He served on the Board of Governors for the Association of Business Trial Lawyers—Los Angeles Chapter from 2009 through 2013, and edited the chapter's publication, The ABTL Report. Mr. Sokolowski is also an active member of the Consumer Attorneys Association of Los Angeles (CAALA) and the Consumer Attorneys of California (CAOC). He has authored several articles, including: Chicken Little and the Future of Class Actions, CAALA Advocate (October 2013); The Anti-Injunction Act Takes on Rule 23, ABTL Report—Los Angeles (Summer 2011); and The Overreaction to the Kelo Decision, Los Angeles Lawyer (January 2006). As a member of the Central District of California Pro Bono Civil Rights Panel, which assists indigent plaintiffs with prosecuting civil rights claims, Mr. Sokolowski received the Public Counsel Pro Bono Achievement Award in 2012 for his work as the sole trial attorney in one of Panel's civil rights cases. Mr. Sokolowski has been selected as one of Southern California's "Super Lawyers – Rising Stars" in 2013, 2014, and 2015.

**Ryan H. Wu.** Ryan H. Wu is a senior counsel at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including opposing defendants' efforts to decertify or overturn certified class actions, the scope and operation of PAGA, contested attorneys' fees motions, and





responding to objectors. Mr. Wu authored the appellate briefs in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. Mr. Wu is also responsible for the merits briefing in the landmark *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), which protected consumers' right to pursue public injunctive relief, and *Williams v. Superior Court*, No. 227228, on the scope of discovery for PAGA actions. In February 2015, Mr. Wu, along with Mr. Danas and Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He began his career litigating international commercial disputes and commercial actions governed by the Uniform Commercial Code. Mr. Wu is co-author of "*Iskanian v. CLS Transportation: Employees' Perspective*" published in the *California Labor & Employment Bar Review*.

### **Associates**

**Arnab Banerjee.** Arnab Banerjee is an associate with Capstone, where he litigates employment and consumer class actions. Mr. Banerjee's practice focuses primarily on wage and hour class action litigation where he has worked on more than 50 class action cases on behalf of employees for the failure to pay overtime and minimum wages, the failure to provide meal and rest breaks, and helping to obtain millions of dollars in recovery for employees. Admitted to the Bar in 2007, Mr. Banerjee began his career and received his training as an associate at Latham & Watkins LLP, where he handled all aspects of pre-trial litigation, in both state and federal court in a wide variety of business litigation matters ranging from white collar defense to environmental litigation. Mr. Banerjee graduated from the University of Southern California Gould School Of Law, where he was an editor on the Interdisciplinary Law Journal, and received his undergraduate degrees in Political Science and Sociology, with a minor in Humanities and Law from the University of California, Irvine where he graduated *cum laude* and Phi Beta Kappa.

**Brandon Brouillette.** Brandon Brouillette is an associate with Capstone Law, where his practice focuses on representing employees and consumers in complex litigation, primarily wage-and-hour class actions and PAGA representative actions. His entire legal career has been devoted to representing individual and class representative plaintiffs against large corporate entities. Prior to joining Capstone, Mr. Brouillette served as an associate at Boucher LLP where he managed the firm's wage-and-hour class actions. He earned his Juris Doctor from Loyola Law School, Los Angeles, where he spent a summer interning for the legal clearance and corporate legal departments at Warner Bros. He received his undergraduate degree from the University of Southern California and is admitted to practice in California and before the United States District Court for the Northern and Central Districts of California. In 2016, Mr. Brouillette was selected as one of Super Lawyers' "Rising Stars" in Southern California.

**Anthony Castillo.** Anthony Castillo is an associate with Capstone Law. His practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. Prior to joining Capstone, he was an associate at a California bankruptcy practice, where he represented individual and business debtors in liquidations and re-organizations as well as various debt and foreclosure defense-related issues. Mr. Castillo graduated from Loyola Law School, Los Angeles in 2009, where he volunteered with the Disability Rights Legal Center. He



attended Stanford University for his undergraduate degree, majoring in Political Science and minoring in History. Anthony is admitted to practice law in California and Washington and before the United States District Court for the Central and Southern Districts of California.

**Ruhandy Glezakos.** Ruhandy Glezakos is an associate with Capstone Law. He works on behalf of employees, focusing primarily on wage-and-hour class action litigation for failure to pay overtime and minimum wages, failure to provide meal and rest breaks, and other Fair Labor Standards Act and California Labor Code violations. Mr. Glezakos advocates passionately for those in need and has extensive experience working in public interest, particularly for low-wage workers and undocumented communities. Ruhandy graduated from UCLA School of Law. During law school, he served as a judicial extern for the Honorable Harry Pregerson, Ninth Circuit Court of Appeals. He received his undergraduate degree from the University of California, Los Angeles where he graduated cum laude.

**Jamie Greene.** Jamie Greene is an associate with Capstone where she evaluates potential new cases, develops new claims, and manages client relations. Well-versed in wage and hour law and federal and state consumer protection statutes, Ms. Greene supervises the pre-litigation phase for all cases, including investigation, analysis, and client consultation. Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury, construction defect, consumer protection, and privacy law. She is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California. She is an active member of the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills, Los Angeles County, and Santa Monica Bar Associations.

**Robin Hall.** Robin Hall is an associate with Capstone Law, where she heads the firm's research department. Ms. Hall assists in pre-litigation investigation of employment and consumer statutory claims, and handles complex research projects. A founding editor of the Impact Litigation Journal (ILJ), Ms. Hall has authored numerous articles on emerging legal issues published on ILJ. Ms. Hall began her career and received her training as an associate at Baker & Hostetler LLP, where she represented Fortune 500 companies in labor and employment litigation, including class actions. She attended Indiana University's Maurer School of Law, where she graduated *cum laude* in 2007. During law school, Ms. Hall served as Editor-in-Chief of the Indiana Journal of Global Legal Studies and Director of the Inmate Legal Assistance Clinic. She received her undergraduate degree from the University of Missouri and is admitted to practice law in California.

**Jonathan Lee.** An associate with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California. Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

**Suzy E. Lee.** Suzy Lee, an associate with Capstone, litigates complex matters with a focus on wage-and-hour class actions. Ms. Lee has successfully litigated wage and hour class actions and single plaintiff cases in other practice areas, including consumer fraud, commercial litigation, personal injury, and employment discrimination. Prior to joining Capstone, Ms. Lee was an associate at several prominent plaintiff firms, where she litigated complex wage and hour and consumer class actions in state and federal courts. Ms. Lee also has experience defending businesses in cases involving contract disputes and other business litigation matters.





Ms. Lee graduated from the Indiana University Maurer School of Law, where she served as the President of the Asian Pacific American Association. She received her undergraduate degree from the University of California, Irvine, where she graduated *cum laude*. Ms. Lee is proficient in Korean.

**Trisha Monesi.** Trisha Monesi is an associate with Capstone Law. Her practice focuses on client consultation, claim identification, investigation, analysis, and development of new automotive defect class actions and other consumer class actions. She graduated from Loyola Law School, Los Angeles in 2014, where she served as an editor of the Loyola of Los Angeles Entertainment Law Review and was a certified law clerk at the Center for Juvenile Law and Policy. She earned her undergraduate degree from Boston University in 2011, where she majored in Political Science and International Relations. She is an active member of the Women Lawyers Association of Los Angeles, and the Los Angeles County and Beverly Hills Bar Associations. Trisha is admitted to practice law in California and before the United States District Court for the Central District of California.

**Cody Padgett.** An associate with Capstone, Cody Padgett's practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. He handles consumer cases at all stages of litigation, and has contributed to major settlements of automobile defect actions valued in the tens of millions. Prior to joining Capstone Law, Mr. Padgett was a certified legal intern with the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*.

**Eduardo Santos.** Eduardo Santos, an associate at Capstone, represents employees and consumers in class action litigation, with a special focus on negotiating, structuring, managing, and obtaining court approval of Capstone's class action settlements. Having assisted in obtaining court-approval of over 60 wage and hour and consumer class action settlements during the course of his career, Mr. Santos has contributed significantly to the high approval rate of Capstone's settlements. Before joining Capstone, Mr. Santos was an associate at one of California's largest plaintiffs-only employment law firms, and prior to that, an associate at a prominent plaintiff's firm specializing in mass torts litigation, where he was part of a team that secured a total of \$4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos received his JD from Loyola Law School of Los Angeles in 2007, which he attended on a full academic scholarship. While in law school, he was an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated *magna cum laude* from UCLA with majors in Political Science and History, and was a recipient of the Ralph J. Bunche scholarship for academic achievement.

**Mao Shiokura.** Mao Shiokura is an associate with Capstone. Her practice focuses on identifying, analyzing, and developing new wage-and-hour and consumer claims, including violations of the Fair Credit Reporting Act, Consumers Legal Remedies Act, False Advertising Law, and Unfair Competition Law. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships. Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.



**Natalie Torbati.** Natalie Torbati is an associate with Capstone Law. Her practice focuses on the firm's major motions and trials. Prior to joining Capstone, she was an associate at a prominent plaintiff's firm, where she successfully litigated, mediated, and settled many single-plaintiff employment discrimination, harassment, and retaliation cases. Ms. Torbati obtained her Juris Doctor from UCLA School of Law in 2014, where she served as a writing advisor for UCLA Law's prestigious Lawyering Skills Program, Business Manager for the Women's Law Journal, and Co-Social Chair for the Jewish Law Students Association. She earned her undergraduate degree from the University of Southern California, where she graduated summa cum laude, majoring in Sociology and minoring in Business Law. Natalie is an active member of the Los Angeles County and Beverly Hills Bar Associations, and is admitted to practice law in California. She is fluent in Farsi and proficient in Spanish.

**Karen Wallace.** An associate with Capstone, Karen Wallace handles the pre-litigation phase for prospective cases including investigation, claim identification and analysis, and client consultation. Ms. Wallace's expertise includes claims for meal and rest period violations, overtime wages, off-the-clock work, misclassification, and other employment and consumer claims. Before attending Southwestern Law School, Ms. Wallace worked as a teacher for many years. She received her doctorate in English from the University of California, Los Angeles, where she also earned her master's degree in American Indian Studies.

**Tarek Zohdy.** An associate with Capstone, Tarek Zohdy litigates automotive defect class actions, along with other consumer class actions for breach of warranty and consumer fraud. At Capstone, he has worked on several large-scale automotive class action settlements that have provided significant relief to thousands of defrauded car owners. Before joining Capstone, Mr. Zohdy spent several years representing individual consumers in their actions against automobile manufacturers and dealerships for breaches of express and implied warranties pursuant to the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act, commonly referred to together as "Lemon Law." He also handled fraudulent misrepresentation and omission cases pursuant to the Consumers Legal Remedies Act. Mr. Zohdy graduated from Louisiana State University *magna cum laude* in 2003, and Boston University School of Law in 2006, where he was a member of the criminal clinic representing underprivileged criminal defendants.

#### **OUTREACH AND EDUCATION**

To increase public awareness about the issues affecting class action and other representative litigation in the consumer and employment areas, Capstone publishes the Impact Litigation Journal ([www.impactlitigation.com](http://www.impactlitigation.com)). Readers have access to news bulletins, op-ed pieces, and legal resources. By taking advantage of social media, Capstone hopes to spread the word about consumer protection and employee rights to a larger audience than has typically been reached by traditional print sources, and to thereby contribute to the enforcement of California's consumer and workplace protection laws.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

KENAI BATISTA, ANDY CHANCE,  
GERARDO TORRES, ANGELA  
MATLIN, AND TUNG NGUYEN,  
*individually and on behalf of those similarly  
situated,*

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.,  
Defendant.

Class Action Case No. 1:14cv 24728-civ-  
Scola/Otazo-Reyes

**DECLARATION OF GREGORY F.  
COLEMAN IN SUPPORT OF  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT**

I, Gregory F. Coleman, declare as follows:

1. I am the founding member of Greg Coleman Law PC and have primary responsibility for the instant litigation for this firm. I make this declaration in support the Unopposed Motion for Final Approval of Class Action Settlement. I have personal knowledge of the facts stated below and, if called upon, could and would competently testify thereto.

2. My firm represents Plaintiff and Class Representative Tung Nguyen, along with Berger & Montague, P.C. We jointly filed a class action complaint on his behalf on March 18, 2016 in the United States District Court for the Middle District of Tennessee, Case No. 3:16-cv-00624 (the “*Nguyen*” Case). That complaint made allegations against Nissan like those alleged in the instant case (the “*Batista*” Case). Mr. Nguyen joined the *Batista* case as a class representative and plaintiff in the Second Amended Consumer Class Action Complaint [DE 138], filed on October 10, 2016.

3. I have personally tried more than 100 jury trials (and countless other bench trials) in areas of class action, product liability, complex medical malpractice, wrongful death, toxic tort, and other areas over the course of my years of practice. I have tried jury trials in states other than Tennessee and have been admitted *pro hac vice* in complex matters around the country. I, along with the other attorneys in my firm that assisted in the present matter, have significant experience

KENAI BATISTA et al. vs.  
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with consumer class actions and complex litigation, including specialized knowledge vital to the success of this case. I am particularly experienced in the litigation, certification, trial, and settlement of class action cases involving allegedly defective products like those at issue here. Our compensation is almost exclusively from court-awarded fees, court-approved settlements, and contingent fee agreements. A copy of the firm biography is attached hereto as Exhibit A.

4. I am admitted to practice before courts in Tennessee. I have also been admitted to practice before the United States Court of Appeals for the Second, Third, Sixth, Seventh, and Ninth Circuits, the United States District Courts of the Tennessee (ED, MD, and WD), Illinois (ND General Bar), Michigan (ED), Missouri (ED), Nebraska, New York (WD), Wisconsin (ED, WD), and the United States Supreme Court.

5. In addition to me, the following employees of Greg Coleman Law PC have contributed to achieving the Settlement:

- a. Mark E. Silvey, a Senior Attorney at Greg Coleman Law PC;
- b. Adam A. Edwards, a Senior Attorney at Greg Coleman Law PC;
- c. Lisa A. White, a Senior Attorney at Greg Coleman Law PC;
- d. Justin G. Day, an Associate Attorney at Greg Coleman Law PC;
- e. Benjamin P. Lemly, an Associate Attorney at Greg Coleman Law PC; and
- f. Dawn L. Holt, a Paralegal at Greg Coleman Law PC.

6. The hourly rates for Greg Coleman Law's attorneys are: \$725.00 for Gregory F. Coleman; \$625.00 for Mark E. Silvey; \$625.00 for Adam A. Edwards; \$625.00 for Lisa A. White; \$400.00 for Justin G. Day; \$400.00 for Benjamin P. Lemly; and \$250.00 for Dawn L. Holt. These rates reflect current market rates by private attorneys and paralegals of similar experience, expertise, and reputation for comparable work.

7. Since the inception of the *Nguyen* case, our firm has devoted a total of 61.10 attorney and paralegal hours to this case which were reasonable and necessary to prosecute the case. Calculated at the hourly rates as shown above, our firm's total legal fees \$37,920.00. These hours and fees are accurately reflected in our firm's books and records.

8. Specifically, our firm, with co-counsel, made the following contributions on behalf of the class: initial investigative work; legal research; preparation and filing of the *Nguyen* case; negotiating discovery; drafting and research for pleadings; participating in conferences co-counsel and defense counsel; and drafting settlement-related documents.

KENAI BATISTA et al. vs.  
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9. To the best of our abilities, Greg Coleman Law PC has minimized duplication of services and no unnecessary duplication occurred. Where multiple attorneys participated, joint participation was necessary because of time constraints, the complexity of the problems, or for effective, efficient communication between several firms essential for informed, group decision-making.

10. We participated in this case on a contingency fee basis which involved risk of not prevailing and therefore not being paid for our work. On the other hand, we also understood that the law would compensate us for such risk if we prevailed. We could not take such a risk without assurances of adequate compensation for favorable results for the Class. Moreover, while we anticipated the lengthy, intensive, and protracted litigation track which transpired, the time and resources dedicated to this case prevented our firm from taking and working on other matters.

11. Our firm expended \$488.42 in unreimbursed expenses which were reasonable and necessary for the prosecution of this case. These expenses are accurately reflected in our firm's books and records, include following:

PHV Filing Fees:	\$400.00
Lexis Legal Research:	\$ 8.82
PACER Courts Record Search:	\$ 69.50
Telephone Conferencing:	\$ 10.10

<b>TOTAL EXPENSES</b>	<b>\$488.42</b>
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12. In the interest of brevity, Greg Coleman Law PC affirms and incorporates the portions of the Declaration of Lawrence Deutsch in Support of Motion for Final Approval of Class Action Settlement as related to the details of the work and negotiations performed collectively by the firms as well as the results obtained on behalf of the Class.

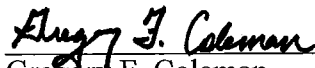
13. I, too, am satisfied with the result achieved on behalf of the Class. I am pleased that as a result of this litigation, all current and former owners of Nissan Pathfinders will receive substantial benefits and received notice of and a remedy for the defect. Based on my experience, the Settlement is fair, reasonable, and adequate, and it treats Class Members equitably. I ask that the Court approve the relief that has been achieved on behalf of the Class as a result of this hard-fought and highly technical litigation.

KENAI BATISTA et al. vs.  
NISSAN NORTH AMERICA, INC.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 24, 2017 in Knoxville, Tennessee.

**Dated: May 24, 2017**

Respectfully submitted,



---

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# **EXHIBIT A**





GREG COLEMAN LAW PC  
*A Professional Corporation*

# FIRM RESUME

First Tennessee Plaza  
800 S. Gay Street, Suite 1100  
Knoxville, TN 37929



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## THE FIRM

Greg Coleman Law PC is an AV rated, full-service law firm composed of a carefully assembled, talented group of attorneys with sound judgment, exceptional skills, and broad expertise. The firm's goal is simple: Provide high quality legal services with innovative and progressive approaches to the law. To this end, the firm's attorneys recognize the importance of court room experience at all levels and the value of a diverse legal practice. Above all else, it is our commitment to aggressively fight for the rights of our clients that sets the firm apart.

## Our Accolades



## PRACTICE AREAS

- Class Actions
- Consumer Protection/Consumer Rights
- Auto, Truck, Motorcycle Accident Litigation
- Products Liability
- Multi District Litigation/Mass Actions
- Breach of Contract and UCC Disputes
- Business Litigation
- Chemical Related Cancers and Diseases
- Dangerous Drugs and Medical Devices
- ERISA Litigation
- False Advertising
- Federal and State Appeals
- Fraud/Misrepresentation/Securities Litigation
- FLSA Litigation
- Insurance Coverage Disputes
- Medical Malpractice
- Medical Monitoring
- Mesothelioma and Asbestosis
- Multi District Litigation
- Social Security Disability
- Toxic Tort
- Workers' Compensation



## REPRESENTATIVE CASES

- ***Adelman v. Rheem Manufacturing Company*** (D. Ariz.) – Co-lead counsel in class action involving heating and air conditioning product defects.
- ***Bauer v. Nordyne, Inc.*** (M.D. Tenn.) – Co-lead counsel in multistate class action involving heating and air conditioning product defects.
- ***Chason v. Capital City Bank*** (Gadsden Cty. Cir. Ct., Fl.) – Co-lead counsel in overdraft fee class action.
- ***Clark v. Lumber Liquidators*** (N.D. Ga.) – Co-lead counsel in class action involving product defects.
- ***Curtis v. Alcoa*** (E.D. Tenn.) – Co-lead counsel in ERISA class action.
- ***Davis v. Westgate Planet Hollywood Las Vegas*** (D. Nev.) – Co-lead counsel in a Fair Labor Standards Act case.
- ***DeMaria v. Nissan North America, Inc.*** (N.D. Ill.) – Co-lead counsel in class action involving vehicle safety defects.
- ***Dickerson v. York International Corporation*** (M.D. Penn.) – Co-lead counsel in class action involving heating and air conditioning product defects.
- ***Feuquay v. Teachers Credit Union*** (St. Joseph Cty, Cir. Ct., Ind.) – Co-lead counsel in overdraft fee class action.
- ***Harding v. Midsouth Bank*** (W.D. La.) – Co-lead counsel in overdraft fee class action.
- ***Fultineer v. Lumber Liquidators*** (W.D. Ky.) – Co-lead counsel in class action involving product defects.
- ***Hardwick v. Fluidmaster, Inc.*** (D.N.H. 2014) – Co-lead counsel in class action involving product defects.
- ***Hatmaker v. Consolidated Nuclear Security, LLC*** (E.D. Tenn.) - Lead counsel in ERISA class action.



## REPRESENTATIVE CASES (Cont.)

- *Hirst v. Skywest Airlines, Inc.* (N.D. Ill) – Co-lead counsel in class action in a Fair Labor Standards Act case.
- *Hungerman v. Fluidmaster, Inc.* (W.D. Pa. 2014) – Co-lead counsel in multistate class action involving product defects.
- *Hurd v. America's Collectibles Network, Inc.* (Knox Cty. Cir. Ct., Tenn.) – Co-lead counsel in class action involving consumer protection and false advertising.
- *Jammal v. American Family Insurance Company* (N.D. Ohio) – Co-lead counsel in ERISA class action.
- *Jenkins v. Lawrence E. Keeble, Marcelo Pinto and Star Transportation, Inc.* (Davidson Cty. Cir. Ct., Tenn.) – Lead counsel in personal injury action which led to the single largest auto negligence verdict in Tennessee for 2009.
- *Johnson v. Direct Shopping Network, Inc.* (L.A. Sup. Ct., Calif.) – Co-lead counsel in class action involving consumer protection and false advertising.
- *Klug v. Watts Regulator Company* (D. Neb.) – Co-lead counsel in class action involving product defects.
- *Krause v. MB Financial Bank* (Cook Cty. Cir. Ct., Ill.) – Co-lead counsel in overdraft fee class action.
- *Lewis v. Allegheny Ludlum Corporation* (W.D. Pa.) – Co-lead counsel in ERISA class action.
- *Lowther v. AK Steel* (S.D. Ohio) – Co-lead counsel in ERISA class action.
- *Merkner v. AK Steel* (S.D. Ohio) – Co-lead counsel in ERISA class action.

#### REPRESENTATIVE CASES (Cont.)

- ***Michelhaugh v. Consolidated Nuclear Security, LLC*** (Anderson County Tenn. Cir. Ct.) – Lead counsel in breach of contract class action.
- ***Moreno v. Toyota Motor Sales*** (C.D. Cal.) – Co-lead counsel in class action involving vehicle safety defects.
- ***Mull v. Glacier Bank*** (Lincoln Cty. Cir. Ct., Mont.) – Co-lead counsel in overdraft fee class action.
- ***Muzingo v. Bank of the Ozarks*** (Pulaski Cty. Cir. Ct., Ark.) – Co-lead counsel in overdraft fee class action.
- ***Parks v. Subaru of America, Inc.*** (S.D. Fla.) – Co-lead counsel in class action involving vehicle safety defects.
- ***Roberts v. Electrolux Home Products, Inc.*** (C.D. Cal.) – Co-lead counsel in multistate class action involving safety defects of clothes dryers.
- ***Samuel v. Chrysler Group LLC*** (C.D. Cal.) – Co-lead counsel in multistate class action involving vehicle safety defects.
- ***Sanborn v. Nissan North America, Inc.*** (S.D. Fla.) – Co-lead counsel in class action involving vehicle safety defects.
- ***Satterfield v. Alcoa, Inc.***, 266 S.W. 3d 347 (Tenn. 2008). Co-lead counsel in Tennessee Supreme Court case in which the Supreme Court ruled that a duty is owed by Alcoa to a nonemployee household member as it relates to the household member's contraction of mesothelioma.
- ***Stedman v. Mazda Motor Corp.*** (C.D. Cal.) – Co-lead counsel in multistate class action involving vehicle safety defects.
- ***Swift v. QNB Bank*** (Bucks Cty Cir. Ct., Pa.) – Co-lead counsel in overdraft fee class action.
- ***Tanasi v. New Alliance Bank*** (W.D.N.Y.) – Co-lead counsel in overdraft fee class action.
- ***Tapp v. Skywest Airlines, Inc.*** (N.D. Ill) – Co-lead counsel in class action in a Fair Labor Standards Act case.





- ***Vickery v. Lumber Liquidators*** (E.D. Tenn.) – Co-lead counsel in class action involving product defects.
- ***Watson v. Westgate Resorts, Inc.*** (E.D. Tenn.) - Co-lead counsel in a Fair Labor Standards Act case.
- ***West v. East Tennessee Pioneer Oil Co.*** - A Tennessee Supreme Court case in which the Court ruled a convenience store had a legal duty to the plaintiffs for selling gas to an obviously intoxicated driver.
- ***Williams v. Subaru of America*** (C.D. Cal. 2012) – Co-lead counsel in multistate class action involving vehicle safety defects.
- ***Wyble v. Fluidmaster, Inc.*** (D. Ariz. 2014) – Co-lead counsel in class action involving product defects.



## *About Gregory F. Coleman*

### Founder and Managing Partner



Greg Coleman is the Founder and Managing Partner of Greg Coleman Law PC with 27 years of trial and appellate experience. Greg received his B.A. with highest honors and distinction from Jacksonville State University in 1986. He attended The University of Tennessee College of Law, graduating in 1989. In addition to distinguishing himself academically, Greg was a member of the National Trial Moot Court Team, was the recipient of the American Jurisprudence Award for National Trial Team and was listed in Who's Who Among Rising Young Americans. In addition, the College of Law bestowed upon Greg the honor of inclusion into the National Order of Barristers for outstanding oral advocacy and trial skills.

Greg's practice focuses on class actions, products liability, medical practice, personal injury, complex multi-district litigation, litigation, toxic torts, premises liability, ERISA, ERISA class actions, drug and medical device litigation, and workers' compensation.



He was co-lead counsel in a defective products case against Electrolux where he and co-counsel successfully obtained a settlement on behalf of a class of more than one million members regarding defectively manufactured dryers. The settlement resulted in an expected utilization settlement value of over \$35 Million.

Greg was lead trial counsel in an ERISA class action against AK Steel Corporation where he successfully obtained a \$178.6 million settlement on behalf of a class of over 3,000 retirees of AK Steel's Butler Works Plant in Pennsylvania in 2011. Excerpts from the final approval hearing before Judge Black:

*"[T]he class has been enormously well represented by the attorneys in this case. I started with the observation that this was a historic moment. I genuinely believe that.*

*"The plaintiffs and the members of the class have been enormously well represented by counsel."*

*"[T]here is no doubt that the settlements herein represent excellent result for the class members and obviate all risk of continued litigation."*

*"[T]he Court finds that the hourly and salaried settlements represent excellent result for the class members and provides them with a substantial benefit."*

*"I reach the conclusion based on acknowledging the extraordinary benefit achieved for the class, the high level of value of these plaintiffs' counsel's services. The lawyers here are excellent, highly regarded, and their service has brought great value to the class."*

*"I acknowledge this was a complex and demanding case involving a great deal of work and that the end result occurred largely, if not fully, attributable to the diligence, determination, hard work of plaintiffs' counsel, who were vigorously contested, as the company was represented by extraordinary lawyers."*

Judge Timothy S. Black, U.S.D.C. S.D. Ohio.

He was also lead trial counsel in an ERISA class action case against AK Steel Corporation where he successfully obtained a \$15.8 million settlement on behalf of a class of over 250 retirees of AK Steel's Zanesville Works Plant in Ohio in 2012.

He was lead counsel in a week-long trucking accident trial where he obtained the largest negligence verdict in the state of Tennessee for 2009. *Jenkins v. Keeble*, Davidson County.



He has been co-lead counsel in a class action case involving Jewelry Television. He was also co-lead counsel in a Fair Labor Standards Act case against Westgate Resorts styled *Davis v. Planet Hollywood Las Vegas* in U.S.D.C., District of Nevada, which has now been settled. Additionally, Greg was co-lead counsel in a Fair Labor Standards Act case against Westgate Resorts styled *Watson v. Westgate Resorts, Inc.* in U.S.D.C., Eastern District of Tennessee, which has been settled.

Greg Coleman has been and is currently involved in complex product liability and drug product liability litigation and has tried more than one hundred (100) jury trials and countless other bench trials during his career. He has tried jury trials in states other than Tennessee and has been admitted *pro hac vice* in complex matters around the country, including a six-week long jury trial in Sacramento, California, for which he was lead counsel.

Greg is admitted to practice in the following courts:

- State Courts of Tennessee
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Sixth Circuit
- United States Court of Appeals for the Seventh Circuit
- United States Court of Appeals for the Ninth Circuit
- Tennessee Supreme Court
- United States District Court, Northern District of Illinois
- United States District Court, Southern District of Indiana
- United States District Court, District of Nebraska
- United States District Court, Western District of New York
- United States District Court, Eastern District of Tennessee
- United States District Court, Middle District of Tennessee
- United States District Court, Western District of Wisconsin
- United States Supreme Court
- United States Court of Federal Claims

He is certified as a Civil Trial Advocacy Specialist and as a Civil Pretrial Advocacy Specialist by the National Board of Trial Advocacy. Greg is a member of the American Bar Association, Tennessee Bar Association, and is also a member of the Knoxville Bar Association.

Greg is listed in Best Lawyers in America in two separate categories and has been named one of the Top 100 Trial Lawyers by the American Trial Lawyers Association. He was



named as Best Lawyers of America Lawyer of the Year in Products Liability and was also named by the U.S. News and World Report as one of the best lawyers and law firms in the country. Additionally, Greg has been recognized as one of Knoxville's Top Attorneys in eight separate categories. Greg Coleman Law was ranked among the 2015 "Best Law Firms" by *U.S. News & World Report* and *Best Lawyer*. Greg Coleman Law also received the 2014 and 2015 Litigator Awards from the Trial Lawyers Board of Regents.

Greg is proud to have been recognized by his colleagues through nomination to the Martindale-Hubbell Bar Register of Preeminent Lawyers which includes only those select law practices that have earned the highest rating in the Martindale-Hubbell Law Directory and have been designated by their colleagues as preeminent in their field. He is AV Peer Review rated by the Martindale Hubbell Legal Rating System and is a Charter Member and Senior Fellow of the Litigation Counsel of America, "a trial lawyer honorary society established to reflect the new face of the American Bar with limited membership representing less than one-half of one percent of American lawyers and is by invitation only." He is a Mid-South Super Lawyer representing the top five percent of Arkansas, Mississippi, and Tennessee attorneys. Greg is a lifetime member of the prestigious Multi-Million Dollar Advocates Forum, an organization whose members is limited to attorneys who have won multi-million dollar verdicts and settlements. He is a Charter member of the Knoxville Chapter of the American Inns of Court and a member of the American Association for Justice and Public Justice. Greg has been featured in Newsweek Magazine in their Showcase of Nationwide Top Attorneys.

Greg has served as a guest lecturer and speaker on Advanced Trial Advocacy and at national seminars, including those sponsored by the Tennessee Bar Association and the National Business Institute. He has lectured extensively for many years on topics such as advanced trial tactics and strategy and complex litigation matters. He has authored published materials regarding advanced trial strategy, ethics seminars, as well as numerous other publications for CLE seminars at which he has lectured.

Greg has been actively involved in civil and charitable activities, having served for many years on the Executive Board of Trustees for the Baptist Health System, including the Baptist Hospital of East Tennessee and related entities, and has been involved in many legal aid and pro bono projects in the Knoxville area. Greg and his firm are donors to the annual Mission of Hope Christmas Barrel drive providing warm coats for the children of rural Appalachia. In support of the Knoxville Academy of Medicine and Knoxville Academy of Medicine Alliance's Conversation Ready Project, Greg performed at the "A Little More Conversation" event. The Conversation Ready Project is a program of the Knoxville Academy of Medicine Foundation and was formed to ensure that everyone's end-of-life wishes are expressed and respected.



Reported Cases:

West v. East Tennessee Pioneer Oil Co., 172 S.W. 3d 545, Tenn. 08/18/2005, which is a Tennessee Supreme Court case in which the Supreme Court ruled a convenience store had a legal duty to the plaintiffs Gary West and Michelle Richardson (Greg's clients) for selling gas to an obviously intoxicated driver, who then had an accident with Gary West and Michelle Richardson on the roadway. This case was the first case to find that a convenience store had a legal duty to a driver on the roadway (Gary West and Michelle Richardson) for selling gas to an obviously intoxicated driver who then had an accident with Greg's clients.

Satterfield v. Alcoa, Inc., 266 S.W. 3d 347 (Tenn. 2008), which is a Tennessee Supreme Court case in which the Supreme Court ruled that a duty is owed by Alcoa to a nonemployee household member as it relates to the household members contraction of mesothelioma.

Merkner v. AK Steel, 2010 U.S. Dist. LEXIS 12742, 48 BNA 1923.

Lowther v. AK Steel, 2012 U.S. Dist. LEXIS 181476, 54 BNA 1931.

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## *About Adam A. Edwards*

### Senior Attorney



Mr. Edwards is a Senior Attorney at the law offices of Greg Coleman Law, and acts as the lead attorney on many of the serious personal injury cases for the firm. He also serves as a primary litigator in many of the firm's class action, multi-district litigation, and defective product cases.

He attended The University of Tennessee where he received his undergraduate degree in political science and served as a field office intern for United States Senator and former Senate Majority Leader, Dr. Bill Frist.

After graduating from UT, Mr. Edwards was accepted into the Juris Doctor program at the Washburn University School of Law where was awarded an academic merit scholarship after his first year of coursework. While at Washburn, Adam excelled in oral advocacy and was selected as the President of the Moot Court Counsel on Oral Advocacy. He was also selected as a member of the Order of Barristers. He received his JD after graduating with Dean's Honors in 2000.

Adam's formal legal career started when he accepted a position as an Attorney at Husch Blackwell (Formerly Blackwell Sanders) in Kansas City, Missouri in May of 2000. During the first four years of his legal career Mr. Edwards successfully defended a number of well-known insurance companies and corporations in a wide range of litigation matters.

Today, Mr. Edwards utilizes his extensive trial experience and a diverse background to advocate for personal injury victims and consumers that have suffered damages as a result of dangerous and defective products.

Mr. Edwards has been selected by fellow members of the Knoxville Bar as a "Top Attorney", an honor which was described in CITYVIEW Magazine's annual Top Attorney's issue. He was selected as a Top Attorney for a second time in 2010. He was also selected for membership into the Million Dollar Advocates Forum, an honor reserved for those trial lawyers who have secured a settlement or verdict in excess of one million dollars; less than 1% of U.S. lawyers are members.

**Practice Areas:** Class Actions, Consumer Protection/Consumer Rights, Motor Vehicle Accident Litigation, Multi District Litigation, Business Litigation, Medical Malpractice, Workers' Compensation, Nursing Home Neglect, Personal Injury, Product Liability, Wrongful Death

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## *About Mark E. Silvey*

### Senior Attorney



Mark E. Silvey is now one of the Senior Attorneys at Greg Coleman Law, and practices primarily in the area of complex litigation/class action cases for the firm. Mark is a native of Knoxville, Tennessee growing up in the Halls community, with family ties going back several generations. Mark's grandfather Adrian Burnett served on the Knox County School Board for a number of years. He received a bachelor's degree in history from the University of Tennessee in 1984 concentrating in the study of medieval Japan and the early 20th century in the United States. He was an invited participant in the Honors History program in 1983. He served on the Dean's Student Advisory Council for the College of Arts and Sciences.

Mark received his law degree in 1988 from the University of Tennessee. A member of the National Trial Team, he received recognition as an Outstanding Clinic Student for the Spring 1988 semester.

Offered an opportunity to relocate to Atlanta, Georgia, in 1997 Mark became an in-house attorney for State Farm Mutual Automobile Insurance Company. Staying in-house but moving to Travelers Indemnity Company in 2001 in Atlanta, Mark returned home to Knoxville in 2006 to open a new in-house counsel office for Travelers. Mark returned to private practice with Greg Coleman Law PC in 2010.

Mark's 26-year litigation career highlights includes over 100 jury trials, over 100 bench trials and many appellate cases. An active musician with wide ranging interests, Mark currently acts as the legal advisor to TheMarchingRoundtable.com and The Marching Roundtable Judges Academy.

**Practice Areas:** Class Actions, Consumer Protection/Consumer Rights, Multi District Litigation, Business Litigation, Product Liability, ERISA, Employment Law, Motor Vehicle Accident Litigation, Wrongful Death

#### CONTACT INFORMATION

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## *About Lisa A. White*

### Senior Attorney



Lisa White is a Senior Attorney at Greg Coleman Law PC working in the areas of complex litigation, class action cases, and Fair Labor collective actions. She joined the firm in 2014. Her primary areas of practice are product defect class actions (representing consumers who have purchased products that are defective but a corporation refuses "do the right thing" by recalling or repairing the defect, or reimbursing consumer for damages caused by the defect) and fair wage cases (representing current and former employees against businesses that routinely violate the Fair Labor Standards Act and state wage laws). Almost all of the cases she works on are filed in the federal court system. Prior to joining Greg Coleman Law, her solo practice included extensive trial and appellate experience.

A writer and researcher at heart, Lisa returned to law school after completing her Bachelors in Sociology and Masters in Sociology from The University of Tennessee, and teaching for a number of years at universities. Just before entering law school, she completed the coursework for her PhD in American Studies at The College of William and Mary. Lisa is a graduate of The University of Tennessee College of Law.

While at The University of Tennessee College of Law, Lisa was a Co-Coordinator of Tennessee Innocence Project, the Research Editor for Tennessee Journal of Law and Policy, and practiced in both the Domestic Violence Clinic and the Advocacy Clinic. As a student, Lisa won first place in the American Bar Association's Commission on Domestic and Sexual Violence Student Writing Competition for her paper: "Unlikely Bedfellows: The Intersection Between The Defense of Marriage Act(s) and Domestic Violence Prosecution." Lisa has had a number of papers published in peer-reviewed journals in law as well as in other academic fields.

Ms. White has been selected by fellow members of the Knoxville Bar as a "Top Attorney," an honor which was described in CITYVIEW Magazine's annual Top Attorneys' issue.

Lisa and her family are avid travelers and she has visited all seven continents.

**Practice Areas:** Class Actions, Fair Labor Practices (including litigation in the airline industry), Consumer Protection/Consumer Rights, Multi District Litigation, Business Litigation, Product Liability, ERISA.

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## *About Justin G. Day*

### Associate



A native East Tennessean, Justin graduated with a bachelor's degree in honors philosophy and political science from the University of Tennessee, where he was awarded the Davis Scholarship and named the top graduate in his major. Justin then attended law school at the University of Tennessee College of Law, where he was a Green Scholar, president of the Christian Legal Society, and one of the first-ever recipients of the Jerry P. Black Jr. Student Clinic Attorney Award.

Before joining the firm, Justin practiced family law, juvenile law, and criminal law in Morristown, Tennessee.

Since joining Greg Coleman Law, Justin has been actively involved in a number of the firm's practice specialties, including the firm's personal injury, consumer protection, and mass tort areas.

Active in his local community, Justin is a member of Fellowship Church of Knoxville and volunteers in its children's ministry. In his spare time, Justin can usually be found exercising, reading at a local coffee shop, or playing golf.

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## About Benjamin P. Lemly

### Associate



A native of Memphis, Tennessee, Benjamin moved to Knoxville to attend the University of Tennessee – Knoxville, where he graduated with a major in Journalism & Electronic Media and minor in Business in 2011.

Benjamin then attended The University of Tennessee College of Law starting in 2013. During law school, Benjamin focused on complex civil litigation, taking classes in Antitrust, Civil Pre-Trial Litigation, Complex Litigation, Conflicts of Law, and Internet & Data Privacy. A recipient of The CALI Excellence for the Future Award – given to the student with the highest score in a law school course – for his work in Advocacy Clinic, Benjamin graduated *cum laude* from University of Tennessee College of Law in 2016.

In January of 2016, Benjamin started working part-time for Greg Coleman Law PC as a law clerk assisting with class action matters while completing his final semester of law school. In August of 2016, Benjamin was hired on full time as a class action attorney with Greg Coleman Law PC. Although he focuses primarily on class actions at the discovery phase of litigation, Benjamin has worked on complaint drafting, settlement letters, responsive motions, and a host of other tasks.

When not at work, Benjamin can be found around Knoxville running, hiking, golfing, or bowling.

#### CONTACT INFORMATION

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

KENAI BATISTA, ANDY CHANCE,  
GERARDO TORRES, ANGELA  
MATLIN, AND TUNG NGUYEN,  
*individually and on behalf of those similarly  
situated,*

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.,  
Defendant.

Class Action Case No. 1:14cv 24728-civ-  
Scola/Otazo-Reyes

**DECLARATION OF LAWRENCE  
DEUTSCH IN SUPPORT OF MOTION  
FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

I, Lawrence Deutsch, declare as follows:

1. I am a shareholder at Berger & Montague, PC. I make this declaration in support of the Unopposed Motion for Final Approval of Class Action Settlement. I have personal knowledge of the facts stated below and, if called upon, could and would competently testify thereto.

**Background**

2. My firm with co-counsel Greg Coleman Law, P.C. represent Plaintiff Tung Nguyen and filed a class action complaint on his behalf on March 18, 2016 in the United States District Court for the Middle District of Tennessee, Case No. 3:16-cv-00624 (the “*Nguyen*” Case). That complaint made allegations against Nissan like those alleged in the instant case (the “*Batista*” Case). Mr. Nguyen joined the *Batista* case as a class representative and plaintiff in the Second Amended Consumer Class Action Complaint [DE 138], filed on October 10, 2016.

3. Berger & Montague has been engaged in the practice of complex and class action litigation since 1970. While our firm has offices in Philadelphia, Pennsylvania, and Minneapolis, Minnesota, we litigate nationwide. Our firm’s practice areas include Antitrust, Commercial Litigation, Commodities & Options, Consumer Protection, Corporate Governance & Shareholder Rights, Employment Law, Environmental & Mass Tort, ERISA & Employee Benefits, Insurance and Financial Products & Services, Lending Practices & Borrowers’ Rights, Securities Fraud, and

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Whistleblowers, Qui Tam & False Claims Act. Our compensation is almost exclusively from court-awarded fees, court-approved settlements, and contingent fee agreements.

4. I am admitted to practice before courts in Pennsylvania and New Jersey. I have also been admitted to practice before the United States Court of Appeals for the First, Second, Third, and Fourth Circuits, the United States District Court of the Eastern District of Pennsylvania, and the United States Court of Federal Claims.

5. Berger & Montague's Consumer Protection Group protects consumers when they are injured by false or misleading advertising, defective products, data privacy breaches, and various other unfair trade practices. *In In re: Certain Teed Fiber Cement Siding Litigation*, MDL No. 2270 (E.D. Pa.), a case in which our firm was co-lead counsel and in which I was actively involved, our firm obtained a settlement of more than \$103 million a multidistrict products liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class. I also served as co-lead counsel in *Tim George v. Uponor, Inc.*, et al., No. 12-CV-249 (D. Minn.), achieving a \$21 million settlement on behalf of a nationwide class of consumers who purchased defective plumbing parts. And, I served as co-lead counsel in *Soto et al v. American Honda Motor Co., Inc.*, No. 3:12-cv-01377 (N.D. Cal.), obtaining a warranty extension and out-of-pocket expense reimbursements for consumers who purchased defective Honda vehicles.

6. A profile of our firm's experience in complex class actions, and specifically in consumer protection and products liability cases, is attached as Exhibit A.

7. In addition to me, the following Berger & Montague lawyers made substantial contributions to achieving the Settlement:

- a. Jeffrey L. Osterwise, a Senior Associate at Berger & Montague;
- b. Eugene R. Tompkins; a Senior Associate at Berger & Montague.<sup>1</sup>

8. The hourly rates for Berger & Montague's attorneys are: \$700.00 for Lawrence Deutsch; \$520.00 for Jeffrey Osterwise; and \$560.00 for Eugene Tompkins. These rates reflect current market rates by private attorneys of similar experience, expertise, and reputation for comparable work.

9. Since the inception of the *Nguyen* case, my firm has devoted a total of 541.6 attorney and paralegal hours to this case which were reasonable and necessary to prosecute the

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<sup>1</sup> Our co-counsel in the *Nguyen* case, Greg Coleman Law PC, also made substantial contributions to the Settlement. A separate declaration will be concurrently submitted by Gregory F. Coleman of Greg Coleman Law PC.



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case. Specifically, our firm, with co-counsel, made the following contributions on behalf of the class: initial investigative work; interviews of scores of owners of the vehicles with the judder problem, legal research; preparation and filing of the *Nguyen* case; negotiating discovery; analyzing over 40,000 pages of documents; reviewing deposition testimony of Nissan corporate representatives; locating and consulting with expert witnesses; attending court hearings; participating in conferences with clients, co-counsel and defense counsel; preparing for and attending two full day in-person mediation sessions; participating in extensive settlement negotiations; and drafting settlement-related documents.

10. The following chart identifies the attorneys and paralegals who worked on this matter, their positions, hours worked, hourly rate, and corresponding fee:

<b>Name</b>	<b>Position</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Fee</b>
Lawrence Deutsch	Shareholder	222.0	\$700.00	\$155,400.00
Jeffrey Osterwise	Senior Associate	241.9	\$520.00	\$125,788.00
Eugene Tompkins	Senior Associate	59.4	\$560.00	\$33,264.00
Others (under 10 hours per person)	various	18.3	\$520.27 (average)	\$9,521.00
<b>Total</b>		<b>541.6</b>		<b>\$323,973.00</b>

11. To the best of our abilities, Class Counsel have minimized duplication of services and no unnecessary duplication occurred. Where multiple attorneys participated, joint participation was necessary because of time constraints, the complexity of the problems, or for effective, efficient communication between several firms essential for informed, group decision-making.

12. We participated in this case on a contingency fee basis which involved risk of not prevailing and therefore not being paid for our work. On the other hand, we also understood that the law would compensate us for such risk if we prevailed. We could not take such a risk without assurances of adequate compensation for favorable results for the Class. Moreover, while we anticipated the lengthy, intensive, and protracted litigation track which transpired, the time and resources dedicated to this case prevented our firm from taking and working on other matters.

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13. Our firm expended \$11,063.83 in unreimbursed expenses which were reasonable and necessarily for the prosecution of this case. These expenses which are accurately reflected in our firm's books and records, include following:

Service of Process & Filing Fees:	\$186.00
Legal Research:	\$794.40
Postage/Facsimile/Express Delivery:	\$14.00
Copying Charges & Printing:	\$253.50
Telephone Expenses:	\$15.53
Travel/Meals/Lodging:	\$6,527.02
Document Management & Translation:	\$3,026.38
Miscellaneous	\$247.00
<b>TOTAL</b>	<b>\$11,063.83</b>

**Pre-Filing Investigation**

14. Beginning in early 2015, Berger & Montague began receiving communications from Nissan Pathfinder owners complaining of issues with their vehicles' transmission. Our firm diligently investigated approximately 150 of these communications prior to filing the *Nguyen* Case complaint. To date, our firm has received over 300 communications from owners of Nissan vehicles.

15. Plaintiff Tung Nguyen (who owns a 2014 Nissan Pathfinder) and Boyong Park (who owns a 2015 Nissan Pathfinder) separately contacted Berger & Montague in late-2015. They both complained that their vehicles' transmission suffered from a transmission judder, despite several attempts to have Nissan dealerships diagnose and correct the problem under their vehicles' warranties.

16. Berger & Montague researched the history of Mr. Nguyen's and Mr. Park's purchases of their vehicles and their service records and advised Mr. Nguyen and Mr. Park to bring a class action lawsuit.

17. Besides researching and discussing the viability of Mr. Nguyen's and Mr. Park's claims, Berger & Montague researched and discussed whether claims alleging defect causing Nissan Pathfinders to judder were suitable for class certification, reviewed National Highway Traffic Safety Administration ("NHTSA") complaints about the vehicles, reviewed Nissan's Technical Service Bulletins, and developed a nationwide litigation strategy. After determining the case could and should be brought as a class action, Berger & Montague drafted their complaint.

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**Complaint, Service on Nissan, and Nissan's Answer**

18. On March 18, 2016, after consulting with Tennessee-based counsel Greg Coleman, Berger & Montague filed a detailed class action complaint against Nissan in the United States District Court for the Middle District of Tennessee on behalf of Mr. Nguyen and Mr. Park and a proposed nationwide class of all persons who purchased or leased model-year 2013 or later Nissan Pathfinders [*Nguyen*, DE 1]. The complaint included details of Nissan's knowledge of consumer complaints and consumers' concern about the Nissan Pathfinder's CVT transmission judder.

19. Jeffery Osterwise, Eugene Tompkins, Gregory Coleman, Lisa White, and I appeared as counsel on the face of the complaint.

20. On March 24, 2016, the summons issued to Nissan was returned as executed [*Nguyen*, DE 6]. Nissan filed its answer on May 16, 2016 [*Nguyen*, DE 18].

**Discovery**

21. Shortly after Nissan answered Mr. Nguyen's and Mr. Park's complaint, the parties negotiated a proposed initial case management order, which they submitted on May 19, 2016 [*Nguyen*, DE 26]. Jeffrey Osterwise and I, along with counsel for Nissan, appeared before the magistrate judge on May 24, 2016. The magistrate set a December 15, 2016 discovery deadline [*Nguyen*, DE 27].

22. On June 9, 2016, the parties made a joint motion for entry of their negotiated protective order [*Nguyen*, DE 28]. On June 10, 2016, the court entered the protective order [*Nguyen*, DE 29].

23. On June 23, 2016, the parties exchanged initial disclosures, pursuant to Fed. R. Civ. P. 26(a)(1). To prepare for this, Berger & Montague interviewed Mr. Nguyen and Mr. Park to identify and collect evidence in their possession.

24. During May and June of 2016, Berger & Montague conducted an extensive search to identify experts suitable to provide guidance and, ultimately, expert opinions about technical and engineering matters likely to arise during the litigation. Berger & Montague had in-depth discussion with three experts who have specific education and experience related to automotive transmissions, including CVTs.

25. In June 2016, counsel for Nissan invited Berger & Montague to participate in mediation scheduled for June 30, 2016 in the *Batista* Case. Before that mediation, Nissan produced to Berger & Montague over 40,000 pages of documents, copies of deposition testimony given by

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Nissan corporate representatives, spreadsheets containing warranty claims data, and responses to written discovery requests and interrogatories served in the *Batista* Case. Berger & Montague reviewed this information prior to and after the June 30, 2016 mediation.

**Mediations, Settlement, and Motion for Preliminary Approval of the Settlement**

26. On June 30, 2016, Berger & Montague joined plaintiffs' counsel in the *Batista* Case and *Gerardo Torres v. Nissan North America, Inc.*, No. 2:15-cv-03251-RGK (C.D. Cal.) for mediation with Nissan before Rodney A. Max of *Upchurch Watson White & Max Mediation Group*. Despite reaching impasse, the parties made significant progress and agreed to return for another in-person session on July 22, 2016, which proceeded as scheduled. On August 24, 2016, the parties reached a settlement agreement, in principle [DE 130].

27. Plaintiffs Nguyen and Park were informed and engaged throughout the mediation process.

28. Despite reaching agreement in principle, drafting and finalizing the written settlement agreement and proposed class notices were an additional task. For months, Class Counsel exchanged numerous lengthy drafts of redlined changes to the agreement and notice documents meticulously negotiating their terms and conditions to benefit the Class. This process included numerous emails and phone calls between and among Class Counsel and defense counsel.

29. After six weeks of drafting, revising, and negotiations, Class Counsel filed the executed Settlement Agreement which affords relief to a national class of Affected Vehicle owners [DE 146], Plaintiffs' Second Amended Consumer Class Action Complaint [DE 138] which added Gerardo Torres, Angela Matlin, and Tung Nguyen as additional class representatives, and Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement [DE 141] which summarized the material terms of the Settlement Agreement, including the benefits to the class, attorneys' fees and expenses, class representative incentive payments, releases of claims, the details of the plan for notifying the class members, and the legal standards and argument requesting the Court's preliminary approval of the parties' Settlement Agreement. The motion for preliminary approval was also supported by declarations of Class Counsel (F. Jerome Tapley (Cory Watson, P.C.), Ronald P. Weil (Weil Quaranta, P.A.), C. Richard Newsome (Newsome Melton, P.A.), Robert K. Friedl (Capstone Law APC), and Lawrence Deutsch (Berger & Montague, P.C.)), declarations of Plaintiffs (Kenai Batista, Andy Chance, Gerardo Torres, Angela Matlin, and Tung Nguyen), and other relevant records and filings.

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30. This Court granted Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement [DE 141] on October 25, 2016 [DE 148].

31. Subsequently, Berger & Montague and counsel for Nissan filed a joint status report in the *Nguyen* case in the Middle District of Tennessee to inform that court that this Court had granted preliminary approval of the Settlement to which Plaintiffs Nguyen and Park are parties [*Nguyen*, DE 31].

**Motion for Final Approval of the Settlement Agreement**

32. Concurrent with filing this declaration, Class Counsel will have also prepared and moved for final approval of the class action settlement and supported that motion with law, responses to any objection(s) by Class Members, and Class Counsel's declarations. Class Counsel also must prepare for and attend the Court's scheduled June 21, 2016 final approval and fairness hearing [DE 159]. Class Counsel will continue to expend additional hours to guide the settlement after final approval, including oversight of the settlement administration process.

**Conclusion**

33. I am proud of the result achieved on behalf of the Class. I am proud that as a result of this litigation, all current and former owners receive substantial benefits and received notice of and a remedy for the CVT defect and judder condition. Based on my experience, the Settlement is fair, reasonable, and adequate, that it treats Class Members equitably. I remain hopeful that the Court will approve the Settlement achieved on behalf of the Class resulting from this hard-fought and highly technical litigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 24, 2017 in Philadelphia, Pennsylvania.

**Dated: May 24, 2017**

Respectfully submitted,

By: 

Lawrence Deutsch

[lddeutsch@bm.net](mailto:lddeutsch@bm.net)

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# **EXHIBIT A**

# Berger&Montague,P.C.

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## About Berger & Montague

Berger & Montague is a full-spectrum class action and complex civil litigation firm, with nationally known attorneys highly sought after for their legal skills. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of antitrust, securities, mass torts, civil and human rights, whistleblower cases, employment, and consumer litigation. In numerous precedent-setting cases, the firm has played a principal or lead role.

The *National Law Journal*, which recognizes a select group of law firms each year that have done “exemplary, cutting-edge work on the plaintiffs side,” has selected Berger & Montague in 11 out of the last fourteen years (2003-05, 2007-13, 2015-16) for its “Hot List” of top plaintiffs’ oriented litigation firms in the United States. The firm has also achieved the highest possible rating by its peers and opponents as reported in *Martindale-Hubbell*.

Currently, the firm consists of 59 lawyers; 18 paralegals; and an experienced support staff. Few firms in the United States have our breadth of practice and match our successful track record in such a broad array of complex litigation.

## History of the Firm

Berger & Montague was founded in 1970 by the late David Berger to concentrate on the representation of plaintiffs in a series of antitrust class actions. David Berger helped pioneer the use of class actions in antitrust litigation and was instrumental in extending the use of the class action procedure to other litigation areas, including securities, employment discrimination, civil and human rights, and mass torts. The firm’s complement of nationally recognized lawyers has represented both plaintiffs and defendants in these and other areas, and has recovered billions of dollars for its clients. In complex litigation, particularly in areas of class action litigation, Berger & Montague has established new law and forged the path for recovery.

The firm has been involved in a series of notable cases, some of them among the most important in the last 40 years of civil litigation. For example, the firm was one of the principal counsel for plaintiffs in the *Drexel Burnham Lambert/Michael Milken* securities and bankruptcy litigation. Claimants in these cases recovered approximately \$2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of *Drexel* in the late 1980’s. The firm was also among the principal trial counsel in the *Exxon Valdez Oil Spill* litigation in Anchorage, Alaska, a trial resulting in a record jury award of \$5 billion against Exxon, later reduced by the U.S. Supreme Court to \$507.5 million. Berger & Montague was lead counsel in the *School Asbestos Litigation*, in which a national class of secondary and elementary schools recovered



in excess of \$300 million to defray the costs of asbestos abatement. The case was the first mass tort property damage class action certified on a national basis. Berger & Montague was also lead/liaison counsel in the *Three Mile Island Litigation* arising out of a serious nuclear incident.

Additionally, in the human rights area, the firm, through its membership on the executive committee in the *Holocaust Victim Assets Litigation*, helped to achieve a \$1.25 billion settlement with the largest Swiss banks on behalf of victims of Nazi aggression whose deposits were not returned after the Second World War. The firm also played an instrumental role in bringing about a \$4.37 billion settlement with German industry and government for the use of slave and forced labor during the Holocaust.

## Practice Areas and Case Profiles

### Consumer Protection

Berger & Montague's Consumer Protection Group protects consumers when they are injured by false or misleading advertising, defective products, data privacy breaches, and various other unfair trade practices. Consumers too often suffer the brunt of corporate wrongdoing, particularly in the area of false or misleading advertising, defective products, and data or privacy breaches.

- ***In re: CertainTeed Fiber Cement Siding Litigation***, MDL No. 2270 (E.D. Pa.). The firm, as one of two Co-Lead Counsel firms obtained a settlement of more than \$103 million in this multidistrict products liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class.
- ***Countrywide Predatory Lending Enforcement Action***: Berger & Montague advised the Ohio Attorney General (and several other state attorneys general) regarding predatory lending in a landmark law enforcement proceeding against *Countrywide* (and its parent, Bank of America) culminating in 2008 in mortgage-related modifications and other relief for borrowers across the country valued at some \$8.6 billion.
- ***In re Pet Foods Product Liability Litigation***: The firm served as one of plaintiffs' co-lead counsel in this multidistrict class action suit seeking to redress the harm resulting from the manufacture and sale of contaminated dog and cat food. The case settled for \$24 million. Many terms of the settlement are unique and highly beneficial to the class, including allowing class members to recover up to 100% of their economic damages without any limitation on the types of economic damages they may recover. (1:07-cv-02867 (D.N.J.), MDL Docket No. 1850 (D.N.J.)).
- ***In re TJX Companies Retail Security Breach Litigation***: The firm served as co-lead counsel in this multidistrict litigation brought on behalf of individuals whose personal and financial data was compromised in the then-largest theft of personal data in history. The breach involved more than 45 million credit and debit card numbers and 450,000 customers' driver's license numbers. The case was settled for benefits valued at over \$200 million. Class members whose driver's license numbers were at risk were entitled to 3 years of credit monitoring and identity theft insurance (a value of \$390 per person based on the retail cost for this service), reimbursement of actual identity theft losses, and reimbursement of driver's license replacement costs. Class members whose credit and debit card numbers were at risk were entitled to cash of \$15-\$30 or store vouchers of \$30-\$60. (No. 1:07-cv-10162-WGY, (D. Mass.)).
- ***In Re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation***: The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement of cash and injunctive relief for a class of 130 million credit card holders whose credit card information was stolen by computer hackers. The breach was the largest known theft of credit card information in history. The settlement is subject to court approval. (No. 4:09-MD-2046 (S.D. Tex. 2009)).

- ***In re: Countrywide Financial Corp. Customer Data Security Breach Litigation:*** The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement for a class of 17 million individuals whose personal information was at risk when a rogue employee sold their information to unauthorized third parties. Settlement benefits included: (i) reimbursement of several categories of out-of-pocket costs; (ii) credit monitoring and identity theft insurance for 2 years for consumers who did not accept Countrywide's prior offer of credit monitoring; and (iii) injunctive relief. The settlement was approved by the court in 2010. (3:08-md-01998-TBR (W.D. Ky. 2008)).
- ***In re Educational Testing Service Praxis Principles of Learning and Teaching: Grades 7-12 Litigation:*** The firm served on the plaintiffs' steering committee and obtained an \$11.1 million settlement in 2006 on behalf of persons who were incorrectly scored on a teacher's licensing exam. (MDL No. 1643 (E.D. La.)).
- ***Vadino, et al. v. American Home Products Corporation, et al.:*** The firm filed a class complaint different from that filed by any other of the filing firms in the New Jersey State Court "Fen Phen" class action, and the class sought in the firm's complaint was ultimately certified. It was the only case anywhere in the country to include a claim for medical monitoring. In the midst of trial, the New Jersey case was folded into a national settlement which occurred as the trial was ongoing, and which was structured to include a medical monitoring component worth in excess of \$1 billion. (Case Code No. 240 (N.J. Super. Ct.)).
- ***Parker v. American Isuzu Motors, Inc.:*** The firm served as sole lead counsel and obtained a settlement whereby class members recovered up to \$500 each for economic damages resulting from accidents caused by faulty brakes. (Sept. Term 2003, No. 3476 (Pa. Ct. Com. Pl., Phila. Cty.)).
- ***Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.:*** The firm served as co-lead counsel in litigation brought on behalf of a nationwide class alleging that defendants failed to disclose that its vehicles contained defectively designed timing belt tensioners and associated parts and that defendants misrepresented the appropriate service interval for replacement of the timing belt tensioner system. After extensive discovery, a settlement was reached. (Docket No. ATL-1461-03 (N.J. Sup. Ct. 2007)).
- ***Burgo v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.:*** The firm served as co-lead counsel in litigation brought on behalf of a nationwide class against premises on defendants' defective tires that were prone to bubbles and bulges. Counsel completed extensive discovery and class certification briefing. A settlement was reached while the decision on class certification was pending. The settlement consisted of remedies including total or partial reimbursement for snow tires, free inspection/replacement of tires for those who experienced sidewall bubbles, blisters, or bulges, and remedies for those class members who incurred other costs related to the tires' defects. (Docket No. HUD-L-2392-01 (N.J. Sup. Ct. 2001)).
- ***Crawford v. Philadelphia Hotel Operating Co.:*** The firm served as co-lead counsel and obtained a settlement whereby persons who contracted food poisoning at a business convention recovered \$1,500 each. (March Term, 2004, No. 000070 (Pa. Ct. Com. Pl., Phila. Cty.)).
- ***Block v. McDonald's Corporation:*** The firm served as co-lead counsel and obtained a settlement of \$12.5 million with McDonald's stemming from its failure to disclose the use of beef fat in its french fries. (No. 01-CH-9137 (Ill. Cir. Ct., Cook Cty.)).

## Shareholders

### Lawrence Deutsch - Shareholder

Lawrence Deutsch is a graduate of Boston University (B.A. 1973), George Washington University's School of Government and Business Administration (M.S.A. 1979), and Temple University's School of Law (J.D. 1985). He became a member of the Pennsylvania Bar in 1986 and the New Jersey Bar in 1987. He has also been admitted to practice in Eastern District of Pennsylvania, the First Circuit Court of Appeals, the Second Circuit Court of Appeals, the Third Circuit Court of Appeals, the Fourth Circuit Court of Appeals and the U.S. Court of Federal Claims as well as various jurisdictions across the country for specific cases.

At the Berger firm, Mr. Deutsch has been involved in numerous major shareholder class action cases. He served as lead counsel in the Delaware Chancery Court on behalf of Class A shareholders in a corporate governance litigation concerning the rights and valuation of their shareholdings. Defendants in the case were the Philadelphia Stock Exchange, the Exchange's Board of Trustees, and six major Wall Street investment firms. The case settled for \$99 million and also included significant corporate governance provisions. Chancellor Chandler, when approving the settlement allocation and fee awards on July 2, 2008, complimented counsel's effort and results, stating, "Counsel, again, I want to thank you for your extraordinary efforts in obtaining this result for the class." The Chancellor had previously described the intensity of the litigation when he had approved the settlement, "All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong, like they have gone at it in this case."

Mr. Deutsch was one of trial counsel for plaintiffs in *Fred Potok v. Floorgraphics, Inc., et al.* (Phila. Co. CCP 080200944 and Phila. Co. CCP 090303768) resulting in an \$8 million judgment against the directors and officers of the company for breach of fiduciary duty.

Over the 25 years working in securities litigation, Mr. Deutsch has been a lead attorney on many substantial matters. Mr. Deutsch served as one of lead counsel in the *In Re Sunbeam Securities Litigation* class action concerning "Chainsaw" Al Dunlap (recovery of over \$142 million for the class in 2002). As counsel on behalf of the City of Philadelphia he served on the Executive Committee for the securities litigation regarding *Frank A. Dusek, et al v. Mattel Inc., et al* (recovery of \$122 million for the class in 2006). *Fox et al v. Prime Group Realty Trust et al.* United States District Court Northern District of Illinois (Civil Case No. 1:12-cv-09350) (\$8.25 million settlement); court-appointed lead counsel in *In Re Inergy LP Unitholder Litigation* (Del. Ch. No. 5816-VCP) (\$8 million settlement);

Mr. Deutsch served as lead counsel for a class of investors in Scudder/Deutsche Bank mutual funds in the nationwide Mutual Funds Market Timing cases. Mr. Deutsch served on the Plaintiffs' Omnibus Steering Committee for the consortium of all cases. These cases recovered over \$300 million in 2010 for mutual fund purchasers and holders against various participants in widespread schemes to "market time" and late trade mutual funds, including \$14 million recovered for Scudder/Deutsche Bank mutual fund shareholders.

Mr. Deutsch currently serves as co-lead counsel representing shareholders in *In Re Precision Castparts Corp. Shareholder Litigation*, (Circuit Court of Oregon No 15CV21455).

Mr. Deutsch has been court-appointed Lead or a primary attorney in numerous complex cases concerning consumer products: served on team of lead counsel in *In Re: CertainTeed Fiber Cement Siding Litigation*,

E.D.PA. MDL NO. 11-2270 (\$103.9 million settlement); Co-lead counsel in *Tim George v. Uponor, Inc., et al.*, United States District Court, District of Minnesota, Case No. 12-CV-249 (ADM/JJK) (\$21 million settlement); Mr. Deutsch currently serves as counsel in numerous consumer product cases: *Nguyen et al v. Nissan North America, Inc.* United States District Court, Middle District of Tennessee, (Case No. 16-CV-00624); *Meadow et al v. NIBCO, Inc.*, United States District Court Middle District of Tennessee, (Case No. 15-CV-01124); *Snyder, et al v. Tamko Building Products Inc.*, United States District Court, Eastern District of California, (Case No. 15-CV-1892).

Mr. Deutsch has also represented plaintiffs in numerous matters of broker/dealer arbitrations, consumer fraud, individual securities disputes and construction litigation.

In addition to his litigation work, Mr. Deutsch was a member of the firm's Administrative Committee for ten years chairs the firm's Electronic Discovery Committee, and manages the firm's paralegals. He has also currently regularly represented indigent parties through the Philadelphia Bar Association's VIP Program, including the Bar's acclaimed representation of homeowners facing mortgage foreclosure.

## Associates

### Jeff Osterwise – Senior Associate

Jeff Osterwise concentrates his practice on obtaining relief for injured shareholders and consumers.

As a member of the firm's Securities & Investor Protection practice group, Mr. Osterwise was instrumental in securing compensation for real estate investment trust preferred shareholders injured by alleged breaches of fiduciary duties by the REIT's board and management. *Fox v. Prime Group Realty Trust et al.*, Case No. 1:12-cv-09350 (N.D. Ill.) (\$8.25 million settlement). He has also successfully pursued claims on behalf of investors injured by alleged violations of the federal securities laws. *In re Scudder Mutual Funds Litigation* Case No. 04-md-15861 (D. Md.) (\$14 million settlement); *In re Veeco Instruments Inc. Securities Litigation*, Case No.: 1:05-md-01695 (S.D.N.Y.) (\$5.5 million settlement). As a member of the firm's Consumer Protection and Defective Products practice groups. Mr. Osterwise has fought for the rights of consumers harmed by corporations' violations of consumer protection statutes and breaches of consumer contracts and warranties. *Vaughn v. L.A. Fitness International LLC*, Case No.: 10-cv-2326 (E.D. Pa.) (settlement on behalf of gym members for alleged improper billing); *Klug, et al. v. Watts Regulator Company*, Case No.: 8:15-cv-00061 (D. Neb.) (\$10 million and \$4 million settlements pending court approval on behalf of consumer classes injured by alleged defective water supply lines). Mr. Osterwise is also actively involved in the firm's representation of the City of Chicago in an action against certain online travel companies for their alleged failure to pay hotel taxes.

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### Eugene R. Tompkins - Senior Associate

Mr. Tompkins is a senior associate in Berger & Montague's Commercial Litigation practice group. He concentrates on complex, technically-oriented disputes and business-related matters under antitrust, securities and corporate governance areas of federal and state law. His prior experience in numerous facets of the international transportation and oil and gas industries complements his efforts in many of the areas encountered in increasingly complex litigation.

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**Class Action: Case No. 1:14-cv-24728-Civ-Scola/Otazo-Reyez**

KENAI BATISTA, ANDY CHANCE, GERARDO  
TORRES, ANGELA MATLIN, and TUNG NGUYEN,  
individually and on behalf of those similarly situated,

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.

Defendant.

\_\_\_\_\_ /

**DECLARATION OF RODNEY A. MAX**

I, Rodney A. Max, pursuant to 28 U.S.C. §1746, declare as follows:

1. My name is Rodney A. Max. I am over the age of 18 and I am competent to give testimony. The statements contained in this declaration are based upon my own personal knowledge and are true and correct.

**I. BACKGROUND AND EXPERIENCE**

2. I graduated in 1975 *cum laude* from the Cumberland School of Law. Upon graduation, I became licensed to practice law in the state of Alabama (1975) and the state of Florida (1976). I am currently a member of Upchurch, Watson, White & Max Mediation Group, Inc.

3. Since 1992, my practice has focused exclusively on alternative dispute resolution, with an emphasis on mediation.

4. I have national mediation experience and have mediated in 32 states and the District of Columbia. I have been selected to conduct mediations by leading plaintiffs' attorneys, defense counsel and in-house counsel for national and international manufacturers, distributors,

transporters, insurers and service provider companies and have been appointed by federal and state judges from coast to coast.

5. I have mediated cases involving consumer fraud, wrongful death and personal injury, breach of contract, bad faith, securities (NASD), antitrust, patent and trademark, Lanham Act, construction, property, environmental, fraud and suppression, banking, estate and trusts, stockholder disputes, partnership disputes and derivative claims. I have mediated numerous national and statewide class actions as well as numerous mass tort, contract and statutory warranty cases. I have convened parties for mediation before suits have been filed, as well as mediated cases on appeal.

6. Over the course of my career, I have conducted well over 5,000 mediations involving over 10,000 cases.

7. I am a past President of the American College of Civil Trial Mediators. Additionally, I am a member of the Alabama Center of Dispute Resolution, the Florida Academy of Professional Mediators and the Dispute Resolution Section of the American Bar Association.

8. I have played a major role in establishing rules, standards and ethics for mediators. I initiated the Mediation Process and Practice Program at Cumberland School of Law as an adjunct professor from 1997-2002. Additionally, I have lectured at CLE seminars for attorneys or those who have sought training on mediation at the following courses:

- American College of Attorney Mediators - Multi Party Mediation, The Business of Mediation;
- American Bar Association Dispute Resolution Section – Multi Party Mediation, Ethics of Mediation, The Business of Mediation;
- New Jersey Bar Association - The Practice of Mediation;
- Alabama Bar Association - Multi Party Mediation; Mediation Dissected;
- Florida Academy of Civil Trial Mediators- Opening Statements;
- University of Florida - Designing The Mediation; and
- The International Academy of Mediators- Ethics of Mediation.



9. I have also published a number of articles. The following abridged list is a sampling: *Mediation Comes of Age*, published in *The American Journal of Trial Advocacy*, Volume 23, Issue 3 (Spring 2000); *Multiparty Mediation*, published in *The American Journal of Trial Advocacy*, Volume 23, Issue 2 (Fall 1999); *Designing The Mediation*, presented at professional seminars; *The Ethical Civil Trial Mediator, The Letter, The Spirit and The Practice*, presented at professional seminars; and *Mediation: The Humanization of the Justice System*, presented at professional seminars.

## **II. FAMILIARITY WITH THE PRESENT LITIGATION**

10. I was retained by counsel for the parties in this matter for the specific purpose of mediating the case and to assist in reaching a global resolution, if possible. In my capacity as mediator, I consider myself to be a neutral, representing neither plaintiff nor defendant.

11. I was retained to mediate this matter in July 2015. In preparing for the mediation, I asked that the parties provide me with a variety of information about the lawsuit. Additionally, I had pre-mediation discussions with all parties to learn more about the facts giving rise to the dispute, the procedural background of the lawsuit, and the positions of the parties. The purpose of these initial conferences was to organize the parties' efforts to fully resolve this matter. Thereafter, I scheduled a mediation session for February 11, 2016. I reviewed selected court filings from the case before the mediation session, and through this review and my conversations with counsel, I became intimately familiar with the nature of the claims and defenses asserted in this case.

## **III. THE MEDIATED SETTLEMENT NEGOTIATIONS**

12. The proposed *Batista, et al. v. Nissan North America, Inc.* settlement is the product of lengthy and particularly hard-fought negotiations which took place on an ongoing basis between July 2015 and September 2016. The caliber of the representation of both sides was extraordinary



in my experience. The in-person mediations consisted of multiple sessions among myself and counsel for the plaintiffs and defendant on February 11, 2016, June 30, 2016, and July 22, 2016. In addition, I facilitated extensive discussions between the parties both before and during the mediation sessions.

13. A review of my records shows that, in total, I personally spent in excess of 47 hours coordinating, preparing, pre-mediating and mediating the resolution of this case.

14. These lengthy negotiations were difficult, and at times frustrating, for the parties and their counsel. The live sessions involved discussions with all counsel and representatives of those parties who were present, extended sessions with each side, bi-lateral discussions with counsel, and *ex parte* discussions with the parties concerning their various positions. The discussions allowed the parties to express their respective views of the strengths and weaknesses of the respective positions in the case. I never witnessed or sensed any collusiveness between the parties. To the contrary, at each point during these negotiations, the settlement process was conducted at arm's-length and, while professionally conducted, was quite adversarial.

15. The relief for class members was the focus of the vast majority of the settlement negotiations. The provisions of the settlement providing for payment of attorneys' fees and incentive payments to the Named Plaintiffs were negotiated only after the parties had agreed on the substantive relief to class members. There were no discussions of attorneys' fees, costs, or incentive awards until the substantive terms of the settlement were negotiated and resolved.

16. In my opinion, the settlement negotiations in this case resulted in a resolution that is fair, reasonable and adequate for class members. The *Batista, et al. v. Nissan North America, Inc.*, settlement, including the relief provided to the class, is a fair and non-collusive settlement that was conducted at arm's length by skilled, well-informed lawyers with sufficient discovery and

investigation prior to completion of the mediation, and through the intense, lengthy mediation process described above.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this 2<sup>nd</sup> day of May, 2017.

  
Rodney A. Max

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF FLORIDA**  
10 **MIAMI DIVISION**

11 **CLASS ACTION: CASE NO. 1:14-CV-24728-CIV-SCOLA/OTAZO-REYEZ**

12 KENAI BATISTA, ANDY CHANCE, GERARDO  
13 TORRES, ANGELA MATLIN, AND TUNG  
14 NGUYEN, INDIVIDUALLY AND ON BEHALF  
15 OF THOSE SIMILARLY SITUATED,

16 Plaintiffs,

17 vs.

18 NISSAN NORTH AMERICA, INC.,

19 Defendant.

**DECLARATION OF LANA LUCCHESI**  
**RE: NOTICE PROCEDURES**

20 I, **LANA LUCCHESI**, declare:

21 1. I am a Senior Project Manager at Kurtzman Carson Consultants LLC ("KCC"). I am over  
22 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein  
23 and, if called as a witness, could and would testify competently thereto.

24 2. KCC was retained by the parties to serve as the Claims Administrator to, among other  
25 tasks, mail the Legal Notice Postcard (the "Postcard Notice"); respond to Class Member inquiries; to  
26 establish and maintain a settlement website and perform other duties as specified in the Amended  
27 Settlement Agreement (the "Amended Settlement Agreement") preliminarily approved by this Court on  
28 October 25, 2016.

3. **CAFA Notification.** In compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. Section 1715, KCC compiled a CD-ROM containing the following documents: Consumer Class Action Complaint, Defendant Nissan North America, Inc.’s Answer to Plaintiffs’ Consumer Class Action Complaint, Class Action Complaint (as filed in *Torres, et al. v Nissan North America, Inc., et al*, CA Sup. Ct., Case No. BC 577204), Nissan North America, Inc.’s Answer to Plaintiffs’ Complaint (as filed in *Torres, et al., v. Nissan North America, Inc., et al.*, USDC CA, Case No. 2:15-cv-03251-RGK-FFM), First Amended Consumer Class Action Complaint, Defendant Nissan North America, Inc.’s Answer to Plaintiffs’ First Amended Consumer Class Action Complaint, Complaint (as filed in *Nguyen, et al., v. Nissan North America, Inc.*, USDC TN, Case No. 3:16-cv-00624), Nissan North America, Inc.’s Original Answer (as filed in *Nguyen, et al., v. Nissan North America, Inc.*, USDC TN, Case No. 3:16-cv-00624), Second Amended Consumer Class Action Complaint, Unopposed Motion for Preliminary Approval of Class Action Settlement, Declaration of Counsel F. Jerome Tapley, Declaration of Ronald P. Weil, Declaration of C. Richard Newsome, Declaration of Lawrence Deutsch in Support of the Joint Motion for Preliminary Approval, Declaration of Robert K. Friedl, Declaration of Kenai Batista, Declaration of Andy Chance, Declaration of Angela Matlin in Support of Motion for Preliminary Approval, Declaration of Tung Nguyen, Declaration of Gerardo Torres in Support of Motion for Preliminary Approval, [Proposed] Preliminary Approval Order of Class Action Settlement, Future Transmission Claims Procedure, Long Form Notice, Summary Notice, Settlement Agreement, and [Proposed] Order and Judgment Granting Final Approval of Class Action Settlement and Attorneys’ Fees and Expenses, , which accompanied a cover letter (collectively, the “CAFA Notice Packet”). A copy of the cover letter is attached hereto as Exhibit A.

4. On October 19, 2016, KCC caused fifty-nine (59) CAFA Notice Packets to be mailed via Priority Mail from the U.S. Post Office in San Rafael, California to the parties listed on Exhibit B, i.e., the U.S. Attorney General, the Attorneys General of each of the 50 States and the District of Columbia, the Attorneys General of the 5 recognized U.S. Territories, as well as parties of interest to this Action.

5. As of the date of this declaration, KCC has received no response to the CAFA Notice Packet from any of the recipients identified in paragraph 4 above.

6. **Mailed Notice.** On November 3, 2016, the Defendant provided KCC with the beginning

1 and ending VIN ranges identified as the Class Vehicles. Using the VIN ranges provided by Nissan, KCC  
2 utilized the services of a third party vendor, IHS Markit, formerly known as R.L. Polk ("IHS"), to obtain  
3 mailing address data for the Settlement Class in preparation for mailing.

4 7. IHS caused the addresses in the Class Member List to be updated using the National  
5 Change of Address database ("NCOA") maintained by the U.S. Postal Service. A total of 35,889  
6 addresses were found and updated. Upon receipt of the mailing address data for the Settlement Class  
7 provided by IHS, KCC entered the Class Member List information into its proprietary database and  
8 prepared a data file for the initial mailing.

9 8. On March 21, 2017, KCC mailed the Postcard Notice to each of the 289,267 persons on  
10 the Class Member List. A sample of the Postcard Notice is attached hereto as Exhibit C.

11 9. As of May 17, 2017, KCC has received one Postcard Notice returned by the U.S. Postal  
12 Service with forwarding addresses. KCC caused the Class Member list to be updated with the new  
13 addresses and a Postcard Notice to be re-mailed to the updated addresses. As of May 17, 2017, KCC has  
14 received a total of 7,201 Postcard Notices returned by the U.S. Postal Service without forwarding  
15 address information. KCC conducted address searches using credit and other public source databases to  
16 attempt to locate new addresses for these Class Members. As of May 17, 2017, these searches have  
17 resulted in 5,065 updated addresses. KCC promptly re-mailed Postcard Notices to the updated  
18 addresses.

19 10. **Toll-Free Telephone Number.** On March 21, 2017, KCC established an Interactive  
20 Voice Response (the "IVR") system to provide information about the settlement and to record requests  
21 for the Long-Form Class Notice. KCC also established an option for Class Members to request to speak  
22 to a live call center agent through the IVR system to answer telephone inquiries from Class Members.  
23 As of May 17, 2017, 5,718 calls have been received by the IVR.

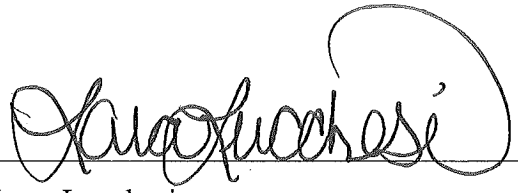
24 11. **Website.** On March 21, 2017, KCC also established a website  
25 ([www.NissanCVTLitigation.com](http://www.NissanCVTLitigation.com)) dedicated to this settlement to provide additional information to the  
26 Class Members and to answer frequently asked questions. Visitors of the website can download a Long-  
27 Form Class Notice, Second Amended Preliminary Approval Order, Amended Settlement Agreement,  
28 Amended Preliminary Approval Order, Settlement Agreement, Preliminary Approval Motion and

1 Second Amended Complaint. The web address was set forth in the Postcard Notice and Long-Form  
2 Class Notice. As of May 17, 2017, the website has received 180,156 visits.

3 12. **Requests for Exclusion**. The deadline for Class Members to request to be excluded from  
4 the class is a postmarked deadline of May 17, 2017. As of the date of this declaration, KCC has received  
5 94 requests for exclusion. A list of the Class Members requesting to be excluded is attached hereto as  
6 Exhibit D.

7 13. **Objections to the Settlement**. The deadline for Class Members to object to the  
8 Settlement is a filing and service deadline of May 17, 2017. As of the date of this declaration, KCC has  
9 received 9 objections to the settlement. A list of the Class Members objecting to the settlement is  
10 attached hereto as Exhibit E.

11  
12 I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true  
13 and correct to the best of my knowledge. Executed on this 17<sup>th</sup> day of May 2017 at San Rafael,  
14 California.

15  
16   
17 Lana Lucchesi

## **Exhibit A**





Mahsa Sobeil  
469.227.4672  
[mahsa.sobeil@sedgwicklaw.com](mailto:mahsa.sobeil@sedgwicklaw.com)

October 19, 2016

VIA PRIORITY MAIL

«First» «Last»  
«Company»  
«Address\_1»  
«Address\_2»  
«City», «State» «Zip»

Re: Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

Dear «First» «Last»:

SEDGWICK LLP represents Nissan North America, Inc., (“Nissan”) in a consolidated class action lawsuit entitled *Kenai Batista, Andy Chance, Gerardo Torres, Angela Matlin, and Tung Nguyen, individually and on behalf of those similarly situated, v. Nissan North America, Inc.*, Case No. 1:14-cv-24728-RNS. The lawsuit is pending before the Honorable Robert N. Scola, Jr. in the United States District Court for the Southern District of Florida, Miami Division. This letter is to advise you that Plaintiffs filed a fully executed Settlement Agreement in connection with this class action lawsuit on October 10, 2016.

**Case Name:** *Kenai Batista, et al., v. Nissan North America, Inc.*

**Case Number:** 1:14-cv-24728-RNS

**Jurisdiction:** United States District Court,  
Southern District of Florida, Miami Division

**Date Settlement**

**Filed with Court:** October 10, 2016

In compliance with 28 U.S.C. § 1715(b), the following documents referenced below are included on the CD that is enclosed with this letter:

1. **28 U.S.C. § 1715(b)(1) – Complaint and Related Materials:** Copies of the *Consumer Class Action Complaint, Defendant Nissan North America, Inc.’s Answer to Plaintiffs’ Consumer Class Action Complaint, Class Action Complaint* (as filed in *Torres, et al. v. Nissan North America, Inc., et al*, CA Sup. Ct., Case No. BC 577204), *Nissan North America, Inc.’s Answer to Plaintiffs’ Complaint* (as filed in *Torres, et al., v. Nissan North America, Inc., et al.*, USDC CA, Case No. 2:15-cv-03251-

«First» «Last»

Re: Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

October 19, 2016

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- RGK-FFM), *First Amended Consumer Class Action Complaint, Defendant Nissan North America, Inc.'s Answer to Plaintiffs' First Amended Consumer Class Action Complaint, Complaint* (as filed in *Nguyen, et al., v. Nissan North America, Inc.*, USDC TN, Case No. 3:16-cv-00624), *Nissan North America, Inc.'s Original Answer* (as filed in *Nguyen, et al., v. Nissan North America, Inc.*, USDC TN, Case No. 3:16-cv-00624), and *Second Amended Consumer Class Action Complaint* are included on the enclosed CD Rom.
2. **28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing:** As of October 19, 2016, the Court has not yet scheduled a final fairness hearing in this matter. Plaintiffs filed an *Unopposed Motion for Preliminary Approval of Class Action Settlement* requesting the Court preliminarily approve the proposed settlement, provisionally certify the Settlement Class, appoint Class Representatives and Class Counsel, approve the proposed notice and authorize its dissemination to the Class, and set a schedule for final approval. Copies of the *Unopposed Motion for Preliminary Approval of Class Action Settlement, Declaration of Counsel F. Jerome Tapley, Declaration of Ronald P. Weil, Declaration of C. Richard Newsome, Declaration of Lawrence Deutsch in Support of the Joint Motion for Preliminary Approval, Declaration of Robert K. Friedl, Declaration of Kenai Batista, Declaration of Andy Chance, Declaration of Angela Matlin in Support of Motion for Preliminary Approval, Declaration of Tung Nguyen, Declaration of Gerardo Torres in Support of Motion for Preliminary Approval, and [Proposed] Preliminary Approval Order of Class Action Settlement* are included on the enclosed CD Rom.
  3. **28 U.S.C. § 1715(b)(3) – Notification to Class Members:** Copies of the *Future Transmission Claims Procedure, Long Form Notice, and Summary Notice* to be provided to the class are included on the enclosed CD Rom.
  4. **28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** A copy of the *Settlement Agreement* is included on the enclosed CD Rom.
  5. **28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreement:** As of October 19, 2016, no other settlement or agreement has been entered into by the parties to this Action.
  6. **28 U.S.C. § 1715(b)(6) – Final Judgment:** No Final Judgment has been reached as of October 19, 2016, nor have any Notices of Dismissal been granted at this time. A copy of the *[Proposed] Order and Judgment Granting Final Approval of Class Action Settlement and Attorneys' Fees and Expenses* is included on the enclosed CD Rom.
  7. **28 U.S.C. § 1715(b)(7)(A)-(B) – Names of Class Members/Estimate of Class Members:** While Nissan is in the process of gathering information on this issue, pursuant to 28 U.S.C. § 1715(b)(7)(A), at this time a complete list of names of class members as well as each State of residence is not available, because the parties do not presently know the names or current addresses of all the proposed settlement class members and will not learn this information until the Settlement is preliminarily approved and the Court authorizes dissemination of information about the Settlement through the Class Notice. Further, pursuant to 28 U.S.C. § 1715(b)(7)(B), it is not feasible to estimate the number of class members since the notice has not yet been authorized and disseminated to the public.

«First» «Last»

Re: Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

October 19, 2016

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8. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** As the proposed Settlement is still pending final approval by the Court, there are no other opinions available at this time. As of October 19, 2016, there has been no written judicial opinion related to the settlement.

If for any reason you believe the enclosed information does not fully comply with 28 U.S.C. § 1715, please contact the undersigned immediately at either (469) 227-8200 or [mahsa.soheil@sedgwicklaw.com](mailto:mahsa.soheil@sedgwicklaw.com) so that Nissan can address any concerns or questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Mahsa Soheil". The signature is written in a cursive, flowing style.

Mahsa Soheil  
Sedgwick LLP

## **Exhibit B**

Last	First	Company	Address 1	Address 2	City	State	Zip
Richards	Craig W.	Office of the Alaska Attorney General	P.O. Box 110300		Juneau	AK	99811-0300
Strange	Luther	Office of the Alabama Attorney General	501 Washington Avenue	PO Box 300152	Montgomery	AL	36130-0152
Rutledge	Leslie	Arkansas Attorney General Office	323 Center Street, Suite 200		Little Rock	AR	72201-2610
Brnovich	Mark	Office of the Arizona Attorney General	1275 W. Washington Street		Phoenix	AZ	85007
	CAFA Coordinator	Office of the Attorney General	Consumer Law Section	455 Golden Gate Ave., Suite 11000	San Francisco	CA	94102
Coffman	Cynthia	Office of the Colorado Attorney General	Ralph L. Carr Colorado Judicial Center	1300 Broadway, 10th Floor	Denver	CO	80203
Jepsen	George	State of Connecticut Attorney General's Office	55 Elm Street		Hartford	CT	6106
Racine	Karl A.	District of Columbia Attorney General	441 4th Street, NW, Suite 1100S		Washington	DC	20001
Lynch	Loretta E.	Attorney General of the United States	United States Department of Justice	950 Pennsylvania Avenue, NW	Washington	DC	20530-0001
Denn	Matt	Delaware Attorney General	Carvel State Office Building	820 N. French Street	Wilmington	DE	19801
Bondi	Pam	Office of the Attorney General of Florida	The Capitol, PL-01		Tallahassee	FL	32399-1050
Olens	Sam	Office of the Georgia Attorney General	40 Capitol Square, SW		Atlanta	GA	30334-1300
Chin	Douglas S.	Office of the Hawaii Attorney General	425 Queen Street		Honolulu	HI	96813
Miller	Tom	Iowa Attorney General	Hoover State Office Building	1305 E. Walnut Street	Des Moines	IA	50319
Wasden	Lawrence	State of Idaho Attorney General's Office	Statehouse	700 W Jefferson St	Boise	ID	83720-0010
Madigan	Lisa	Illinois Attorney General	James R. Thompson Center	100 W. Randolph Street	Chicago	IL	60601
Zoeller	Greg	Indiana Attorney General's Office	Indiana Government Center South	302 West Washington Street, 5th Floor	Indianapolis	IN	46204
Schmidt	Derek	Kansas Attorney General	120 S.W. 10th Ave., 2nd Floor		Topeka	KS	66612-1597
Conway	Jack	Office of the Kentucky Attorney General	700 Capitol Ave	Capitol Building, Suite 118	Frankfort	KY	40601
Caldwell	James D.	Office of the Louisiana Attorney General	P.O. Box 94095		Baton Rouge	LA	70804-4095
Healey	Maura	Office of the Attorney General of Massachusetts	1 Ashburton Place		Boston	MA	02108-1518
Frosh	Brian	Office of the Maryland Attorney General	200 St. Paul Place		Baltimore	MD	21202-2202
Mills	Janet	Office of the Maine Attorney General	State House Station 6		Augusta	ME	04333
Schuette	Bill	Office of the Michigan Attorney General	P.O. Box 30212	525 W. Ottawa Street	Lansing	MI	48909-0212
Lori Swanson	Attorney General	Attention: CAFA Coordinator	1400 Bremer Tower	445 Minnesota Street	St. Paul	MN	55101-2131
Koster	Chris	Missouri Attorney General's Office	Supreme Court Building	207 W. High Street	Jefferson City	MO	65101
Hood	Jim	Mississippi Attorney General's Office	Department of Justice	P.O. Box 220	Jackson	MS	39205
Fox	Tim	Office of the Montana Attorney General	Justice Bldg.	215 N. Sanders Street	Helena	MT	59620-1401
Cooper	Roy	Office of the North Carolina Attorney General	Department of Justice	P.O. Box 629	Raleigh	NC	27602-0629
Stenehjem	Wayne	North Dakota Office of the Attorney General	State Capitol	600 E. Boulevard Avenue	Bismarck	ND	58505-0040
Peterson	Doug	Office of the Nebraska Attorney General	State Capitol	P.O. Box 98920	Lincoln	NE	68509-8920
Foster	Joseph A.	New Hampshire Attorney General	State House Annex	33 Capitol Street	Concord	NH	03301-6397
Hoffman	John Jay	Office of the New Jersey Attorney General	Richard J. Hughes Justice Complex	25 Market Street, P.O. Box 080	Trenton	NJ	08625
Balderas	Hector	Office of the New Mexico Attorney General	P.O. Drawer 1508		Santa Fe	NM	87504-1508
Laxalt	Adam Paul	Nevada Attorney General	Old Supreme Ct. Bldg.	100 North Carson Street	Carson City	NV	89701
Schneiderman	Eric	Office of the New York Attorney General	Department of Law	The Capitol, 2nd Floor	Albany	NY	12224
DeWine	Mike	Ohio Attorney General	State Office Tower	30 E. Broad Street	Columbus	OH	43266-0410
Pruitt	Scott	Oklahoma Office of the Attorney General	313 NE 21st Street		Oklahoma City	OK	73105
Rosenblum	Ellen F.	Office of the Oregon Attorney General	Justice Building	1162 Court Street, NE	Salem	OR	97301
Kane	Kathleen	Pennsylvania Office of the Attorney General	1600 Strawberry Square		Harrisburg	PA	17120
Kilmartin	Peter	Rhode Island Office of the Attorney General	150 South Main Street		Providence	RI	02903
Wilson	Alan	South Carolina Attorney General	Rembert C. Dennis Office Bldg.	P.O. Box 11549	Columbia	SC	29211-1549
Jackley	Marty J.	South Dakota Office of the Attorney General	1302 East Highway 14, Suite 1		Pierre	SD	57501-8501
Slattery, III	Herbert H.	Tennessee Attorney General and Reporter	425 5th Avenue North		Nashville	TN	37243
Paxton	Ken	Attorney General of Texas	Capitol Station	P.O. Box 12548	Austin	TX	78711-2548
Reyes	Sean	Utah Office of the Attorney General	State Capitol, Room 236	350 N State St	Salt Lake City	UT	84114-0810
Herring	Mark	Office of the Virginia Attorney General	900 East Main Street		Richmond	VA	23219
Sorrell	William H.	Office of the Attorney General of Vermont	109 State Street		Montpelier	VT	05609-1001
Ferguson	Bob	Washington State Office of the Attorney General	1125 Washington St SE	P.O. Box 40100	Olympia	WA	98504-0100
Schimel	Brad	Office of the Wisconsin Attorney General	Dept of Justice, State Capitol, RM 114	East P.O. Box 7857	Madison	WI	53707-7857
Morrissey	Patrick	West Virginia Attorney General	State Capitol	1900 Kanawha Blvd E	Charleston	WV	25305
Michael	Peter K.	Office of the Wyoming Attorney General	State Capitol Bldg.	200 W 24th St	Cheyenne	WY	82002
Ale	Talauaga Eleasalo V.	American Samoa Attorney General	Exec. Ofc. Bldg, Utulei	Territory of American Samoa	Pago Pago	AS	96799
Barrett-Anderson	Elizabeth	Attorney General Office	590 S. Marine Corps Drive	ITC Bldg, Suite 706	Tamuning	Guam	96913
Manibusan	Edward	Northern Mariana Islands Attorney General	Administration Building	PO Box 10007	Saipan	MP	96950-8907
Miranda-Rodriguez	Cesar R.	Puerto Rico Attorney General	P.O. Box 902192	San Juan	San Juan	PR	902
Walker	Claude E.	Department of Justice	Virgin Islands Attorney General	34-38 Kronprindsens Gade, GERS Bldg, 2nd Floor	St. Thomas	VI	00802
Soheil	Mahsa	Sedgwick LLP	1717 Main Street	Suite 5400	Dallas	TX	75201
Tapley	F. Jerome	Cory Watson, P.C.	2131 Magnolia Avenue		Birmingham	AL	35205

## **Exhibit C**

## **LEGAL NOTICE**

Current and Former Owners or Lessees  
of 2013-2014 Nissan Pathfinder,  
and Infiniti JX35/QX60  
equipped with the FK-\*k2 CVT.

*A Federal Court authorized this notice.  
This is not a solicitation from a lawyer.*

1-855-306-1955

www.NissanCVTLitigation.com

If you currently own or lease or  
previously owned or leased  
a model year 2013-2014 Nissan  
Pathfinder or Infiniti JX35/QX60  
equipped with the FK-\*k2 CVT,  
you may benefit from a  
Proposed Class Action Settlement.

**Nissan CVT Litigation**  
**Settlement Administrator**  
P.O. Box 43441  
Providence, RI 02940-3441

VIN: «VIN»

«Barcode»

Postal Service: Please do not mark barcode

Control#: NBX-«ClaimID»-«MailRec»

«First1» «Last1»

«CO»

«Addr2»

«Addr1»

«City», «St» «Zip»

«Country»

NBX



**A Federal Court authorized this Notice. This is not a solicitation from a lawyer.**

A settlement has been proposed in a class action lawsuit against Nissan North America, Inc. ("NNA") involving the continuously variable transmission ("CVT") in 2013-2014 model year Nissan Pathfinder and 2013-2014 Infiniti JX35/QX60 vehicles equipped with the FK-\*k2 CVT that may affect your rights. This Notice summarizes the proposed settlement (the "Settlement"). For additional information including the longer Notice of Proposed Settlement and the Settlement Agreement with the precise terms and conditions of the Settlement, please see [www.NissanCVTLitigation.com](http://www.NissanCVTLitigation.com). You may also access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.flsd.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of Florida, 400 N. Miami Ave., Miami, Florida 33218, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. The case is called *Batista, et al. v. Nissan North America, Inc.* and the case number is 14-cv-24728. Please do not telephone the Court or the Court Clerk's Office to inquire about this Settlement or the claim process.

Plaintiffs allege that the Class Vehicles have a defective CVT that can lead to transmission vibration or judder. NNA denies all of Plaintiffs' claims related to the CVT in their vehicles, denies all allegations of wrongdoing, fault, liability or damage of any kind to Plaintiffs or the Settlement Class (as defined below), denies that it acted improperly or wrongfully in any way, and believes that this litigation is without merit. The Court did not rule in favor of either party. Instead, the parties agreed to a proposed Settlement in order to avoid the expense and risks of continuing the lawsuits.

You are a Settlement Class Member and part of the Settlement if you purchased or leased in the United States or its territories, including Puerto Rico, a 2013-2014 model year Nissan Pathfinder or a 2013-2014 model year Infiniti JX35/QX60 equipped with the FK-\*k2 CVT. For the transmission assembly (including the valve body and torque converter) in all Class Vehicles, the Settlement extends the New Vehicle Warranty by twenty-four (24) months or twenty-four thousand (24,000) miles, whichever occurs first. For former owners of Class Vehicles who have had two (2) or more CVT replacements or repairs to the transmission assembly, valve body and/or torque converter during their ownership experience, the Settlement provides Nissan and Infiniti Vehicle Purchase Program pre-negotiated pricing ("VPP Pricing") for a purchase or lease of a single new Nissan or Infiniti vehicle. Class Counsel also will ask that the Court award up to \$3,750,000 in attorneys' fees and expenses, and an incentive payment of \$5,000 for each class representative. The Court will decide whether to approve the Settlement at the Final Approval Hearing on June 21, 2017, at 8:30 a.m. This date may be moved, canceled, or otherwise modified; see [www.NissanCVTLitigation.com](http://www.NissanCVTLitigation.com), for more information.

**You may:**

1. **Do Nothing:** You are included in the class and, you will receive an extended warranty for the transmission assembly in your vehicle or special pricing on a new Nissan Infiniti vehicle, if you qualify, you will be bound by the terms of the Settlement Agreement, and you will release certain claims against NNA. You may not file a lawsuit for breach of the warranty that may occur in the future without first using the expedited resolution program provided through the BBB. This is all explained in the longer Notice of Proposed Settlement at [www.NissanCVTLitigation.com](http://www.NissanCVTLitigation.com).
2. **Object to the Settlement:** To object, you must mail in a written objection to the Clerk of the Court by May 17, 2017. For specific procedures for objecting, please see the longer Notice of Proposed Settlement and other information at [www.NissanCVTLitigation.com](http://www.NissanCVTLitigation.com).
3. **Exclude Yourself from the Class and the Settlement:** If you wish to exclude yourself ("opt out") from the Settlement, you must, by May 17, 2017, send to the Settlement Administrator by U.S. Mail at P.O. Box 43441 Providence, RI 02940-3441, a signed and dated letter that includes your name, address, telephone number, the name of the lawsuit, your vehicle year and model, your vehicle's VIN and mileage, and a statement that you wish to be excluded from the Settlement. If you submit a timely and valid request for exclusion, you will no longer be a member of the Class and you will receive no benefits under the Settlement, but you will retain whatever claims you may have against NNA. If you are a member of the Settlement Class and do not exclude yourself, you will be bound by any judgment in the case and will release certain claims you may have. If you previously excluded yourself from the Class and the Settlement, and wish to remain excluded, you do not need take any further action.

This Notice is a summary only. The deadlines in this Notice may be moved, cancelled or otherwise modified, so please check the website regularly for updates.

**BY ORDER OF THE U.S. DISTRICT COURT**

## **Exhibit D**

**KCC Class Action Services**

**Batista v. Nissan North America, Inc.**

**Exclusion Report**

**Count**

**94**

ClaimID	Last Name	First Name	VIN
10001625001	ADAMUSIK	LESZEK	5N1AR2MN0EC601180
10004327601	ALGER	SUSAN J	5N1AR2MN0DC646859
10009599901	ARIAS	JOHNNY	5N1AR2MN3DC621941
10013392701	BAILEY	JOANNE H	5N1AR2MMXDC617750
10015058501	BARAJAS	CAROLINA	5N1AR2MN6DC640855
10016591601	BARRON	MARTA L	5N1AR2MN5DC623674
10016715901	BARRY JR	E M	5N1AR2MM4EC697385
10016928401	BARTON	ADRIENNE	5N1AR2MN3DC650890
10017647101	BATZ	ORFA	5N1AR2MN1EC635239
10017648301	BATZ	ORFA	5N1AR2MN8DC635530
10021050801	BERGSTROM	GREGORY W	5N1AR2MNXEC659183
10021600601	BERRY	SHANNON	5N1AR2MN8DC678636
10023706001	BLAIR	JASON E	5N1AR2MM9DC671198
10030489801	BROOKS	AMY L	5N1AR2MN5DC612190
10034007601	BUREN LEON	FORD T	5N1AR2MN3DC618988
10036824401	CALDERON	VICTOR A	5N1AR2MN0DC604921
10037567401	CAMO	MARIO	5N1AR2MNXDC635769
10040546001	CARRILLOTORRES	JESUS	5N1AR2MN9EC627051
10043427701	CERVANTES	ARACELI	5N1AR2MN3EC605756
10045312001	CHEN	ANDREW Y	5N1AR2MN2DC664828
10047142001	CHUNG	JIYOUNG	5N1AL0MM2DC351372
10050176001	COLEMAN	JEFFREY A	5N1AL0MN2DC348464
10056434301	CRUZ	AILYN	5N1AR2MN3DC668015
10056510401	CRUZ	ESPERANZA	5N1AR2MN5DC603943
10057051301	CULLEN	SETH	5N1AR2MM1DC612680
10065038701	DEVELASCO FRANCIS	MARTINEZ	5N1AR2MN6EC605850

10078870101	FEAMSTER	JEANNE L	5N1AR2MM6DC630284
10082523001	FLORES	GREGORY	5N1AR2MN7DC670317
10083203901	FOGLIO	OSCAR	5N1AL0MN1DC348133
10087825801	GALINDO	PATRICIA	5N1AR2MN1EC616996
10088836701	GARCIA	ALMA D	5N1AR2MN2DC658298
10088917701	GARCIA	BIBIANA	5N1AR2MNXDC618454
10092657501	GIACALONE	SALVO	5N1AL0MM7DC352209
10095830801	GOMM	RALF	5N1AR2MN7EC611995
10096190301	GONZALEZ	BERNARDO F	5N1AR2MN1DC645851
10100184801	GREGORIAN	EMINEH A	5N1AR2MN4DC656844
10103041101	GUTIERREZ	GEMMA A	5N1AR2MN9DC637223
10112084901	HERMANNNS	JOHN K	5N1AR2MM2DC659474
10112485501	HERNANDEZ	JOHN P	5N1AR2MN9DC669816
10112880001	HERNANDEZ	VERONICA	5N1AR2MNXEC728079
10117955801	HORNER	JOSE J	5N1AR2MN9EC686097
10124311001	JAMES	F P	5N1AL0MM3EC502494
10131433401	KAMERKAR	AMEYA V	5N1AL0MM6DC348149
10133416301	KELLER	CHRISTOPHER	5N1AR2MN8DC608344
10146310801	LEDEZMA	SILVIA	5N1AR2MN6DC634229
10150873601	LISCOMBE	GREGORY G	5N1AR2MN4EC615213
10154955601	LUGO	MARIA	5N1AR2MM1EC600935
10156729701	MACLACHLAN	ALEX S	5N1AR2MN0DC650989
10156843501	MACVU	DONNA	5N1AR2MNXDC666536
10157411301	MAGOS	RUBEN	5N1AR2MN3DC649383
10158716801	MALTERER	BRICE	5N1AR2MM1EC706110
10161175401	MARTA	MARTHA	5N1AR2MN4DC649540
10161986801	MARTINEZ	BLANCA M	5N1AR2MN2DC617993
10162800601	MARTINEZ JR	RAUL	5N1AR2MN6DC640600
10167843501	MCGRAW	ELECTA	5N1AR2MM0DC676872
10189856301	OBRAS	NERISSA S	5N1AL0MN7EC505312
10192229201	OO	MIN N	5N1AR2MM0DC616056
10199173301	PAYUMO	PAUL T	5N1AR2MN9DC658086
10200969701	PEREZ	JOSE	5N1AR2MN8EC625033
10202857601	PETTON	MARLENE C	5N1AR2MN3EC639423

10211561801	RAMIREZ	ERIN R	5N1AR2MN2EC716573
10214062501	REDMOND II	RONNIE M	5N1AR2MN2DC650993
10223228301	ROMERO	MONTERRAT	5N1AL0MN0DC328147
10223302001	ROMERO RAFAEL	DEL R	5N1AR2MN9DC671436
10225881801	RUIZ	JOSE A	5N1AR2MM0DC642964
10228054001	SALCIDO	RICHARD	5N1AL0MN7DC338870
10230007001	SANDOVAL	MARTHA	5N1AR2MN1DC641105
10233327001	SCHONBERG	ELIZABETH C	5N1AR2MN7DC647832
10240503701	SIMENTAL	HILDA I	5N1AR2MN4DC669111
10259061801	THOMPSON	MICHAEL D	5N1AL0MM4EC503900
10267616101	VARNES	RAYFORD L	5N1AR2MN3DC606386
10267849201	VASQUEZ	PACO E	5N1AR2MN1EC699586
10268211201	VAZQUEZ	VICTOR	5N1AR2MN0DC627423
10268606301	VELASQUEZ	ALCIDES V	5N1AR2MN3DC665678
10279463701	WILKINSON	DAVID W	5N1AR2MN9DC608031
10281518501	WILSON	DENNIS P	5N1AR2MM0DC663510
10283323001	WONG	CHUN C	5N1AR2MM8EC644298
10285147501	YABUT	DERRICK	5N1AR2MNXDC671185
10286266701	YOO	MIN H	5N1AR2MN6EC627282
10287985001	ZECHA	HUBERT	5N1AR2MM3DC620831
10288244701	ZEPEDA	JOSE	5N1AR2MN3DC649514
900003501	BAKSHAYANDEH	KOUROSH	JN1CV6EK8EM112852
900004901	KAHN	JUSTIN AND HOFIT	5N1CL0MN3EC522679
900005201	DAVIS	KURT	5N1AR2MN6FC661174
900006601		PENSEE BO AND TIMOTHY LEE	5N1AR2MN1DC626023
900007001	AMBARRSUM MAYTUSYAN AND AELITA FARAMAZOVA		5N1AL0MM9DC314447
900008301	NUNEZ	OSCAR	5N1AR2MN1DC668868
900009701	WAN	CALVIN	5N1AR2MM0DC671560
900010901	ORTIZ	ANDRE	5N1AL0MM6DC314938
900011201	DOMINQUEZ	CARLOS	5N1AR2MM9EC727660
900012601	GALLEGOS	ADRIANA	5N1AL0MM3DC348044
900013001	CHILDRESS	DAVID & BRANDY	5N1AL0MM5DC325428
900014301	KARAFIN	SCOTT D	5N1AL0MNXFC505435
900015701	GARCIA	FERNANDO	5N1CR2MN7EC661983

## **Exhibit E**

**KCC Class Action Services**  
**Batista v. Nissan North America, Inc.**  
**Objection Report**

**Count**

**9**

ClaimID	Last Name	First Name	VIN
10011555001	AUKER	WENDY J	5N1AR2MM8DC650066
10017652501	BAUCICOT	JEAN C	5N1AR2MM1DC666304
10064879401	DESSNER	STUART	5N1AR2MM8EC687152
10077664401	FAIRBANKS SR	CHARLES G	5N1AR2MN7DC675775
10135836201	KILPATRICK	AARON C	5N1AR2MM6DC660532
10147659001	LEMER	RANDALL S	5N1AL0MN3EC536976
10272808201	WALLACE	ERICA	5N1AR2MM4DC611362
900001801	HADEN JR	BRIAN L	
900002101	STANKO	JOHN MICHAEL	5N1AR2MM4DC611362



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Class Action: Case No. 1:14-cv-24728-Civ-Scola/Otazo-Reyez

KENAI BATISTA, ANDY CHANCE, GERARDO  
TORRES, ANGELA MATLIN, and TUNG NGUYEN,  
individually and on behalf of those similarly situated,

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.

Defendant.

\_\_\_\_\_ /

**DECLARATION OF LEE BOWRON, ACAS, MAAA**

I, Lee Bowron, ACAS, MAAA, declare as follows:

1. I am an Associate of the Casualty Actuarial Society (“ACAS”) and a Member of the American Academy of Actuaries (“MAAA”), and I have worked as a professional actuary for the past 27 years. I co-founded the Kerper Bowron actuarial consulting firm 15 years ago. The firm currently has offices in Birmingham, Alabama and Chicago, Illinois. I have continued in my role as a Principal and Actuary at the Kerper Bowron Firm since its founding, with my practice focused on automotive extended service contracts, GAP coverage, and captive market issues. Attached hereto and incorporated by reference herein as **Exhibit “A”** is a true and exact copy of my current *curriculum vitae* which further details my qualifications.

2. I have been asked to consult on this matter at the request of the Newsome Melton Law Firm (Newsome) to calculate a range of retail prices of the Nissan 24-month extended warranty for the vehicles equipped with Continuously Variable Transmissions (CVTs) for the 2013 and 2014 model year for Nissan Pathfinder, Infiniti JX35, and Infiniti QX60.

3. I have reviewed the Second Amended Complaint filed in the matter of *Batista, et al. v. Nissan North American, Inc.*, Case No.: 1:14-cv-24728-RNS, currently pending in the United States District Court for the Southern District of Florida. I am familiar with the claims advanced in that litigation; specifically, that the continuously variable transmission (“CVTs”) equipped in 2013-2014 Nissan Pathfinders, certain 2013 Infiniti JX 35s, and 2014 Infiniti QX 60s were

allegedly subject to one or more defects that caused the transmission to “shudder” or “judder” during low-speed accelerations.

4. Additionally, I have reviewed publicly available information regarding the CVT shudder/judder phenomenon and other CVT issues reported with respect to Nissan vehicles. Such public sources include consumer complaints filed with the National Highway Traffic Safety Administration, including those complaints quoted in the Complaint.

5. The information I reviewed, as provided above, along with my education, training, and experience, are the bases giving rise to my conclusions stated in the “Nissan CVT 24 Month Extended Warranty Analysis of Retail Price.” Attached hereto and incorporated by reference herein as Exhibit “B” is a true and exact copy of my “Nissan CVT 24 Month Extended Warranty Analysis of Retail Price” report (Report), which further details my data, calculations, and conclusions. I fully stand behind my conclusions stated in my Report as being the result of accurate, complete, and comprehensive analysis and computation.

6. As provided in the Report, I calculated a range of retail prices for a 24-month extended warranty for the vehicles equipped with CVTs for the 2013 and 2014 model year for Nissan Pathfinder, Infiniti JX35, and Infiniti QX60. Based on the size of the Class, my analysis and computation resulted in a range of suggested retail prices for this warranty of \$37 million to \$99 million, with a point estimate of \$65 million. This estimate is made within a reasonable degree of actuarial probability or certainty, as set forth in the Report.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and I would and could competently testify as to any of the foregoing in a court of law if called upon to do so.

Executed this 23rd day of May, 2017, at Las Vegas, Nevada.

Lee Bowron

Digitally signed by Lee Bowron  
DN: cn=Lee Bowron, o=Kerper and  
Bowron LLC, ou, email=lee@kerper-  
bowron.com, c=US  
Date: 2017.05.23 15:58:50 -05'00'

---

Lee Bowron, ACAS, MAAA

# **Exhibit “A”**

---

400 Vestavia Pkwy Ste 131  
205-870-0595

Birmingham, AL 35216  
lee@kerper-bowron.com

---

## Lee M. Bowron, ACAS, MAAA

---

### Work Experience

Kerper and Bowron, LLC, Birmingham, AL

#### **Principal**

March 2001 – Present (dba Matthews Actuarial March 2001 – July 2003)

- Founded consulting firm in March 2001. Clients include insurance companies, state governments, reinsurance companies, managing general agencies and financial consulting firms.
- Practice focuses on extended service contract, GAP, and captive market. Extended service contract projects include:
  - Statutory Loss Reserve Opinion for regional and national service contract companies
  - Product development for major auto service contract companies
  - Evaluation of liabilities for a major risk retention group for auto service contracts
  - Expert testimony in a civil trial regarding actuarial techniques for service contracts
  - Auto service contract rate filings for major auto service contract companies
  - Acquisition due diligence for purchase of service contract writers

The General Auto Insurance, Nashville, TN

#### **Vice President and Chief Actuary**

February 1999 – February 2001

#### **Actuary**

September 1993 – February 1999

- Broad responsibility for reserving and pricing for a book of private passenger, reinsurance, and captive operations. Responsible for managing the staff of both the product management and the actuarial department.
- Responsible for developing data warehouse.
- Reported to the CEO and participated in strategic planning, reinsurance strategies and information system implementations.
- Supervised the pricing and product development of a new non-standard program in several states.
- Responsible for all actuarial activities of the company, including ratemaking, reserving and statistical reporting
- Assisted in acquisitions and negotiated loss portfolio transfer of reserve liabilities

Alfa Insurance Companies, Montgomery, AL

#### **Actuarial Analyst**

July 1990 – August 1993

- Ratemaking for the 2<sup>nd</sup> largest insurer in the State of Alabama

<b>Education</b>	1989 University of the South, Sewanee, TN BS, Mathematics
<b>Professional Activities</b>	Associate, Casualty Actuarial Society  Member, American Academy of Actuaries  Approved Actuary for Captive Feasibility Studies, Alabama, Oklahoma, Tennessee, South Carolina, and the District of Columbia  Speaker, CAS Annual Meeting Fall 2007  Speaker, Casualty Actuaries of the Southeast, Fall 1998, March 2001, Fall 2007  Speaker, Midwest Actuarial Forum Fall 2007  Speaker, Southwest Actuarial Forum Spring 2008  Speaker, Quebec Actuarial, Spring 2008  Panelist, Ratemaking Seminar (2001, 2002)  Panelist, Dynamic Financial Analysis Seminar (2001)  Panelist, Predictive Modeling Seminar (2008)  Former Member, Casualty Actuarial Exam Committee  Former Member, Ratemaking Committee  Former Chair, Open Source Software Committee  Member, Webinar Committee
<b>Publications</b>	"An Exposure Based Approach to Automobile Service Contract Ratemaking and Reserving," Spring 2007, CAS Rate Forum  "GAP Insurance: Techniques and Challenges," Winter 2007 Rate Forum  "Ratemaking for Maximum Profitability," 2001 Ratemaking Discussion Forum  "Zipf's Law," Jan. 2004 issue of Contingencies  "Staying in the Race," December 2001 issue of Best's Review.  Several short articles for P&A magazine, a publication devoted to the service contract industry: <ul style="list-style-type: none"><li>• What's Going on With Gap? (Sep. 2016)</li><li>• VSCS in 2016: New Terms, New Costs (July 2016)</li><li>• Earnings Curves: The Past Present And Future (Apr. 2014)</li><li>• Gap: A 2013 Update (July 2013)</li><li>• Big Data—What Is It? (Apr. 2013)</li><li>• The Metrics We Use (Dec. 2012)</li><li>• Breaking Down Limited Lifetime Warranty (July 2012)</li><li>• Are We Setting the Right Price? (Apr. 2012)</li><li>• Gap—Where Do We Go From Here? (Jan. 2012)</li><li>• Carrier And Administration Relations—Best Practices (Nov. 2011)</li></ul>

# **Exhibit “B”**



**Nissan CVT 24 Month Extended Warranty  
Analysis of Retail Price**

**May 23, 2017**

**Submitted By:  
Kerper and Bowron, LLC  
400 Vestavia Pkwy Suite 131  
Birmingham, AL 35216  
(205) 870-0595  
Fax: (815) 301-6769  
Prepared by: Lee Bowron, ACAS, MAAA**



**Nissan CVT 24 Month Extended Warranty  
Analysis of Retail Price**

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## **Nissan CVT 24 Month Extended Warranty Analysis of Retail Price**

### **Purpose of Report**

At the request of the Newsome Melton Law Firm (Newsome) Kerper and Bowron LLC calculated a range of retail prices for the vehicles equipped with Continuously Variable Transmissions (CVTs) for the 2013 and 2014 model year for Nissan Pathfinder, Infiniti JX35, and Infiniti QX60. The retail prices were calculated for a 24 month or 24,000 mile extension to the transmission portion of the warranty.

The data and conclusions in this report are provided to support the conclusions made in the Statement of Actuarial Opinion and may not be appropriate for any other purpose.

Kerper and Bowron LLC is available to answer questions regarding this report or any other aspect of our review.

### **Executive Summary**

Our estimated suggested retail price for the extended warranty is 37 to 99 million dollars with a point estimate of 65 million dollars. This estimate is made within a reasonable degree of actuarial probability or certainty, subject to the parameters of this report.

The retail price of a service contract is typically made up of 3 components: a loss fund, administrator cost, and marketing fee. The loss fund is generally the expected amount of losses plus a margin for premium taxes and profit. The administrator will receive a fee for administering the product, such as issuing the service contract, adjudicating claims and processing transfer and other transactions. The marketer will receive a fee for selling the product.

Adding the insurance, transfer, administrator and marketer pieces, we get a range of suggested retail prices for this warranty. The final estimate is made by multiplying this range by the class size.

### **Scope and Limitations**

#### *Data Reliance*

In performing this analysis we relied upon data and other information provided to us by Newsome, as well as industry sources of data. We did not audit or verify this data and information. If the underlying data or information is inaccurate or incomplete, the results of our analysis may likewise be inaccurate or incomplete.

We performed a limited review of the data used directly in our analysis for reasonableness and consistency. We did not find material defects in the data.

If there are material defects in the data, it is possible that they would be uncovered by a detailed, systematic review and comparison of the data to search for data values that are questionable or relationships that are materially inconsistent. Such a review was beyond the scope of our assignment.

## **Nissan CVT 24 Month Extended Warranty Analysis of Retail Price**

### *Significant Digits*

Numbers in the exhibits are generally shown to more significant digits than their accuracy suggests. This has been done to simplify review of the calculations.

### *Interpretation of Conclusions*

Some of the assumptions, methods, and conclusions in this report are of a significantly technical nature. The recipient should understand the assumptions, methodology and possible variability in results that are inherent in our conclusions. We are available to discuss our assumptions, methodology and conclusions in greater detail.

### *Uncertainty*

Due to the uncertainties inherent in the estimation of future costs, it cannot be guaranteed that the estimates set forth in the report will not prove to be inadequate or excessive and actual costs may vary significantly from our estimates.

### *Unanticipated Changes*

Unanticipated changes in factors such as judicial decisions, legislation actions, claim consciousness, claim management, claim settlement practices, and economic conditions may significantly alter the conclusions.

### *Best Estimate*

These caveats and limitations notwithstanding, the conclusions represent our best estimate of the suggested retail price for this extended warranty, and are made within a reasonable degree of actuarial probability or certainty.

## **Number of Vehicles Affected**

Vehicles affected include the 2013 and 2014 model year for Nissan Pathfinder, Infiniti JX35, and Infiniti QX60 equipped with Continuously Variable Transmissions (CVTs).

The number was provided as 241,000. Since the vehicles were sold for the 2013 and 2014 model years, some vehicles may no longer be eligible due to mileage constraints. We assumed that the warranty will begin on August 1, 2017 so we are not estimating that any vehicles will be impacted by the time limitation. For example, a 2013 model year sold in September of 2012 will be slightly less than 7 years old when the extended warranty expires on August 31, 2019.

However, some vehicles will "mile out" of the program and exceed 84,000 miles during the period. We used historical driving patterns and divided them into 5 quintiles. Using this, we were able to derive a factor to reduce the expected loss costs for high mileage drivers. We estimated a factor of 0.697. In other words, we would expect

### **Nissan CVT 24 Month Extended Warranty Analysis of Retail Price**

approximately 70% of the claims we would expect if the warranty extension was 24 months and unlimited miles.

#### **Frequency of Problem**

The frequency of claims during the extended warranty is a range based on actuarial judgment. We did not have access to data on CVT repairs to make a quantitative estimate.

We did review complaints provided by the attorney as well as additional complaints on various sites on the internet which referenced the problem. Some of the opinions on the internet noted that the technology was new and that there was potential for catastrophic failure.

We have reviewed service contract programs. Typical service contract programs will have frequencies of around 50% or higher. However, few of these claims will be transmission repairs. This is likely for a couple of reasons:

- Major transmission problems on traditional transmissions typically occur after 100,000 miles when most service contracts have expired.
- Virtually all service contracts have provisions that the claim limit is the value of the car. A transmission problem will often result in the service contract writer purchasing the high mileage vehicle from the customer in order to avoid repair.

Therefore, we have made a judgmental assumption of 2 to 5% of all cars will have CVT repairs under this warranty. We note that this is much smaller than a typical service contract but that is appropriate since we are limiting our analysis to transmission.

We would expect that frequency on this issue to not be negligible due to the number of complaints and the willingness to extend the warranty by an additional 24 months through the class action settlement rather than handle these on a case by case basis. .

#### **Severity of Repair**

We reviewed a detailed invoice showing the breakdown of costs to replace the CVT in a two-wheel drive (2WD) 2014 Nissan Pathfinder and an all-wheel drive (AWD) 2014 Nissan Pathfinder. The total costs for all labor and parts were \$3997.70 for the 2WD Pathfinder and \$3,693.00 for the AWD Pathfinder. Additionally, a review of service contract repairs indicated repair costs on traditional replacements or rebuilds of approximately \$3,700.

We selected an average repair cost of \$3,500.

#### **Insurance Expenses**

Insurance expenses are relatively small and reflect premium tax and a profit margin for the cost of capital. The amount selected was 2.5% for premium taxes and 4% for profit, for a 6.5% margin.

**Nissan CVT 24 Month Extended Warranty  
Analysis of Retail Price**

**Administrative Costs**

We estimated administrative costs to be between \$25 and \$50 on this program which is consistent with other types of programs.

**Transfer Costs**

One of the benefits of this program is that it is transferable. Typically a transfer fee for a service contract is \$75. We assumed that 9% of these vehicles would be sold each year. This would imply that over 2 years we would see about 18% transferred. Multiplied by \$75, this implies a transfer benefit of \$13.50.

**Marketing Fee**

Markups on these programs by auto dealers or service contract writers vary widely, but are usually around 100% (with direct marketed programs having, in general, even higher markups). Often the markups are flat and since the service contract cost is low, the percentage markup would likely be higher in the marketplace, but we have selected a 100% markup on loss cost and administrator cost.

The transfer fee is not subject to any markup.

**Range of Results**

Adding the insurance, transfer, administrator and marketer pieces, we get a range of suggested retail prices for this warranty. The final estimate is made by multiplying this range by the class size.

**Nissan Class Settlement**

**Estimate of Retail Price of CVT Warranty Extension for 24 months/24,000 miles**

		<b>Low</b>	<b>Mean</b>	<b>High</b>
1	Frequency	2.0%	3.5%	5.0%
2	Severity	3,000	3,500	4,000
3	Out of Warranty	0.697	0.697	0.697
4	Pure Premium	41.81	85.37	139.38
5	Insurance Expenses	2.91	5.93	9.69
6	Insurance Cost	44.72	91.30	149.06
7	Administrator Cost	25.00	37.50	50.00
8	Transfer	13.50	13.50	13.50
9	Markup	69.72	128.80	199.06
10	Retail Price	152.94	271.10	411.63
11	Cars in Class	241000	241000	241000
12	Total Retail Cost	36,858,179	65,335,970	99,202,430
1	See Report			
2	See Report			
3	See Exhibit II			
4	(1) x (2) x (3)			
5	(4)/[ 1 - .065] x .065			
6	(4)+(5)			
7	See Report			
8	See Report			
9	(6) + (7)			
10	Sum of 6 through 9			
11	See Report			
12	(10) x (11)			

**Nissan Class Settlement**

**Estimate of Elimination Factor Due to Time and/or Miles**

1 SumMonthsExposures	2880
2 Miles1	576
3 Miles2	576
4 Miles3	540
5 Miles4	300
6 Miles5	15
7 Total Exposures	2007
8 Reduction due to Time or Miles	0.697
1 24 months (time vehicles sold) x 24 (time warranty in effect) x 5 (mileage bands)	
2 24 months (time vehicles sold) x Time warranty in effect for first quintile of miles	
3 24 months (time vehicles sold) x Time warranty in effect for second quintile of miles	
4 24 months (time vehicles sold) x Time warranty in effect for third quintile of miles	
5 24 months (time vehicles sold) x Time warranty in effect for fourth quintile of miles	
6 24 months (time vehicles sold) x Time warranty in effect for fifth quintile of miles	
7 Sum of 2 through 6	
8 7 divided by 1	

EX II  
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**Nissan Class Settlement**  
**Estimate of Elimination Factor Due to Time and/or Miles**  
**First Quintile of Miles**  
**Miles Driven Each Month \$42**

Months Driven	September-12	October-12	November-12	December-12	January-13	February-13	March-13	April-13	May-13	June-13	July-13	August-13	September-13	October-13
August-17	32519	31977	31435	30893	30351	29809	29267	28725	28183	27641	27099	26557	26015	25473
September-17	33061	32519	31977	31435	30893	30351	29809	29267	28725	28183	27641	27099	26557	26015
October-17	33603	33061	32519	31977	31435	30893	30351	29809	29267	28725	28183	27641	27099	26557
November-17	34145	33603	33061	32519	31977	31435	30893	30351	29809	29267	28725	28183	27641	27099
December-17	34687	34145	33603	33061	32519	31977	31435	30893	30351	29809	29267	28725	28183	27641
January-18	35229	34687	34145	33603	33061	32519	31977	31435	30893	30351	29809	29267	28725	28183
February-18	35771	35229	34687	34145	33603	33061	32519	31977	31435	30893	30351	29809	29267	28725
March-18	36313	35771	35229	34687	34145	33603	33061	32519	31977	31435	30893	30351	29809	29267
April-18	36855	36313	35771	35229	34687	34145	33603	33061	32519	31977	31435	30893	30351	29809
May-18	37397	36855	36313	35771	35229	34687	34145	33603	33061	32519	31977	31435	30893	30351
June-18	37939	37397	36855	36313	35771	35229	34687	34145	33603	33061	32519	31977	31435	30893
July-18	38481	37939	37397	36855	36313	35771	35229	34687	34145	33603	33061	32519	31977	31435
August-18	39023	38481	37939	37397	36855	36313	35771	35229	34687	34145	33603	33061	32519	31977
September-18	39565	39023	38481	37939	37397	36855	36313	35771	35229	34687	34145	33603	33061	32519
October-18	40107	39565	39023	38481	37939	37397	36855	36313	35771	35229	34687	34145	33603	33061
November-18	40649	40107	39565	39023	38481	37939	37397	36855	36313	35771	35229	34687	34145	33603
December-18	41191	40649	40107	39565	39023	38481	37939	37397	36855	36313	35771	35229	34687	34145
January-19	41733	41191	40649	40107	39565	39023	38481	37939	37397	36855	36313	35771	35229	34687
February-19	42275	41733	41191	40649	40107	39565	39023	38481	37939	37397	36855	36313	35771	35229
March-19	42817	42275	41733	41191	40649	40107	39565	39023	38481	37939	37397	36855	36313	35771
April-19	43359	42817	42275	41733	41191	40649	40107	39565	39023	38481	37939	37397	36855	36313
May-19	43901	43359	42817	42275	41733	41191	40649	40107	39565	39023	38481	37939	37397	36855
June-19	44443	43901	43359	42817	42275	41733	41191	40649	40107	39565	39023	38481	37939	37397
July-19	44985	44443	43901	43359	42817	42275	41733	41191	40649	40107	39565	39023	38481	37939

Months Driven	September-12	October-12	November-12	December-12	January-13	February-13	March-13	April-13	May-13	June-13	July-13	August-13	September-13	October-13
August-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
September-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
October-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
November-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
December-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
January-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
February-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
March-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
April-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
May-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
June-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
July-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
August-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
September-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
October-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
November-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
December-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
January-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1
February-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1
March-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1
April-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1
May-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1
June-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1
July-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1



EX II  
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**Nissan Class Settlement**  
**Estimate of Elimination Factor Due to Time and/or Miles**  
**First Quintile of Miles**  
**Miles Driven Each Month 542**

Months Driven	November-13	December-13	January-14	February-14	March-14	April-14	May-14	June-14	July-14	August-14
August-17	24931	24389	23847	23305	22763	22221	21679	21137	20595	20053
September-17	25473	24931	24389	23847	23305	22763	22221	21679	21137	20595
October-17	26015	25473	24931	24389	23847	23305	22763	22221	21679	21137
November-17	26557	26015	25473	24931	24389	23847	23305	22763	22221	21679
December-17	27099	26557	26015	25473	24931	24389	23847	23305	22763	22221
January-18	27641	27099	26557	26015	25473	24931	24389	23847	23305	22763
February-18	28183	27641	27099	26557	26015	25473	24931	24389	23847	23305
March-18	28725	28183	27641	27099	26557	26015	25473	24931	24389	23847
April-18	29267	28725	28183	27641	27099	26557	26015	25473	24931	24389
May-18	29809	29267	28725	28183	27641	27099	26557	26015	25473	24931
June-18	30351	29809	29267	28725	28183	27641	27099	26557	26015	25473
July-18	30893	30351	29809	29267	28725	28183	27641	27099	26557	26015
August-18	31435	30893	30351	29809	29267	28725	28183	27641	27099	26557
September-18	31977	31435	30893	30351	29809	29267	28725	28183	27641	27099
October-18	32519	31977	31435	30893	30351	29809	29267	28725	28183	27641
November-18	33061	32519	31977	31435	30893	30351	29809	29267	28725	28183
December-18	33603	33061	32519	31977	31435	30893	30351	29809	29267	28725
January-19	34145	33603	33061	32519	31977	31435	30893	30351	29809	29267
February-19	34687	34145	33603	33061	32519	31977	31435	30893	30351	29809
March-19	35229	34687	34145	33603	33061	32519	31977	31435	30893	30351
April-19	35771	35229	34687	34145	33603	33061	32519	31977	31435	30893
May-19	36313	35771	35229	34687	34145	33603	33061	32519	31977	31435
June-19	36855	36313	35771	35229	34687	34145	33603	33061	32519	31977
July-19	37397	36855	36313	35771	35229	34687	34145	33603	33061	32519

Months Driven	November-13	December-13	January-14	February-14	March-14	April-14	May-14	June-14	July-14	August-14
August-17	1	1	1	1	1	1	1	1	1	1
September-17	1	1	1	1	1	1	1	1	1	1
October-17	1	1	1	1	1	1	1	1	1	1
November-17	1	1	1	1	1	1	1	1	1	1
December-17	1	1	1	1	1	1	1	1	1	1
January-18	1	1	1	1	1	1	1	1	1	1
February-18	1	1	1	1	1	1	1	1	1	1
March-18	1	1	1	1	1	1	1	1	1	1
April-18	1	1	1	1	1	1	1	1	1	1
May-18	1	1	1	1	1	1	1	1	1	1
June-18	1	1	1	1	1	1	1	1	1	1
July-18	1	1	1	1	1	1	1	1	1	1
August-18	1	1	1	1	1	1	1	1	1	1
September-18	1	1	1	1	1	1	1	1	1	1
October-18	1	1	1	1	1	1	1	1	1	1
November-18	1	1	1	1	1	1	1	1	1	1
December-18	1	1	1	1	1	1	1	1	1	1
January-19	1	1	1	1	1	1	1	1	1	1
February-19	1	1	1	1	1	1	1	1	1	1
March-19	1	1	1	1	1	1	1	1	1	1
April-19	1	1	1	1	1	1	1	1	1	1
May-19	1	1	1	1	1	1	1	1	1	1
June-19	1	1	1	1	1	1	1	1	1	1
July-19	1	1	1	1	1	1	1	1	1	1

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**Nissan Class Settlement**  
Estimate of Elimination Factor Due to Time and/or Miles  
First Quintile of Miles  
Miles Driven Each Month 875

Months Driven	September-12	October-12	November-12	December-12	January-13	February-13	March-13	April-13	May-13	June-13	July-13	August-13	September-13	October-13
August-17	52482	51607	50733	49858	48983	48109	47234	46359	45484	44610	43735	42860	41986	41111
September-17	53357	52482	51607	50733	49858	48983	48109	47234	46359	45484	44610	43735	42860	41986
October-17	54231	53357	52482	51607	50733	49858	48983	48109	47234	46359	45484	44610	43735	42860
November-17	55106	54231	53357	52482	51607	50733	49858	48983	48109	47234	46359	45484	44610	43735
December-17	55981	55106	54231	53357	52482	51607	50733	49858	48983	48109	47234	46359	45484	44610
January-18	56856	55981	55106	54231	53357	52482	51607	50733	49858	48983	48109	47234	46359	45484
February-18	57730	56856	55981	55106	54231	53357	52482	51607	50733	49858	48983	48109	47234	46359
March-18	58605	57730	56856	55981	55106	54231	53357	52482	51607	50733	49858	48983	48109	47234
April-18	59480	58605	57730	56856	55981	55106	54231	53357	52482	51607	50733	49858	48983	48109
May-18	60354	59480	58605	57730	56856	55981	55106	54231	53357	52482	51607	50733	49858	48983
June-18	61229	60354	59480	58605	57730	56856	55981	55106	54231	53357	52482	51607	50733	49858
July-18	62104	61229	60354	59480	58605	57730	56856	55981	55106	54231	53357	52482	51607	50733
August-18	62978	62104	61229	60354	59480	58605	57730	56856	55981	55106	54231	53357	52482	51607
September-18	63853	62978	62104	61229	60354	59480	58605	57730	56856	55981	55106	54231	53357	52482
October-18	64728	63853	62978	62104	61229	60354	59480	58605	57730	56856	55981	55106	54231	53357
November-18	65603	64728	63853	62978	62104	61229	60354	59480	58605	57730	56856	55981	55106	54231
December-18	66477	65603	64728	63853	62978	62104	61229	60354	59480	58605	57730	56856	55981	55106
January-19	67352	66477	65603	64728	63853	62978	62104	61229	60354	59480	58605	57730	56856	55981
February-19	68227	67352	66477	65603	64728	63853	62978	62104	61229	60354	59480	58605	57730	56856
March-19	69101	68227	67352	66477	65603	64728	63853	62978	62104	61229	60354	59480	58605	57730
April-19	69976	69101	68227	67352	66477	65603	64728	63853	62978	62104	61229	60354	59480	58605
May-19	70851	69976	69101	68227	67352	66477	65603	64728	63853	62978	62104	61229	60354	59480
June-19	71725	70851	69976	69101	68227	67352	66477	65603	64728	63853	62978	62104	61229	60354
July-19	72600	71725	70851	69976	69101	68227	67352	66477	65603	64728	63853	62978	62104	61229

Months Driven	September-12	October-12	November-12	December-12	January-13	February-13	March-13	April-13	May-13	June-13	July-13	August-13	September-13	October-13
August-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
September-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
October-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
November-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
December-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
January-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
February-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
March-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
April-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
May-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
June-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
July-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
August-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
September-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
October-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
November-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
December-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
January-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1
February-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1
March-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1
April-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1
May-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1
June-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1
July-19	1	1	1	1	1	1	1	1	1	1	1	1	1	1

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**Nissan Class Settlement**  
**Estimate of Elimination Factor Due to Time and/or Miles**  
**First Quintile of Miles**  
**Miles Driven Each Month 875**

Months Driven	November-13	December-13	January-14	February-14	March-14	April-14	May-14	June-14	July-14	August-14
August-17	40236	39362	38487	37612	36737	35863	34988	34113	33239	32364
September-17	41111	40236	39362	38487	37612	36737	35863	34988	34113	33239
October-17	41986	41111	40236	39362	38487	37612	36737	35863	34988	34113
November-17	42860	41986	41111	40236	39362	38487	37612	36737	35863	34988
December-17	43735	42860	41986	41111	40236	39362	38487	37612	36737	35863
January-18	44610	43735	42860	41986	41111	40236	39362	38487	37612	36737
February-18	45484	44610	43735	42860	41986	41111	40236	39362	38487	37612
March-18	46359	45484	44610	43735	42860	41986	41111	40236	39362	38487
April-18	47234	46359	45484	44610	43735	42860	41986	41111	40236	39362
May-18	48109	47234	46359	45484	44610	43735	42860	41986	41111	40236
June-18	48983	48109	47234	46359	45484	44610	43735	42860	41986	41111
July-18	49858	48983	48109	47234	46359	45484	44610	43735	42860	41986
August-18	50733	49858	48983	48109	47234	46359	45484	44610	43735	42860
September-18	51607	50733	49858	48983	48109	47234	46359	45484	44610	43735
October-18	52482	51607	50733	49858	48983	48109	47234	46359	45484	44610
November-18	53357	52482	51607	50733	49858	48983	48109	47234	46359	45484
December-18	54231	53357	52482	51607	50733	49858	48983	48109	47234	46359
January-19	55106	54231	53357	52482	51607	50733	49858	48983	48109	47234
February-19	55981	55106	54231	53357	52482	51607	50733	49858	48983	48109
March-19	56856	55981	55106	54231	53357	52482	51607	50733	49858	48983
April-19	57730	56856	55981	55106	54231	53357	52482	51607	50733	49858
May-19	58605	57730	56856	55981	55106	54231	53357	52482	51607	50733
June-19	59480	58605	57730	56856	55981	55106	54231	53357	52482	51607
July-19	60354	59480	58605	57730	56856	55981	55106	54231	53357	52482

Months Driven	November-13	December-13	January-14	February-14	March-14	April-14	May-14	June-14	July-14	August-14
August-17	1	1	1	1	1	1	1	1	1	1
September-17	1	1	1	1	1	1	1	1	1	1
October-17	1	1	1	1	1	1	1	1	1	1
November-17	1	1	1	1	1	1	1	1	1	1
December-17	1	1	1	1	1	1	1	1	1	1
January-18	1	1	1	1	1	1	1	1	1	1
February-18	1	1	1	1	1	1	1	1	1	1
March-18	1	1	1	1	1	1	1	1	1	1
April-18	1	1	1	1	1	1	1	1	1	1
May-18	1	1	1	1	1	1	1	1	1	1
June-18	1	1	1	1	1	1	1	1	1	1
July-18	1	1	1	1	1	1	1	1	1	1
August-18	1	1	1	1	1	1	1	1	1	1
September-18	1	1	1	1	1	1	1	1	1	1
October-18	1	1	1	1	1	1	1	1	1	1
November-18	1	1	1	1	1	1	1	1	1	1
December-18	1	1	1	1	1	1	1	1	1	1
January-19	1	1	1	1	1	1	1	1	1	1
February-19	1	1	1	1	1	1	1	1	1	1
March-19	1	1	1	1	1	1	1	1	1	1
April-19	1	1	1	1	1	1	1	1	1	1
May-19	1	1	1	1	1	1	1	1	1	1
June-19	1	1	1	1	1	1	1	1	1	1
July-19	1	1	1	1	1	1	1	1	1	1

EX II  
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Nissan Class Settlement  
Estimate of Elimination Factor Due to Time and/or Miles  
First Quintile of Miles  
Miles Driven Each Month 1112

Months Driven	September-12	October-12	November-12	December-12	January-13	February-13	March-13	April-13	May-13	June-13	July-13	August-13	September-13	October-13
August-17	66712	65600	64488	63376	62264	61152	60041	58929	57817	56705	55593	54481	53369	52258
September-17	67824	66712	65600	64488	63376	62264	61152	60041	58929	57817	56705	55593	54481	53369
October-17	68935	67824	66712	65600	64488	63376	62264	61152	60041	58929	57817	56705	55593	54481
November-17	70047	68935	67824	66712	65600	64488	63376	62264	61152	60041	58929	57817	56705	55593
December-17	71159	70047	68935	67824	66712	65600	64488	63376	62264	61152	60041	58929	57817	56705
January-18	72271	71159	70047	68935	67824	66712	65600	64488	63376	62264	61152	60041	58929	57817
February-18	73383	72271	71159	70047	68935	67824	66712	65600	64488	63376	62264	61152	60041	58929
March-18	74495	73383	72271	71159	70047	68935	67824	66712	65600	64488	63376	62264	61152	60041
April-18	75607	74495	73383	72271	71159	70047	68935	67824	66712	65600	64488	63376	62264	61152
May-18	76719	75607	74495	73383	72271	71159	70047	68935	67824	66712	65600	64488	63376	62264
June-18	77830	76719	75607	74495	73383	72271	71159	70047	68935	67824	66712	65600	64488	63376
July-18	78942	77830	76719	75607	74495	73383	72271	71159	70047	68935	67824	66712	65600	64488
August-18	80054	78942	77830	76719	75607	74495	73383	72271	71159	70047	68935	67824	66712	65600
September-18	81166	80054	78942	77830	76719	75607	74495	73383	72271	71159	70047	68935	67824	66712
October-18	82278	81166	80054	78942	77830	76719	75607	74495	73383	72271	71159	70047	68935	67824
November-18	83390	82278	81166	80054	78942	77830	76719	75607	74495	73383	72271	71159	70047	68935
December-18	84502	83390	82278	81166	80054	78942	77830	76719	75607	74495	73383	72271	71159	70047
January-19	85613	84502	83390	82278	81166	80054	78942	77830	76719	75607	74495	73383	72271	71159
February-19	86725	85613	84502	83390	82278	81166	80054	78942	77830	76719	75607	74495	73383	72271
March-19	87837	86725	85613	84502	83390	82278	81166	80054	78942	77830	76719	75607	74495	73383
April-19	88949	87837	86725	85613	84502	83390	82278	81166	80054	78942	77830	76719	75607	74495
May-19	90061	88949	87837	86725	85613	84502	83390	82278	81166	80054	78942	77830	76719	75607
June-19	91173	90061	88949	87837	86725	85613	84502	83390	82278	81166	80054	78942	77830	76719
July-19	92285	91173	90061	88949	87837	86725	85613	84502	83390	82278	81166	80054	78942	77830

Months Driven	September-12	October-12	November-12	December-12	January-13	February-13	March-13	April-13	May-13	June-13	July-13	August-13	September-13	October-13
August-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
September-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
October-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
November-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
December-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
January-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
February-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
March-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
April-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
May-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
June-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
July-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
August-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
September-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
October-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
November-18	1	1	1	1	1	1	1	1	1	1	1	1	1	1
December-18	0	1	1	1	1	1	1	1	1	1	1	1	1	1
January-19	0	0	1	1	1	1	1	1	1	1	1	1	1	1
February-19	0	0	0	1	1	1	1	1	1	1	1	1	1	1
March-19	0	0	0	0	1	1	1	1	1	1	1	1	1	1
April-19	0	0	0	0	0	1	1	1	1	1	1	1	1	1
May-19	0	0	0	0	0	0	1	1	1	1	1	1	1	1
June-19	0	0	0	0	0	0	0	1	1	1	1	1	1	1
July-19	0	0	0	0	0	0	0	0	1	1	1	1	1	1

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Nissan Class Settlement  
Estimate of Elimination Factor Due to Time and/or Miles  
First Quintile of Miles  
Miles Driven Each Month 1112

Month/Driven	November-13	December-13	January-14	February-14	March-14	April-14	May-14	June-14	July-14	August-14
August-17	51146	50034	48922	47810	46698	45586	44475	43363	42251	41139
September-17	52258	51146	50034	48922	47810	46698	45586	44475	43363	42251
October-17	53369	52258	51146	50034	48922	47810	46698	45586	44475	43363
November-17	54481	53369	52258	51146	50034	48922	47810	46698	45586	44475
December-17	55593	54481	53369	52258	51146	50034	48922	47810	46698	45586
January-18	56705	55593	54481	53369	52258	51146	50034	48922	47810	46698
February-18	57817	56705	55593	54481	53369	52258	51146	50034	48922	47810
March-18	58929	57817	56705	55593	54481	53369	52258	51146	50034	48922
April-18	60041	58929	57817	56705	55593	54481	53369	52258	51146	50034
May-18	61152	60041	58929	57817	56705	55593	54481	53369	52258	51146
June-18	62264	61152	60041	58929	57817	56705	55593	54481	53369	52258
July-18	63376	62264	61152	60041	58929	57817	56705	55593	54481	53369
August-18	64488	63376	62264	61152	60041	58929	57817	56705	55593	54481
September-18	65600	64488	63376	62264	61152	60041	58929	57817	56705	55593
October-18	66712	65600	64488	63376	62264	61152	60041	58929	57817	56705
November-18	67824	66712	65600	64488	63376	62264	61152	60041	58929	57817
December-18	68935	67824	66712	65600	64488	63376	62264	61152	60041	58929
January-19	70047	68935	67824	66712	65600	64488	63376	62264	61152	60041
February-19	71159	70047	68935	67824	66712	65600	64488	63376	62264	61152
March-19	72271	71159	70047	68935	67824	66712	65600	64488	63376	62264
April-19	73383	72271	71159	70047	68935	67824	66712	65600	64488	63376
May-19	74495	73383	72271	71159	70047	68935	67824	66712	65600	64488
June-19	75607	74495	73383	72271	71159	70047	68935	67824	66712	65600
July-19	76719	75607	74495	73383	72271	71159	70047	68935	67824	66712

Months Driven	November-13	December-13	January-14	February-14	March-14	April-14	May-14	June-14	July-14	August-14
August-17	1	1	1	1	1	1	1	1	1	1
September-17	1	1	1	1	1	1	1	1	1	1
October-17	1	1	1	1	1	1	1	1	1	1
November-17	1	1	1	1	1	1	1	1	1	1
December-17	1	1	1	1	1	1	1	1	1	1
January-18	1	1	1	1	1	1	1	1	1	1
February-18	1	1	1	1	1	1	1	1	1	1
March-18	1	1	1	1	1	1	1	1	1	1
April-18	1	1	1	1	1	1	1	1	1	1
May-18	1	1	1	1	1	1	1	1	1	1
June-18	1	1	1	1	1	1	1	1	1	1
July-18	1	1	1	1	1	1	1	1	1	1
August-18	1	1	1	1	1	1	1	1	1	1
September-18	1	1	1	1	1	1	1	1	1	1
October-18	1	1	1	1	1	1	1	1	1	1
November-18	1	1	1	1	1	1	1	1	1	1
December-18	1	1	1	1	1	1	1	1	1	1
January-19	1	1	1	1	1	1	1	1	1	1
February-19	1	1	1	1	1	1	1	1	1	1
March-19	1	1	1	1	1	1	1	1	1	1
April-19	1	1	1	1	1	1	1	1	1	1
May-19	1	1	1	1	1	1	1	1	1	1
June-19	1	1	1	1	1	1	1	1	1	1
July-19	1	1	1	1	1	1	1	1	1	1

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Nissan Class Settlement  
Estimate of Elimination Factor Due to Time and/or Miles  
First Quintile of Miles  
Miles Driven Each Month 1378

Months Driven	September-12	October-12	November-12	December-12	January-13	February-13	March-13	April-13	May-13	June-13	July-13	August-13	September-13	October-13
August-17	82651	81273	79896	78518	77141	75761	74386	73008	71631	70253	68876	67498	66121	64743
September-17	84028	82651	81273	79896	78518	77141	75761	74386	73008	71631	70253	68876	67498	66121
October-17	85406	84028	82651	81273	79896	78518	77141	75761	74386	73008	71631	70253	68876	67498
November-17	86783	85406	84028	82651	81273	79896	78518	77141	75761	74386	73008	71631	70253	68876
December-17	88161	86783	85406	84028	82651	81273	79896	78518	77141	75761	74386	73008	71631	70253
January-18	89538	88161	86783	85406	84028	82651	81273	79896	78518	77141	75761	74386	73008	71631
February-18	90916	89538	88161	86783	85406	84028	82651	81273	79896	78518	77141	75761	74386	73008
March-18	92293	90916	89538	88161	86783	85406	84028	82651	81273	79896	78518	77141	75761	74386
April-18	93671	92293	90916	89538	88161	86783	85406	84028	82651	81273	79896	78518	77141	75761
May-18	95048	93671	92293	90916	89538	88161	86783	85406	84028	82651	81273	79896	78518	77141
June-18	96426	95048	93671	92293	90916	89538	88161	86783	85406	84028	82651	81273	79896	78518
July-18	97803	96426	95048	93671	92293	90916	89538	88161	86783	85406	84028	82651	81273	79896
August-18	99181	97803	96426	95048	93671	92293	90916	89538	88161	86783	85406	84028	82651	81273
September-18	100558	99181	97803	96426	95048	93671	92293	90916	89538	88161	86783	85406	84028	82651
October-18	101936	100558	99181	97803	96426	95048	93671	92293	90916	89538	88161	86783	85406	84028
November-18	103314	101936	100558	99181	97803	96426	95048	93671	92293	90916	89538	88161	86783	85406
December-18	104691	103314	101936	100558	99181	97803	96426	95048	93671	92293	90916	89538	88161	86783
January-19	106069	104691	103314	101936	100558	99181	97803	96426	95048	93671	92293	90916	89538	88161
February-19	107446	106069	104691	103314	101936	100558	99181	97803	96426	95048	93671	92293	90916	89538
March-19	108824	107446	106069	104691	103314	101936	100558	99181	97803	96426	95048	93671	92293	90916
April-19	110201	108824	107446	106069	104691	103314	101936	100558	99181	97803	96426	95048	93671	92293
May-19	111579	110201	108824	107446	106069	104691	103314	101936	100558	99181	97803	96426	95048	93671
June-19	112956	111579	110201	108824	107446	106069	104691	103314	101936	100558	99181	97803	96426	95048
July-19	114334	112956	111579	110201	108824	107446	106069	104691	103314	101936	100558	99181	97803	96426

Months Driven	September-12	October-12	November-12	December-12	January-13	February-13	March-13	April-13	May-13	June-13	July-13	August-13	September-13	October-13
August-17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
September-17	0	1	1	1	1	1	1	1	1	1	1	1	1	1
October-17	0	0	1	1	1	1	1	1	1	1	1	1	1	1
November-17	0	0	0	1	1	1	1	1	1	1	1	1	1	1
December-17	0	0	0	0	1	1	1	1	1	1	1	1	1	1
January-18	0	0	0	0	0	1	1	1	1	1	1	1	1	1
February-18	0	0	0	0	0	0	1	1	1	1	1	1	1	1
March-18	0	0	0	0	0	0	0	1	1	1	1	1	1	1
April-18	0	0	0	0	0	0	0	0	1	1	1	1	1	1
May-18	0	0	0	0	0	0	0	0	0	1	1	1	1	1
June-18	0	0	0	0	0	0	0	0	0	0	1	1	1	1
July-18	0	0	0	0	0	0	0	0	0	0	0	1	1	1
August-18	0	0	0	0	0	0	0	0	0	0	0	0	1	1
September-18	0	0	0	0	0	0	0	0	0	0	0	0	0	1
October-18	0	0	0	0	0	0	0	0	0	0	0	0	0	0
November-18	0	0	0	0	0	0	0	0	0	0	0	0	0	0
December-18	0	0	0	0	0	0	0	0	0	0	0	0	0	0
January-19	0	0	0	0	0	0	0	0	0	0	0	0	0	0
February-19	0	0	0	0	0	0	0	0	0	0	0	0	0	0
March-19	0	0	0	0	0	0	0	0	0	0	0	0	0	0
April-19	0	0	0	0	0	0	0	0	0	0	0	0	0	0
May-19	0	0	0	0	0	0	0	0	0	0	0	0	0	0
June-19	0	0	0	0	0	0	0	0	0	0	0	0	0	0
July-19	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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Nissan Class Settlement  
Estimate of Elimination Factor Due to Time and/or Miles  
First Quintile of Miles  
Miles Driven Each Month 1378

Months Driven	November-13	December-13	January-14	February-14	March-14	April-14	May-14	June-14	July-14	August-14
August-17	63366	61988	60611	59233	57856	56478	55101	53723	52346	50968
September-17	64743	63366	61988	60611	59233	57856	56478	55101	53723	52346
October-17	66121	64743	63366	61988	60611	59233	57856	56478	55101	53723
November-17	67498	66121	64743	63366	61988	60611	59233	57856	56478	55101
December-17	68876	67498	66121	64743	63366	61988	60611	59233	57856	56478
January-18	70253	68876	67498	66121	64743	63366	61988	60611	59233	57856
February-18	71631	70253	68876	67498	66121	64743	63366	61988	60611	59233
March-18	73008	71631	70253	68876	67498	66121	64743	63366	61988	60611
April-18	74386	73008	71631	70253	68876	67498	66121	64743	63366	61988
May-18	75763	74386	73008	71631	70253	68876	67498	66121	64743	63366
June-18	77141	75763	74386	73008	71631	70253	68876	67498	66121	64743
July-18	78518	77141	75763	74386	73008	71631	70253	68876	67498	66121
August-18	79896	78518	77141	75763	74386	73008	71631	70253	68876	67498
September-18	81273	79896	78518	77141	75763	74386	73008	71631	70253	68876
October-18	82651	81273	79896	78518	77141	75763	74386	73008	71631	70253
November-18	84028	82651	81273	79896	78518	77141	75763	74386	73008	71631
December-18	85406	84028	82651	81273	79896	78518	77141	75763	74386	73008
January-19	86783	85406	84028	82651	81273	79896	78518	77141	75763	74386
February-19	88161	86783	85406	84028	82651	81273	79896	78518	77141	75763
March-19	89538	88161	86783	85406	84028	82651	81273	79896	78518	77141
April-19	90916	89538	88161	86783	85406	84028	82651	81273	79896	78518
May-19	92293	90916	89538	88161	86783	85406	84028	82651	81273	79896
June-19	93671	92293	90916	89538	88161	86783	85406	84028	82651	81273
July-19	95048	93671	92293	90916	89538	88161	86783	85406	84028	82651

Months Driven	November-13	December-13	January-14	February-14	March-14	April-14	May-14	June-14	July-14	August-14
August-17	1	1	1	1	1	1	1	1	1	1
September-17	1	1	1	1	1	1	1	1	1	1
October-17	1	1	1	1	1	1	1	1	1	1
November-17	1	1	1	1	1	1	1	1	1	1
December-17	1	1	1	1	1	1	1	1	1	1
January-18	1	1	1	1	1	1	1	1	1	1
February-18	1	1	1	1	1	1	1	1	1	1
March-18	1	1	1	1	1	1	1	1	1	1
April-18	1	1	1	1	1	1	1	1	1	1
May-18	1	1	1	1	1	1	1	1	1	1
June-18	1	1	1	1	1	1	1	1	1	1
July-18	1	1	1	1	1	1	1	1	1	1
August-18	1	1	1	1	1	1	1	1	1	1
September-18	1	1	1	1	1	1	1	1	1	1
October-18	1	1	1	1	1	1	1	1	1	1
November-18	0	1	1	1	1	1	1	1	1	1
December-18	0	0	1	1	1	1	1	1	1	1
January-19	0	0	0	1	1	1	1	1	1	1
February-19	0	0	0	0	1	1	1	1	1	1
March-19	0	0	0	0	0	1	1	1	1	1
April-19	0	0	0	0	0	0	1	1	1	1
May-19	0	0	0	0	0	0	0	1	1	1
June-19	0	0	0	0	0	0	0	0	1	1
July-19	0	0	0	0	0	0	0	0	0	1

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Nissan Class Settlement  
Estimate of Elimination Factor Due to Time and/or Miles  
First Quintile of Miles  
Miles Driven Each Month 2029

Months Driven	November-13	December-13	January-14	February-14	March-14	April-14	May-14	June-14	July-14	August-14
August-17	93337	91308	89179	87249	85220	83191	81162	79133	77104	75075
September-17	95366	93337	91308	89279	87249	85220	83191	81162	79133	77104
October-17	97395	95366	93337	91308	89279	87249	85220	83191	81162	79133
November-17	99424	97395	95366	93337	91308	89279	87249	85220	83191	81162
December-17	101453	99424	97395	95366	93337	91308	89279	87249	85220	83191
January-18	103482	101453	99424	97395	95366	93337	91308	89279	87249	85220
February-18	105511	103482	101453	99424	97395	95366	93337	91308	89279	87249
March-18	107540	105511	103482	101453	99424	97395	95366	93337	91308	89279
April-18	109569	107540	105511	103482	101453	99424	97395	95366	93337	91308
May-18	111598	109569	107540	105511	103482	101453	99424	97395	95366	93337
June-18	113627	111598	109569	107540	105511	103482	101453	99424	97395	95366
July-18	115656	113627	111598	109569	107540	105511	103482	101453	99424	97395
August-18	117685	115656	113627	111598	109569	107540	105511	103482	101453	99424
September-18	119714	117685	115656	113627	111598	109569	107540	105511	103482	101453
October-18	121743	119714	117685	115656	113627	111598	109569	107540	105511	103482
November-18	123773	121743	119714	117685	115656	113627	111598	109569	107540	105511
December-18	125802	123773	121743	119714	117685	115656	113627	111598	109569	107540
January-19	127831	125802	123773	121743	119714	117685	115656	113627	111598	109569
February-19	129860	127831	125802	123773	121743	119714	117685	115656	113627	111598
March-19	131889	129860	127831	125802	123773	121743	119714	117685	115656	113627
April-19	133918	131889	129860	127831	125802	123773	121743	119714	117685	115656
May-19	135947	133918	131889	129860	127831	125802	123773	121743	119714	117685
June-19	137976	135947	133918	131889	129860	127831	125802	123773	121743	119714
July-19	140005	137976	135947	133918	131889	129860	127831	125802	123773	121743

Months Driven	November-13	December-13	January-14	February-14	March-14	April-14	May-14	June-14	July-14	August-14
August-17	0	0	0	0	0	1	1	1	1	1
September-17	0	0	0	0	0	0	1	1	1	1
October-17	0	0	0	0	0	0	1	1	1	1
November-17	0	0	0	0	0	0	0	1	1	1
December-17	0	0	0	0	0	0	0	0	1	1
January-18	0	0	0	0	0	0	0	0	0	0
February-18	0	0	0	0	0	0	0	0	0	0
March-18	0	0	0	0	0	0	0	0	0	0
April-18	0	0	0	0	0	0	0	0	0	0
May-18	0	0	0	0	0	0	0	0	0	0
June-18	0	0	0	0	0	0	0	0	0	0
July-18	0	0	0	0	0	0	0	0	0	0
August-18	0	0	0	0	0	0	0	0	0	0
September-18	0	0	0	0	0	0	0	0	0	0
October-18	0	0	0	0	0	0	0	0	0	0
November-18	0	0	0	0	0	0	0	0	0	0
December-18	0	0	0	0	0	0	0	0	0	0
January-19	0	0	0	0	0	0	0	0	0	0
February-19	0	0	0	0	0	0	0	0	0	0
March-19	0	0	0	0	0	0	0	0	0	0
April-19	0	0	0	0	0	0	0	0	0	0
May-19	0	0	0	0	0	0	0	0	0	0
June-19	0	0	0	0	0	0	0	0	0	0
July-19	0	0	0	0	0	0	0	0	0	0