

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE - NASHVILLE DIVISION**

CHRISTOPHER GANN, LEANDRE BISHOP, KEVIN BURKE, ELISA CABEBE, ISRAEL CHIA, KRISTA COSTA, HILLARY DICK, JURA GERALD, SEIJI SILER-HYATTE, JEANINE INGRASSIA, ARNIKA IRELAND, MONTELL JONES, MICHAEL KANZLER, ALEXANDRA MCCULLOUGH, TERESE MIRANDA, AUTUMN PIERCE, ROBERT H. WEINBERG, LASHANDRIKA WILLIAMS, AND LAURA WINDOM, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA, INC., a California corporation,

Defendant.

Case No. 3:18-cv-00966

CLASS ACTION

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT, CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS, AND APPROVAL OF CLASS NOTICE

District Judge Eli Richardson
Courtroom 874
Magistrate Judge Alistair E. Newbern
Courtroom 774

JURY TRIAL DEMANDED

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Fed. R. Civ. P. 23 *passim*

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 § 13.12.....15

William Rubenstein, Alba Conte, and Herbert B. Newberg,
 Newberg on Class Actions (5th ed. 2015)
 § 13:4413

I. INTRODUCTION

This litigation concerns approximately 1.4 million model year 2013–2016 Nissan Altima vehicles (“Class Vehicles”)¹ equipped with continuously variable transmissions (“CVTs”). Plaintiffs allege that the Class Vehicles’ CVTs are defective and prone to shuddering, jerking, losing power and lagging when accelerating, stalling, unusual noises, and premature transmission failure. Nissan denies these allegations.

After contested litigation in five district courts and intensive settlement negotiations with the assistance of a respected mediator, the Parties entered into the Class Action Settlement Agreement (the “Settlement”) attached as Exhibit A. The Settlement extends powertrain coverage under Class Vehicles’ New Vehicle Limited Warranty for transmission² repairs by 24 months or 24,000 miles (the “Warranty Extension Period”), enabling Class Members to seek under-warranty transmission repairs until 84 months after the first sale of their vehicle or 84,000 miles, whichever occurs first (the “Extended Warranty”). Nissan’s liability is uncapped under this provision, ensuring that all Class Members with a Class Vehicle requiring a transmission repair during the Warranty Extension Period will be able to take advantage of this valuable benefit.

The Settlement also includes valuable reimbursement provisions that effectively make the warranty extension retroactive. Under the Settlement, Nissan North America, Inc. (“NNA”) will reimburse Class Members the full amount they paid to a Nissan authorized dealer (or up to \$5,000 paid to a non-NNA authorized repair facility) to have their Class Vehicle’s transmission repaired or replaced during the Warranty Extension Period. Additionally, if a Nissan authorized dealer recommended repair of a Class Vehicle’s transmission during the vehicle’s Warranty Extension Period, but the repair was

¹ The definitions in the Settlement are incorporated herein by reference.

² As used herein, “transmission” means a Class Vehicle’s transmission assembly (including valve body and torque converter) and/or Automatic Transmission Control Unit (“ATCU”).

performed outside of the Warranty Extension Period, NNA will reimburse Class Members for the full amount they paid a Nissan authorized dealer (or up to \$5,000 paid to a non-NNA authorized repair facility) to have the vehicle's transmission repaired or replaced within ninety (90) days after the Notice Date or the vehicle reaching 90,000 miles, whichever occurred earlier. Class Members need only complete and submit a simple Claim Form and provide documentation of a Qualifying Repair to receive reimbursement under the Settlement.

Finally, the Settlement allows former Class Vehicle owners who had two or more transmission replacements or repairs and who, if eligible, opted not to submit a claim for reimbursement, to receive a \$1,000 voucher usable towards the purchase or lease of a new Nissan or Infiniti vehicle.

The Settlement is the result of hard-fought litigation in five district courts, extensive discovery and investigation (including consultation with experts in Nissan's CVT design), and extended negotiations conducted by experienced class action litigators with the assistance of a highly-regarded mediator. The Settlement represents a tremendous result for the Class, exceeds the required standard of likely to be approved as fair, reasonable, and adequate, and should be preliminarily approved.

Plaintiffs respectfully move this Honorable Court for entry of an Order: (1) granting preliminary approval of the Settlement; (2) approving the Notice Program, as set forth in the Declaration of Carla Peak, and directing commencement of notice as set forth in the Settlement and Notice Program; (3) conditionally certifying the Settlement Class for settlement purposes only; (4) approving the form and content of the Detailed Notice and Summary Notice attached as Exhibits C and D to the Settlement, respectively; (5) appointing Plaintiffs as Class Representatives; (6) appointing Ben Barnow of Barnow and Associates, P.C., Timothy G. Blood

of Blood Hurst & O'Reardon, LLP, Marc L. Godino of Glancy Prongay & Murray LLP, and Mark S. Greenstone of Greenstone Law APC, as Co-Lead Class Counsel; (7) appointing Erich P. Schork of Barnow and Associates, P.C., Danielle L. Manning of Glancy Prongay & Murray LLP, and Kevin H. Sharp of Sanford Heisler Sharp LLP, as Class Counsel; (8) appointing Kurtzman Carson Consultants LLC ("KCC") as Settlement Administrator; and (9) scheduling a Final Fairness hearing to consider entry of a final order approving the Settlement, final certification of the Settlement Class for settlement purposes only, and the request for attorneys' fees, costs, and expenses, and Representative Plaintiff service awards.

II. HISTORY OF THE LITIGATION

The Settlement was reached after hard-fought litigation in five district courts, extensive investigation, discovery, consultation with experts, and mediation assisted by a highly respected mediator. These efforts are detailed in the Declaration of Timothy G. Blood and the Declaration of Marc L. Godino, filed concurrently herewith ("Blood Decl." and "Godino Decl.," respectively).

A. The Litigation

Nissan is one of the world's largest car manufacturers. It has a history of vigorously defending consumer class actions brought against it. This case and the related cases, *Weinberg v. NNA*, No. 17-cv-08867 (N.D. Ill.), *Cabebe v. NNA*, No. 18-cv-00144 (N.D. Cal.), and *Costa v. NNA*, No. 18-cv-11523 (D. Mass.) (together, the "Lawsuits") were no exception. Blood Decl. ¶ 3; Godino Decl. ¶¶ 3-18.

Nissan promoted Class Vehicles' CVTs as a major selling point, emphasizing the CVTs' smoothness, fluid-feeling performance, improved drivability, and responsiveness. Blood Decl. ¶ 4. Plaintiffs allege that contrary to these representations, Class Vehicles' CVTs were defective and prone to shuddering, lagging when accelerating, stalling, and premature failure. *Id.*

1. Weinberg v. NNA

Based on these facts, on December 8, 2017, Robert Weinberg filed a Class Action Complaint in the United States District Court for the Northern District of Illinois. Blood Decl. ¶¶ 5-10. Weinberg’s initial complaint alleged claims under the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* (“MMWA”), Illinois Consumer Fraud Act (“ICFA”), and for breach of express warranty. Blood Decl. ¶ 10. Nissan responded by moving to dismiss Weinberg’s complaint. After full briefing and due consideration, the Illinois court upheld Weinberg’s MMWA and express warranty claims, while dismissing Weinberg’s ICFA and implied warranty claims without prejudice. Blood Decl. ¶ 11.

In response to the Court’s Order, Weinberg moved for leave to file an Amended Class Action Complaint to allege additional facts in support of his ICFA and implied warranty claims. Blood Decl. ¶ 12. The Illinois court granted that motion. Nissan has moved to dismiss Weinberg’s amended complaint, and Weinberg opposed that motion. Blood Decl. ¶ 13.

2. Cabebe v. NNA

On January 8, 2018, Elisa Cabebe filed a Class Action Complaint in the United States District Court for the Northern District of California. Blood Decl. ¶ 14; Godino Decl. ¶ 7. Cabebe’s initial complaint asserted claims under California’s Consumers Legal Remedies Act (“CLRA”), California’s Unfair Competition Law (“UCL”), MMWA, California’s Song-Beverly Consumer Warranty Act (“CSBCWA”), and for fraudulent omissions and breach of express warranty. Blood Decl. ¶ 14; Godino Decl. ¶ 7. NNA responded by moving to dismiss Cabebe’s initial complaint. Blood Decl. ¶ 15; Godino Decl. ¶¶ 8, 9.

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On April 19, 2018, Elisa Cabebe, Hillary Dick, Israel Chia, and Alexandra McCullough filed a First Amended Class Action Complaint, asserting claims under the CLRA, UCL, MMWA, CSBCWA, New York’s General Business Law for Deceptive Acts or Practices (“NY GBL”), and Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.* (“UTPCPL”), and for fraudulent omissions, breach of express warranty, and breach of implied warranty of merchantability. Blood Decl. ¶ 15; Godino Decl. ¶ 10. On May 9, 2018, NNA responded by moving to dismiss the amended Complaint. Blood Decl. ¶ 15; Godino Decl. ¶ 11. On October 26, 2018, after full briefing and due consideration, the California court denied NNA’s motion to dismiss in substantial part, dismissing without prejudice only the fraudulent omissions claims under New York and Pennsylvania law and the New York General Business Law Section 349 claim. Blood Decl. ¶ 16; Godino Decl. ¶ 13.

On December 14, 2018, Elisa Cabebe, Hillary Dick, Israel Chia, Alexandra McCullough, Montell Jones, Kevin Burke, Arnika Ireland, Jeanine Ingrassia, Seiji Siler-Hyatte, Lashandrika Williams, Laura Windom, and Michael Kanzler filed a Second Amended Complaint (the “*Cabebe SAC*”). Blood Decl. ¶ 17; Godino Decl. ¶ 15. The *Cabebe SAC* asserts claims under the Alabama Deceptive Trade Practices Act, Ala. Code §§ 8-19-1, *et seq.*, Arizona Consumer Fraud Act, Ariz. Rev. Stat. §§ 44-1521, *et seq.*, CLRA, UCL, MMWA, ICFA, Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*, New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et seq.*, NY GBL, UTPCPL, and Texas Deceptive Trade Practices Act, Tex. Bus. Code §§ 17.41, *et seq.* (“TDTPA”), and for breach of express warranty, fraudulent omissions, and breach of implied warranty of merchantability. Blood Decl. ¶¶ 17, 18; Godino Decl. ¶ 15. On March 1, 2019, NNA moved to dismiss portions of the *Cabebe SAC*. Blood Decl. ¶ 19; Godino Decl. ¶ 16.

3. *Madrid v. NNA, No. 18-cv-00534 (M.D. Tenn.)*

On June 8, 2018, Salome Madrid and Teresa Miranda filed a class action complaint asserting various claims against NNA for CVT defects in their Altima vehicles. Thereafter, the *Madrid* complaint was amended to include named plaintiffs who had purchased Nissan Juke vehicles and to exclude Altimas. Accordingly, Ms. Miranda (an Altima purchaser) joined this action, *Gann*, as a named plaintiff; Ms. Madrid withdrew and dismissed her claims. Blood Decl. ¶ 21. In other words, because the ongoing *Madrid* action no longer asserts any claims regarding Nissan Altimas, it is the subject of a separate settlement and is not covered or impacted by the proposed settlement in *Gann*.

4. *Costa v. NNA*

On July 20, 2018, Krista Costa filed a Class Action Complaint in the United States District Court for the District of Massachusetts. Blood Decl. ¶ 22. Costa's complaint alleges claims under the Massachusetts Regulation of Business Practice and Consumer Protection Act, Mass. Gen. Law Chapter 93A, the MMWA, and for breach of implied warranty. *Id.* On September 28, 2018, NNA moved to dismiss Costa's complaint. Blood Decl. ¶ 23. After full briefing and consideration, on January 18, 2019, the Massachusetts court entered an Order denying Nissan's motion. *Id.* On February 1, 2019, NNA answered Costa's complaint. *Id.*

5. *Gann v. NNA*

On September 25, 2018, Christopher Gann filed his Class Action Complaint with the Court. Gann's complaint asserted claims under the CLRA, UCL, and MMWA, and for breach of the implied warranty of merchantability and express warranty. Blood Decl. ¶¶ 24, 25. On December 14, 2018, Christopher Gann, Leandre Bishop, Autumn Pierce, and Jura Gerald filed their First Amended Class Action Complaint with the Court. *Id.* The amended complaint alleged claims under MMWA, CLRA, UCL, TDTPA, South Carolina Unfair Trade Practices Act, S.C. Code §§ 39-5-10, *et seq.*, and North

Carolina Unfair Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1, and for breach express warranty and the implied warranty of merchantability. *Id.* NNA responded by moving to dismiss the amended complaint. Blood Decl. ¶ 26. On April 1, 2019, the Gann plaintiffs opposed NNA's motion. *Id.* On May 31, 2019, a Second Amended Complaint was filed in *Gann*. The Second Amended Complaint includes the plaintiffs and causes of action from the *Weinberg*, *Cabebe* and *Costa* actions and Teresa Miranda, an Altima purchaser and former plaintiff in the *Madrid* action as discussed above. Blood Decl. ¶ 21. In light of the Second Amended Complaint, this Settlement in *Gann* will cover all of these claims and cases against Nissan.

B. Plaintiffs Engaged in Extensive Investigation and Discovery

During the course of the Lawsuits, Plaintiffs' counsel served and responded to written discovery and reviewed over 20,000 pages of documents produced by NNA. Blood Decl. ¶ 27; Godino Decl. ¶ 12. Plaintiffs' counsel also reviewed hundreds of consumer complaints submitted to the National Highway Traffic Safety Administration and popular consumer complaint websites, such as Carcomplaints.com, interviewed hundreds of Altima owners and lessees about their experiences with Class Vehicles, reviewed dozens of articles from engineering and mechanics publications and blogs, and reviewed Nissan's technical service bulletins and maintenance manuals for the Class Vehicles. Blood Decl. ¶¶ 6, 8, 9; Godino Decl. ¶¶ 4, 12, 14, 19.

To supplement the discovery produced and other information collected, Plaintiffs consulted with a CVT expert who has published numerous articles regarding Nissan Altima CVTs and consulted with Nissan and JATCO's engineers regarding modifications and redesigns to the CVTs. Blood Decl. ¶ 28; Godino Decl. ¶ 4.

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After a series of preliminary telephonic discussions and in-person meetings, on April 16, 2019, the Parties participated in a day-long mediation in Atlanta, Georgia, moderated by Hunter Hughes—a highly regarded neutral with decades of class action litigation experience. Blood Decl. ¶¶ 29, 30; Godino Decl. ¶ 17. While unable to reach agreement at that time, the Parties continued to negotiate for weeks following the mediation and ultimately executed a Memorandum of Understanding on May 3, 2019. Blood Decl. ¶ 30; Godino Decl. ¶ 17. Proposed Co-Lead Class Counsel and counsel for NNA then spent weeks negotiating the language of the Settlement and related documents—a process involving the exchange of numerous drafts and dozens of conversations and emails regarding the language of the Settlement, notice documents, and other related matters—prior to executing the Settlement on June 6, 2019. Blood Decl. ¶¶ 31-33; Godino Decl. ¶ 17. The negotiations were intense, adversarial, complex, and resulted in a Settlement providing significant relief to Plaintiffs and the Class. Blood Decl. ¶¶ 34, 35; Godino Decl. ¶¶ 17, 18.

As noted above, on May 31, 2019, Plaintiffs filed the Consolidated Second Amended Class Action Complaint (“SAC”) with the Court. ECF 59. The SAC consolidates Plaintiffs’ claims in the *Gann*, *Weinberg*, *Costa* and *Cabebe* cases and alleges a nationwide Class of current and former owners of Class Vehicles who purchased or leased a Class Vehicle in the United States or its territories, including Puerto Rico. Blood Decl. ¶ 36. The parties in the *Weinberg*, *Costa* and *Cabebe* cases have agreed to move to stay their case pending resolution of the settlement approval process. *Id.* Within five days of the Effective Date of the Settlement, plaintiffs in the *Cabebe*, *Costa* and *Weinberg* matters will dismiss their cases with prejudice. Settlement Agreement (“SA”) ¶ 107.

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III. TERMS OF THE SETTLEMENT

The following is a summary of the terms of the Settlement, as reflected in the Settlement and its Exhibits.

A. The Class Definition

Under the terms of the Settlement, the Parties agreed to certification of the following Settlement Class for settlement purposes only:

All current and former owners and lessees who purchased or leased Class Vehicles in the United States and its territories including Puerto Rico.

SA ¶¶ 39, 50. The following persons and entities are specifically excluded from the Settlement Class:

(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 the Sixth Circuit Court of Appeals; and (3) government purchasers and lessees. SA ¶¶ 39, 50.

B. Settlement Benefits

Pursuant to the Settlement, Class Members are entitled to the following:

1. Extended Warranty Coverage

The Settlement extends powertrain coverage for transmission repairs under Class Vehicles' New Vehicle Limited Warranty by 40 percent, from 60 months or 60,000 miles to 84 months or 84,000 miles, whichever occurs first. SA ¶¶ 56-57.³ To take advantage of that benefit, Class Vehicle owners and lessees need only bring their vehicle requiring a transmission repair to a Nissan authorized dealer during the vehicle's Warranty Extension Period.

³ The Warranty Extension is subject to terms and conditions of Class Vehicles' original New Vehicle Limited Warranty. SA ¶ 57.

The Warranty Extension is a significant benefit to the Class. The average cost to replace a Class Vehicle's CVT is in the range of \$3,500. Blood Decl. ¶ 34. As demonstrated by the robust market for extended warranties, vehicle owners value the protection and piece-of-mind that comes with an extended warranty. NNA's commitments under this provision are also not capped, ensuring that all Class Members can take advantage of this valuable benefit during their Class Vehicles' Warranty Extension Period. An extended warranty is a particularly fair and suitable means of settling the claims at issue here because it provides relief directly proportional to the scope of the problem, thereby eliminating the potential for under-compensation. Unlike a fixed settlement fund that may be depleted, the benefits available to Class Members here are not capped. Rather, how much Nissan will pay to provide repairs under the Extended Warranty will depend on how many Class Members experience issues with their CVTs and present their vehicles for repair within the Extended Warranty.

2. Reimbursement for Qualifying Transmission Repairs

The Settlement enables Class Members to recover amounts paid to repair or replace their Class Vehicle's transmission during the vehicle's Warranty Extension Period. SA ¶ 58. Under the Settlement, NNA will reimburse Class Members (i) 100% of the amount they actually paid to a Nissan authorized dealer to repair or replace their Class Vehicle's transmission during the vehicle's Warranty Extension Period, or (ii) up to \$5,000 of the amount they actually paid to a non-NNA authorized repair facility to repair or replace their Class Vehicle's transmission during the vehicle's Warranty Extension Period. SA ¶ 58. This provision effectively makes the warranty extension retroactive and is of significant value to the Class.

The Settlement also reimburses Class Members 100% of the amounts they paid to Nissan authorized dealers (or up to \$5,000 paid to non-NNA dealers) to repair transmissions diagnosed by a NNA dealer as needing a transmission repair during the Warranty Extension Period, but which were not

repaired until after the Warranty Extension Period, so long as the repair occurred less than ninety (90) days after the Notice Date or the vehicle reaching 90,000 miles, whichever occurs first.

Replacing (or even repairing) a Class Vehicle's transmission can be extremely expensive. Since the inception of the Lawsuits, Proposed Co-Lead Class Counsel have spoken with numerous individuals who simply could not afford to have their Class Vehicle's transmission repaired. Blood Decl. ¶ 34. This provision provides valuable coverage for Class Members who for financial reasons or otherwise were unable to have a transmission repair recommended during a Class Vehicle's Warranty Extension Period performed prior to expiration of such period.

The claim process is designed to allow Claim Forms to be submitted without unnecessarily burdensome requirements. SA ¶¶ 80-88 and Exhibit B (Claim Form). The Claim Form will be available to view and download at the Settlement Website and can be submitted on-line or by U.S. mail. SA ¶ 82. To obtain reimbursement, Class Members need only submit a Claim Form, along with documentation sufficient to prove a qualifying repair. SA ¶¶ 14, 80. Class Members may submit a Claim Form at any time from the Notice Date up to and including ninety (90) days after the Notice Date or thirty (30) days after a Qualifying Repair, whichever is later. SA ¶ 7. For Class Members whose Summary Notice needed to be re-mailed, the Settlement Administrator will accept and consider Claim Forms received within ninety (90) days after the date of re-mailing of the Summary Notice. SA ¶ 7.

3. A Voucher Option for Certain Former Owners

To provide an additional benefit targeted to former Class Vehicle owners, the Settlement provides that Class Members who meet the following criteria can claim a \$1,000 Voucher usable towards the purchase or lease of a new Nissan or Infiniti vehicle: (1) the Class Member was a former owner of a Class Vehicle as of the Notice Date; and (2) NNA's warranty records reflect that authorized Nissan dealers performed two or more transmission repairs or replacements on the Class Vehicle formerly

owned by the Class Member during the period of time they owned the vehicle. SA ¶¶ 4, 13, 43, 61. All Vouchers received under the Settlement must be redeemed within nine (9) months of the Settlement's Effective Date. SA ¶ 43. Class Members who are eligible for both reimbursement of out-of-pocket costs and a Voucher will select the remedy they prefer. SA ¶ 64.

4. Expedited Resolution Process for Future Transmission Claims

The Settlement includes an expedited resolution process to resolve Class Member claims for breach of the Nissan New Vehicle Limited Warranty, as extended and modified by the Warranty Extension, that accrue after the Notice Date ("Future Transmission Claims"). SA ¶ 106. Pursuant to that process, Class Members are required to submit Future Transmission Claims through the BBB AUTO LINE dispute resolution program, which is independently operated by the Council for Better Business Bureaus, Inc. SA ¶ 106 and Exhibit A. The Expedited Resolution Process is binding on the Class Member only in instances where the BBB decides that NNA must repurchase the vehicle or where NNA offers to repurchase the vehicle. SA Exhibit A. In all other situations, the Class Member may accept the BBB's decision, appeal it, or file a lawsuit. *Id.* Any decision by BBB Auto Line will be binding on NNA. SA Exhibit A. The costs of the Expedited Resolution Process will be borne by NNA. *Id.*

5. The Costs of Notice and Settlement Administration

Pursuant to the Settlement, NNA will pay all costs of Notice and Settlement administration. SA ¶ 66. The specifics of the Notice Program are described below and detailed in the Settlement and the Declaration of Carla Peak in Support of Settlement Notice Plan ("Peak Decl."), filed herewith. Subject to Court approval, the Parties agree to the appointment of KCC as Settlement Administrator. SA ¶ 41. KCC is a nationally recognized class action administration firm with extensive experience providing class notice and administering class action settlements. Peak Decl. ¶¶ 3-5.

C. Attorneys’ Fees, Costs, and Expenses, and Representative Plaintiff Service Awards

The Parties did not discuss attorneys’ fees, costs, and expenses, or service awards until after reaching agreement on all material terms of the Settlement. Blood Decl. ¶ 35. In connection with Final Approval, Proposed Co-Lead Class Counsel will apply to the Court for an award of attorneys’ fees, costs, and expenses in the amount of \$5,900,000, and Class Representative service awards in the amount of \$5,000 for each of Plaintiffs. SA ¶ 115. NNA has agreed not to oppose an application seeking up to those amounts. SA ¶ 116. The amounts will be paid by NNA separate and apart from the relief going to the Class. SA ¶ 117. Proposed Co-Lead Class Counsels’ request for an award of attorneys’ fees, costs, and expenses, and Class Representative service awards will be presented to the Court as part of Plaintiffs’ motion for final approval of the Settlement and filed no later than fourteen (14) days prior to the deadline to object to the Settlement. SA ¶ 52.

IV. THE SETTLEMENT MERITS PRELIMINARY APPROVAL

Settlements of class actions are strongly favored. As a matter of public policy, “[t]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” William Rubenstein, Alba Conte, and Herbert B. Newberg, *Newberg on Class Actions* § 13:44 (5th ed. 2015) (“Newberg”); *see also UAW v. GMC*, 497 F.3d 615, 632 (6th Cir. 2007) (noting “the federal policy favoring settlement of class actions”); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 530 (E.D. Mich. 2003) (“[T]here is a strong public interest in encouraging settlement of complex litigation and class action suits because they are notoriously difficult and unpredictable and settlement conserves judicial resources.”).⁴

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⁴ All internal quotations and citations are omitted unless otherwise indicated.

At the preliminary approval stage, the Court must ascertain whether the proposed settlement is likely to be approved as fair, reasonable, and adequate, and whether the Settlement Class is likely to be certified for settlement purposes at the final approval stage. Fed. R. Civ. P. 23(e)(1)(B). Rule 23(e)(2), as recently amended, provides that in determining whether a settlement is fair, reasonable, and adequate at the final approval stage, a Court must consider whether:

(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). Consideration of these factors demonstrates the Settlement is likely to be approved as fair, reasonable, and adequate, and should be preliminarily approved.

A. The Settlement Class Is Well Represented

Proposed Co-Lead Class Counsel have significant experience prosecuting complex class actions, including automotive defect class cases, are well-informed of the claims and facts at issue, and negotiated the Settlement providing significant and timely benefits to the Class. Blood Decl. ¶¶ 48-53; Godino Decl. ¶ 20. The resumes of Ben Barnow and Timothy G. Blood are attached as Exhibits B and C to the Blood Declaration, respectively, and the resumes of Marc Godino and Mark Greenstone are attached as Exhibits A and B to the Godino Declaration.⁵ They have and will continue to work diligently to advance Plaintiffs' and other Class Members' interests.

⁵ Plaintiffs also seek the appointment of Kevin Sharp of Sanford Heisler Sharp LLP, Erich P. Schork of Barnow and Associates, P.C., and Danielle L. Manning of Glancy Prongay & Murray LLP as Class Counsel. The resumes of Erich P. Schork and Kevin Sharp are attached as Exhibits C and D to the Blood Declaration, respectively. The resume of Danielle L. Manning is included in Exhibit A to the Godino Declaration.

Proposed Co-Lead Class Counsel and other Plaintiffs' counsel actively litigated in five district courts prior to the initiation of settlement negotiations. Blood Decl. ¶¶ 1, 48; Godino Decl. ¶¶ 7-16. As described in Section II above, that process involved the filing of nine complaints, opposing seven motions to dismiss, drafting and responding to discovery, and reviewing over 20,000 pages of discovery produced by NNA. Blood Decl. ¶¶ 10-26; Godino Decl. ¶¶ 7-16.

Proposed Co-Lead Class Counsel engaged in extensive investigation to establish the facts and claims at issue. Blood Decl. ¶¶ 6-9. In addition to reviewing the discovery produced by NNA, Proposed Co-Lead Class Counsel reviewed hundreds of consumer complaints submitted to the National Highway Traffic Safety Administration and popular consumer complaint websites, interviewed hundreds of Class Vehicle owners regarding their experiences, reviewed dozens of articles from engineering and mechanics publications and blogs, and reviewed Nissan's technical service bulletins and maintenance manuals covering Class Vehicles. Blood Decl. ¶¶ 6-9; Godino Decl. ¶¶ 4, 12, 14, 19.

During the course of settlement negotiations, Proposed Co-Lead Class Counsel pursued informal discovery from NNA that was appropriately targeted at information relevant to the Settlement. Blood Decl. ¶¶ 31, 32; Godino Decl. ¶ 17; *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (“In the context of class action settlements, formal discovery is not a necessary ticket to the bargaining table where the parties have sufficient information to make an informed decision about settlement.”); *see also* Manual for Complex Litigation (Fourth) § 13.12 (2004) (recognizing that the benefits of settlement are diminished if it is postponed until discovery is completed and approving of targeting early discovery at information needed for settlement negotiations). Informal discovery is a recognized method of minimizing the cost, delay, and burden associated with formal discovery. *See id.* at § 11.423 (2004). Indeed, to further such ends, courts

are to “encourage counsel to exchange information, particularly relevant documents, without resort to formal discovery.” *Id.*

Plaintiffs have likewise worked diligently on behalf of the Class. They stepped forward to prosecute this action on behalf of all Class Members, were involved in the drafting of the complaints, and reviewed and approved the Settlement.

This factor favors preliminary approval.

B. The Settlement Is the Product of Arm’s Length Negotiations

The Settlement is the product of hard-fought and arm’s length negotiations conducted by experienced counsel. Blood Decl. ¶ 34; Godino Decl. ¶¶ 17, 18. On April 16, 2019, the Parties engaged in a full-day mediation with the assistance of Hunter Hughes, a respected mediator. Blood Decl. ¶¶ 29, 30; Godino Decl. ¶ 17. Negotiations continued during the ensuing weeks, leading to the Parties’ execution of a Memorandum of Understanding on May 3, 2019. Blood Decl. ¶ 33; Godino Decl. ¶ 17. Proposed Co-Lead Class Counsel and counsel for NNA then spent weeks negotiating the language of the Settlement and related documents—a process involving the exchange of numerous drafts and dozens of conversations and emails regarding the language of the Settlement, notice documents, and other related matters—prior to executing the Settlement. *Id.* The end result is a Settlement that provides significant and timely benefits to Class members. This factor supports preliminary approval. *See Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 277 (6th Cir. 2016) (“parties’ two-and-a-half years of litigation, extensive discovery, ongoing settlement negotiations, and formal mediation session all weighed against the possibility of fraud or collusion”); *Applegate-Walton v. Olan Mills, Inc.*, No. 3:10-cv-00224, 2010 U.S. Dist. LEXIS 77965, at *5 (M.D. Tenn. Aug. 2, 2010) (finding no risk of fraud or collusion where the settlement was “the result of intensive, arms-length negotiations, including mediation with an experienced third-party neutral”).

C. The Settlement Benefits Are Excellent

The immediacy and certainty of the significant recovery provided by the Settlement supports a grant of preliminary approval. The benefits of the Settlement are excellent. The Settlement provides for a 40% increase in Class Vehicles' powertrain warranty for transmission repairs, reimburses Class Members 100% of amounts they paid to Nissan authorized dealers (or up to \$5,000 paid to non-NNA dealers) for transmission repairs during the Warranty Extension Period, and reimburses Class Members 100% of the amounts they paid to Nissan authorized dealers (or up to \$5,000 paid to non-NNA dealers) to repair transmissions diagnosed by a NNA dealer as needing a transmission repair during the Warranty Extension Period, but which were not repaired until after the Warranty Extension Period, so long as the repair occurred less than ninety (90) days after the Notice Date or the vehicle reaching 90,000 miles, whichever occurred first. SA ¶¶ 56-59. If a Class Member paid for repairs on multiple occasions, they are entitled to reimbursement for all such repairs subject to the above conditions.

Former Class Vehicle owners who had two or more transmission repairs to their Class Vehicle while they owned the vehicle and who, if eligible, elect not to receive reimbursement for amounts paid for qualifying transmission repairs, are eligible to receive a \$1,000 Voucher usable towards the purchase of a new Nissan or Infiniti vehicle. SA ¶ 61. The Voucher may be used in combination with other discounts, rebates, and the like. SA ¶ 61.

These valuable benefits readily satisfy the applicable standard that the settlement be likely to be finally approved as fair, reasonable and adequate.

In addition to the excellent benefits being provided to the Class, the release of claims that the Class will provide to Nissan is limited and appropriate. The release extends to any claims related to transmission design, manufacturing, performance or repair of Class Vehicles, including the claims

asserted in the Lawsuits, but excludes (among other things) Future Transmission Claims based on events that occur after the Notice Date. SA ¶¶ 36, 17, 21.

D. The Risk, Expense, Complexity, and Likely Duration of Further Litigation Support Preliminary Approval

The significant benefits of the Settlement, when weighed against the risk, expense, complexity and duration of continued litigation, support approval of the Settlement. Blood Decl. ¶¶ 42, 43.

The Settlement achieves excellent benefits to the Class while obviating the significant risks of further litigation. Litigating allegations of a vehicle defect like the one at issue typically results in a costly, lengthy battle of experts. This case is no exception.

Prosecuting this litigation through trial and appeal would likely be lengthy, complex, and impose significant costs on all parties. *See, e.g., In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000) (recognizing that “[m]ost class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them”). Litigating this complex matter to final judgment would almost certainly require substantial motion practice, extensive fact discovery, class certification proceedings, further dispositive motions, a trial including a costly battle of experts and given the size of the Class and amount of money at stake, a lengthy appeal process. Blood Decl. ¶¶ 42, 43. Expert reports and testimony would be necessary to establish the defect, show that it is common to the Class Vehicles, and prove that it causes transmission failure which is unrelated to and separate from normal transmission wear and tear. *Id.*

The Settlement guarantees a timely and substantial recovery for the Class, obviating the need for a lengthy, complex, and uncertain trial. This factor supports approval of the Settlement. *See Grant v. Capital Mgmt. Servs., L.P.*, No. 10-CV-WQH BGS, 2014 WL 888665, at *3 (S.D. Cal. Mar. 5, 2014) (“The court shall consider the vagaries of the litigation and compare the significance of immediate recovery by way of compromise to the mere possibility of relief in the future, after

protracted and expensive litigation. In this respect, it has been held proper to take the bird in hand instead of a prospective flock in the bush”); *see also Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) (“There are weighty justifications, such as the reduction of litigation and related expenses, for the general policy favoring the settlement of litigation.”); *In re Sunrise Sec. Litig.*, 131 F.R.D. 450, 455 (E.D. Pa. 1990) (approving a class action settlement because, in part, the settlement “will alleviate ... the extraordinary complexity, expense and likely duration of this litigation”).

E. The Proposed Method of Distributing Relief Supports Preliminary Approval

Rule 23(e)(2)(C)(ii) requires consideration of “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.” The advisory committee’s notes to this provision instruct: “Often it will be important for the court to scrutinize the method of claims processing to ensure that it facilitates filing legitimate claims. A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding.” Fed. R. Civ. P. 23(e) advisory committee’s note to 2018 amendment.

All Class Members are eligible for the Warranty Extension provided by the Settlement. SA ¶¶ 56-57. If their Class Vehicle transmission requires repair or replacement during the Warranty Extension Period, they need only bring the vehicle to a Nissan authorized dealer to take advantage of that significant benefit. SA ¶¶ 56-57.

The Settlement and Claim Form are designed to facilitate the filing of valid reimbursement claims by Class Members. Claim Forms can be submitted online or by mail at a Class Member’s convenience. SA ¶ 82. All Claim Forms will be processed by KCC, an experienced and nationally recognized class action administration firm. Class Members are also given the option to receive

payment electronically (via PayPal or Zelle) or have a check mailed to them to facilitate timely and efficient payments under the Settlement. SA ¶ 80.

The Settlement's methods of distributing relief to Class Members further support preliminary approval.

F. The Terms of the Proposed Award of Attorneys' Fees Support Preliminary Approval of the Settlement

Rule 23(e)(2)(C)(ii) requires consideration of “the terms of any proposed award of attorney's fees, including timing of payment.” The advisory committee's notes instruct:

Examination of the attorney-fee provisions may also be valuable in assessing the fairness of the proposed settlement. Ultimately, any award of attorney's fees must be evaluated under Rule 23(h), and no rigid limits exist for such awards. Nonetheless, the relief actually delivered to the class can be a significant factor in determining the appropriate fee award.

Fed. R. Civ. P. 23(e) advisory committee's note to 2018 amendment.

The terms of the Settlement relating to proposed attorneys' fees are in accord with class action best practices and appropriate. The Parties did not discuss attorneys' fees until after agreeing upon all material terms of the Settlement. SA ¶ 115; Blood Decl. ¶ 35; Godino Decl. ¶ 18. The attorneys' fees are to be paid by NNA separate and apart from the benefits provided to the Class under the Settlement and will not diminish the Class's recovery. SA ¶ 117. Plaintiffs' motion for final approval, including their request for an award of attorneys' fees, costs, and expenses, and Plaintiff service awards, shall be filed with the Court no later than fourteen (14) days prior to the deadline for Class Members to file objections to the Settlement. SA ¶ 52. Additionally, NNA has until twenty-eight (28) days after the Effective Date of the Settlement to cause the attorneys' fees to be paid to Proposed Co-Lead Class Counsel—there is no quick pay provided for by the Settlement. SA ¶ 117.

The terms of the proposed attorneys' fee award support preliminary approval of the Settlement.

G. The Settlement Treats All Class Members Equitably

All Class Members are eligible for the Warranty Extension and all Class Members who qualify for reimbursement or a Voucher can claim such benefits. SA ¶¶ 56-61. The release provided for by the Settlement also applies equally to all Class Members. SA ¶¶ 103-105. This factor supports preliminary approval of the Settlement.

V. THE CLASS SHOULD BE CONDITIONALLY CERTIFIED

Rule 23 governs class certification, whether the proposed class action is litigated or settled. *UAW*, 497 F.3d at 625. For the purpose of conditionally certifying a class for settlement purposes, courts evaluate the relevant factors under Rule 23(a): (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. The Court must also consider the Rule 23(b)(3) requirements of predominance and superiority. Rule 23 confers to the district court “broad discretion to decide whether to certify a class.” *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 850 (6th Cir. 2013).

The requirements of Rules 23(a) and (b)(3) are readily satisfied, and the Class should be conditionally certified for settlement purposes only.

A. The Settlement Class Satisfies the Requirements of Rule 23(a)

1. Numerosity and Ascertainability

Rule 23(a)(1) requires that a class be “so numerous that joinder of all members is impracticable.” The Settlement Class includes all current and former owners of the approximately

1.4 million Class Vehicles. Blood Decl. ¶¶ 7, 45; SA 39. Given the size of the Class and the impracticability of joining absent Class Members, the numerosity requirement is readily satisfied.

The Class is also ascertainable. “For a class to be sufficiently defined, the court must be able to resolve the question of whether class members are included or excluded from the class by reference to objective criteria.” *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 538 (6th Cir. 2012). Here, the Class is objectively defined to include all current and former owners of Class Vehicles who purchased or leased the vehicle in the United States or its territories. The implicit ascertainability requirement is satisfied.

2. Commonality

Rule 23(a)(2) requires the existence of “questions of law or fact common to the class.” Commonality is determined by whether the issues raised have “the capacity [in] a classwide proceeding to generate common answers apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011); *Sprague v. GMC*, 133 F.3d 388, 398 (6th Cir. 1998) (test is whether there is a “common issue the resolution of which will advance the litigation”).

In automobile defect cases, commonality is often found because the most significant question concerns the existence of a defect. *See, e.g., Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006) (affirm district court’s decision that commonality was easily satisfied where prospective class members’ claims involved same alleged defect found in vehicles of the same make and model); *Keegan v. Am. Honda Motor Co.*, 284 F.R.D. 504, 524 (C.D. Cal. 2012) (finding commonality where uniform rear suspension defect was alleged).

This litigation centers on common class wide issues that, absent the Settlement, would drive the resolution of Plaintiffs’ claims. The claims of all Class Members involve the same alleged

defect—the defective CVT. SAC ¶ 1. Other common issues include: (i) whether Nissan misrepresented the standard, quality, and characteristics of the Class Vehicles; (ii) whether Nissan knew Class Vehicles were equipped with defective CVTs prior to Plaintiffs’ and other Class Members’ purchases; (iii) whether the defective CVTs constitute an unreasonable safety hazard; (iv) whether a reasonable consumer would have considered a defective CVT to be important when deciding whether to purchase or lease a Class Vehicle; (v) whether Nissan had a duty to disclose the defective CVTs to Plaintiffs and other Class Members; and (vi) whether Nissan’s refusal to perform the necessary repairs and replacement constitutes deceptive and unfair conduct and/or a breach of warranty. *Id.* ¶ 67.

3. Typicality

Typicality is satisfied where “the representative’s interests will be aligned with those of the represented group, and in pursuing his own claims, the named plaintiff will also advance the interests of the class members.” *Young*, 693 F.3d at 542. A class representative’s “claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and [the] claims are based on the same legal theory.” *Arlington Video Prods. v. Fifth Third Bancorp*, 515 F. App’x 426, 442 (6th Cir. 2013). A “representative’s claim need not always involve the same facts or law, provided there is a common element of fact or law.... Finally, a plaintiff’s burden to establish typicality is not onerous.” *Campbell v. Hope Cmty. Credit Union*, No. 10-2649-STA, 2012 U.S. Dist. LEXIS 87697, at *14 (W.D. Tenn. June 25, 2012) (quoting *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007)).

Plaintiffs’ and all other Class Members’ claims arise from the purchase or lease of a Class Vehicle equipped with an allegedly defective CVT, and their claims are based on the same legal theories. SAC ¶¶ 1, 7–26. Rule 23’s typicality requirement is satisfied here.

4. Adequacy of Representation

Representative parties must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The adequacy inquiry requires a two-prong test: (1) whether class counsel is qualified, experienced and generally able to conduct the litigation, and (2) whether the class members have interests that are not antagonistic to one another. *In re Am. Med. Sys.*, 75 F.3d 1069, 1083 (6th Cir. 1996); *Pelzer v. Vassalle*, 655 F. App’x 352, 364 (6th Cir. 2016).

The adequacy requirement is met here. Plaintiffs have demonstrated they are well-suited to represent the Class. They each came forward prior to the filing of their respective complaints, understand their duties as proposed Class Representatives, and have actively participated in the Lawsuits. For example, Plaintiffs provided Proposed Co-Lead Class Counsel with factual information relating to their experiences their Class Vehicle’s CVT.

Plaintiffs’ interests are also aligned with those of the Class. Plaintiffs allege having suffered economic loss as a result of the same CVT defect as the other Class Members. Plaintiffs have no interests antagonistic to the other Class Members and will continue to vigorously represent the Class’s interests. The interests of Plaintiffs and other Class Members are aligned in seeking to maximize the Class’s recovery relating to the alleged CVT defect.

Proposed Co-Lead Class Counsel are nationally recognized for their skill and experience in prosecuting complex class actions. *See* Resumes, Blood Decl. ¶¶ 50-53 and Exhibits B and C; Godino Decl. ¶¶ 20, 21 and Exhibits A and B. Their collective experience includes leading and successfully resolving complex automotive class actions. *Id.* For example, Ben Barnow and Timothy G. Blood served as Co-Lead Class Counsel in *Warner v. Toyota Motor Sales, U.S.A., Inc.*, 2:15-cv-02171 (C.D. Cal.), where a \$3.4 billion landmark settlement on behalf of more than 2,500,000 class members resolved claims that certain vehicles’ frames lacked adequate rust corrosion

protection. Blood Decl. ¶ 53. Marc L. Godino and Mark S. Greenstone served as Co-Lead Class Counsel respectively in *Reniger v. Hyundai Motor America*, Case No. 4:14-cv-03612-CW (N.D. Cal.), a settlement on behalf of approximately 77,000 owners and lessees of 2010-2012 Hyundai Santa Fe vehicles resolving claims the Hyundai's were prone to stall at random. Godino Decl. ¶¶ 20, 21 and Exhibits A and B. They are well-versed in the legal theories at issue in the Lawsuits.

Proposed Co-Lead Class Counsel have and will continue to vigorously represent the Class's interests. They thoroughly investigated the claims in the Lawsuit with the assistance of technical consultants on the alleged defect, succeeded in opposing NNA's multiple pleading challenges, and successfully negotiated the Settlement providing significant and timely relief to the Class. Blood Decl. ¶¶ 6-13, 22-34; Godino Decl. ¶¶ 7-19; *see also Emergency Med. Care Facilities, P.C. v. Bluecross Blueshield of Tenn., Inc.*, No. 1:15-cv-01014, 2016 U.S. Dist. LEXIS 181103, at *28 (W.D. Tenn. Apr. 15, 2016) (a court evaluating adequacy of Class Counsel may examine attorneys' professional qualifications, performance in investigating and litigating class claims, knowledge of applicable law, experience handling class actions, and resources committed to the class representation). The adequacy requirement is easily satisfied.

B. Rule 23(b)(3) Requirements

Certification is warranted under Rule 23(b)(3) because “the questions of law or fact common to class members predominate over any questions affecting only individual members,” and “a class action is superior to other available methods for fairly and efficiently” settling the controversy.

1. Common Issues of Law and Fact Predominate

“This requirement is satisfied when the questions common to the class are at the heart of the litigation.” *Powers v. Hamilton Cnty. Public Defender Comm'n*, 501 F.3d 592, 619 (6th Cir. 2007). The predominance inquiry “trains on the legal or factual questions that qualify each class member's case as a

genuine controversy.” *Amchem Prods. v. Windsor*, 521 U.S. 591, 623 (1997). “[T]he fact that a defense may arise and may affect class members differently does not compel a finding that individual issues predominate over common ones.” *Beattie*, 511 F.3d at 564. “The requirement demands only predominance of common questions, not exclusivity or unanimity of them.” *In re Whirlpool*, 722 F.3d at 858; *see also Isabel v. Velsicol Chem. Corp.*, No. 04-2297 DV, 2006 U.S. Dist. LEXIS 42279, at *16 (W.D. Tenn. June 20, 2006) (the test for commonality “is qualitative rather than quantitative, that is, there need be only a single issue common to all members of the class.”).

The predominance requirement is satisfied. Questions common to all Class Members exist regarding the existence of the alleged CVT defect, NNA’s knowledge of same, and whether the alleged defect reduced the value of Class Vehicles. The answers to these questions, which would drive the resolution of the litigation, do not depend on the individual facts or circumstances of an individual Plaintiff’s purchase or lease of a Class Vehicle. To the contrary, the Class Vehicles’ CVTs were either defective, or they were not; NNA either knew the CVTs were defective. or it did not; NNA either failed to disclose the CVTs were defective, or it did not; and the alleged defect either reduced the value of Class Vehicles, or it did not. These questions are common to all Class Members and predominate over any potential questions affecting only individual Class Members. For each of these, Plaintiffs would present evidence at trial common to all Class Members. Each question would be resolved for all Class Members on a Class basis. The predominance requirement is readily satisfied. *See, e.g., Daffin*, 458 F.3d at 554 (“The issues that predominate include: (1) whether the throttle body assembly is defective, (2) whether the defect reduces the value of the car, and (3) whether Ford’s express ‘repair or replace’ warranty covers the latent defect at issue in this case.”).

2. Class Treatment Is the Best Method for Adjudication of this Case

Rule 23(b)(3) sets forth the factors to determine whether a class action is superior to other available methods for the fair and efficient adjudication of the controversy. These factors include: (i) the class members' interest in individually controlling separate actions; (ii) the extent and nature of any litigation already begun by individual class members; (iii) the desirability or undesirability of concentrating the litigation in the particular forum; and (iv) the likely difficulties in managing a class action. The manageability factor need not be considered in the settlement context. *Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.”).

A class action is the only reasonable method to fairly and efficiently adjudicate Class Members' claims against NNA. *See, e.g., Phillips Co. v. Shutts*, 472 U.S. 797, 809 (1985) (“[c]lass actions ... permit the plaintiffs to pool claims which would be uneconomical to litigate individually ... [in such a case,] most of the plaintiffs would have no realistic day in court if a class action were not available”). Because the costs of litigating their claims individually against NNA would almost certainly dwarf any recovery, Class Members are not likely to file individual actions against NNA. *See In re Whirlpool*, 722 F.3d at 861. Further, permitting the individual owners and lessees of the approximately 1.4 million Class Vehicles to litigate their cases “is a vastly inferior method of adjudication when compared to determining threshold issues of contract interpretation that apply equally to the whole class. Additionally, the difference in value between conforming and non-conforming goods is better litigated in a class-wide context.” *See Daffin*, 458 F.3d at 554. Additionally, NNA is headquartered in Tennessee and the Court is a desirable forum to resolve this matter. A class action is the superior (and only realistic) method available to fairly and efficiently adjudicate this controversy.

Because the requirements of Rules 23(a) and (b)(3) are satisfied, conditional certification of the Class for settlement purposes only is appropriate.

VI. THE CLASS NOTICE PROGRAM SHOULD BE APPROVED

Notice serves to “afford members of the class due process which, in the context of the Rule 23(b)(3) class action, guarantees them the opportunity to be excluded from the class action and not be bound by any subsequent judgment.” *Peters v. Nat’l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-74 (1974)). The Court must “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “All that the notice must do is fairly apprise ... prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests.” *Gooch v. Life Inv’rs Ins. Co. of Am.*, 672 F.3d 402, 423 (6th Cir. 2012).

The Notice Program includes: (1) mailing direct Summary Notice to every Class Member; (2) a settlement website established to allow Class Members to obtain information regarding the Settlement, access important documents regarding the Settlement, and file claims online; and (3) a toll-free number to provide Class Members with information regarding the Settlement. Notices including this information and provided in this manner have been held to be sufficient. *See, e.g., Kizer v. Summit Partners, L.P.*, No. 1:11-CV-38, 2012 WL 1598066, at *9 (E.D. Tenn. May 7, 2012) (approving notice disseminated by first class mail that provided information such as settlement terms and that class members had option to object to the settlement and the requested attorneys’ fees); *Gooch*, 672 F.3d at 423-24 (holding that notice which gave class members an address, phone number, and website with which to obtain more information about proposed

settlement comported with due process). The Notice Program readily satisfies the “best practicable” standard.

A. Contents of the Notice

The Notice documents were designed to provide information about the Settlement, along with clear, concise, easily understood information about Class Members’ legal rights. The Notice documents include the Summary Notice mailed to Class Members and the Long Form Notice that will be available on the Settlement website. The Notice documents collectively include: (1) a fair summary of the Parties’ respective litigation positions; (2) a description of the benefits provided by the Settlement; (3) an explanation of how Class Members can obtain Settlement benefits; (4) instructions for how to opt-out of or object to the Settlement; (5) an explanation that any claims against NNA or related parties that could have been litigated in the actions will be released if the Class Member does not opt out, with an explanation of the scope of the release; (6) the name of Co-Lead Class Counsel and information regarding their request for an award of attorneys’ fees, costs, and expenses, and Plaintiff service awards; (7) the Settlement website address and toll-free number; (8) the process and instructions for making a claim; and, (9) as to be set by the Court, the date, time, and place of the Final Fairness Hearing. SA Exs. C, D.

The Notice documents contain information that a reasonable person would consider material in making an informed, intelligent decision of whether to opt out or remain a member of the Settlement Class and be bound by a final judgment, and direct individuals to a convenient location to obtain more detailed information. The Notice documents fairly apprise Class Members of the terms of the Settlement and the options available to them in connection with this litigation. *See Pelzer*, 655 F. App’x at 368 (“Class notice [must] be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an

opportunity to present their objections;” it must “fairly apprise the prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests.”).

B. The Scope of Notice

The Settlement provides for the mailing of a postcard Summary Notice to all Class Members. SA ¶ 71. Pursuant to the Settlement, NNA will provide KCC with all Class Vehicles’ Vehicle Identification Numbers (“VINs”). SA ¶ 70. Using the VINs provided by NNA, KCC will utilize the services of a third-party vendor, IHS Markit (“IHS”), to obtain Class Members’ mailing addresses.⁶ Peak Decl. ¶ 14. After receiving mailing information from IHS, KCC will evaluate the data to eliminate duplicate records and review the data to prepare it for mailing. Peak Decl. ¶ 17. Prior to mailing the postcard Summary Notices, KCC will run all addresses through the National Change of Address database to obtain the most recent addresses on file with the United States Postal Service (“USPS”). Peak Decl. ¶ 18.

All Summary Notices returned by USPS as undeliverable with a forwarding address will be re-mailed to the new address. Peak Decl. ¶ 19. For Summary Notices returned by USPS as undeliverable without a forwarding address, address update searches will be conducted and Summary Notice will be re-mailed to those Class Members for whom updated address information is located. Peak Decl. ¶ 20.

KCC will establish and maintain a case specific website to allow Class Members to obtain additional information and documents about the Settlement, as well as file a Claim online. Peak

⁶ IHS owns, maintains, and compiles proprietary databases of information comprised of titles, registration transfers and renewals throughout the United States to the extent such information is made available by the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico. All original, intervening non-current and current owners are included in the databases of information. Peak Decl. ¶ 15.

Decl. ¶ 21. The case website will allow users to read and download the Long Form Notice, Settlement Agreement, Claim Form, Preliminary Approval Order, and Plaintiffs' Motion for Final Approval of Class Action Settlement Agreement and Award of Attorneys' Fees, Costs, and Expenses, and Class Representative Service Awards. *Id.* Class Members will also be able to view a list of answers to Frequently Asked Questions, important dates and deadlines, and contact information for the Settlement Administrator. *Id.* The website address will be prominently displayed in the Summary Notices. SA Exhibit D.

KCC will establish and host a case specific toll-free telephone number. Peak Decl. ¶ 22. The telephone number will also allow Class Members to request to have a copy of the Notice or Claim Form mailed directly to them. *Id.* The toll-free number will be displayed in the Summary Notice, Long Form Notice, and on the case website. SA Exhibits C and D.

The Notice documents and the Notice Program are the best notice practicable under the circumstances, constitute due and sufficient notice to the Settlement Class, and comply with Fed. R. Civ. P. 23 and due process requirements. *See* Peak Decl. ¶ 13. Therefore, the Notice documents and Notice Program should be approved.

VII. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court enter an order: (1) granting preliminary approval of the Settlement; (2) approving the Notice Program, as set forth in the Declaration of Carla Peak, and directing commencement of notice as set forth in the Settlement and Notice Program; (3) conditionally certifying the Settlement Class for settlement purposes only; (4) approving the form and content of the Long Form Notice and Summary Notice attached as Exhibits C and D to the Settlement, respectively; (5) appointing Plaintiffs as Class Representatives; (6) appointing Ben Barnow of Barnow and Associates, P.C., Timothy G. Blood

of Blood Hurst & O'Reardon, LLP, Marc L. Godino of Glancy Prongay & Murray LLP, and Mark S. Greenstone of Greenstone Law APC, as Co-Lead Class Counsel; (7) appointing Erich P. Schork of Barnow and Associates, P.C., Danielle L. Manning of Glancy Prongay & Murray LLP, and Kevin H. Sharp of Sanford Heisler Sharp LLP, as Class Counsel; (8) appointing Kurtzman Carson Consultants LLC ("KCC") as Settlement Administrator; and (9) scheduling a Final Fairness hearing to consider entry of a final order approving the Settlement, final certification of the Settlement Class for settlement purposes only, and the request for attorneys' fees, costs, and expenses, and Representative Plaintiff service awards.

Respectfully submitted,

Dated: June 6, 2019

By: s/ Timothy G. Blood

Timothy G. Blood (*pro hac vice*)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 6, 2019, a copy of the foregoing **Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement, Conditional Certification of Settlement Class, and Approval of Class Notice** was sent through CM/ECF, to the following:

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