



3. The common engine defect and the resulting strong fuel odor throughout the interior of the vehicle makes Class Vehicle owners physically ill and is a safety hazard to drivers, passengers, and bystanders. *See, e.g.:*

- NHTSA Complaint No. 11496829, December 9, 2022 (2022 Nissan Rogue): “My car smells gasoline inside and outside. I brought the car to the service dealer but the service manager said that they cannot figure out where gas odor coming from. I am using my car in bringing my 2 kids to school and going to work. **My kids are getting sick** and I am afraid my car will cause fire.”
- NHTSA Complaint No. 11502157, January 17, 2023 (2022 Nissan Rogue): “After 9 months of owning this car. When I drive for 20 or so miles and turn the vehicle off for a short period then restart I smell **gas and fumes make me sick and my eyes water at times**. The dealer found nothing wrong. Nissan corporate got involved after I emailed them. Their engineering tech confirmed it was happening.”
- NHTSA Complaint No. 11504489, January 30, 2023 (2022 Nissan Rogue): “Gas fumes from engine compartment – after the car has been driven 20-30 mins enough to heat up the engine and then parked (turned off) for 10-15 minutes a strong smell of gasoline is detected, you can smell it either by sniffing in the front grill or if you start it and use the outdoor air circulation in the cabin it will come through the vents. There are enough fumes to fill a 1 car garage in 30 mins with a thick odor of gasoline. **The fumes are nauseating and cause headaches**. My salesman at Hawk Nissan suggested changing gas to a top tier brand so I starting using Mobile but no help with the fume issue. After speaking with a service manager at Woodfield Nissan, he said that he’s had a few cars come in recently with the same problem. Nothing is showing up mechanically so they chalked it up to a “break-in period” and/or possibly a coating used in manufacturing. Brought it back to Woodfield Nissan a couple weeks later stating the oil dipstick has a strong smell of gasoline same smell I get in the cabin and around the car. He found nothing unusual with the oil smell. I took it into Hawk Nissan Oct 2022 with 800 miles now with 2943 miles still having the issue. Not sure if this is affecting my MPG but I'm only getting 18-20 MPG mix of city & highway driving. Recently I'm seeing a lot of the same complaints with the 2023 models.”
- NHTSA Complaint No. 11505449, February 3, 2023 (2023 Nissan Rogue): “Vehicle smells of strong gas smell in the cab and around the vehicle. **Smell is so strong it makes you feel light headed and gives you a headache. This is a huge health concern for me and my family**. When parking in the garage it smells so strong that you have to then park it outside so you do not have a fire hazard in the garage. Took it to the dealership to have diagnosed and was told that Nissan is aware of the issue and it is under engineering review but there is nothing they can do at this time. I then reached out to Nissan consumer affairs and they denied a buy back and told me that it is under engineering review but they do not have a fix for

it. If they do not have a fix they should buy it back. This is a huge safety and health concern for me and my family.”

- NHTSA Complaint No. 11505610, February 4, 2023 (2022 Nissan Rogue): “We bought our 2022 Rogue in September 2022, it now has around 5300 miles on it. In December, we noticed that every time we drive it, the inside of the car fills with gas fumes. **The fumes are so strong that it gives us extreme headaches, dizziness and nausea.** When we park the Rogue in our garage, it creates a strong gas smell. We are concerned that it could explode or cause a fire. The vehicle was taken to Ron Sayer Nissan in Idaho Falls, Idaho on February 4, 2023 for diagnosis. The service manager, [XXX], informed us after examining the vehicle that he did not know what is causing the strong gasoline odor. The dealership did nothing to repair the vehicle and the problem continues.”
- NHTSA Complaint No. 11508056, February 19, 2023 (2023 Nissan Rogue): “The cabin of the vehicle fills with a gasoline odor when driven. When I park the vehicle in the garage (with engine OFF), the garage fills with a gasoline odor. **I have experienced nausea and headaches with the smell. My oldest child has complained about the smell and making his head hurt.** It is very concerning that my ATTACHED garage fills with gasoline odor and could continue into my residence. I am now forced to park my vehicle outside and can not have my two children in the vehicle. I took the vehicle back to the dealership and they initially claimed it was an O Ring around the gasoline tank. They replaced it and the issue still continued. They then advised that Nissan is aware of this issue but does not have a fix at this time. There are cases around the country with this issue. I am now using a loaner vehicle from the dealership until Nissan finds a fix. There is approximately 5,300 miles on the vehicle. There are no warning messages on the dash. This problem started at the beginning of January.”
- NHTSA Complaint No. 11513772, March 25, 2023 (2023 Nissan Rogue): “When parked and off, or sitting in idle a major smell of gasoline is spewing out of the hvac system in the car. **It makes me nauseous and major headaches.** This can’t be safe to drive. This has always been an issue. I’ve only owned the vehicle since December.”

4. Additionally, Nissan has failed to adequately repair the defect under Nissan’s warranty. When Class Vehicle owners, including Plaintiffs, complain about the defect to Nissan dealerships, and seek repairs under Nissan’s warranty, they are consistently told Nissan has no repair for this defect, thus forcing drivers to continue to experience the noxious odors when driving their brand new, unrepaired Class Vehicles. *See, e.g.:*

- NHTSA Complaint No. 11498633, December 23, 2022 (2023 Nissan Rogue): “When driving vehicle cabin will fill with a fuel odor which can make you nauseous. In order to prevent the vents need to be on recirculate which in turn fog up all the windows in the winter time. Also when vehicle is parked in garage it fills the garage with an extremely strong fuel odor. Has been to the dealer 3 times, 2 times they couldn’t reproduce and the 3rd time they can’t find the problem. **Nissan is aware and has it under ‘engineering review’ with multiple claims from other owners.**”
- NHTSA Complaint No. 11499442, December 29, 2022 (2022 Nissan Rogue): “For several weeks I have noticed strong smell of gasoline when my car is parked in my garage. Today, I called my Nissan dealer because I am very concerned. **The service advisor informed me that they have received many similar complaints and Nissan is supposedly trying to identify and remedy the problem.** He said my car is safe, but I am terribly concerned.”
- NHTSA Complaint No. 11503128, January 23, 2023 (2023 Nissan Rogue): “Fuel smell from engine compartment that enters cabin if heat turned on. Took to dealer, nothing showed up on computer. Unable to see leak, or evidence of fuel leak. Started about 2 months ago. **Was reported to Nissan who states that it’s under engineering review.** Fuel smell lingers for a couple hrs after parked in garage. Concern for health exposure to fumes and potential engine fire hazard. No check engine warning lamps.”
- NHTSA Complaint No. 11503767, January 26, 2023 (2023 Nissan Rogue): “After about the 3k miles mark, I started noticing a raw gas smell on the interior of the cabin when driving the vehicle. I also notice this gas smell when my vehicle is parked in my garage, with the engine off. I brought it to my local Nissan dealer, and they confirmed that it is a known issue 3 other 2023 Rogue customers have reported to this dealership. They did a visual inspection for leaks, and ran a computer diagnostic but nothing was found. **At this point they informed me that corporate Nissan is aware of the issue and until they find the root cause of the problem, and issue a recall there is nothing my dealer can do.**”

5. Had Plaintiffs, and the Class Members known about the Gas Fumes Defect, they would not have purchased the Class Vehicles, or would have paid substantially less for them.

6. As a result of their reliance on Defendant’s omissions, owners, and/or lessees of the Class Vehicles have suffered ascertainable loss of money, property, and/or loss in value of their Class Vehicles.

7. Nissan’s conduct constitutes unjust enrichment and is a breach of express and implied warranties, and the Magnuson-Moss Warranty Act.

8. Nissan has and will continue to benefit from its unlawful conduct – by selling more vehicles, at a higher price, and avoiding warranty obligations – while consumers are harmed at the point of sale as their vehicles continue to suffer from the unremedied Gas Fumes Defect.

9. To remedy Nissan’s unlawful conduct, Plaintiffs, on behalf of the proposed class members, seek damages, and restitution from Nissan, as well as notification to class members about the defect.

### **PARTIES**

10. Plaintiff Michael Elias (“Plaintiff Elias” or “Mr. Elias”) is an adult individual residing in Clinton Township, Michigan.

11. Plaintiff Kelly Wemer (“Plaintiff Wemer” or “Ms. Wemer”) is an adult individual residing in Farmer City, Illinois.

12. Defendant Nissan North America, Inc. (“Nissan”) is a Delaware corporation with a principal place of business in Franklin, Tennessee.

13. At all times herein mentioned, Nissan designed, engineered, developed, manufactured, fabricated, assembled, equipped, tested or failed to test, inspected or failed to inspect, repaired, retrofitted or failed to retrofit, failed to recall, labeled, advertised, promoted, marketed, supplied, distributed, wholesaled, and/or sold the Class Vehicles, including the vehicles operated by Plaintiffs. Nissan also reviews, and analyzes warranty data submitted by Nissan’s dealerships, and authorized technicians in order to identify defect trends in vehicles. Upon information and belief, Nissan dictates that when a repair is made under warranty (or

warranty coverage is requested), service centers must provide Defendant with detailed documentation of the problem, and the fix that describes the complaint, cause, and correction, and also save the broken part in the event Defendant decide to audit the dealership. Nissan uses this information to determine whether particular repairs are covered by an applicable Nissan warranty, or are indicative of a pervasive defect.

### **JURISDICTION AND VENUE**

14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) of the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members; (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs; and (iii) there is minimal diversity because Plaintiffs and Class Members, and Defendant are citizens of different states.

15. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiffs present a claim under the federal Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* As to the state law claims, this Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

16. Personal jurisdiction, and venue are proper in this District as Defendant is headquartered in this District.

### **FACTUAL ALLEGATIONS APPLICABLE TO INDIVIDUAL PLAINTIFFS**

#### **I. Michael Elias**

17. On December 3, 2022, Mr. Elias purchased a new 2023 Nissan Rogue, Vehicle Identification Number 5N1BT3BB0PC736117 (hereafter the “Elias Vehicle”) from Jeffrey Automotive Group, Inc., in Roseville, Michigan (hereinafter, “JAG”), an authorized Nissan

dealership.

18. Prior to the purchase, JAG assured Mr. Elias that the Elias Vehicle was accompanied by Nissan North America, Inc.'s written warranties; and was free from defects of workmanship; and that the car was safe and reliable.

19. Shortly after Mr. Elias purchased his vehicle, he observed that after he drove the car and then parked, it emitted an intense smell of gasoline in the interior of the vehicle. The gasoline odor is more intense shortly after Mr. Elias parked the vehicle in his garage after having driven it. The intensity of the gasoline smell made it impossible to stay in the garage at a risk of becoming physically ill from the fumes.

20. On February 1, 2023, having driven the vehicle less than 2,000 miles, Mr. Elias brought his vehicle to JAG, complaining about the Elias Vehicle's noxious odors. In response, JAG inspected the vehicle and confirmed that gas fumes smell was a known issue. However, the dealer advised Mr. Elias that there were no repairs available.

21. On March 3, 2022, Mr. Elias, through his counsel, sent a letter to Nissan advising it that the Elias Vehicle suffered from the Gas Fumes Defect and had not been repaired under Nissan's warranties.

22. At all times, Mr. Elias has driven his vehicle in a foreseeable manner and in the manner in which it was intended to be used.

## **II. Kelly Wemer**

23. On December 16, 2022, Ms. Wemer purchased a new 2023 Nissan Rogue, Vehicle Identification Number 5N1BT3CB5PC753476 (hereafter the "Wemer Vehicle") from RPG Imports, LLC d/b/a O'Brien Nissan of Bloomington, in Bloomington, Illinois (hereinafter, "O'Brien Nissan"), an authorized Nissan dealership.

24. Prior to the purchase, O'Brien Nissan assured Ms. Wemer that the Wemer Vehicle was accompanied by Nissan North America, Inc.'s written warranties; and was free from defects of workmanship; and that the car was safe and reliable.

25. A little over a month after Ms. Wemer purchased her vehicle, she observed that when driving the car gasoline fumes would enter the interior of the vehicle. Progressively, the intensity of the fumes grew and saturated the vehicle interior and the clothing inside the vehicle with gasoline odor. The gasoline odor is even more intense shortly after Ms. Wemer parked the vehicle.

26. Ms. Wemer then called O'Brien Nissan and complained about the gasoline odor in her car, and made an appointment to bring the Wemer Vehicle to O'Brien Nissan for service and repair.

27. At the end of February 2023, Ms. Wemer brought her vehicle to O'Brien Nissan, complaining about the Wemer Vehicle's noxious odors. In response, O'Brien Nissan inspected the vehicle and confirmed that gas fumes smell was a known issue but that Nissan had no fix.

28. On March 2, 2022, Ms. Wemer, through her counsel, sent a letter to Nissan advising it that the Wemer Vehicle suffered from the Gas Fumes Defect and had not been repaired under Nissan's warranties.

29. On March 30, 2023, Ms. Wemer called O'Brien Nissan again to schedule an appointment for the dealer to repair the noxious gasoline odors still emanating from the Wemer Vehicle. O'Brien Nissan refused to schedule a warranty repair appointment and claimed that there were no repair available.

30. At all times, Ms. Wemer has driven his vehicle in a foreseeable manner and in



the manner in which it was intended to be used.

## **FACTUAL ALLEGATIONS**

### **The Gas Fumes Defect**

31. Nissan began selling the Class Vehicles in or around October 2021, when Nissan introduced for the first time a 1.5-liter KR15DDT three-cylinder variable-compression turbocharged (VC-Turbo) engine.

32. “The VC-Turbo is the most advanced engine Nissan has ever produced in the U.S.,” according to Steve Marsh, Senior Vice President, Manufacturing and Supply Chain Management, Nissan North America. ”<sup>1</sup>

33. However, despite being the most advance engine produced by Nissan in the United States, the internal combustion engines are defective and emit noxious gasoline odors that make driving the Class Vehicles unsafe, unpleasant and undesirable.

34. Beginning in 2022, if not before, Nissan knew that the Class Vehicles contain one or more design, and/or manufacturing defects within its PCV system that allows fuel to seep through porous rubber components resulting in strong gas fumes emanating from the engine compartment area that also permeates into the vehicles’ interior (the “Gas Fumes Defect”). Nonetheless, Nissan has been unable to adequately repair the defect to date.

35. As set forth above, JAG inspected Plaintiff Elias’ vehicle, acknowledged Nissan knows the Class Vehicles suffer from the Gas Fumes Defect but has no fix.

36. Other Class Vehicle owners have likewise complained that their vehicles continue to experience the Gas Fumes Defect and remain unrepaired despite bringing their

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<sup>1</sup> <https://usa.nissannews.com/en-US/releases/release-9eea16a47c78109cfe96b677a005fc7e-2022-rogue-to-feature-nissans-all-new-15-liter-vc-turbo-engine> (last visited March 29, 2023).

vehicles to the Nissan dealers for warranty repairs. For instance, on December 20, 2022, one Class Vehicle owner inquired on a Nissan Rogue-enthusiast website whether other Class Vehicle owners experienced their cabins filling with gas fuel smell and added that when parking in his garage within ten minutes whole garage smelled like gas.<sup>2</sup> He added that he complained to a Nissan dealership repeatedly of smelling gas to which dealership responded it had numerous other Class Vehicle owners complaining of same defect and that Nissan was investigating but had no fix.<sup>3</sup> In response, numerous other Class Vehicle owners posted experiencing the same gas fuel smell in their vehicles too, complaining of the defect to the Nissan dealerships and Nissan directly, but receiving no relief.<sup>4</sup>

37. Further, owners of the Class Vehicles consistently complain that Nissan dealers fail to perform any repairs on their vehicles and no repair attempt is even available regarding their vehicles. Neither Plaintiff Elias nor Wemer were provided with any repair attempts despite each complaining to a dealer and requesting a repair.

38. Nissan had and has a duty to fully disclose the true nature of the Gas Fumes Defect and the associated repair costs to Class Vehicle owners because, among other reasons, the Defect poses an unreasonable safety hazard; Nissan had and has exclusive knowledge or access to material facts about the Class Vehicles' engines that were and are not known to or reasonably discoverable by Plaintiffs and the other Class Members; and Nissan has failed to disclose the Gas Fumes Defect to its customers. Because the PCV system components within each Class Vehicle engine is defective, the Class Vehicles' the PCV system components

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<sup>2</sup> <https://www.nissanforums.com/threads/23-rogue-awd-sv-fuel-smell-in-cabin-and-garage-after-parked.279125/> (last visited April 11, 2023).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; see also <https://www.nissanforums.com/threads/2023-rogue-gas-leak-gas-fumes-engineering-review-recall.279189/> (last visited April 11, 2023).

should be repaired or replaced by Nissan free of charge regardless of whether the Gas Fumes Defect has manifested, or the facts and circumstances surrounding any failure.

**Nissan's Knowledge of the Defect**

39. Before Nissan sold Plaintiffs their Class Vehicles, Nissan was on notice that the Class Vehicles suffered from the Gas Fumes Defect, however Nissan failed to disclose the existence of the defect to Plaintiffs or any other Class Vehicle owner.

40. Nissan became aware of the Gas Fumes Defect through sources not available to Plaintiffs and Class Members, including, but not limited to, pre-production testing, pre-production design failure mode, and analysis data; production design failure mode, and analysis data; early consumer complaints made exclusively to Nissan's network of dealers, and directly to Nissan; aggregate warranty data compiled from Nissan's network of dealers; testing conducted by Nissan in response to consumer complaints; and repair order, and parts data received by Nissan from Nissan's network of dealers.

41. On information and belief, during the pre-release process of designing, manufacturing, engineering, and performing durability testing on the Class Vehicles' VC-Turbo engines, which would have occurred in 2021 before Nissan began selling the Class Vehicles in Fall 2021, Nissan necessarily would have gained comprehensive and exclusive knowledge that the Class Vehicles' engines cause the Class Vehicles to emit gasoline fumes. Thus, during the pre-release analysis stage of the Class Vehicles, Nissan would have known that the Class Vehicles' brand new VC-Turbo engines were defective, and would pose a hazard to owners/lessees, and the motoring public. Despite that such testing on the Class Vehicles revealed the Gas Fumes Defect to Nissan, Nissan failed to remedy the manufacturing processes with the Class Vehicles' VC-Turbo engines before putting the vehicles into

production and selling them to the public.

42. Nissan also knew about the Gas Fumes Defect because numerous consumer complaints regarding engine-related issues (e.g., the Class Vehicles emitted strong gas odor) were made directly to Nissan, and its authorized dealerships. The large number of complaints, and the consistency of their descriptions of engine issues alerted Nissan to this serious Defect affecting the Class Vehicles. The full universe of complaints made directly to Nissan about the Gas Fumes Defect is information presently in the exclusive custody and control of Nissan, and is not yet available to Plaintiffs prior to discovery. However, upon information and belief, many Class Vehicle owners complained directly to Nissan and Nissan dealerships and service centers about the continuous emission of gasoline fumes by their Vehicles.

43. Moreover, because the Gas Fumes Defect can and does manifest almost immediately – often within weeks of the Class Vehicles first being driven – Nissan began receiving notification of the higher than expected number of Defect complaints made to Nissan dealers merely within weeks after Nissan began selling the Class Vehicles.

44. Further, upon information and belief, since it began selling the Class Vehicles, Nissan has been tracking the performance of its VC-Turbo engines particularly closely because it is a brand-new engine built at its assembly plant in Decherd, Tennessee, which supplies such engines for all of the Nissan’s U.S. assembled Class Vehicle models.<sup>5</sup>

**Customer Complaints and Online Discussions of the Defect:**

45. Upon information and belief, thousands of purchasers, and lessees of the Class Vehicles have experienced the Gas Fumes Defect. Given how widespread the issue is and the

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<sup>5</sup> <https://usa.nissannews.com/en-US/releases/release-9eea16a47c78109cfe96b677a005fc7e-2022-rogue-to-feature-nissans-all-new-15-liter-vc-turbo-engine> (last visited March 29, 2023).

fact that the defect manifests shortly after owners begin driving the vehicles, Class Vehicle owners have been complaining about the Gas Fumes Defect directly to Nissan since Fall 2022, if not sooner, and have been posting such complaints online since at least November 2022. For instance, on November 25, 2022, a Class Vehicle owner wrote on a Nissan Rogue-enthusiast website, “I also noticed a smell of gas in the cabin of the Rogue?” and inquired whether “anyone else experienced these issues?”<sup>6</sup> Same Class Vehicle Owner later wrote that he took his vehicle to a Nissan dealer and complained of gas smell, to which dealership responses the smell was due to fumes and that it found no leaks,<sup>7</sup> and same gas smell persisted.<sup>8</sup>

46. On January 4, 2023, another Class Vehicle owner responded that they too smelled gas inside their car and complained to a Nissan dealership, to which they received a response that “Nissan is aware of the issue and that the Rogue is under Engineering Review” and “that there was nothing else to do until Nissan issues a recall or figures out a fix for wherever the gas is leaking.”<sup>9</sup>

47. Same day, on January 4, 2023, another Class Vehicle owner shared having the same experience of smelling gas which a Nissan dealership confirmed but undertook no repair.<sup>10</sup>

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<sup>6</sup> <https://www.nissanforums.com/threads/2023-rogue-questions.278985/> (last visited April 11, 2023).

<sup>7</sup> <https://www.nissanforums.com/threads/2023-rogue-questions.278985/post-1735858> (last visited April 11, 2023).

<sup>8</sup> <https://www.nissanforums.com/threads/2023-rogue-questions.278985/post-1736015> (last visited April 11, 2023).

<sup>9</sup> <https://www.nissanforums.com/threads/2023-rogue-questions.278985/post-1736112> (last visited April 11, 2023).

<sup>10</sup> <https://www.nissanforums.com/threads/2023-rogue-questions.278985/page-2> (last visited April 11, 2023).

48. Similarly, on December 20, 2022, another Class Vehicle owner inquired on a Nissan Rogue-enthusiast website whether other Class Vehicle owners experienced their cabins filling with gas fuel smell and added that when parking in his garage within ten minutes whole garage smelled like gas.<sup>11</sup> He added that he complained to a Nissan dealership repeatedly of smelling gas to which dealership responded it had numerous other Class Vehicle owners complaining of same defect and that Nissan was investigating but had no fix.<sup>12</sup>

49. In response, numerous other Class Vehicle owners posted experiencing the same gas fuel smell in their vehicles too, complaining of the defect to the Nissan dealerships and the Nissan directly, but receiving no relief.<sup>13</sup>

50. Likewise, dozens of Class Vehicle owners voiced on Facebook their frustration with receiving no repair when they complained about gas fuel smell to the Nissan dealerships.<sup>14</sup>

51. Moreover, a Nissan dealership technician reported that the Nissan TechLine database “is littered with cases” of Class Vehicle owners complaining of fuel smell issue and that Nissan does not have a fix and merely instructs its dealers to document instances of Class Vehicle owners complaining of fuel smell.<sup>15</sup>

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<sup>11</sup> <https://www.nissanforums.com/threads/23-rogue-awd-sv-fuel-smell-in-cabin-and-garage-after-parked.279125/> (last visited April 11, 2023).

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

<sup>13</sup> *Id.*; *see also* <https://www.nissanforums.com/threads/2023-rogue-gas-leak-gas-fumes-engineering-review-recall.279189/> (last visited April 11, 2023).

<sup>14</sup> <https://www.facebook.com/groups/837297303796997/permalink/1270545243805532/> (last visited April 11, 2023);

<https://www.facebook.com/groups/837297303796997/permalink/1322708141922575/> (last visited April 11, 2023);

<https://www.facebook.com/groups/837297303796997/permalink/1317739372419452/> (last visited April 11, 2023);

<sup>15</sup> <https://www.nissanforums.com/threads/2023-rogue-gas-leak-gas-fumes-engineering-review-recall.279189/page-2> (last visited April 11, 2023).

52. Furthermore, Class Vehicle owners have consistently lodged NHTSA complaints regarding the Gas Fumes Defect. The below example complaints, filed by consumers with NHTSA and posted on the Internet, which on information and belief Nissan actively monitored during the relevant time period, demonstrate that the Gas Fumes Defect is widespread and dangerous and that Nissan has known about the defect at all relevant times:

- NHTSA Complaint No. 11496829, December 9, 2022 (2022 Nissan Rogue): “My car smells gasoline inside and outside. I brought the car to the service dealer but the service manager said that they cannot figure out where gas odor coming from. I am using my car in bringing my 2 kids to school and going to work. My kids are getting sick and I am afraid my car will cause fire.”
- NHTSA Complaint No. 11498633, December 23, 2022 (2023 Nissan Rogue): “When driving vehicle cabin will fill with a fuel odor which can make you nauseous. In order to prevent the vents need to be on recirculate which in turn fog up all the windows in the winter time. Also when vehicle is parked in garage it fills the garage with an extremely strong fuel odor. Has been to the dealer 3 times, 2 times they couldn’t reproduce and the 3rd time they can’t find the problem. Nissan is aware and has it under ‘engineering review’ with multiple claims from other owners.”
- NHTSA Complaint No. 11499442, December 29, 2022 (2022 Nissan Rogue): “For several weeks I have noticed strong smell of gasoline when my car is parked in my garage. Today, I called my Nissan dealer because I am very concerned. The service advisor informed me that they have received many similar complaints and Nissan is supposedly trying to identify and remedy the problem. He said my car is safe, but I am terribly concerned.”
- NHTSA Complaint No. 11499566, December 30, 2022 (2022 Nissan Rogue): “The contact owns a 2022 Nissan Rogue. The contact stated while the vehicle was parked in the garage, he started to smell an abnormal fuel odor. The contact stated no warning light was illuminated. The contact took the vehicle to the local dealer but was unable to determine the cause of the failure. The vehicle was not repaired. The manufacturer had been informed of the failure. The failure mileage was approximately 3,000.”
- NHTSA Complaint No. 11500268, January 5, 2023 (2023 Nissan Rogue): “The contact owns a 2023 Nissan Rogue. The contact stated there was an abnormal fuel odor inside and outside the vehicle. Upon inspecting the vehicle, the contact found no visible leaks coming from the vehicle. The vehicle was then taken to the dealer where the mechanic also could not detect any leaks coming from the vehicle. The

manufacturer had been notified of the failure and provided a case number. The vehicle was not repaired. The failure mileage was approximately 2,000.”

- NHTSA Complaint No. 11501655, January 13, 2023 (2022 Nissan Rogue): “Vehicle has raw fuel smell, both outside and inside. Smell intensity varies, sometimes it is faint, sometimes it smells up the whole garage for days. When restarting the vehicle after having driven it, fuel smell comes into the cabin from the air vents. Took to dealer multiple times. The first time, the Service Advisor noted the strong fuel smell. Subsequent visits to the dealer had faint fuel smell that was hard to detect over the typical odors in a repair shop. Opened a case with Nissan, and they sent a tech, but no resolution. Requested a re-purchase, and Nissan denied it. Nissan states this 1.5L engine is under Engineering Review, but they do not know if or when they will figure out a repair. This vehicle is an extreme health hazard with the exposure to hydrocarbon vapors, and is not safe to drive as an engine fire could result from the gas vapors. Issue started a month ago at 1100 miles.”
- NHTSA Complaint No. 11501676, January 13, 2023 (2023 Nissan Rogue): “Strong gas odor in cabin of vehicle emanating from air cleaner housing. Also strong gas smell outside of vehicle after and while driving. Smell is very strong and causes dizziness, nausea and headaches.”
- NHTSA Complaint No. 11501807, January 14, 2023 (2022 Nissan Rogue): “There is a strong smell of gasoline a few minutes after parking the vehicle in my enclosed garage. The smell is strongest on the drivers side, near base of the windshield and along the left side of the hood. This problem occurs every time I drive the vehicle more than 20 mins and then park it in an enclosed garage. 10 mins after parking it, the garage smells like spilled gasoline. I took the vehicle at 2,200 miles to a dealer and they stated that they were unable to duplicate the problem. They asked me to return the vehicle at 5,000 miles if I still had the problem.”
- NHTSA Complaint No. 11501824, January 15, 2023 (2022 Nissan Rogue): “For roughly the last three months, several times I have smelled fuel or gas in the interior cabin. Mostly at startup for first time during morning. But also when starting car after use earlier in the day. The smell dissipates after 10 minutes or so. Especially if I roll down windows to let in fresh air. Please let me know how address because dealer will not see issue as it does not occur with a defined pattern that I recognize. I did notice that when the gas tank was near empty the smell was very strong - and I was driving car for several minutes before the odor started. This issue is not healthy for breathing and I’m worried about it getting worse and becoming a safety issue.”
- NHTSA Complaint No. 11502021, January 16, 2023 (2022 Nissan Rogue): “There is a strong unburied fuel smell on occasion. The dealer says that they are waiting for Nissan engineering to provide a repair and that it would be ok to drive.”



- NHTSA Complaint No. 11502157, January 17, 2023 (2022 Nissan Rogue): “After 9 months of owning this car. When I drive for 20 or so miles and turn the vehicle off for a short period then restart I smell gas and fumes make me sick and my eyes water at times. The dealer found nothing wrong. Nissan corporate got involved after I emailed them. Their engineering tech confirmed it was happening.”
- NHTSA Complaint No. 11502315, January 18, 2023 (2022 Nissan Rogue): “My Vehicle has 3,700 miles on it and i have smelled a very intense fuel smell in the cabin of the vehicle at least 6 times mostly when the interior fan is not set to recirculate the air, i took the vehicle to my local nissan service center and they could find no issues but said this is a complaint that others have also made. I am concerned that there could be a fire from the fumes that are being released.”
- NHTSA Complaint No. 11502725, January 19, 2023 (2023 Nissan Rogue): “First issue: After starting the vehicle there can be a smell of gasoline in the passenger cabin for a little bit. Also after parking vehicle in garage and turning off engine, the garage smells of gas and remains overnight, it is not exhaust fumes. Sometimes it seems to be worse after driving in reverse. There is no sign of a liquid leak on the undercarriage or on the floor. Happens whether the gas tank is full or near empty. Vehicle is only 2 months since purchase ... .”
- NHTSA Complaint No. 11502732, January 20, 2023 (2022 Nissan Rogue): “Gas smell after driving. Dealer replaced EVAP canister valve but still fills my garage with smell.”
- NHTSA Complaint No. 11503291, January 23, 2023 (2023 Nissan Rogue): “After about two months of driving our 2023 Nissan Rogue SV, a fuel odor emerged from the car. The odor is detected constantly in the car’s interior and exterior. The fuel odor is so intense that we are concerned about the safety of parking the vehicle in our garage; we must park it outside. Due to the intensity of the fuel odor, we have purchased a fire extinguisher, as we are afraid of a car fire in the event of an accident/collision. Additionally, we are very concerned about our exposure to the gas fumes, and the health risk it may be causing. The dealership we bought the vehicle from evaluated the car, and informed us that the issue was that gas was sprayed accidentally on the hood liner during production. The dealership replaced the hood liner; however, upon returning the vehicle home the same day, the fuel odor persisted with the same intensity, and it did not fix the problem. The problem occurs after driving the vehicle, and the technician, who did the repair, must not have driven the vehicle.”
- NHTSA Complaint No. 11503128, January 23, 2023 (2023 Nissan Rogue): “Fuel smell from engine compartment that enters cabin if heat turned on. Took to dealer, nothing showed up on computer. Unable to see leak, or evidence of fuel leak. Started about 2 months ago. Was reported to Nissan who states that it’s under

engineering review. Fuel smell lingers for a couple hrs after parked in garage. Concern for health exposure to fumes and potential engine fire hazard. No check engine warning lamps.”

- NHTSA Complaint No. 11503767, January 26, 2023 (2023 Nissan Rogue): “After about the 3k miles mark, I started noticing a raw gas smell on the interior of the cabin when driving the vehicle. I also notice this gas smell when my vehicle is parked in my garage, with the engine off. I brought it to my local Nissan dealer, and they confirmed that it is a known issue 3 other 2023 Rogue customers have reported to this dealership. They did a visual inspection for leaks, and ran a computer diagnostic but nothing was found. At this point they informed me that corporate Nissan is aware of the issue and until they find the root cause of the problem, and issue a recall there is nothing my dealer can do.”
- NHTSA Complaint No. 11504244, January 28, 2023 (2023 Nissan Rogue): “Smell of gas after driving.”
- NHTSA Complaint No. 11504489, January 30, 2023 (2022 Nissan Rogue): “Gas fumes from engine compartment – after the car has been driven 20-30 mins enough to heat up the engine and then parked (turned off) for 10-15 minutes a strong smell of gasoline is detected, you can smell it either by sniffing in the front grill or if you start it and use the outdoor air circulation in the cabin it will come through the vents. There are enough fumes to fill a 1 car garage in 30 mins with a thick odor of gasoline. The fumes are nauseating and cause headaches. My salesman at Hawk Nissan suggested changing gas to a top tier brand so I starting using Mobile but no help with the fume issue. After speaking with a service manager at Woodfield Nissan, he said that he’s had a few cars come in recently with the same problem. Nothing is showing up mechanically so they chalked it up to a “break-in period” and/or possibly a coating used in manufacturing. Brought it back to Woodfield Nissan a couple weeks later stating the oil dipstick has a strong smell of gasoline same smell I get in the cabin and around the car. He found nothing unusual with the oil smell. I took it into Hawk Nissan Oct 2022 with 800 miles now with 2943 miles still having the issue. Not sure if this is affecting my MPG but I'm only getting 18-20 MPG mix of city & highway driving. Recently I'm seeing a lot of the same complaints with the 2023 models.”
- NHTSA Complaint No. 11504729, January 31, 2023 (2023 Nissan Rogue): “This is my 2nd 2023 Nissan Rogue. The first one was purchase in October 2022 Around Thanksgiving 2022 we started smelling gas inside the car and outside the car. After the dealer confirmed the smell and told us there was no fix at the time, we left car at dealership and took a loaner, several weeks later the dealer said there is still no fix. We went to dealer and bought another 2023 Nissan Rogue at approximately 800 miles we started smelling the fumes in the cab and outside the vehicle.”

- NHTSA Complaint No. 11505455, February 3, 2023 (2023 Nissan Rogue): “There is a constant strong fuel odor coming from the car, especially when it is parked inside the garage. It is most noticeable under the front hood as well as inside the cabin. The car has been inspected by the Nissan dealer and they have not found any leaks. They did confirm that this is a known concern, which is under engineering review and the dealership is working with a specialist to address this. They have also informed us the smell is caused by colder temperatures as more fuel needs to be injected than normal and thus causing the strong odor. However, the smell is constant even in warm temperatures. Also, a Nissan engineer has confirmed that this is caused by a design flaw, which only appears on cars with a turbo.”
- NHTSA Complaint No. 11505449, February 3, 2023 (2023 Nissan Rogue): “Vehicle smells of strong gas smell in the cab and around the vehicle. Smell is so strong it makes you feel light headed and gives you a headache. This is a huge health concern for me and my family. When parking in the garage it smells so strong that you have to then park it outside so you do not have a fire hazard in the garage. Took it to the dealership to have diagnosed and was told that Nissan is aware of the issue and it is under engineering review but there is nothing they can do at this time. I then reached out to Nissan consumer affairs and they denied a buy back and told me that it is under engineering review but they do not have a fix for it. If they do not have a fix they should buy it back. This is a huge safety and health concern for me and my family.”
- NHTSA Complaint No. 11505610, February 4, 2023 (2022 Nissan Rogue): “We bought our 2022 Rogue in September 2022, it now has around 5300 miles on it. In December, we noticed that every time we drive it, the inside of the car fills with gas fumes. The fumes are so strong that it gives us extreme headaches, dizziness and nausea. When we park the Rogue in our garage, it creates a strong gas smell. We are concerned that it could explode or cause a fire. The vehicle was taken to Ron Sayer Nissan in Idaho Falls, Idaho on February 4, 2023 for diagnosis. The service manager, [XXX], informed us after examining the vehicle that he did not know what is causing the strong gasoline odor. The dealership did nothing to repair the vehicle and the problem continues.”
- NHTSA Complaint No. 11505819, February 6, 2023 (2023 Nissan Rogue): “The smell of gas is so strong inside and outside of the cabin of the vehicle, that it is causing health issues. Nissan told me to put the car on air circulation as a temporary fix, but it is not working. My entire body is shaky and I’m suffering from migraines and nausea.”
- NHTSA Complaint No. 11506004, February 7, 2023 (2023 Nissan Rogue): “The contact owns a 2023 Nissan Rogue. The contact stated that while operating the vehicle, there was an abnormal fuel odor inside the cabin of the vehicle. Additionally, while parked in the garage, the fuel odor was also present outside the vehicle. Upon inspection, no leaks were found. The vehicle was taken to the local

dealer who was able to confirm the fuel odor but was unable to identify the cause of the odor. There were no repairs performed. The manufacturer was notified of the failure. The failure mileage was 500.”

- NHTSA Complaint No. 11506346, February 7, 2023 (2023 Nissan Rogue): “Good morning - I will be contacting the dealer today. I have a 2023 Nissan Rogue and there is a strong smell of gas in the cabin. I haven't purchased gasoline so it isn't that. It is coming from under the hood. My eyes burn I have a sore throat and am nauseous and dizzy. I looked it up online to troubleshoot and apparently it is a known issue however there isn't a recall. I've tried opening windows, closing them, recirculating the air nothing helps. Even after the car has sat for 8-9 hours it still smells inside and outside the car - edit I just called the dealer and they are backed up until next week. As far as the mph question, I can smell it when driving and parked.”
- NHTSA Complaint No. 11506596, February 10, 2023 (2023 Nissan Rogue): “When I park my 2023 Nissan Rogue in the garage, the garage fills with a strong gas smell. This happens about 50% of the time. There are no performance issues or warning lights involved. I took it to the dealership for assessment yesterday. They did not find evidence of a leak. They said Nissan is aware of this and is investigating and that there is no danger at this time. I believe this does create a health and safety risk to myself and my family and possibly to my home. They also reported that Nissan suggests this issue could be due to winterized gas. This response does not indicate that Nissan accepts responsibility or cares to solve this problem.”
- NHTSA Complaint No. 11507075, February 13, 2023 (2022 Nissan Rogue): “There is a strong smell of gasoline in the garage after I park my Rogue in it. We can smell it in the house. There is also the strong smell of gasoline in the cab when the car is idling, like when waiting in line or at a stop sign. This is not exhaust, it's fuel. I've had it checked once already during an oil change and am taking it back again tomorrow. This can't be safe to my health. Am also afraid it will set my house down on fire. Please help.”
- NHTSA Complaint No. 11507010, February 13, 2023 (2022 Nissan Rogue): “Known issue, fuel smell inside cabin after initial start up and after parking in garage. Fuel/exhaust smells are persistent while initially driving off as well, significant safety risk as we are not certain where this is emanating (or originating) from. This is a health hazard and could potentially lead to engine fire, etc.”
- NHTSA Complaint No. 11507262, February 14, 2023 (2022 Nissan Rogue): “Unknown Very strong gas smell inside the vehicle and outside the vehicle and under hood. This started with less the 4000 miles on it and it is just over 6200 miles at this time. I brought it to local nissan dealer lia nissan of Saratoga and was advised they can not find anything wrong with it and they can not do anything without a

recall. So I am driving a vehicle around with excessive gas smell inside and out. This seems dangerous to me. I did express my concern to both the dealership and nissan themselves and they still refuse to do anything. I asked what happens if I am in an accident and my car starts on fire or if I am driving and my car starts on fire. The service recep. Said well it looks like you will have a law suit. So don't think they realize this is not good. Breathing in gas is a health issue and this should be addressed and should not be ignored. These vehicles had gas issues the year prior so why isn't this a concern for nissan. This is a new vehicle smelling gas is a hazard and puts myself, my family and people driving around me at risk. Please consider reviewing this further. Thank you Jill Tracy.”

- NHTSA Complaint No. 11507480, February 15, 2023 (2023 Nissan Rogue): “I purchased a brand new 2023 Nissan Rogue. I can smell fuel when the car is in park. It is not exhaust either. It is fuel!!! The smell of fuel spreads into the house. We have health issues and are concerned about this problem. This is serious. We are also concerned that this could be a fire hazard as well.”
- NHTSA Complaint No. 11507700, February 16, 2023 (2022 Nissan Rogue): “I purchased my new 2022 Nissan Rogue a few months ago. I do not drive a whole lot seeing as I am working from home. Yet I have noticed on many occasions that after going out and running my errands, I come home and park in my garage and my garage smells of very strong gas fumes. Yesterday I brought my car in to the Nissan Dealership for its first oil change and the service attendant asked me how I was liking it. So, I brought it up to him about the strong gas smell in my garage after driving car. He informed me that this is not the first time that they have heard this. He said they are researching at this time but have not been able to locate the issue. He stated that they were thinking it was the winter gas and I said no way. If gas was the issue, why is it only the 2022 Nissan Rogue having an issue with the gas. Makes no sense. He stated there is no recall on it yet seeing as they cannot figure out the issue, but I will most likely be seeing a recall once they figure it out. They noted on receipt that ‘they were unable to duplicate concern, no fuel leak at fuel lines or tank. Nissan is aware of issue and seeking a remedy, customer will be notified.’ This is very scary to me, it is a strong smell, like there is raw gas leaking. I am afraid of it catching fire or just the fact of inhaling these fumes are not safe. This is a huge safety hazard and Nissan does not seem to care. Are they waiting for something horrible to happen before they take this seriously?”
- NHTSA Complaint No. 11508056, February 19, 2023 (2023 Nissan Rogue): “The cabin of the vehicle fills with a gasoline odor when driven. When I park the vehicle in the garage (with engine OFF), the garage fills with a gasoline odor. I have experienced nausea and headaches with the smell. My oldest child has complained about the smell and making his head hurt. It is very concerning that my ATTACHED garage fills with gasoline odor and could continue into my residence. I am now forced to park my vehicle outside and can not have my two children in the vehicle. I took the vehicle back to the dealership and they initially claimed it was an O Ring around the gasoline tank. They replaced it and the issue still

continued. They then advised that Nissan is aware of this issue but does not have a fix at this time. There are cases around the country with this issue. I am now using a loaner vehicle from the dealership until Nissan finds a fix. There is approximately 5,300 miles on the vehicle. There are no warning messages on the dash. This problem started at the beginning of January.”

- NHTSA Complaint No. 11508998, February 24, 2023 (2023 Nissan Rogue): “Strong smell of raw gasoline coming from the front of the vehicle after driving and while driving. If parked in garage entire garage has strong odor that penetrates into attached house. Very hazardous to health and emissions.”
- NHTSA Complaint No. 11509070, February 25, 2023 (2022 Nissan Rogue): “There is a very strong gas smell in the cabin coming through the vents. Opening windows doesn’t help as it is outside the vehicle as well. It smells like gasoline is actually covering the vehicle. Causes nausea & ightheadedness. Worried for health from breathing in the fumes and fire risk. Nissan service changed evap canister and problem persists. I bought the vehicle brand new and is an unresolved issue.”
- NHTSA Complaint No. 11509202, February 26, 2023 (2023 Nissan Rogue): “After 3000 miles on my car I noticed a gasoline smell in my garage after driving it. Now I have 5000 miles and the gasoline smell is so strong I have to park it outside my garage since my garage is attached to my house and the smell enters my house and makes me feel nauseous and gives me a headache. I have made an appointment with 2 Nissan dealers who state it is a known problem but there is nothing they can do about it at this time and are waiting to hear from Nissan. There are no warning lights on in my car.”
- NHTSA Complaint No. 11509497, February 28, 2023 (2023 Nissan Rogue): “SMELLS strongly of GAS. Location of smell is strongest on driver side closest to windshield under the hood. Vehicle is currently with 2280 miles. Purchased in December of 2022. Smell began mid January 2023 with mileage approximately at 1700.”
- NHTSA Complaint No. 11509730, March 1, 2023 (2023 Nissan Rogue): “The new Nissan Rogue I just bought has gasoline smell that comes into the cabin from the Engine compartment when driving at low speeds. I took the car to the dealer where I was told that Nissan was aware of the gas smell and are looking into a fix. I also called Nissan Corp. and was told that they are aware of the problem and that the gas fumes are not a danger. Also I was told that this is happening to some of the late 2022's and the 2023's. Nissan needs to get this problem fixed ASAP. This Is a safety and a health issue. Please Investigate. Thanks.”
- NHTSA Complaint No. 11509925, March 2, 2023 (2022 Nissan Rogue): “The vehicle has a very strong raw gasoline smell after driving. The smell is very



noticeable both outside and inside of the cabin. This condition is becoming more frequent the more it's driven. The odor is strong enough to make the driver lightheaded and nauseous. The vehicle was purchased new. Dealership is unable to diagnose and Nissan corporate continuously refers this issue back to the dealership."

- NHTSA Complaint No. 11510014, March 3, 2023 (2023 Nissan Rogue): "Fuel smell in garage on a regular basis. No gasoline or gas powered equipment is stored in the garage. The gasoline smell is noticeable when vehicle is warm after driving. Smell was first noticed soon after purchase of vehicle. We didn't really worry about it at first. But it continues to persist. Dealership is blaming it on spillage from gas pumps. The vehicle is currently at half tank, no noticeable smell from filler area. Smell is not noticeable when vehicle is cold. Gasoline odors are dangerous and possibly explosive. No warning lamps are visible or any symptoms shown by vehicle. Vehicle is being taken to dealership on 3/4/23 to be checked out."
- NHTSA Complaint No. 11509983, March 3, 2023 (2023 Nissan Rogue): "Fuel smell continues from engine compartment. Specifically after parked in garage and it is localized to the windshield gutter on drivers side. Started 2-3 months ago. Was reported to Nissan who state that it is under engineering review and there is no fix at this time When heater turned on, fuel smell gets into cabin . Concern for health exposure to fumes as well as potential fire hazard. Check engine warning light does not come on. Only 3000 miles on the car. Bought in September 2022."
- NHTSA Complaint No. 11510201, March 5, 2023 (2022 Nissan Rogue): "Gas fumes leaking into cabin. Garage smells like gas when vehicle is parked there. Nissan has no idea what causes this."
- NHTSA Complaint No. 11510926, March 9, 2023 (2023 Nissan Rogue): "After driving the car and parking it in the garage we notice a "raw gasoline" smell. If we are driving and idle at a stop sign the heater (heating the interior) picks up the gasoline smell and the fumes come inside the car. We have to open the windows to air it out once moving. The problem appears to be getting worse, meaning the smell is getting stronger. We have contacted Nissan and they gave me a case number #48234302, but no progress. The dealer says Nissan is working on the issue, but there is no fix. I have call both Nissan and the dealer since 1-18-2023, but for the most part no one will respond anymore. We find the smell a health concern."
- NHTSA Complaint No. 11511676, March 13, 2023 (2023 Nissan Rogue): "Strong smell of gasoline in our garage, coming from the 2023 Nissan Rogue everytime we park the car. Fumes/vapors fill the garage, and then into the house."
- NHTSA Complaint No. 11513772, March 25, 2023 (2023 Nissan Rogue): "When parked and off, or sitting in idle a major smell of gasoline is spewing out of the

hvac system in the car. It makes me nauseous and major headaches. This can't be safe to drive. This has always been an issue. I've only owned the vehicle since December.”

53. Although Nissan was aware of the widespread nature of the Gas Fumes Defect in the Class Vehicles, and that it posed grave health and safety risks, Nissan has failed to take adequate steps to repair the Defect or notify Class Vehicle owners and/or lessees of the Defect.

54. Customers have reported the Gas Fumes Defect in the Class Vehicles to Nissan directly and through its dealers. Defendant is fully aware of the Gas Fumes Defect contained in the Class Vehicles. Nevertheless, Defendant has failed to disclose the existence and nature of the Defect from Plaintiffs and the other Class Members at the time of purchase or when presented for repair and thereafter. Specifically, Defendant:

- a. failed to disclose, at the time of purchase or repair and thereafter, any and all known material defects or material nonconformities of the Class Vehicles, including the Gas Fumes Defect;
- b. failed to disclose, at the time of purchase or repair, and thereafter, that the Class Vehicles, and their engines were not in good working order, were defective, and were not fit for their intended purpose; and
- c. failed to disclose and/or actively concealed the fact that the Class Vehicles and their engines were defective, despite the fact that Defendant learned of the Gas Fumes Defect as early as beginning of 2022.

55. Defendant has deprived Class Members of the benefit of their bargain, exposed them all to a dangerous safety Defect, and caused them to expend money at its dealerships or other third-party repair facilities and/or take other remedial measures related to the Gas Fumes



Defect contained in the Class Vehicles.

56. Defendant has not recalled the Class Vehicles to repair the Gas Fumes Defect, has not offered to its customers a suitable repair or replacement parts related to the Gas Fumes Defect free of charge, and has not reimbursed all Class Vehicle owners and leaseholders who incurred costs for repairs related to the Gas Fumes Defect.

57. Class Members have not received the value for which they bargained when they purchased or leased the Class Vehicles.

58. As a result of the Gas Fumes Defect, the value of the Class Vehicles has diminished, including without limitation, the resale value of the Class Vehicles. Reasonable consumers, like Plaintiffs, expect, and assume that their vehicles will not reek of gas when they drive their vehicles or when they park their vehicles, causing them headaches and nausea, and that their vehicles will not fill their garages with intoxicating gas fumes. Plaintiffs and Class Members further expect and assume that Nissan will not sell or lease vehicles with known safety defects, such as the Gas Fumes Defect, and will fully disclose any such defect to consumers prior to purchase or offer a suitable non-defective repair. They do not expect that Nissan would fail to disclose the Gas Fumes Defect to them.

### **CLASS ACTION ALLEGATIONS**

#### **A. The Classes**

59. Plaintiffs bring this action on their own behalf, and on behalf of a nationwide class pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3).

**Nationwide Class:** All persons or entities who purchased or leased any 2022-2023 Nissan Rogue vehicle in in the United States.

60. In the alternative to the Nationwide Class, and pursuant to Fed. R. Civ. P.

23(c)(5), Plaintiffs seek to represent the following state-specific classes:

**Michigan Class:** All persons or entities who purchased or leased any 2022-2023 Nissan Rogue vehicle in the State of Michigan (the “Michigan Class”)

**Illinois Class:** All persons or entities who purchased or leased any 2022-2023 Nissan Rogue vehicle in the State of Illinois (the “Illinois Class”)

61. Defendant and its employees or agents are excluded from the Class.

**B. Numerosity**

62. Upon information and belief, the Classes are each so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Classes are unknown at this time, such information being in the sole possession of Defendant, and obtainable by Plaintiffs only through the discovery process, Plaintiffs believe, and on that basis allege, that thousands of Class Vehicles have been sold and leased nationwide, throughout Michigan, and throughout Illinois

**C. Common Questions of Law and Fact**

63. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. These questions include:

- a. whether the Class Vehicles suffer from the Gas Fumes Defect;
- b. whether the Gas Fumes Defect constitutes an unreasonable safety hazard;
- c. whether Defendant knows about the Gas Fumes Defect and, if so, how long Defendant has known of the Defect;
- d. whether the defective nature of the Class Vehicles’ PCV system constitutes a material defect;
- e. whether Defendant had and has a duty to disclose the defective nature of the Class Vehicles’ PCV system to Plaintiffs and the other Class Members;

- f. whether Plaintiffs and the other Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction;
- g. whether Defendant knew or reasonably should have known of the Gas Fumes Defect contained in the Class Vehicles before it sold or leased them to Class Members; and
- h. Whether Defendant breached its express warranty and the implied warranty of merchantability, engaged in unjust enrichment, and whether Defendant violated the Magnuson-Moss Warranty Act, as alleged in this Complaint.

**D. Typicality**

64. The Plaintiffs' claims are typical of the claims of the Classes since Plaintiffs purchased or leased defective Class Vehicles, as did each member of the Classes. Furthermore, Plaintiffs and all members of the Classes sustained economic injuries arising out of Defendant's wrongful conduct. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all absent Class members.

**E. Protecting the Interests of the Class Members**

65. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiffs nor their counsel has any interest which might cause them not to vigorously pursue this action.

**F. Proceeding Via Class Action is Superior and Advisable**

66. A class action is the superior method for the fair and efficient adjudication of this controversy. The injury suffered by each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive

litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, an economy of scale, and comprehensive supervision by a single court. Upon information and belief, members of the Class can be readily identified and notified based on, *inter alia*, Defendant's vehicle identification numbers, warranty claims, registration records, and database of complaints.

67. Defendant has acted, and refused to act, on grounds generally applicable to the Classes, thereby making appropriate final equitable relief with respect to the Classes as a whole.

**FIRST CAUSE OF ACTION**

**Breach of Implied and Express Warranties Pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.***

**(Plaintiffs on behalf of the Nationwide Class or in the alternative Plaintiff Elias on behalf of the Michigan Class and Plaintiff Wemer on behalf of the Illinois Class)**

68. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

69. Plaintiffs and members of the Classes are each a "consumer" as defined in 15 U.S.C. § 2301(3).

70. Defendant is a "supplier" and "warrantor" as defined in 15 U.S.C. § 2301(4) and (5).

71. The Class Vehicles are each a “consumer product” as defined in 15 U.S.C. § 2301(6). 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with the written and implied warranties.

72. 15 U.S.C. § 2304(a)(1) requires Defendant, as a warrantor, to remedy any defect, malfunction or nonconformance of the Class Vehicles within a reasonable time and without charge to the Plaintiffs and Class members.

73. The Defendant’s sale of the defective Class Vehicles and its failure and/or refusal to repair the Class Vehicles’ Gas Fumes Defect within the applicable warranty period constitutes a breach of the written and implied warranties applicable to the Class Vehicles.

74. Despite repeated demands, Defendant has failed to remedy the Class Vehicles’ defects within a reasonable time, and/or a reasonable number of attempts, thereby breaching the written and implied warranties applicable to the Class Vehicles.

75. As a result of Defendant’s breaches of the written and implied warranties, and Defendant’s failure to remedy the same within a reasonable time, Plaintiffs and class members have suffered damages.

**SECOND CAUSE OF ACTION**  
**Unjust Enrichment**

**(Plaintiffs on behalf of the Nationwide Class or in the alternative Plaintiff Elias on behalf of the Michigan Class and Plaintiff Wemer on behalf of the Illinois Class)**

76. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

77. Nissan has long known that about the Gas Fumes Defect which it concealed and failed to disclose to Plaintiffs and Class Members.

78. As a result of its fraudulent acts, and omissions related to the Gas Fumes

Defect, Nissan obtained monies which rightfully belong to Plaintiffs, and the Class Members to the detriment of Plaintiffs, and Class Members.

79. Nissan appreciated, accepted, and retained the non-gratuitous benefits conferred by Plaintiffs and the proposed Class Members who, without knowledge of the Gas Fumes Defect, paid a higher price for their vehicles which actually had lower values. Nissan also received monies for vehicles that Plaintiffs and the Class Members would not have otherwise purchased or leased.

80. It would be inequitable and unjust for Nissan to retain these wrongfully obtained profits.

81. Nissan's retention of these wrongfully obtained profits would violate the fundamental principles of justice, equity, and good conscience.

82. As a result of Defendant's unjust enrichment, Plaintiffs, and Class Members have suffered damages.

83. Plaintiffs do not seek restitution under their Unjust Enrichment claim. Rather, Plaintiffs and Class Members seek non-restitutionary disgorgement of the financial profits that Defendant obtained as a result of its unjust conduct.

84. Additionally, Plaintiffs seek injunctive relief to compel Defendant to offer, under warranty, remediation solutions that Defendant identifies. Plaintiffs also seek injunctive relief enjoining Defendant from further deceptive distribution, sales, and lease practices with respect to Class Vehicles, enjoining Defendant from selling the Class Vehicles with misleading information concerning the Gas Fumes Defect; compelling Defendant to provide Class members with adequate repairs or with replacement components that do not contain the defects alleged herein; and/or compelling Defendant to reform its warranty, in a manner

deemed to be appropriate by the Court, to cover the injury alleged and to notify all Class Members that such warranty has been reformed. Money damages are not an adequate remedy for the above requested non-monetary injunctive relief.

**THIRD CAUSE OF ACTION**  
**Breach of the Implied Warranty of Merchantability Pursuant to**  
**Mich. Comp. Laws Ann. § 440.2314**

**(Plaintiff Elias on behalf of the Michigan Class)**

85. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

86. Defendant is a merchant with respect to motor vehicles.

87. The Class Vehicles were subject to implied warranties of merchantability running from the Defendant to Plaintiff Elias and the Michigan Class Members.

88. An implied warranty that the Class Vehicles were merchantable arose by operation of law as part of the sale or lease of the Class Vehicles.

89. Defendant breached the implied warranty of merchantability in that the Class Vehicles suffer from the defects referenced herein, and thus were not in merchantable condition when Plaintiff Elias, and the Michigan Class Members purchased or leased the Class Vehicles, or at any time thereafter, and the Class Vehicles are unfit for the ordinary purposes for which such vehicles are used. Specifically, the Class Vehicles were, and are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because the Class Vehicles suffer from a Gas Fumes Defect that can make vehicle operation unreasonably dangerous.

90. As a result of Defendant's breach of the applicable implied warranties, owners and lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or

value of their Class Vehicles. Defendant's actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use.

**FOURTH CAUSE OF ACTION**

**Breach of Express Warranty Pursuant to Michigan. Stat. § 55-2-313**

**(Plaintiff Elias on behalf of the Michigan Class)**

91. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

92. In connection with the sale or lease of the Class Vehicles, Defendant provided Plaintiff Elias and Michigan Class Members with a written warranty that provides, *inter alia*, that with respect to powertrain coverage Nissan would repair or replace defective powertrain components within the first 60 months in service.

93. Plaintiff Elias and Michigan Class Members relied on Defendant's warranties when they agreed to purchase, or lease the Class Vehicles, and Defendant's warranties were part of the basis of the bargain.

94. Plaintiff Elias, and Michigan Class Members submitted their Vehicles for warranty repairs as referenced herein. Defendant failed to comply with the terms of the express written warranty provided to each Class member by failing, and/or refusing to repair the Gas Fumes Defect under the vehicle's warranty as described herein.

95. Plaintiff Elias and Michigan Class Members have given Defendant reasonable opportunities to cure the defect, but Defendant has been unable, and/or has refused to do so within a reasonable time.

96. As a result of said nonconformities, Plaintiff Elias and Michigan Class Members cannot reasonably rely on the Class Vehicles for the ordinary purpose of safe, reliable, comfortable, and efficient transportation.



97. Plaintiff Elias, and Michigan Class Members could not reasonably have discovered these nonconformities with the Class Vehicles prior to Plaintiff Elias and Michigan Class Members' acceptance of the Class Vehicles.

98. Plaintiff Elias, and Michigan Class Members would not have purchased or leased the Class Vehicles, or would have paid less for the Class Vehicles, had they known, prior to their respective times of purchase or lease, that Class Vehicles contained the Gas Fumes Defect.

99. As a direct and proximate result of the willful failure of Defendant to comply with its obligations under the express warranties, Plaintiff Elias, and Michigan Class Members have suffered actual, and consequential damages. Such damages include, but are not limited to, the loss of the use and enjoyment of their vehicles, and a diminution in the value of the vehicles containing the defects identified herein.

**THIRD CAUSE OF ACTION**  
**Breach of the Implied Warranty of Merchantability Pursuant to**  
**810 ILCS §§ 5/2-314 and 5/2A-212**

**(Plaintiff Wemer on behalf of the Illinois Class)**

100. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

101. Defendant was at all relevant times a "merchant" with respect to motor vehicles under 810 ILCS §§ 5/2-104(1) and 5/2A-103(3), and a "seller" of motor vehicles under § 5/2-103(1)(d).

102. The Class Vehicles are and were at all relevant times "goods" within the meaning of 810 ILCS §§ 5/2-105(1) and 5/2A-103(1)(h).

103. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to 810 ILCS §§ 28-2-314 and 28-12-212.

104. The Class Vehicles were subject to implied warranties of merchantability running from the Defendant to Plaintiff Wemer and the Illinois Class Members.

105. An implied warranty that the Class Vehicles were merchantable arose by operation of law as part of the sale or lease of the Class Vehicles.

106. Defendant breached the implied warranty of merchantability in that the Class Vehicles suffer from the defects referenced herein and thus were not in merchantable condition when Plaintiff Wemer and the Illinois Class Members purchased or leased the Class Vehicles, or at any time thereafter, and the Class Vehicles are unfit for the ordinary purposes for which such vehicles are used. Specifically, the Class Vehicles were and are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because the Class Vehicles suffer from the Gas Fumes Defect, which produces strong fuel odor throughout the interior of the vehicle that makes Class Vehicle owners physically ill and is a safety hazard to drivers, passengers, and bystanders.

107. As a result of Defendant's breach of the applicable implied warranties, owners and lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Defendant's actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use.

#### **FOURTH CAUSE OF ACTION**

#### **Breach of Express Warranty Pursuant to 810 Ill. Comp. Stat. Ann. 5/2-313**

**(Plaintiff Wemer on behalf of the Illinois Class)**

108. Plaintiffs incorporate by reference all allegations contained in this Complaint

as though fully stated herein.

109. In connection with the sale or lease of the Class Vehicles, Defendant provided Plaintiff Wemer and Illinois Class Members with a written warranty that provides, *inter alia*, that with respect to powertrain coverage Nissan would repair or replace defective powertrain components within the first 60 months in service.

110. Plaintiff Wemer and Illinois Class Members relied on Defendant's warranties when they agreed to purchase, or lease the Class Vehicles, and Defendant's warranties were part of the basis of the bargain.

111. Plaintiff Wemer, and Illinois Class Members submitted their Vehicles for warranty repairs as referenced herein. Defendant failed to comply with the terms of the express written warranty provided to each Class member by failing, and/or refusing to repair the Gas Fumes Defect under the vehicle's warranty as described herein.

112. Plaintiff Wemer and Illinois Class Members have given Defendant reasonable opportunities to cure the defect, but Defendant has been unable, and/or has refused to do so within a reasonable time.

113. As a result of said nonconformities, Plaintiff Wemer and Illinois Class Members cannot reasonably rely on the Class Vehicles for the ordinary purpose of safe, reliable, comfortable, and efficient transportation.

114. Plaintiff Wemer, and Illinois Class Members could not reasonably have discovered these nonconformities with the Class Vehicles prior to Plaintiff Wemer and Illinois Class Members' acceptance of the Class Vehicles.

115. Plaintiff Wemer, and Illinois Class Members would not have purchased or leased the Class Vehicles, or would have paid less for the Class Vehicles, had they known,

prior to their respective times of purchase or lease, that Class Vehicles contained the Gas Fumes Defect.

116. As a direct and proximate result of the willful failure of Defendant to comply with its obligations under the express warranties, Plaintiff Wemer, and Illinois Class Members have suffered actual, and consequential damages. Such damages include, but are not limited to, the loss of the use and enjoyment of their vehicles, and a diminution in the value of the vehicles containing the defects identified herein.

### **DEMAND FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Defendant as follows:

- a. An order certifying the proposed Classes, designating Plaintiffs as named representative of the Classes, and designating the undersigned as Class Counsel;
- b. An order awarding Plaintiffs and class members their actual damages, incidental and consequential damages, punitive damages, and/or other form of monetary relief provided by law;
- c. An order awarding Plaintiffs and the classes restitution, disgorgement, or other equitable relief as the Court deems proper;
- d. Equitable relief including, but not limited to, replacement of the Class Vehicles with new vehicles, or repair of the defective Class Vehicles with an extension of the express warranties and service contracts which are or were applicable to the Class Vehicles;

- e. A declaration requiring Defendant to comply with the various provisions of the state and federal consumer protection statutes herein alleged and to make all the required disclosures;
- f. Reasonable attorneys' fees and costs;
- g. Pre-judgment and post-judgment interest, as provided by law;
- h. Plaintiffs demand that Defendant perform a recall, and repair all Class Vehicles; and
- i. Such other and further relief as this Court deems just and proper.

Dated: April 13, 2023

Respectfully submitted,

By: /s/ Susan S. Lafferty  
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*Attorneys for Plaintiffs*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Strong Gas Smell Inside 2022-2023 Nissan Rogue Caused by PCV System Defect, Class Action Claims](#)

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