UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

DEVIN GOURLEY, individually and on behalf of all similarly situated persons,

Plaintiff,

v.

NISSAN NORTH AMERICA, INC.

Defendant.

Case No. <u>1:17-cv-00441</u>

JURY DEMANDED

CLASS ACTION

PLAINTIFF'S ORIGINAL CLASS ACTION COMPLAINT

Plaintiff Devyn Gourley, individually and as class representative on behalf of all similarly situated persons, brings this action against Defendant Nissan North America, Inc. ("Nissan" or "Defendant"), and alleges as follows:

NATURE OF THE CASE

1. Plaintiff brings this proposed class action on behalf of himself and other Texas residents that own or lease a 2007-2009 Nissan Altima. Nissan sold the vehicles without first telling consumers that Nissan had opted to install dashboards in the vehicles that *do not* withstand exposure to sunlight and that melt, emit a noxious chemical smell, and take on a reflective quality. When the dashboards become reflective, drivers trying to see through the windshield have to struggle to see past the image of the dashboard in the windshield. When the sun or another bright light catches the dashboard at the right angle, the glare off of a melted dashboard

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can significantly obstruct the driver's view, thus endangering the motoring public.

2. On January 6, 2017, the United States District Court for the Southern District of

Florida entered Final Order and Judgment in Cause No. 0:14-cv-62567, Sanborn, et al. v.

Nissan North America, Inc. ("Sanborn") certifying the following class:

All consumers who are residents of, and purchased or leased a new or used 2008 or 2009 Nissan Altima in, the State of Florida on or before April 1, 2017. The Settlement Class excludes any people or businesses that did not purchase or lease the Class Vehicles as consumers, thereby excluding any automobile dealers of any kind or others who did not lease or purchase the Class Vehicles for ordinary consumer use.¹

3. In *Sanborn*, the plaintiff filed an almost identical class action case against Nissan

North America, Inc. on behalf of a class of Florida residents. After preliminary approval of the class action settlement in *Sanborn*, the district court authorized that Class Notice be issued.²

4. On behalf of himself and the proposed Texas class, Plaintiff seeks to compel Nissan to warn drivers about the known defect and to bear the expense of replacing dashboards that should never have been placed in the stream of commerce in the first place.

PARTIES

5. Plaintiff Devyn Gourley is a citizen and resident of Austin, Texas, located in the Western District of Texas.

6. Defendant Nissan North America, Inc. has its headquarters and principal place of business in Franklin, Tennessee. Nissan North America, Inc. is the U.S. subsidiary of Nissan Motor Company, Ltd., which is a company that has its headquarters in Japan. Nissan North America, Inc. is licensed to do business in Texas and can be served with process by and through its registered agent, CSC-Layers Incorporating Service Company, 211 E. 7th Street, Suite 620,

¹ See *Final Order and Judgment* in Case No. 0:14-CV-62567, attached as Exhibit A.

² See *Class Notice* in *Sanborn*, attached as Exhibit B.

Austin, Texas 78701.

JURISDICTION AND VENUE

7. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(a) and (d) because the amount in controversy for the Class exceeds \$5,000,000, and Plaintiff and other Class members are citizens of a different state than Defendant.

8. This Court has personal jurisdiction over Plaintiff because Plaintiff submits to the Court's jurisdiction. This Court has personal jurisdiction over Nissan because Nissan conducts substantial business in this District, and some of the actions giving rise to the complaint took place in this District.

9. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

SUBSTANTIVE ALLEGATIONS

10. Nissan North American, Inc. manufactures, markets, distributes, and warrants automobiles in the United States, including Nissan Altima cars. This lawsuit concerns model years 2007-2009 Nissan Altima vehicles (the "Class Vehicles").

The Altima Defect

11. The Class Vehicles have defective dashboards that melt and crack when exposed to sunlight.

12. When the dashboards melt they produce a noxious chemical smell and ooze a chemical compound that is sticky to the touch. The dashboards also melts, deforms, cracks, and tears, as can be seen below. The degradation causes the dashboards in Class Vehicles to become reflective, resulting in unpredictable glare being cast onto the windshield and into the drivers' eyes. This makes it difficult and sometimes impossible to see and safely operate the vehicle,

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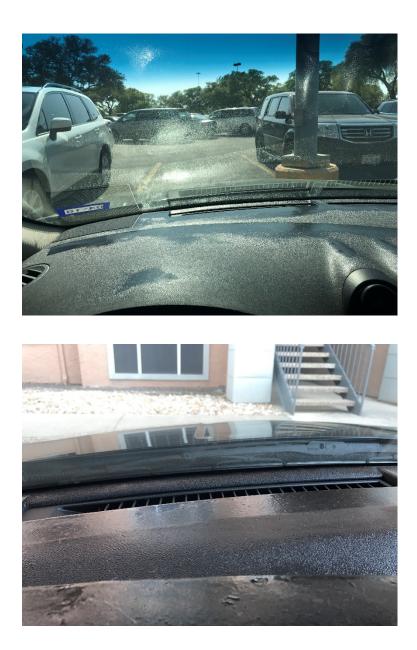
putting drivers, passengers, and others on the road at risk. Even when a driver's vision is obstructed for just a moment, the driver cannot see and respond to hazards, such as children running in front of the vehicle or pedestrians trying to cross the road.

13. In addition, the Class Vehicles are equipped with a passenger side airbag that deploys through precisely designed perforations in the dashboard. The parts affecting airbag release are designed with great attention to detail, with the recognition that in an accident it is essential that they deploy as designed. Thus, the spacing and size of the perforations designed to facilitate the properly timed and located airbag release are subject to precise specifications. As the dashboards in Class Vehicles degrade, however, they commonly become visibly misshapen, raising the likelihood that in the event of a collision, the airbag will not release as designed.

14. The following photos were taken inside Plaintiff Gourley's 2008 Nissan Altima demonstrate the dangerous glare that comes off his melted dashboard and how it can obstruct the driver's vision:







15. Other owners of 2007-2009 Altimas have posted pictures on Nissan's Facebook page showing the severity of the glare from their melting dashboards. For example, Cindi posted the following pictures of the glare from her melting Nissan Altima dashboard on Nissan's Facebook page on April 3, 2014³:

³ https://www.facebook.com/nissanusa/posts/10152938385130375#; These pictures were also reproduced in a news story at: http://www.wptv.com/web/wptv/money/consumer/the-center-for-auto-safety-thinks-melting- dashboards-are-a-safety-defect-and-should-be-recalled?searchType=ALL&compId=517381720



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16. As seen in this picture, Cindi showed Nissan how much her view was obstructed by the glare from her melting dashboard. The first picture shows how the glare makes it very difficult to see a pedestrian just a few feet from the vehicle.

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17. On May 28, 2014, Art posted a picture on Nissan's Facebook wall showing the glare on his windshield from his melted Nissan Altima dashboard⁴:



18. As this was posted on Nissan's Facebook page, which the company routinely monitors, Nissan has had the opportunity to get a firsthand look at how the defect affects drivers. As the photograph above shows, the shiny surface of Art's melting dashboard created a reflection on the windshield of his car that makes it very hard to see when driving.

19. At least two drivers have reported getting into accidents because of the glare from Nissan's melting dashboards. As a result of the defect, there have been at least two reported accidents, while many other drivers have told Nissan and the National Highway Traffic Safety Administration ("NHTSA") that they feel unsafe driving their vehicles. Because the replacement of the dashboard can cost several thousand dollars, however, and because Nissan refuses to cover the full cost of repairs, many drivers are not in a position to replace the dashboard when they learn of the problem. Additionally, Nissan has provided no assurances that replacement dashboards

⁴ https://www.facebook.com/nissanusa/posts/10152938385130375#

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will not suffer from the same problems. Moreover, Nissan has recognized the defect but only

chosen to repair it for drivers who reside in Florida.

20. A driver of a 2008 Altima reported on April 16, 2014 that he got in an accident on

September 1, 2012. The driver stated in his NHTSA complaint:

On February 2013 I had a frontal car accident due to the glare on my windshield of my melting dashboard on my 08 Altima. My dashboard seems to be melting without no reason. Dealer will not replace defective dashboard as it is not part of a recall. This is a serious issue which may cause a serious accident [or even] death to a motorist or pedestrian. Nissan needs to make a recall on this issue. It is obvious that this was a defect on their behalf for the majority of 08 Altimas.⁵

21. One driver reported in his NHTSA complaint that the glare from his melting

dashboard caused him to veer off the road and crash into an embankment on February 17, 2014.

He stated in his NHTSA complaint:

The dashboard on my 2008 Nissan Altima coupe has melted (possible plasticizer migration) and it has become very difficult to drive because of the glare it produces on the windshield, this lead to me to veer off the road and into the embankment. The Nissan dealer told us that they have seen a lot of dashes on the Altima with this problem in Florida, but there is nothing they can do because it is out of the initial factory warranty and they claim the Nissan extended warranty does not cover it. Several Florida residents who own 2008 Altima coupes are experiencing the same problem. This appear to be a manufacturers defect and has really become a serious safety hazard. I respectfully request you're help in this matter. I can provide pictures if necessary. Below are a few addressing forums the situation HTTP://FORUMS.NICOCLUB.COM/MY-DASHBOARD-IS-MELTING-T569582.HTML HTTP://WWW.ALTIMAFORUMS.NET/SUPER-STICKY-DASHBOARD-T15553.HTML?T=15553 HTTP://WWW.NISSANCLUB.COM/FORUMS/2007-2012-NISSAN-ALTIMA-DISCUSSION-2-5-3-5/343066-MELTING-DASHBOARD-PROBLEM.HTML

⁵ NHTSA ID Number: 10583012.

HTTP://WWW.CARCOMPLAINTS.COM/NISSAN/ALTIMA/2008/ACCESSORIES-INTERIOR/DASHBOARD_IS_MELTING.SHTMLHTTP://WWW.ABOUTAUTOMOBILE.COM/COMPLAINT/2008/NISSAN/ALTIMA/WINDOWHTTP://MYTHREECENTS.COM/SHOWREVIEW.CGI?ID=109390.*TR (date of incident: 2/17/14, date of complaint: 2/20/14).6

22. Below are further examples of complaints lodged with NHTSA reflecting drivers'

safety concerns:

<u>2008 Altima</u>: Beginning in 2012 (less than 4 years after purchasing my car), I started to notice that portions of the dashboard were melting. In the years since, it has gotten progressively worse. My mechanic told me he's never seen anything like it, even in much, much older cars. From what I can tell, many others are experiencing this same problem. This is not a cosmetic issue, but rather a serious safety concern. The melting dashboard is shiny and reflect sunlight, causing sudden blinding glares while driving. I have experienced these sudden flashes of light several times on the highway. The reality of being unable to see while at speed exceeding 60 miles is incredibly scary and dangerous. (date of incident: 8/1/12, date of complaint: 4/20/14).⁷

<u>2009 Altima</u>: My 2009 Nissan Altima Coupe'[s] Dahs is melting. A car dealership told me when the dashboard is melting the airbag on the passenger side will not deploy correctly in a crash. I also can not see out of the front windshield because the shiny sticky mess throws a blinding glare while driving. Nissan will not help me. This is a problem with the product used for the dashboard. (date of incident: 11/1/13, date of complaint: 5/2/14)⁸

<u>2007 Altima</u>: My Nissan Altima, the dashboard is starting to crack and melt. The local news channel in my area did investigation on this problem. Looks like I'm not the only one having this problem. They advise to file a complaint, and the local dealership only solution is to have the whole dashboard replaced. (date of incident:5/1/13, date of complaint: 6/13/14).⁹

⁶ NHTSA ID Number: 10565148.

⁷ NHTSA ID Number: 10583727.

⁸ NHTSA ID Number: 10586129.

⁹ NHTSA ID Number: 10598251.

<u>2008 Altima</u>: The dashboard on my Nissan Altima is melting. The material has become very shiny and sticky creating a horrible glare on my windshield and I cannot see while I am driving. It is very dangerous and I was told by Nissan the melting material is emitting fumes. The windshield also has a constant film on it from the melting material, which combined with the glare is hazardous. (date of incident:

12/16/13, date of complaint: 8/13/14)¹⁰

<u>2009 Altima</u>: My dashboard is sticky and appears to be melting away. This shiny surface causes an awful glared reflection on the windshield. Also, it causes the car to appear old and everything sticks to it including papers and insects. It's pretty gross! (date of incident: 1/1/13, date of complaint: 4/8/14).¹¹

2008 Altima: Affected are of vehicle: Dashboard This is a safety hazard! The vehicle was purchased on 7/14/2012. At the time of purchase, it had approximately 36889 miles. Purchased as a previously owned vehicle. About one month after, we noticed that the top of the dashboard by the windshield material started to melt. The material, is a like a foam that gets hot, sticky and starts to melt. It can start a fire any minute. We took the vehicle to the Nissan dealership, located at Semoran Blvd in Orlando, Fl, the same place we bought the car two months before. The staff at the dealership proceeded to inform me that, after several visit, that they never seen something like that and they couldn't do anything because the warranty expired. We took the vehicle to a Nissan authorized shop. The technician informed us for that for the Nissan model for that year 2008 the material used was not the standard one. We are reaching out to Nissan to remedy this problem immediately. This is not only an issue that needs to be cover by the manufacturer and present a safety hazard to my family and the community in general. If we don't hear from Nissan in 10 days we are going to go to BBB and the government. (date of incident: 9/17/12, date of complaint: 12/26/12).¹²

<u>2008 Altima:</u> I noticed about 6 months ago, that there was a shiny, sticky substance on my dashboard and it has been getting worse as the months go by. It has gotten to a point that it is dangerous for me to drive my car because of the glare that it produces off my windshield. I can't even put something over the dash, cause it will stick and tear the dash board apart, if it moves. This is not only a

¹⁰ NHTSA ID Number: 10622045.

¹¹ NHTSA ID Number: 10578396.

¹² NHTSA ID Number: 10490156.

hazard to myself, but to anyone else in my car and to other drivers. I pointed it out to a representative at Nissan dealership months ago and he said he didn't know what was causing it, he couldn't help me. I feel it's a defective type material and I'm sure its also not a healthy breathing environment for me. (date of incident: 9/1/13, date of complaint: 3/14/14).¹³

<u>2008 Infiniti G35:</u> Dashboard is sticky and melting causing glare on windshield (date of incident: 10/17/13 date of complaint: 10/07/14).¹⁴

<u>2006 Infiniti M35:</u> The dashboard in my vehicle is melting. There is a glare that blind me and the dash above the steering wheel melts so bad and gets so hot it burns my fingers while driving. I try to avoid touching it but forget sometimes. I shouldn't have to avoid getting burned while driving. (date of incident: 8/13/14 date of complaint: 8/13/14).¹⁵

2008 Infiniti M35: Dashboard is shiny, sticky & gummy in number of areas. The vehicle is one owner (owned by a retired person), has always been garage kept & does not sit outside in the elements. It has been meticulously maintained & the dash has never had any substances (i.e. protectants) applied. The local Infiniti dealer's service department inspected the dash & stated that the material was breaking down & the dash needs to be replaced. A case was initiated with Infiniti USA that resulted in the manufacturer declining to accept any responsibility due to the vehicle no longer being within the original warranty period. The repair has not yet been completed due to the high cost

involved. (date of incident: 3/15/14, date of complaint: 9/16/14).¹⁶

<u>2007 Infiniti G35</u>: Top of dashboard melting and creating a glare (date of incident: 7/10/13, date of complaint: 9/2/14).¹⁷

<u>2008 Infiniti G37</u>: My dashboard is melted. Obvious defect of the manufacturer...It's sticky and shiny which makes it hard to see and pay attention while I'm driving. I saw that other people have the same problem from my local news station and decided to fill this out. *JS (ellipses in original) (date of incident: 11/20/13, date

¹³ NHTSA ID Number: 10569275.

¹⁴ NHTSA ID Number: 10643103.

¹⁵ NHTSA ID Number: 10622060.

¹⁶ NHTSA ID Number: 10633643.

¹⁷ NHTSA ID Number: 10630188.

of complaint: 4/30/14).¹⁸

NISSAN'S KNOWLEDGE OF THE DEFECT AND THE DANGERS POSED

23. Nissan knew or should have known when it sold the Class Vehicles that the dashboards would not hold up to exposure to sunlight and that the result would be an unsafe condition for drivers.

24. Nissan has known for decades that dashboard reflections can impair drivers' vision and can make it harder to see pedestrians and objects on the road. For instance, a paper published in 1996 by researchers for the University of Michigan Transportation Research Institute found that when a dashboard casts a reflection in the windshield it can impair the drivers' vision. *See* Schumann, Josef, Daytime Veiling and Driver Visual Performance: Influence of Windshield Rake Angle and Dashboard Reflectance, *The University of Michigan Transportation Research Institute* (1996).

25. Likewise, product defects that obstruct the vision of drivers pose a severe safety hazard, and there have been many recalls related to obstructions of the driver's vision. For instance, there were several recalls in 1998 for defective windshield wipers in Nissan 200sx cars because when windshield wipers cannot clean the glass of the windshield, a driver's vision can be obstructed.¹⁹ Other automotive manufacturers, such as Ford, have had recalls because of bubbles that form on the windshield in higher temperatures, which could obstruct drivers' vision.²⁰ Similarly to these prior recalls, the Class Vehicles' melting dashboards pose a severe safety hazard to drivers because they can obstruct a driver's vision.

26. Nissan became aware in at least 2006 that drivers were complaining that the

¹⁸ NHTSA ID Number: 10585806.

¹⁹ http://www.automd.com/recall/nissan_m/200sx_mm/

²⁰ http://www.ncconsumer.org/news-articles/ford-recalls-e-series-vehicles-with-windshield-defect.html

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dashboards in its Infiniti FX 35 and FX 45 Infiniti vehicles were melting and degrading. Nissan was ultimately persuaded to extend the warranty for those vehicles, covering dashboard degradation for up to 8 years in 2003-2008 FX 35 and FX45 vehicles. Many owners of 2003-2008 FX35 and FX45 Infiniti vehicles, however, were still denied a repair of their dashboards because their vehicles were out of the 8 year extended warranty when their dashboards started to melt and deteriorate. Nissan also did not compensate the Florida owners of 2003-2008 FX45 Infiniti vehicles for the loss in resale value to their vehicles from the known problem with Infiniti's melting dashboards. Nissan also never disclosed to drivers that their melting dashboards were a safety hazard and maintained that the issue was merely cosmetic.

27. Despite Nissan's knowledge in at least 2006 that its Infiniti dashboards melted and degraded with exposure to sunlight, Nissan continued to install dashboards that melt when exposed to sunlight. Furthermore, Nissan never extended its warranty to drivers of vehicles with melting dashboards in Nissan 2007-2009 Nissan Altima, 2006-2008 G35 Infiniti, 2006-2008 M35 Infiniti, and 2008-2009 G37 Infiniti vehicles.

28. Given the composition of the dashboards in the Class Vehicles, Nissan knew or should have known that the dashboards would melt and crack with exposure to sunlight. Nissan nonetheless decided to sell Class Vehicles without altering the dashboards, putting Nissan drivers, passengers, and others on the road at risk. Nissan did not tell customers or dealers that the dashboards would melt and crack with exposure to sunlight. Nissan thus had exclusive and superior knowledge of the dashboard defect and actively concealed the defect and corresponding danger from consumers who had no way to reasonably discover the problem before buying and driving their vehicles.

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29. Had consumers been aware of the dashboard defect in their vehicles, they would not have purchased their vehicles or would have paid far less money for them. As Nissan knows, a reasonable person would consider the dashboard defect important and would not purchase or lease a vehicle with a potentially defective dashboard or would pay substantially less for the vehicle.

30. Although there have been numerous complaints about the dashboards through the NHTSA website (which Nissan monitors), posted on Nissan's Facebook page, and made directly to Nissan customer service, Nissan continues to deny the existence of a safety defect for those owners residing in Texas, even though Nissan has recognized the defect for Florida owners. Additionally, the defect was discussed in a Florida ABC-affiliate news segment, which showed pictures of the glare that drivers experience from their melting dashboards.²¹ In response to the news report about the dashboard defect, Nissan stated: "We have become aware of a few isolated consumer complaints about the dashboard appearance in their vehicle." This statement was made prior to Nissan accepting responsibility for the defect for Florida residents.

Nissan's Refusal to Repair the Defective Dashboards

31. Despite the large amount of evidence, number of warnings that Nissan has had about the safety risk that melting dashboards pose, and the class action settlement for Florida owners, Nissan has refused to notify its other customers of the dashboard safety defect or to cover the full costs of repairs for the Class Vehicles. The total for parts and labor to replace a dashboard is around \$2,000, depending on where the part is replaced. Just the cost of the labor may total nearly \$1,000, depending on the location of the Nissan dealership.

²¹ <u>http://www.wptv.com/money/consumer/sticky-shiny-safety-issue-drivers-complain-of-sun-glare-from-melting-dashboards</u>

PLAINTIFF'S ORIGINAL CLASS ACTION COMPLAINT

32. Many customers have made complaints to NHTSA about Nissan's failure to pay

for the full cost to replace defective dashboards:

2009 Altima: I purchased a 2008 Nissan Altima Brand New in 2007, and currently the dashboard is melting. I recently visited my local Nissan dealership as I was told to do so by Nissan Consumer Affairs for a diagnostics. There the dealership also agreed the dashboard is peeling and melting. I was quoted a total cost of \$1860 for parts and labor. I then contacted Nissan Consumer Affairs regarding the matter and they created a case # and said they would get back with me on the issue. A week later they contacted me to say that they will pay for the parts but not the labor because my vehicle is no longer under warranty. I cannot possibly understand why I should be penalized or have to pay for any of this when it is completely not my fault. This is the first have ever seen of a melting dashboard and I've had two cars prior to his one, one being a 1995 and there were no issues of a melting dashboard. This melting dashboard is also hazardous for me, the child I am carrying and my two year old son, as it does affect my view while driving when its sunny out, which is pretty much all the time where I live, there is a really bad glare of the dashboard on my windshield. Unfortunately, this car is my only means of transportation and buying another car is out of the question for me (date of incident: 7/11/14 date of complaint: financially. 7/18/14).22

<u>2008 Altima:</u> My 2008 Altima Coupe Dashboard is melting. It started with a small spot on the dash, I thought it was [moisture] from the air conditioner. A few days later the spot was getting larger. I felt it and it felt like sticky clear glue. Now it's getting larger almost all the way across the dash. I took it to the Nissan dealership and the guy said he ha[s] never seen anything like this. He told me the only thing he can do is order another one for me and that's over \$2,000.00. I feel that I should not have to pay for another dashboard, when it's a defect from the manufacturer and it needs to be a recall on this product. (date of incident: 6/2/13, date of complaint: 7/26/14).²³

<u>2008 Altima:</u> The dashboard has been melting and getting gooey and sticky for months. This causes a distracting sparkling reflection on the windshield during certain days when it is very sunny and the sun shines directly at windshield. The defect was reported to

²² NHTSA ID Number: 10614598.

²³ NHTSA ID Number: 10616446.

Nissan (dealership in Fort Lauderdale, Florida, and the corporate office) but the company does not want to pay for repairing it because the warranty has expired, despite numerous similar complaints by other owners of the same model and the safety issue. (date of incident: 5/15/14, date of complaint: 6/9/13).²⁴

2008 Altima: Sometime in December 2013 I noticed the dashboard of my Nissan Altima 2008 melting causing a shiny substance [that] causes a tremendous glare on the windshield which makes it difficult to see when driving. This should not be happening...obviously defective materials by Nissan. I have researched and on one complaint forum alone found 196 pages of the same complaint and the same year and model . . . I filed a complaint directly with Nissan on 2-17-14 I was told that I needed to get a diagnoses from a Nissan dealer so I did ... Nissan clearly stated that the dashboard needed to be replaced ... well on 2-21-14 a Nissan rep named [xxx] out of Tennessee called me back and said that Nissan will not pay for the replacement of the dashboard... I can supply you with photos of my issues and a list of 100's of others with the same complaint. I appreciate your assistance with this matter. (redactions and ellipses by NHTSA) (date of incident: 12/13/13, date of complaint: 2/23/14).²⁵

33. Nissan's refusal to pay for the complete cost of dashboard repairs has caused great hardship to Nissan owners. Many drivers cannot afford to spend up to \$2,000 to replace their dashboards and are forced to continue to drive unsafe cars, risking getting into an crash. Nissan owners also have difficulty selling their vehicles because of their melted dashboards. Nissan owners who are able to sell their cars with melted dashboards are forced to sell their vehicles at a steep discount due to the dashboard defect.

PLAINTIFF'S EXPERIENCE

34. Devyn Gourley purchased his 2008 Nissan Altima in November of 2012 from Joe Self Chevrolet in Wichita, Kansas. Mr. Gourley purchased a Nissan because members of his family had always been loyal Nissan buyers, believing them to be vehicles of high quality and

²⁴ NHTSA ID Number: 10596975.

²⁵ NHTSA ID Number: 10565528.

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superior safety. Although the car was used when Mr. Gourley purchased the 2008 Altima, the dashboard was in excellent condition.

35. In approximately May 2015, after Mr. Gourley moved to Austin, Texas, he noticed dust collecting on his dashboard and used a dry cloth to try to wipe it off. However, Mr. Gourley's attempt to clean his dashboard only caused fuzz from the dry cloth to stick onto the dash along with the dust. At this time, Mr. Gourley felt the dashboard and discovered it to be sticky to the touch.

36. The condition of Mr. Gourley's dashboard progressively worsened as the summer months got hotter, and the dashboard continued to melt and become stickier. As time passed, the melting of the dashboard caused a blinding reflective glare, making it difficult to see out of the windshield and obstructing Mr. Gourley's view while driving the vehicle.

37. When Mr. Gourley took his Altima to his local Nissan dealership for an oil change and other routine maintenance later in 2015, he inquired about the sticky and reflective dashboard. Those at the Nissan dealership directed him to call Nissan's Consumer Affairs phone line. After Mr. Gourley called the Nissan Consumer Affairs line, he was told in approximately January 2016, that the company would look into his complaint. Nissan Consumer Affairs ultimately responded that the company was not able to assist Mr. Gourley in resolving his complaint.

38. As time passed, the condition of Mr. Gourley's dashboard continued to worsen and his visibility was severely restricted when the sun struck the dash. Again, in approximately 2016, he complained to his local dealership and again he was directed to call Nissan's Consumer Affairs phone line. After initially opening a case number regarding his complaint and acknowledging the Florida class action settlement, Nissan, despite an increasing number of complaints nationwide, did not resolve the problem.

39. At this time, Mr. Gourley's dashboard continued to degrade with exposure to the sunlight and the dangerous glare remains making it difficult for him to safely drive his Altima as he expected.

40. The complaints with Nissan dashboards are well documented with hundreds of posts on consumer websites and social media by consumers from Texas, Florida, Mississippi, Georgia, Missouri. Oklahoma, Hawaii, Arizona, Alabama, North Carolina. Texas consumers specifically have been significantly impacted by the dangerous and defective dashboards.

October 25, 2014 NHTSA ID NUMBER: 10649948 Components: UNKNOWN OR OTHER NHTSA ID Number: 10649948

Incident Date August 15, 2014

Consumer Location DECATUR, TX

Vehicle Identification Number 1N4AL24EX8C****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

DASH HAS MELTED CAUSING STICKY MESS AND GLARE CAUSING LACK OF VISIBILITY WHILE DRIVING WHICH COULD RESULT IN AN ACCIDENT. CONTACTED NISSAN SEVERAL TIMES THEY WERE NO HELP AND SAID THEY WOULD NOT HELP WITH COST OF REPLACING DASH. *TR

1 Associated Product ²⁶

²⁶ https://www.nhtsa.gov/vehicle/2008/NISSAN/ALTIMA/4%252520DR/FWD#complaints

November 21, 2015 NHTSA ID NUMBER: 10795256 Components: VISIBILITY/WIPER, UNKNOWN OR OTHER NHTSA ID Number: 10795256

Incident Date June 8, 2014

Consumer Location FRISCO, TX

Vehicle Identification Number 1N4AL24E58C****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

THE MATERIAL ON THE DASH IS MELTING, AND THERE ARE CHUNKS BREAKING OFF, GREATLY AFFECTING THE VALUE OF MY VEHICLE. THIS ALSO CAUSES A REFLECTION ON THE WINDSHIELD. THERE IS A GLARE IN THE DIRECT LINE OF MY VISION AND WHEN DRIVING INTO THE SUN IT IS VERY DIFFICULT TO SEE. I HAVE HEARD OTHER MAKES OF THIS SAME YEAR HAVE HAD SIMILAR PROBLEMS, AND HAD MANUFACTURE RECALL. HOPEFULLY NISSAN WILL FOLLOW SUIT. SOON.

1 Associated Product ²⁷

August 12, 2015 NHTSA ID NUMBER: 10748306 Components: UNKNOWN OR OTHER

NHTSA ID Number: 10748306

Incident Date May 1, 2013

Consumer Location HOUSTON, TX

Vehicle Identification Number 1N4AL21E28N****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

²⁷ https://www.nhtsa.gov/vehicle/2008/NISSAN/ALTIMA/4%252520DR/FWD#complaints

I PURCHASED MY NISSAN ALTIMA USED IN 2012. A LITTLE MORE THAN A YEAR LATER, I NOTICED STICKY SPOTS ON MY DASHBOARD. INITIALLY, I THOUGHT I HAD CLEANED MY DASHBOARD WITH THE WRONG PRODUCT. HOWEVER, THE ISSUE HAS GOTTEN PROGRESSIVELY WORSE SINCE THEN, AND I NOW KNOW THAT THE STICKINESS IS CAUSED BY MY DASHBOARD MELTING IN THE SUN. LARGE STICKY, SHINY AREAS COVER MY DASHBOARD AND CAUSE A VERY SERIOUS GLARE ON MY WINDSHIELD THAT AFFECTS MY VISION WHEN DRIVING. THIS IS A VERY SERIOUS HAZARD FOR ME AND FOR THE DRIVERS AROUND ME. IT IS A DEFECT OF VEHICLE'S CONSTRUCTION AND SHOULD BE ADDRESSED BY THE MANUFACTURER.

1 Associated Product ²⁸

May 3, 2016 NHTSA ID NUMBER: 10862785 Components: UNKNOWN OR OTHER, VISIBILITY/WIPER

NHTSA ID Number: 10862785

Incident Date January 1, 2014

Consumer Location HOUSTON, TX

Vehicle Identification Number 1N4AL21E08N****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

THE DASHBOARD OF MY CAR HAS MELTED, PRESUMABLY FROM THE HOT SUN. IT HAS BECOME STICKY AND MESS. HOWEVER, IT HAS ALSO BECOME VERY SHINY. THE SHINE REFECTS DANGEROUSLY INTO THE WINDSHIELD WHILE DRIVING, OBSCURING OBJECTS, INCLUDING CARS AND PEDESTRIANS, ON THE ROAD.

THE PROBLEM FIRST BEGAN ABOUT TWO YEARS AGO BUT HAS GOTTEN PROGRESSIVELY WORSE. THE ATTACHED PHOTO, TAKEN TODAY, SHOWS HOW THE DRIVER CANNOT SEE A LARGE SUV RIGHT IN FRONT OF HIS VEHICLE BECAUSE OF THE GLARE ON THE WINDSHIELD CAUSED BY THE MELTED DASHBOARD.

1 Associated Product ²⁹

²⁸ https://www.nhtsa.gov/vehicle/2008/NISSAN/ALTIMA/4%252520DR/FWD#complaints

²⁹ https://www.nhtsa.gov/vehicle/2008/NISSAN/ALTIMA/4%252520DR/FWD#complaints

February 13, 2016 NHTSA ID NUMBER: 10826015 Components: UNKNOWN OR OTHER, VISIBILITY/WIPER NHTSA ID Number: 10826015

Incident Date February 12, 2016

Consumer Location SUGAR LAND, TX

Vehicle Identification Number 1N4AL21E78N****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

DASHBOARD MELTING. IT IS EXTREMELY DIFFICULT TO SEE THE PEDESTRIAN, ROAD, VEHICLES DUE TO GLARE ON THE WINDSHIELD WHEN THE SUNLIGHT REFLECTS FROM THE DASHBOARD. THE GLARE IMPAIRS THE VISION AND WE HAD MANY NEAR MISS INCIDENTS THAT COULD HAVE COST LIVES, PROPERTY DAMAGE. WE REQUEST RECALL CONSIDERING THE SAFETY OF ALL ON THE ROAD.

1 Associated Product³⁰

September 28, 2015 NHTSA ID NUMBER: 10778196 Components: UNKNOWN OR OTHER, VISIBILITY/WIPER

NHTSA ID Number: 10778196

Incident Date May 1, 2014

Consumer Location ROUND ROCK, TX

Vehicle Identification Number 1N4AL24E18C****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

³⁰ https://www.nhtsa.gov/vehicle/2008/NISSAN/ALTIMA/4%252520DR/FWD#complaints

DASHBOARD MELTED AND CAUSES A SEVERE GLARE ON THE FRONT WINDSHIELD. THIS GLARE LIMITS VIABILITY AND IS DANGEROUS WHEN DRIVING.

1 Associated Product³¹

October 16, 2015 NHTSA ID NUMBER: 10782605 Components: VISIBILITY/WIPER, UNKNOWN OR OTHER

NHTSA ID Number: 10782605

Incident Date July 22, 2013

Consumer Location BELLAIRE, TX

Vehicle Identification Number 1N4AL21E88N****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

THE DASHBOARD MELTS AND IT'S AN SAFETY ISSUE. SOMETIMES I CANNOT SEE THE ROAD BECASUE THE MELTED DASHBOARD SHINES ON THE WINDSHIELD.

1 Associated Product ³²

June 15, 2015 NHTSA ID NUMBER: 10725401 Components: UNKNOWN OR OTHER

NHTSA ID Number: 10725401

Incident Date May 1, 2014

Consumer Location HOUSTON, TX

Vehicle Identification Number 1N4AL21E08N****

Summary of Complaint

CRASHNo

³¹ https://www.nhtsa.gov/vehicle/2008/NISSAN/ALTIMA/4%252520DR/FWD#complaints

³² https://www.nhtsa.gov/vehicle/2008/NISSAN/ALTIMA/4%252520DR/FWD#complaints

FIRENo

INJURIES0

DEATHS0

DASHBOARD IS MELTING WITH EXTREME GLARE OFF OF IT. STICKY TO TOUCH. SOMETIMES HARD TO SEE WITH GLARE. SINCE FIRST NOTICING IT, IT HAS NOW COVERED ALMOST 1/2 THE DASHBOARD.

1 Associated Product ³³

September 1, 2015 NHTSA ID NUMBER: 10760717 Components: UNKNOWN OR OTHER

NHTSA ID Number: 10760717

Incident Date August 27, 2015

Consumer Location IRVING, TX

Vehicle Identification Number 1N4AL21E88N****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

IT SEEMS LIKE NISSAN ALTIMA DASHBOARD IS MELTING AND NOW IT BECAME STICKY AND SHINY.WHILE DRIVING IN DIRECT SUN IT CREATES A GLARE ON THE WINDSHIELD AND HARD TO SEE THE ROAD CONDITION.IT IS A MAJOR SAFETY CONCERN FOR A DRIVER.THIS IS HAPPENING MAY BE NISSAN USED A LOW QUALITY MATERIAL FOR THE DASH.THIS NEEDS TO BE RECALLED AND FIXED BY NISSAN.

1 Associated Product³⁴

August 30, 2016 NHTSA ID NUMBER: 10899611 Components: UNKNOWN OR OTHER NHTSA ID Number: 10899611

INFISA ID Nulliber. 10899011

Incident Date June 5, 2016

Consumer Location CHANNELVIEW, TX

³³ https://www.nhtsa.gov/vehicle/2008/NISSAN/ALTIMA/4%252520DR/FWD#complaints

³⁴ https://www.nhtsa.gov/vehicle/2008/NISSAN/ALTIMA/4%252520DR/FWD#complaints

Vehicle Identification Number 1N4AL21E48N****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

MY NISSAN ALTIMA HAS THE DASHBOARD MELTING WHICH MAKES IT VISIBLE THRU THE WINDSHIELD WHICH MAKES IT MORE DIFFICULT TO DRIVE THE VEHICLE. I'VE ALMOST HAD 4 NEAR CAR ACCIDENTS WHERE THE MELTING DASHBOARD WAS THE ISSUE.

1 Associated Product³⁵

November 17, 2016 NHTSA ID NUMBER: 10926713 Components: UNKNOWN OR OTHER

NHTSA ID Number: 10926713

Incident Date June 15, 2013

Consumer Location CIBOLO, TX

Vehicle Identification Number 1N4AL21E88N****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

THE DASHBOARD IS MELTING. STARTED 3 YEARS AGO, WAS TOLD BY DEALERSHIP REPAIR SHOP TO CLEAN IT. IT HAS INCREASED IN SIZE AND NOTHING CLEANS IT. THE GLARE ONTO THE WINDOW IS TERRIBLE, DANGEROUS. HAS A STRANGE SMELL TO IT.

1 Associated Product³⁶

³⁵ https://www.nhtsa.gov/vehicle/2008/NISSAN/ALTIMA/4%252520DR/FWD#complaints

³⁶ https://www.nhtsa.gov/vehicle/2008/NISSAN/ALTIMA/4%252520DR/FWD#complaints

October 31, 2016 NHTSA ID NUMBER: 10920402 Components: UNKNOWN OR OTHER

NHTSA ID Number: 10920402

Incident Date October 31, 2016

Consumer Location HOUSTON, TX

Vehicle Identification Number 1N4AL24E98C****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

THE DASHBOARD SEEMS TO BE MELTING. THE MATERIAL IS BECOMING STICKY AND CAN EASILY BE PEELED OFF, ALMOST LIKE PLAYDOUGH. ALSO IN SOME AREAS IT PRODUCES A GLARE AND IS VERY BOTHERSOME AND IF IT CONTINUES TO GET WORSE WILL EVEN BECOME QUITE DANGEROUS AS IT SORT OF BLINDS THE DRIVER TO SOME DEGREE.

1 Associated Product³⁷

March 19, 2016 NHTSA ID NUMBER: 10850588 Components: UNKNOWN OR OTHER

NHTSA ID Number: 10850588

Incident Date March 19, 2016

Consumer Location SAN ANTONIO, TX

Vehicle Identification Number 1N4AL21E19N****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

THE DASHBOARD OF MY 2009 NISSAN ALTIMA IS MELTING, CREATING A SHINY, STICKY SURFACE. THE SHINE FROM THE MELTED DASH REFLECTS ON THE

³⁷ https://www.nhtsa.gov/vehicle/2008/NISSAN/ALTIMA/4%252520DR/FWD#complaints

WINDSHIELD CAUSING A GLARE THAT MAKES IT HAZARDOUS TO DRIVE.

1 Associated Product³⁸

October 11, 2016 NHTSA ID NUMBER: 10915217 Components: UNKNOWN OR OTHER NHTSA ID Number: 10915217

Incident Date August 1, 2012

Consumer Location HOUSTON, TX

Vehicle Identification Number 1N4AL21E89N****

Summary of Complaint

CRASHNo

FIRENo

INJURIES0

DEATHS0

DASH BOARD HAS MELTED AND GOTTEN STICKY. BECAUSE OF THE MELTING IT HAS GOTTEN VERY SHINY AND CAUSES TERRIBLE GLARE ON THE WINDSHIELD THUS RESTRICTING VIEW AND MAKING DRIVING DANGEROUS BECAUSE OF LACK OF VISION ON THE ROAD. IT IS ALSO VERY MESSY IF YOU TOUCH OR LAY ANYTHING ON THE DASH. I WOULD SUSPECT IT TO BE UNHEALTHY ALSO SINCE THE CHEMISTRY IN THE MATERIAL HAS CHANGED. I LIVE IN HOUSTON, TEXAS AND MY CAR IS OUT IN THE SUN AND WEATHER MOST OF THE TIME. WE DEPEND ON THIS VEHICLE FOR MOST OF OUR TRANSPORTATION.

THIS PROBLEM IS ALWAYS THERE, BUT IS SIGNIFICANTLY WORSE IN HOT/SUNSHINY WEATHER. IT LOOKS LIKE PUDDLE ON THE DASH AND ALSO LOOKS LIKE THE DASH IS ABOUT TO DRIP OFF. IT IS EVEN STICKY AND SHINY AT NIGHT.

THIS HAS BEEN A GRADUAL THIN THAT STARTED ABOUT 2012 AND HAS GOTTEN WORSE AND WORSE.

<u>1 Associated Product</u>³⁹

³⁸ https://www.nhtsa.gov/vehicle/2009/NISSAN/ALTIMA/4%252520DR/FWD#complaints

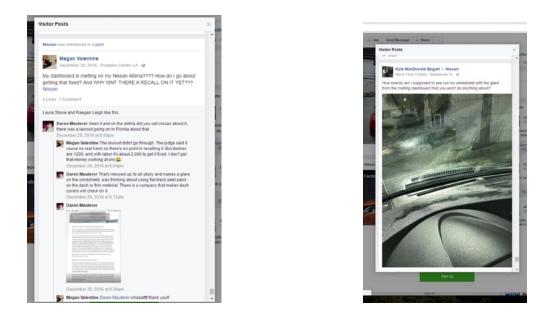
³⁹ https://www.nhtsa.gov/vehicle/2009/NISSAN/ALTIMA/4%252520DR/FWD#complaints

Through social media, Nissan has been made aware of this nationwide problem affecting thousands of consumers.⁴⁰





⁴⁰ https://www.facebook.com/nissanusa/posts_to_page/



41. Facing a consumer fraud lawsuit, Nissan has even settled claims from Florida consumers about the defective dashboards. Nonetheless, no resolution for those outside of Florida has been offered. Consumers in Texas and other states are left without recourse.

42. As recently as March 2017, individuals from Texas have referenced their shared complaints regarding their melting dashboards on a Facebook group called "Nissan Melting Dashboards."



CLASS ACTION ALLEGATIONS

43. Plaintiff proposes to represent: *All persons residing in Texas who purchased or leased a model year 2007-2009 Nissan Altima*.

44. Excluded from the proposed class is Nissan; any affiliate, parent, or subsidiary of Nissan; any entity in which Nissan has a controlling interest; any officer, director, or employee of Nissan; any successor or assign of Nissan; anyone employed by counsel for Plaintiff in this action; any judge to whom this case is assigned, his or her spouse, and all persons within the third degree of relationship to either of them, as well as the spouses of such persons; and anyone who purchased a Class Vehicle for the purpose of resale.

45. This action has been brought and may properly be maintained on behalf of the class proposed above under the criteria of Federal Rule of Civil Procedure Rule 23.

46. <u>Numerosity</u>. Nissan sold hundreds of thousands of Class Vehicles, including a substantial number in Texas. Members of the proposed class likely number in the tens of thousands and are thus too numerous to practically join in a single action. Class members may be notified of the pendency of this action by mail, supplemented by published notice (if deemed necessary or appropriate by the Court).

47. <u>Existence and predominance of common questions</u>. Common questions of law and fact exist as to all members of the proposed class and predominate over questions affecting only individual class members. These common questions include whether:

a. Class Vehicles were factory equipped with defective dashboards;

b. Nissan knew or should have known about the dashboard defect and, if so, when Nissan discovered the defect;

c. The existence of the dashboard defect would be important to a reasonable person, for example, because they pose an unreasonable safety risk;

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d. Nissan disclosed the dashboard defect to potential customers;

e. Nissan dealerships have failed to provide free dashboard repairs for Class Vehicles.

48. <u>Typicality</u>. Plaintiff's claims are typical of the claims of the proposed class. Plaintiff and the class members they propose to represent purchased a Class Vehicle that contains the same defective dashboard, giving rise to substantially the same state and federal claims.

49. <u>Adequacy</u>. Plaintiff is an adequate representative of the proposed class because his interests do not conflict with the interests of the members of the class he seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. The interests of members of the class will be fairly and adequately protected by Plaintiff and his counsel.

50. <u>Superiority</u>. The class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Nissan economically feasible. Even if class members themselves could afford such individualized litigation, the court system could not. In addition to the burden and expense of managing many actions arising from the Nissan defect, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the 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, economy of scale, and comprehensive supervision by a single court.

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51. In the alternative, the proposed class may be certified because:

a. the prosecution of separate actions by the individual members of the proposed class would create a risk of inconsistent or varying adjudication with respect to individual class members which would establish incompatible standards of conduct for Nissan;

b. the prosecution of separate actions by individual class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and

c. Nissan has acted or refused to act on grounds generally applicable to the proposed class, thereby making appropriate final and injunctive relief with respect to the members of the proposed class as a whole.

FIRST CAUSE OF ACTION

Violations of the Texas Deceptive Trade Practices Act

52. Plaintiff, on behalf of himself and the proposed Class, hereby re-alleges the paragraphs above.

53. Plaintiff and the proposed Class are individuals, partnerships and corporations with assets of less than \$25 million (or are controlled by corporations or entities with less than \$25 million in assets). *See* TEX. BUS. & COM. Code § 17.41.

54. The Texas Deceptive Trade Practices-Consumer Protection Act ("Texas DTPA") provides a private right of action to a consumer where the consumer suffers economic damage as the result of either (i) the use of false, misleading or deceptive act or practice specifically enumerated in TEX. BUS. & COM. Code § 17.46(b); (ii) "breach of an express or implied

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warranty" or (iii) "an unconscionable action or course of action by any person." TEX. BUS. & COM. Code § 17.50(a)(2) & (3).

55. An "unconscionable action or course of action," means "an act or practice which, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree." TEX. BUS. & COM. Code § 17.45(5). As detailed herein, Nissan has engaged in an unconscionable action or course of action and thereby caused economic damages to Plaintiff and the proposed Class.

56. Nissan has also breached the implied warranty of merchantability with respect to Plaintiff and the proposed Class as set forth below.

57. Nissan has also violated the specifically enumerated provisions of TEX. BUS. & COM. Code § 17.46(b) by, at a minimum: (1) representing that the Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Class Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the Class Vehicles with the intent not to sell them as advertised; (4) failing to disclose information concerning the Class Vehicles with the intent to induce consumers to purchase or lease the Class Vehicles.

58. In the course of its business, Nissan concealed the melting dashboard defect in the Class Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Nissan also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Class Vehicles.

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59. Nissan knew of the defects affecting many models and years of Nissan and Infinity-branded vehicles, because of multiple reports, investigations, and notifications from consumers, lawyers, and regulatory authorities. Nissan became aware of the melting dash defect years ago, but concealed all of that information until recently.

60. Nissan was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and that this approach would necessarily cause the existence of defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in the Class Vehicles.

61. By failing to disclose and by actively concealing the defects in the Class Vehicles, by marketing its vehicles as reliable and of high quality, and by presenting itself as a reputable manufacturer that valued quality, safety and stood behind its vehicles after they were sold, Nissan engaged in deceptive and unconscionable business practices in violation of the Texas DTPA.

62. In the course of Nissan's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the serious defect discussed above.

63. Nissan's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true safety and reliability of Nissan-branded vehicles, the quality of the Nissan brand, and the true value of the Class Vehicles.

64. Nissan intentionally and knowingly misrepresented material facts regarding the Class Vehicles with the intent to mislead Plaintiff and the proposed Class.

65. Nissan knew or should have known that its conduct violated the Texas DTPA.

66. Nissan owed Plaintiff a duty to disclose the true safety and reliability of the Class Vehicles, because Nissan:

- a. Possessed exclusive knowledge of the defect in the Class Vehicles;
- b. Intentionally concealed the foregoing from Plaintiff; and/or
- c. Made incomplete representations about the safety and reliability of the Class Vehicles generally, while purposefully withholding material facts from Plaintiff and other consumers.

67. Because Nissan fraudulently concealed the many defects in the Class Vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Class Vehicles has greatly diminished. In light of the stigma attached to those vehicles Nissan's conduct, the Class Vehicles are now worth significantly less than they otherwise would be.

68. Nissan's concealment of the defect was material to Plaintiff and the proposed Class. A vehicle made by a reputable manufacturer of safe vehicles is safer and worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedying them.

69. As the foregoing allegations demonstrate, Nissan, by its misrepresentations and failure to disclose material facts about the safety and quality of its vehicles, which resulted in at least two known crashes, and economically injured thousands more. Nissan thereby engaged in acts or practices which, to the detriment of Plaintiff and the proposed Class, took advantage of their lack of knowledge, ability, experience, and capacity to a grossly unfair degree. In other words, Nissan engaged in unconscionable actions or an unconscionable course of action as to Plaintiff and the proposed Class.

70. Plaintiff and the proposed Class suffered ascertainable loss caused by Nissan's misrepresentations and its concealment of and failure to disclose material information. As the

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result of Nissan's deceptive practices, and unconscionable course of action, as set forth in detail above, Plaintiff and the proposed Class would have paid less for their Class Vehicles or would not have purchased or leased them at all. Under TEX. BUS. & COM. Code § 17.50(b)(1), Plaintiff is entitled to recover such economic damages.

71. As set forth in more detail in a separate cause of action, Nissan breached of the implied warranty of merchantability with respect to Plaintiff and the proposed Class, and engaged in an unconscionable course of action "knowingly," which means it did so with "actual awareness of the fact of the act, practice, condition, defect or failure constituting the breach of warranty" and with "actual awareness, at the time of the act or practice complained of, of the falsity, deception or unfairness of the act or practice giving rise to the consumer's claim...." TEX. BUS. & COM. Code § 17.45(9). Accordingly, pursuant to TEX. BUS. & COM. Code § 17.50(b)(1), Plaintiff and the proposed Class are entitled to additional damages in an amount up to three times the amount of economic damages.

72. Nissan's conduct presents a continuing risk to Plaintiff as well as to the general public. Nissan's unlawful acts and practices complained of herein affect the general motoring public.

73. Pursuant to TEX. BUS. & COM. Code § 17.50(a)(1) and (b), Plaintiff and the proposed Class seek monetary relief against Nissan measured as actual damages in an amount to be determined at trial, treble damages for Nissan's knowing violations of the Texas DTPA, and any other just and proper relief available under the Texas DTPA.

74. Alternatively, or additionally, pursuant to TEX. BUS. & COM. Code § 17.50(b)(3)& (4), Plaintiff and the proposed Classare entitled to disgorgement or to rescission or to any

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other relief necessary to restore any money or property that was acquired from them based on violations of the Texas DTPA or which the Court deems proper.

75. Plaintiff and the Proposed Class are also entitled to recover court costs and reasonable and necessary attorneys' fees under § 17.50(d) of the Texas DTPA.

76. On May 9, 2017, Plaintiff sent a letter complying with TEX. BUS. & COM. Code §17.505(a) to Nissan North America, Inc.

SECOND CAUSE OF ACTION

Breach of Implied Warranty of Merchantability

(TEX. BUS. & COM. Code § 2.314)

77. Plaintiff re-alleges and incorporates by reference all paragraphs as though fully set forth herein.

78. Nissan was a merchant with respect to the Class Vehicles under TEX. BUS. & COM. Code § 2.104.

79. Under TEX. BUS. & COM. Code § 2.314, a warranty that the Class Vehicles were in merchantable condition was implied by law in the transaction in which Plaintiff and the proposed Class purchased or leased their Class Vehicles from Nissan.

80. Nissan impliedly warranted that the Class Vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and passengers in reasonable safety during normal operation, and without unduly endangering them or members of the public.

81. The Class Vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the defective dashboards are inherently defective in that there are defects in the materials used that cause the

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dashboard to melt and cast a reflective glow on the windshield which has been known to reslt in at least two known crashes.

82. As a direct and proximate result of Nissan's breach of the implied warranty of merchantability, Plaintiff and the proposed Class have been damaged in an amount to be proven at trial.

THIRD CAUSE OF ACTION

Money Had and Received / Unjust Enrichment

83. Plaintiff, on behalf of himself and the proposed class, hereby re-alleges the paragraphs above.

84. Plaintiff pleads this cause of action in the alternative to his other causes of action.

85. Plaintiff brings this claim individually and on behalf of the proposed Class.

86. Plaintiff and Class members have conferred non-gratuitous benefits on Defendant by purchasing and leasing Class Vehicles, reasonably expecting to receive a vehicle that was free of defects.

87. Defendant has knowledge of and has accepted and retained the benefits conferred.

88. The Class Vehicles purchased and used by Plaintiff and Class members contained defective dashboards, and Plaintiff and Class members would not have paid money for their vehicles, or would have paid substantially less for their vehicles had they been aware that their vehicles had defective dashboards. Under the circumstances, it would be inequitable for Defendant to retain the benefit conferred without compensating Plaintiff and Class members.

89. Plaintiff requests that this Court enter judgment in his favor for disgorgement and restitution of the benefits conferred on Defendant, including wrongful profits and revenues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

a. For an order certifying the proposed class and appointing Plaintiff and his counsel to represent the class;

b. For an order awarding Plaintiff and the members of the class actual damages;

c. For an order awarding Plaintiff and the members of the class restitution, disgorgement or other equitable relief as the Court deems proper;

d. For an order requiring Nissan to adequately disclose and repair the dashboard defect;

e. For an order awarding Plaintiff and the members of the class pre-judgment and post- judgment interest;

f. For an order awarding Plaintiff and the members of the class reasonable attorney fees and costs of suit, including expert witness fees; and

g. For an order awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: May 11, 2017

Respectfully submitted,

STECKLER GRESHAM COCHRAN PLLC

<u>/s/ Bruce W. Steckler</u> Bruce W. Steckler R. Dean Gresham (*not yet admitted*) L. Kirstine Rogers 12720 Hillcrest Rd., Ste. 1045 Dallas, TX 75230 Tel: 972.387.4040 Fax: 972.387.4041 bruce@stecklerlaw.com dean@stecklerlaw.com krogers@stecklerlaw.com

Attorneys for Plaintiff and the Putative Class

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EXHIBIT



UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

Case No. 0:14-CV-62567

TRACY SANBORN and LOUIS LUCREZIA, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA INC.,

Defendant.

FINAL ORDER AND JUDGMENT

THIS CAUSE came before the Court upon the Parties' Joint Motion for Final Approval of Class Settlement (ECF No. 194) and Plaintiffs' Motion for Attorney Fees, Expenses, and Service Awards (ECF No. 195). This Final Order and Judgment resolves the litigation between Defendant Nissan North America Inc. and Plaintiffs Tracy Sanborn and Louis Lucrezia, who brought this action against Defendant on behalf of themselves and all others similarly situated.

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of any class action settlement. The Eleventh Circuit has held that "in order to approve a settlement, the district court must find that the settlement is fair, adequate and reasonable and not the product of collusion between the parties." *Bennet v. Behring Corp.*, 737 F.3d 982, 986 (11th Cir. 1984) (internal quotation marks omitted). In *Bennet v. Behring Corp.*, the Eleventh Circuit set out the following factors for courts to weight in determining whether to approve the settlement: "(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the

complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved." *Id.*; *see also Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1240 (11th Cir. 2011). Furthermore, in order to certify a class for purposes of settlement a court must find that the class meets the requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy—and Rule 23(b)(3)—predominance and superiority.

ACCORDINGLY, the Court having previously directed class notice of the proposed settlement, afforded class members a full and fair opportunity to make any objections known, and held a Fairness Hearing on January 5, 2017, it is hereby **ORDERED AND ADJUDGED** as follows:

1. This Judgment incorporates by reference the definitions and terms of the Parties' Proposed Class Action Settlement Agreement ("Settlement") (ECF No. 191-2).

2. All preliminary findings and conclusions in the Court's Preliminary Approval Order (ECF No. 92) are hereby made final. In particular, the Court affirms its findings that the following settlement class ("Class") meets the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure:

All consumers who are residents of, and purchased or leased a new or used 2008 or 2009 Nissan Altima in, the State of Florida on or before April 1, 2017. The Settlement Class excludes any people or businesses that did not purchase or lease the Class Vehicles as consumers, thereby excluding any automobile dealers of any kind or others who did not lease or purchase the Class Vehicles for ordinary consumer use.

3. The Court finds that notice has been disseminated to the Class in Compliance with the Court's Preliminary Approval Order and that the notice given was the best notice practicable under the circumstances, fully satisfied due process and met the requirements of Rule 23.

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4. The Court finds that the Settlement is fair, reasonable, is in the best interests of the Class, has been entered into in good faith, and should be and hereby is fully and finally approved pursuant to Federal Rule of Civil Procedure 23. The Court has carefully considered and overruled all objections to the proposed settlement.

5. The Court finds the attorney fees and costs requested by Class Counsel to be fair and reasonable. The requested fee constitutes between 2.3% and 25% of the value of the settlement benefits made available to the Class, which is well within the range approved by the Eleventh Circuit. *See, e.g., Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) (most fee awards fall between 20 to 30% of the value provided). The fee is further warranted by the fact that Class Counsel expended more than 4,100 hours to this case on a purely contingent basis—time worth approximately \$2,215,000 at their normal hourly rates; by the results obtained for class members; and by the difficulty and risks posed by the class's claims. In addition, the Class Counsel's expenses were of the variety typically billed to clients in the normal course of business. Accordingly, Class Counsel is hereby awarded attorney fees in the amount of \$1,300,000, and costs in the amount of \$348,000, to be paid by Defendant pursuant to the terms of the Settlement.

6. The Court further finds the requested service awards are fair and reasonable, given the time and effort expended by the class representatives on behalf of the Class. Plaintiff Tracy Sanborn and Plaintiff Louis Lucrezia are hereby awarded \$5,000 each, to be paid by Defendant pursuant to the terms of the Settlement.

7. The Release and Covenant Not to Sue set forth in the Settlement, in Section 5, is incorporated herein and is binding and effective on all Class Members who have not properly excluded themselves from the Class.

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8. The following persons have properly excluded themselves from the Class in compliance with the procedures set forth in the Court's Preliminary Approval Order:

- a. David and Michel Dickson of Miami, FL (VIN 1N4AL******83)
- b. Ashley Harvey/Ashley Smith of Canastota, NY (VIN unavailable))
- c. Jowanna Lamb of Orlando, FL (VIN 1N4AL*******71)
- d. Rebecca A. Pelky of Jacksonville, FL (VIN unavailable)
- e. Janice E. Riley of Leesburg, FL (VIN 1N4AL*******26)
- f. Barry K. Waluzak of Riverview, FL (VIN 1N4AL*******99)

The persons so identified shall be neither entitled to benefits from the Settlement nor bound by this Final Order and Judgment.

9. There being no just reason for delay, the Court, in the interests of justice, expressly directs the Clerk of the Court to enter this Final Order and Judgment, and hereby decrees that, upon entry, it be deemed a final judgment. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over (a) implementation of the Settlement; (b) further proceedings, if necessary, on applications for attorneys' fees, expenses, and costs in connection with the action and Settlement; and (c) the Parties and the Class Members for the purpose of construing, enforcing, and administering the Settlement and all orders and judgments entered in connection therewith.

The Clerk of Court is instructed to CLOSE this case. All other pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this <u>6th</u> day of January, 2017.

win Muchael Moore Kevin Michael Moore 2017.01.06 17:36:29 -05'00'

K. MICHAEL MOORE CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT B

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UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA SANBORN, ET AL. V. NISSAN NORTH AMERICA, INC., NO: 0:14-CV-62567

If you are a resident of the State of Florida, and you bought or leased a 2008 or 2009 Nissan Altima, new or used, in the State of Florida, a proposed class action settlement may affect your rights.

A federal court authorized this notice. This is not a solicitation from a lawyer.

The parties are seeking court approval of a proposed class action settlement involving cracked, melting, or sticky dashboards in 2008 and 2009 Nissan Altima vehicles. Nissan will reimburse all but \$250 for the cost of a dashboard replacement for those vehicles with cracked, melting, or sticky dashboards, and will also provide an alternative method to obtain a dashboard replacement for a net payment of \$250.

Your legal rights and options----and the deadlines to exercise them---are explained in this notice.

YOUR LEGAL RIGHTS AND OPTIONS						
DO NOTHING	You are bound by the settlement. You will be part of the Class and entitled to the benefits from the settlement, which include getting reimbursed for the cost of a replacement dashboard. You will give up your rights to sue Nissan about the same or similar legal claims at issue in this lawsuit.					
SEEK REIMBURSEMENT/ REPLACEMENT	Obtain the benefits from the settlement. As a Class Member bound by the settlement, you must act by April 29, 2017, to obtain reimbursement or dashboard replacement. See Sections 9 and 10 for more information about the procedure you must follow.					
ASK TO BE EXCLUDED	Give up the right to receive the benefits of this settlement. This is the only option that allows you to ever be part of any other lawsuit about the legal claims in this case. You must act by November 22, 2016, to exercise this option. See Sections 13-15 for more information.					
OBJECT TO THE SETTLEMENT	Tell the Court if you don't like the settlement. You must remain a member of the lawsuit (you cannot ask to be excluded) to object to the settlement. You must act by November 22, 2016, to exercise this option. See Sections 19-20 for more information.					

- These rights and options and the deadlines to exercise them are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Please be patient.

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BASIC INFORMATION

1. Why did I get this notice?

You got this notice because you may be a Florida resident who has purchased or leased a 2008 or 2009 Nissan Altima in Florida. You have a right to know about a proposed settlement of a class action lawsuit and about your options before the Court decides whether to approve the settlement.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Southern District of Florida and the case is known as *Sanborn, et al. v. Nissan North America, Inc.*, No. 0:14-cv-62567. The people who sued are called Plaintiffs, and the company they sued, Nissan North America, Inc. ("Nissan"), is called the Defendant.

2.	 W/L - 4 to 4L to 1 - months - L 40	· = 2···· = ···	
. Ze .	What is this lawsuit about?		:

This lawsuit is being pursued by two individuals, called Plaintiffs, on behalf of themselves and others. Plaintiffs claim that a defect in the dashboard material causes the dashboards in 2008 and 2009 Nissan Altima vehicles to crack, melt, and become sticky when exposed to the prolonged heat and humidity typical of Florida. Plaintiffs alleged that Nissan should bear the expense of replacing degraded dashboards. Nissan denies that Plaintiffs are entitled to anything under the law in Florida.

You can get information about the progress of the settlement at <u>www.FloridaAltimaClassActionSettlement.com</u>.

3. Why is this a class action?

In a class action lawsuit, one or more persons, called Class Representatives (in this case Tracy Sanborn and Louis Lucrezia), sue on behalf of other people who have similar claims. All of these people form a Class and are Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. U.S. District Judge K. Michael Moore is in charge of this class action.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Nissan. Instead, both sides agreed to a settlement. That way, all parties avoid the risks and cost of a trial, and the people affected will quickly receive a remedy. The Class Representatives and the attorneys think the settlement is best for the Class.

WHO IS IN THE SETTLEMENT

To see if you will receive benefits from this settlement, you must first determine if you are a Class Member.

5. How do I know if I am part of the settlement?

Judge Moore decided that everyone who fits the following description is a Class Member:

All consumers who are residents of, and purchased or leased a new or used 2008 or 2009 Nissan Altima in, the State of Florida on or before April 1, 2017. The Settlement Class excludes any people or businesses that did not purchase or lease the Class Vehicles as consumers, thereby excluding any automobile dealers of any kind or others who did not lease or purchase the Class Vehicles for ordinary consumer use.

6. I'm still not sure if I am included.

If you are still not sure whether you are included, you can get more information at <u>www.FloridaAltimaClassActionSettlement.com</u>. If you need help understanding your rights, you can call Class Counsel listed in Section 16 in this notice.

THE SETTLEMENT BENEFITS—WHAT YOU GET

7. What does the settlement provide?

Nissan will reimburse all but \$250 of the cost a Class Member pays (or previously paid) to have the dashboard replaced at a Nissan dealership on or before April 29, 2017. This repair would normally cost approximately \$1500-\$2000. Nissan will also provide an alternative method to obtain a dashboard replacement for a net payment of \$250. See Sections 9 and 10 below for instructions for how to obtain the benefits the settlement provides.

8. What is the alleged defect?

Plaintiffs alleged that the material used to construct dashboards in 2008 and 2009 Nissan Altima vehicles is improperly formulated to withstand the heat and humidity common in Florida. Plaintiffs alleged that in some vehicles the defect caused the dashboards to melt, crack, and become sticky, often developing a glossy, reflective sheen that produced a glare on the windshield.

9. How do I get my dashboard replaced?

If you currently own or lease a 2008 or 2009 Nissan Altima with a cracked, melting, or sticky dashboard, you may obtain a dashboard replacement by contacting a Nissan dealership to schedule a service appointment. This repair would normally cost approximately \$1500-\$2000, but you will be reimbursed by Nissan upon submission of appropriate documentation for the cost of repair minus \$250. The dashboard must be replaced, or its deteriorated condition documented by a Nissan dealership in preparation for replacement, no later than April 29, 2017. Failure to either replace the dashboard or have a Nissan dealership document its condition by that date will mean that you will not be reimbursed for any of the cost of a dashboard replacement.

In the event that you cannot afford to pay the dealer for the cost of the replacement dashboard before seeking reimbursement, there is an alternative procedure available. You may go to the dealer and obtain a written quote for the dashboard replacement and submit that as a claim to the settlement administrator. The settlement administrator will then send payment either directly to the dealer or provide you a check or similar documentation made out to the dealer that will allow you to go get your dashboard replaced upon payment of \$250 and the presentation of the check or other documentation to the dealer.

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		ed for my dashboard replacement cost?	!

You can make a reimbursement claim by sending a completed Nissan Dashboard Claim Form with proof of payment to the following address:

Sanborn v. Nissan North America Settlement Administrator P.O. Box 30244 College Station, TX 77842-3244

If you cannot provide proof of payment and your vehicle was repaired at an authorized Nissan dealership, indicate the name of the dealership and the date of the repair on your Claim Form. Nissan will attempt to verify the repair with that information, and will provide reimbursement only if able to do so. Make sure to sign and date your reimbursement request and make sure to include your current name, address, telephone number, and the Vehicle Identification Number (VIN) of your vehicle.

You should submit your Claim Form immediately if you have already had your dashboard replaced, or as soon after replacement as possible, preferably by June 7, 2017, in order to avoid any possibility of missing a deadline. You must submit your Claim Form no later than 120 days after the Order granting Final Approval of the settlement becomes final or, so long as the dashboard was replaced in that time period, within 60 days of having the dashboard replaced, whichever is later. See <u>www.FloridaAltimaClassActionSettlement.com</u> for more information.

11. What if my request for a dashboard replacement or reimbursement is denied?

If you believe your request for a dashboard replacement or reimbursement was wrongly denied, you may contact Class Counsel listed in Section 16 of this notice. They will attempt to resolve the dispute amicably with counsel for Nissan.

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12. What am I giving up to stay in the Class and receive settlement benefits?

Unless you exclude yourself, you are staying in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit about the same legal issues in this case. It also means that all of the Court's orders will apply to you and legally bind you.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of this settlement?

To exclude yourself from the settlement, you must send a written and signed statement entitled "Request for Exclusion" saying that you want to be excluded from *Sanborn, et al. v. Nissan North America, Inc.*, No. 0:14-cv-62567. Be sure to include (i) your full name, address, telephone number, and e-mail address (if available), and (ii) the Vehicle Identification Number (VIN) of your Class Vehicle(s). You must mail your exclusion request postmarked no later than November 22, 2016, to:

Sanborn v. Nissan North America Settlement Administrator P.O. Box 30244 College Station, TX 77842-3244

You cannot exclude yourself on the phone or by e-mail. If you submit a request to be excluded, you will not be entitled to any benefits of the settlement and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

14	If I don't exclude myself, can I sue later?	 	<u> </u>	7
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No. Unless you exclude yourself, you give up the right to sue Nissan North America, Inc. for the claims that this settlement resolves. If you have a pending lawsuit against Nissan, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Class to continue your own lawsuit if it involves claims that this settlement resolves. Remember, the exclusion deadline is November 22, 2016.

15. If I exclude myself, can I get the benefits of this settlement?

No. If you exclude yourself from the Class you will not be able to participate in this settlement. But you may sue, or continue to sue, or be part of a different lawsuit against Nissan North America, Inc.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court has decided that the law firms of Gibbs Law Group LLP and Greg Coleman Law PC are qualified to represent you and all Class Members. The law firms are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense. You can contact Class Counsel at 1-800-808-5294.

17.	Should I get my own lawyer?	 	 	-	Т
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You do not need to hire your own lawyer because Class Counsel is working on your behalf. But if you want your own lawyer, you may hire one at your own expense.

18. How will the lawyers be paid and will there be incentive payments?

Class Counsel will ask the Court to award attorney fees up to \$1,300,000, expense reimbursements of up to \$348,000, and incentive payments of \$5,000 to each of the Class Representatives (Tracy Sanborn and Louis Lucrezia). The Court may award less than these amounts. Nissan will separately pay the fees, expenses, and incentive payments that the Court awards. These amounts will not come out of the funds for payments to Class Members. Nissan will also separately pay the costs to administer the settlement.

OBJECTING TO THE SETTLEMENT

19. How do I tell the Court if I don't like the settlement?

If you are a Class Member, you can tell the Court that you object to the settlement and think the Court should not approve it. To object to the settlement, you must send a written and signed statement entitled "Objection" to the following address no later than November 22, 2016:

Gibbs Law Group LLP 505 14th Street, Suite 1110 Oakland, CA 94612

Your objection must include (i) your full name, address, telephone number, and e-mail address, (if available); (ii) the Vehicle Identification Number (VIN) of your Class Vehicle(s); (iii) a statement of your objection(s), including all factual and legal grounds for the position; (iv) copies of any documents you wish to submit in support of your position; (v) the name, address, and telephone number of your separate counsel in this matter, if any; and (vi) your dated signature. In addition, you must list any other objections you or your counsel have submitted to any class action settlements in any court in the United States in the previous five (5) years, or else affirmatively state that no such objections have been made. If you intend to appear, in person or by counsel, at the fairness hearing, you must so state in your objection.

The filing of an objection allows Class Counsel or counsel for Nissan to take your deposition consistent with the Federal Rules of Civil Procedure at an agreed-upon location, and to seek any documentary evidence or other tangible things that are relevant to the objection. Failure to make yourself available for a deposition or comply with discovery requests may result in the Court striking your objection and otherwise denying you the opportunity to be heard. The Court may tax the costs of any such discovery to the objector or the objector's counsel should the Court determine that the objection is frivolous or made for any improper purpose.

20. What is the difference between objecting and excluding myself?

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class and the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

21. When and where will the Court decide to approve the settlement?

The Court will hold a fairness hearing at 10:00 a.m. on January 5, 2017, at the United States District Court for the Southern District of Florida in Miami, Florida. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Moore may listen to people who have asked to speak at the hearing. The Court may also decide how much Nissan must pay Class Counsel or whether to approve incentive awards. The Court will decide whether to approve the settlement either at the hearing or thereafter. We do not know when the Court will make its decision.

22. Do I have to come to the hearing?		 _	 	 ••••	· -	— ¬	
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No. Class Counsel will answer questions Judge Moore may have. But you are welcome to come at your own expense.

23. May I speak at the hearing?

If you would like to speak at the hearing about your objection to the settlement, you must add to your letter objecting to the settlement a statement that you intend to appear at the fairness hearing. If you intend to appear at the fairness hearing through counsel, your objection must also state the identity of all attorneys representing you who will appear at the fairness hearing. You cannot speak at the hearing if you excluded yourself.

IF YOU DO NOTHING

24.	What happens if I do nothing at all?	· _ · - ·	 	· — ·
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If you do nothing, you will be part of the Class and be entitled to the benefits under the settlement. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Nissan North America, Inc. about the legal issues in this case, ever again.

GETTING MORE INFORMATION

25. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can access the Settlement Agreement at <u>www.FloridaAltimaClassActionSettlement.com</u>. If you do not have access to the internet, you can request a copy of the Settlement Agreement by calling Class Counsel at 1-800-808-5294.

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26.	How do I get more information?			

You can find more information about this litigation and settlement at <u>www.FloridaAltimaClassActionSettlement.com</u>, where updates regarding the case will be available. You may also call Class Counsel with questions.

JS 44 (Rev. 08/16)

Case 1:17-cv-004 CIVIL COVER 3 Filed 05/11/17 Page 1 of 2

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS				DEFENDANTS					
DEVIN GOURLEY, indivi persons,	dually and on behalf	of all similarly situate	ed	NISSAN NORTH	AMERICA, INC.				
(b) County of Residence of	f First Listed Plaintiff	TRAVIS		County of Residence	of First Listed Defendant				
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(c) Attorneys (Firm Name, A Bruce W. Steckler, Steck 1045, Dallas, TX 75230,	ler Gresham Cochran		d., Ste.	Attorneys (If Known)					
II. BASIS OF JURISDI	CTION (Place an "X" in (One Box Only)	III. CI	FIZENSHIP OF P	RINCIPAL PARTIES	(Place an "X" in One Box for Plaintiff			
□ 1 U.S. Government	□ 3 Federal Question			For Diversity Cases Only)	TF DEF	and One Box for Defendant) PTF DEF			
Plaintiff	(U.S. Government	Not a Party)	Citize		1 DET 1 Incorporated or Pr of Business In T	incipal Place 🗖 4 🗖 4			
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IV. NATURE OF SUIT		nly) DRTS	FO	RFEITURE/PENALTY	Click here for: <u>Nature of Su</u> BANKRUPTCY	it Code Descriptions. OTHER STATUTES			
 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 245 Tort Product Liability 290 All Other Real Property 	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 340 Marine 345 Motr Vehicle 355 Motor Vehicle 700uct Liability 360 Other Personal Injury 360 Other Personal Injury 360 Other Personal Gaparactice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities -	Other: 540 Mandamus & Other	Y □ 62: 0 690 1 0 2 710 □ 720 □ 740 □ 75: NS □ 79: □ 79: □ 462	5 Drug Related Seizure of Property 21 USC 881 0 Other Definition of the series of t	□ 422 Appeal 28 USC 158 □ 423 Withdrawal 28 USC 157 ■ PROPERTY RIGHTS □ 820 Copyrights □ 820 Copyrights □ 840 Trademark ■ 840 Trademark □ 861 HIA (1395ff) □ 862 Black Lung (923) □ 863 DIWC/DIWW (405(g)) □ 864 SSID Title XVI □ 865 RSI (405(g)) ■ 870 Taxes (U.S. Plaintiff or Defendant) □ 871 IRS—Third Party 26 USC 7609	 375 False Claims Act 376 Qui Tam (31 USC 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 895 Freedom of Information Act 896 Arbitration 995 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes 			
	Other 448 Education	 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement 		Actions					
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VI. CAUSE OF ACTIO	brief description of c	^{ause:} cles without telling c	consume	ers that the dashboa	rds do not withstand exp	oosure to sunlight			
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS UNDER RULE 2	S IS A CLASS ACTION 23, F.R.Cv.P.	N DI	EMAND \$	CHECK YES only JURY DEMAND:	if demanded in complaint: ★ Yes □ No			
VIII. RELATED CASE IF ANY	E(S) (See instructions):	JUDGE			DOCKET NUMBER				
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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- **I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below. United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box. Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- **III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: <u>Nature of Suit Code Descriptions</u>.
- V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date. Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.

Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

- VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>Nissan Altima Melting Dashboard Lawsuit Filed in Texas</u>