

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

RAFAEL SUAREZ, DAISY GONZALEZ,
and RICHARD BYRD, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.,

Defendant.

) Case No.: 3:21-cv-00393-WLC-AN

) Hon. William L. Campbell, Jr.

) **CLASS ACTION**

**ORDER GRANTING THE PARTIES' JOINT MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, pursuant to Rule 23(a) and 23(b) of the Federal Rules of Civil Procedure, the parties seek entry of an order preliminarily approving the settlement of this action pursuant to the Settlement Agreement fully executed between May 6, 2021 and May 9, 2021 (the "Settlement Agreement" or "Agreement"), which, together with its attached exhibits, sets forth the terms and conditions for a proposed Settlement of the Action and dismissal of the Action with prejudice; and

The Court, having read and considered the Settlement Agreement and all exhibits thereto, the Parties' Joint Motion for Preliminary Approval, and Plaintiffs' brief in support thereof, hereby GRANTS the motion.

IT IS HEREBY ORDERED as follows:

1. This Order incorporates by reference the definitions in the Agreement, and all terms used in this Order shall have the same meanings as set forth in the Agreement.

2. This Court has jurisdiction over this litigation, Plaintiffs, all Settlement Class Members, Defendant Nissan North America, Inc. (“NNA” or “Defendant”), and any party to any agreement that is part of or related to the Settlement.

3. The Court preliminarily approves the Settlement as being fair, reasonable, and adequate, and finds that it otherwise meets the criteria for approval, subject to further consideration at the Final Fairness Hearing described below, and warrants issuance of notice to the Settlement Class. Accordingly, the proposed Settlement is preliminarily approved.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the Settlement, the Settlement Class as follows:

All United States residents who are current or former owners or lessees of all model year 2013–2018 Nissan Altimas, except the following excluded vehicles:

| Model Years | Trim | Package/Edition (if applicable) |
|-------------|---------|---------------------------------|
| 2013-2018 | 3.5L SL | |
| 2017 | 3.5L SR | |
| 2016-2017 | 2.5L SR | with LED Appearance package |
| 2016-2018 | 2.5L SR | with Tech package |
| 2017 | 2.5L SR | Midnight Edition |

For clarity, the Settlement Class Vehicles include all 2013-2018 Altimas manufactured with halogen headlamps, and excludes 2013-2018 Altimas manufactured with Xenon or LED headlamps.

Excluded from the Settlement Class are officers and directors of NNA or its parents and subsidiaries, and any Judge to whom the litigation is assigned. Also excluded are Settlement Class Members who timely Opt Out or exclude themselves from the Settlement.

5. The Court preliminarily finds that the Settlement is likely to receive final approval and class certification, specifically that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of

the Plaintiffs are typical of the claims of the Settlement Class; (d) Plaintiffs and Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

6. The Court appoints Timothy N. Mathews, Samantha E. Holbrook, Alex M. Kashurba, and Zachary P. Beatty of Chimicles Schwartz Kriner & Donaldson-Smith LLP, 361 W. Lancaster Avenue, Haverford, Pennsylvania 19041 as Lead Class Counsel, and John Spragens of Spragens Law PC, 311 22nd Ave. N., Nashville, Tennessee 37203 as additional Class Counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are satisfied by this appointment.

7. The Court appoints Plaintiffs Rafael Suarez, Daisy Gonzalez, and Richard Byrd to serve as class representatives for settlement purposes on behalf of the Settlement Class.

8. The Court appoints Kurtzman Carson Consultants, LLC (“KCC”) as the Settlement Administrator.

9. The Mailed Notice, Reimbursement Claim Form, Publication Notice, Full Notice, Out-of-Warranty Notice and Claim Form, and Effective Date Notice, are approved for dissemination, subject to any non-material changes to which the Parties may agree.

10. The Court approves the notice plan set forth in the Settlement Agreement. To the extent any deadlines set forth in the Settlement vary from deadlines set in this Order, however, this Order controls. The Court finds that the mailing of the Mailed Notice and publication of the Publication Notice in the manner and form set forth in the Agreement, along with the other forms of notice provided therein, including the Digital Publication Notice and the Settlement Website, satisfies due process, constitutes the best notice practicable under the circumstances, and shall

constitute due and sufficient notice to all Settlement Class Members entitled to such notice. Notice shall be completed not more than 91 days from entry of this Order. The Court authorizes the Parties to make non-material modifications to the notices and claim forms if they jointly agree that any such changes are appropriate under the circumstances.

11. If Settlement Class Members do not wish to participate in the Settlement Class, they may exclude themselves by timely delivering a written request for exclusion to the Settlement Administrator's address listed on the Mailed Notice and the Settlement Website. All requests by Settlement Class Members to be excluded from the Settlement Class must be in writing and postmarked on or before one hundred and nineteen (119) days after the entry of this Preliminary Approval Order. The Settlement Administrator shall report the names and addresses of all such persons and entities requesting exclusion to the Class Counsel within seven (7) days prior to the Final Fairness Hearing. Plaintiffs will file with their Reply in Support of the Final Approval Motion the list of persons and entities that properly excluded themselves from the Settlement Class. The list of persons and entities deemed by the Court to have excluded themselves from the Settlement Class will be attached as an exhibit to the Final Order and Judgment.

12. Any Settlement Class Member's written Request for Exclusion shall state in writing: (a) the Settlement Class Member's full name, current address and telephone number; (b) the model, model year, date of acquisition and vehicle identification number ("VIN") of the Settlement Class Vehicle; and (c) specifically and unambiguously state in writing his or her desire to be excluded from the Settlement Class and election to be excluded from any judgment entered pursuant to the Settlement. No Request for Exclusion will be valid unless all of the information described above is included. All Settlement Class Members who exclude themselves from the Settlement Class will not be eligible to receive any benefits under the Settlement, will not be bound

by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against the Released Parties.

13. A request for exclusion by a *current* owner of a Settlement Class Vehicle does not exclude from the Settlement a *former* owner of the same Settlement Class Vehicle. A request for exclusion by a *former* owner of a Settlement Class Vehicle does not exclude from the Settlement a *current* owner of the same Settlement Class Vehicle.

14. To state an objection to the Settlement, an objecting Settlement Class Member must in writing provide: (a) the objector's full name, current address, and telephone number; (b) the model, model year, date of acquisition, vehicle identification number ("VIN") of the Settlement Class Vehicle, and a statement whether the objecting Settlement Class Member is a current or former owner or lessee of the vehicle, along with proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt); (c) a specific statement of all grounds for the objection and, if applicable, any legal support for the objection; (d) a statement whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (e) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; (f) a list of all class action settlements to which the Class Member has objected in the past four (4) years, if any; (g) copies of any papers, briefs, or other documents upon which the objection is based; (h) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing either personally or through counsel; and (i) the signature of the Settlement Class Member.

15. Objections must be served by first-class mail and *received* within one hundred and nineteen (119) days of the entry of this Preliminary Approval Order by each of the following: (1)

Clerk of the Court, United States District Court for the Middle District of Tennessee, Estes Kefauver Federal Building & Courthouse, 801 Broadway, Room 800, Nashville, TN 37203; (2) Timothy N. Mathews, Chimicles Schwartz Kriner & Donaldson-Smith, LLP, 361 West Lancaster Avenue, Haverford, PA 19041; and (3) Brigid Carpenter, Baker Donelson PC, 1600 West End Avenue, Suite 2000, Nashville, TN 37203.

16. Any Settlement Class Member who does not make his or her objections in the manner provided herein shall be deemed to have waived such objections and shall forever be foreclosed from making any objections to the fairness, reasonableness, or adequacy of the proposed Settlement and the judgment approving the Settlement.

17. The Court hereby establishes the following deadlines and schedules the Final Fairness Hearing as follows:

| Event | Deadline Stated in Number of Days From Entry of Preliminary Approval Order | Date |
|---|---|--------------------|
| Settlement Website Posted | 7 days after preliminary approval Order | August 2, 2021 |
| Notice Date (i.e., deadline to complete mailed and publication notice) | 91 days after preliminary approval Order | October 25, 2021 |
| Deadline to file Motion for Attorneys' Fees and Incentive Awards | 56 days after preliminary approval Order granted | September 20, 2021 |
| Deadline to file Motion for Final Approval | 56 days after preliminary approval Order granted | September 20, 2021 |
| Objection/Opt-out Deadline | 119 days after preliminary approval Order granted | November 22, 2021 |
| Deadline to file Reply in Support of Attorneys' Fees and Incentive Awards | 14 days before Fairness Hearing | December 6, 2021 |

| | | |
|--|---|---------------------------------|
| Reply in Support of Final Approval | 14 days before Fairness Hearing | December 6, 2021 |
| Final Fairness Hearing | ≥147 days after Preliminary Approval is Granted | December 20, 2021, at 1:30 p.m. |
| Claims Deadline For Reimbursement Claims | 180 days from Notice Date | April 25, 2022 |

18. The Court may modify the dates above if good cause exists, and the Court may adjourn the Final Fairness Hearing without further notice to Settlement Class Members; however, any changes to deadlines shall be posted on the Settlement Website.

19. Information about how to join the Final Fairness hearing, whether it is held in-person or by other means, shall be provided in a manner to be directed by the Court to the parties and to any Objecting Settlement Class Member who serves a timely objection with notice of intent to appear at the Fairness hearing.

IT IS SO ORDERED.



HONORABLE WILLIAM L. CAMPBELL, JR.
UNITED STATES DISTRICT JUDGE