

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

PATRICIA WECKWERTH, PATRICIA CRUZ, MICHELLE FALK, CYNTHIA GARRISON, INDHU JAYAVELU, MICHAEL KNOTTS, WALDO LEYVA, AMANDA MACRI, DANIELLE TROTTER, and PAMELA PRITCHETT, individually, and on behalf of a class of similarly situated individuals,)	
)	No 3:18-cv-00588
)	
Plaintiffs,)	Judge William L. Campbell, Jr.
)	Magistrate Judge Alistair E. Newbern
)	
v.)	
)	
NISSAN NORTH AMERICA, INC.)	COMPLAINT—CLASS ACTION
)	
Defendants.)	JURY TRIAL DEMANDED

SECOND AMENDED CLASS ACTION COMPLAINT

1. Plaintiffs Patricia Weckwerth, Patricia Cruz, Michelle Falk, Cynthia Garrison, Indhu Jayavelu, Michael Knotts, Waldo Leyva, Amanda Macri, Danielle Trotter, and Pamela Pritchett (“Plaintiffs”) bring this action for themselves and on behalf of all current and former owners and lessees of 2013-2017 Nissan Sentra (B17), 2014-2017 Nissan Versa Note (E12), or 2012-2017 Nissan Versa (N17) vehicles equipped with a DX or DX-K Continuously Variable Transmission (“Class Vehicles”) who purchased or leased the vehicle in the United States or its Territories. Plaintiffs allege as follows:

INTRODUCTION

2. This is a class action concerning a failure to disclose material facts and a safety concern.
3. Nissan marketed and sold the Class Vehicles without disclosing that the Class Vehicles’ Xtronic Continuously Variable Transmission (“CVT”) was defective.
4. Specifically, Plaintiffs are informed and believe, and based thereon allege, that

the CVT transmission contains one or more design and/or manufacturing defects. The CVT is defective in the following ways (collectively, the “CVT Defect”): it causes sudden, unexpected shaking and violent jerking (commonly referred to as “juddering” or shuddering”) when drivers attempt to accelerate their vehicles; it causes the vehicle to lag or delay when the driver tries to accelerate, causing an unsafe, unpredictable acceleration; it exhibits a hard deceleration or “clunk” when drivers either slow down or accelerate at low speeds; it causes complete transmission failure in the middle of roadways¹ and it suffers catastrophic failure, necessitating replacement.

5. Nissan sold the Class Vehicles with a 5-year, 60,000-mile powertrain warranty that purports to cover the CVT. However, owners and lessees have complained that their CVTs failed and required replacement just outside the 60,000-mile warranty period. As Class members have reported to the National Highway Traffic Safety Administration (“NHTSA”), Nissan’s authorized dealerships are replacing transmissions both within, and just outside, the 60,000-mile warranty period.

6. The CVT Defect is inherent in each Class Vehicle and was present at the time of sale.

7. Plaintiffs are informed and believe that since 2013, if not earlier, Nissan has been aware that the CVT installed in the Class Vehicles would require frequent replacement, including replacements just outside of warranty, that the replacement transmissions installed would be equally defective as the originals, and that the CVT would cause the symptoms of

¹ See, e.g., ¶ 71(i), *infra*, where a class member complains to the National Highway Traffic Safety Administration: “DRIVING ON THE HIGHWAY AT 65 MILES PER HOUR, THE VEHICLE SUDDENLY LOST POWER. BY THE GRACE OF GOD, I WAS ABLE TO MANEUVER OFF THE HIGHWAY WITHOUT BEING RUN OVER BY THE SEMI TRUCKS TRAVELING THE HIGHWAY WITH ME. I HAD THE VEHICLE TOWED TO A NISSAN DEALERSHIP WHERE I WAS TOLD THE TRANSMISSION WAS “DEFECTIVE” AND WOULD NEED TO BE REPLACED.”

the CVT Defect described above (juddering, lag when attempting to accelerate, hard deceleration, complete failure and other symptoms), and that the Class Vehicles' CVT would require frequent repair, yet Nissan continued to install the defective CVT. Moreover, Nissan not only refused to disclose the problem to owners and lessees, but it also actively concealed, and continues to conceal, its knowledge concerning the CVT Defect.

8. Nissan undertook affirmative measures to conceal CVT failures and other malfunctions through, among other things, Technical Service Bulletins ("TSB") issued to its authorized repair facilities only.

9. Nissan had superior and/or exclusive knowledge of material facts regarding the CVT Defect as a result of its pre-production testing, design failure mode analysis, customer complaints made to NHTSA, and customer complaints made to dealers.

10. As a result of Nissan's failure to disclose material facts regarding the CVT Defect to its customers, the Class has incurred significant and unexpected repair costs. Nissan's omission at the time of purchase of the CVT's marked tendency to fail just outside of warranty is material because no reasonable purchaser or lessee expects to spend thousands of dollars to repair or replace essential transmission components in the early years of owning their vehicles.

11. The CVT Defect is also material to purchasers and lessees because it presents an unreasonable safety risk. Transmission malfunctions can impair any driver's ability to control his or her vehicle and greatly increase the risk of collision. For example, turning left across traffic in a vehicle with delayed and unpredictable acceleration is plainly unsafe. In addition, these conditions can make it difficult to safely change lanes, merge into traffic, turn, accelerate from stop light/sign, and accelerate onto highways or freeways. See ¶ 71, *infra*.

12. Nissan's failure to disclose the alleged defect has caused Plaintiffs and putative

class members to lose use of their vehicles and/or incur costly repairs that have conferred an unjust substantial benefit upon Nissan.

13. Had Nissan disclosed the CVT Defect to Plaintiffs and Class Members, they would not have purchased the Class Vehicles, would have paid less for them, or would have required Nissan to replace or pay for the replacement of the defective CVT with a non-defective version before their warranty periods expired.

THE PARTIES

Plaintiff Patricia Weckwerth

14. Plaintiff Patricia Weckwerth is a citizen of Georgia. She resided in Tallahassee, FL, until April 28, 2018, at which time she moved to Marietta, GA, where she currently resides. She purchased her new 2014 Nissan Versa SV, VIN 3N1CN7AP6EL804271, from Kraft Nissan in Tallahassee, FL, on April 29, 2014. As of May 31, 2018, the mileage on the vehicle was 28,416.

15. Prior to purchasing her car, Ms. Weckwerth visited and reviewed the Nissan website and read information about the Versa. She also was exposed to internet and television advertising about the Versa that touted the vehicle's attributes and benefits. She also test-drove the vehicle at the Kraft Nissan dealership with a Nissan sales representative, who also touted the vehicle's attributes and benefits, including the smooth ride and effectiveness of the CVT transmission. She also reviewed the "Monroney" window sticker on the vehicle. She reviewed materials that discussed the car's warranty program as well as the warranty itself, which impacted her decision to purchase the vehicle.

16. After she purchased her car, on several occasions she felt the car buck or jerk forward, accelerating on its own when she was not applying any pressure to the gas pedal. She also experienced a loss of power and difficulty shifting. When her car was idling, the

tachometer would indicate that the RPMs would jump from 1,000 to 3,000 within seconds without her applying any pressure to the gas pedal.

17. On July 1, 2016, while driving her car in traffic in downtown Atlanta, she intermittently experienced the car losing power and also jerking forward. This occurred three or four times. When it jerked forward, she had to keep her foot pressed on the brake pedal to avoid hitting cars in front of her.

18. On July 1, 2016, while driving her car on I-75 just north of Atlanta, approximately two hours later, her car completely shut down and became inoperable in the middle lane of this five-lane highway. The car had under 19,000 miles on its odometer at the time. She immediately called 911 to alert the authorities of her disabled vehicle and the danger she was in.

19. After approximately four attempts, her car restarted. She was able to pull her car over to an exit lane near an exit ramp. Her car promptly again completely shut down and become inoperable. She remained on the phone with the 911 operator throughout this ordeal.

20. After approximately two attempts, her car restarted and she was able to proceed to her destination, approximately 10 miles away.

21. Later that day, she phoned Town Center Nissan, 2310 Barrett Lakes Blvd, Kennesaw, GA 30144, to relate her incident and complain about the vehicle. She was told to bring her car to that dealership the next day, July 2. On July 2, she drove her car to Town Center Nissan for service and waited in line there for 30 minutes to speak with a service representative. She was told by that representative that there was no computer technician on site to perform a diagnostic test on her car.

22. On July 5, 2018, she drove her car from Georgia back to Tallahassee, FL, and drove straight to Kraft Nissan. She was told she could leave her car for service, which she

could not do since she had no other means of transportation, or make an appointment to return for service, which she did.

23. On July 9, 2018, she returned to Kraft Nissan to have her vehicle serviced. Kraft Nissan found “DE97AA REPROGRAM ENGINE CONTROL MODULE – ECM” and performed the following service: “18979 FOUND DTC P0116. VEHICLE FELL UNDER YSB NTB15-029. REPROGRAMMED ENGINE CONTROL MODULE PER TSB”.

24. On or about August 6, 2016, she wrote a detailed letter to Nissan that she sent through email via www.nissanusa.com, “Contact Us,” “send us a message”, complaining about her car (and its transmission) and her experience with it. She never received a response.

25. Ms. Weckwerth has continued to experience issues with her vehicle’s transmission, such as issues with poor acceleration, a long lag time between pressing on the gas pedal and the car accelerating, and bucking and jerking.

26. At all times, Ms. Weckwerth has driven her vehicle in a foreseeable manner and in the manner in which it was intended to be used.

Plaintiff Patricia Cruz

27. On February 14, 2015, Plaintiff Cruz purchased a new 2014 Nissan Sentra from Nissan 112 in Patchogue, New York for about \$18,000. Ms. Cruz also purchased an extended warranty for \$2,000.

28. Soon after purchasing the vehicle, Plaintiff Cruz noticed symptoms of the defect, including frequent juddering, a whining noise, and delayed acceleration.

29. On August 10, 2016, Plaintiff Cruz took her vehicle to Nissan 112 in Patchogue, New York at 16,465 miles. She informed the technician that there is a whistling noise and that her vehicle would “pull back” at around 25-40 mph. The service records indicate that the technician road tested the vehicle and could not replicate the problem or find codes in the computer. Nissan did not perform any repairs.

30. On October 10, 2016, Plaintiff Cruz took her vehicle back to Nissan 112 at 18,006 miles and indicated that she heard a noise in the transmission. The technician noted in the service records that the car had a noise in the transmission and indicated that (s)he reprogrammed the transmission. However, the technician informed her that nothing could be done without a diagnostic code.

31. Plaintiff Cruz called Nissan on November 11, 2016 to discuss the technicians' failure to perform a repair. A Nissan representative named "Andrea" informed Ms. Cruz that Nissan could not help unless the technician found a repair code.

32. The problems continued and Plaintiff Cruz brought her vehicle back to Nissan 112 on January 4, 2017 at 20,570 miles. She informed the technician that the transmission was exhibiting a kick back when approaching 40 mph. The technician test drove the vehicle and felt the sudden shaking and noted that he had driven other Sentra's and observed the same sudden shaking. Plaintiff Cruz also stated that she experienced the same defect in the 2016 Nissan Sentra loaner car provided to her. The technician concluded that the vehicle was operating as designed and did not warrant a repair.

33. Despite providing Nissan and its authorized dealer with several opportunities to repair her vehicle, Plaintiff continues to experience the transmission failure.

Michelle Falk

34. On or about July 21, 2016, Plaintiff Michelle Falk purchased a used 2015 Nissan Sentra from Enterprise Car Sales in San Jose, California, for \$14,000. The original purchaser of Plaintiff Falk's vehicle purchased it on or about January 19, 2015. At the time of Plaintiff's purchase, the odometer of the class vehicle recorded 38,332 miles.

35. In August 2016, within a few weeks of her purchase, Plaintiff Falk noticed that, when shifting from park to drive, the engine would feel like it was failing and she would hear a big clanking noise. Within a day or so after that, there was a loss of power when driving from a stop and then, shortly after that, her vehicle would take a long time to speed up to 30 mph. In fact, there was so much lag that Plaintiff Falk felt like she was driving with the

emergency brake engaged. When going over 45 mph, her car would shake violently, which caused her immediate concern. The car would lose power and decrease speed on the freeway and almost die at stop signs. When starting from a complete stop, the car displayed significant hesitation and drove like it had a manual transmission. Plaintiff Falk feared driving the vehicle because she had no confidence that the car had sufficient speed or power to merge and because its performance was unpredictable. On August 15, 2016, the engine light came on and she scheduled an appointment at an authorized Nissan dealership.

36. Plaintiff Falk had her first visit to Premier Nissan of San Jose (“Premier Nissan”) in San Jose, California, on August 23, 2016, at 39,121 miles. The dealership’s service department told her that “these things happen with CVT transmissions” and that they would check it. According to Plaintiff Falk’s service records, Nissan technicians verified her concerns and found a TSB related to the issue. The technicians cleaned the inside of the throttle chamber and updated the ECM software. However, this service did not correct the defect and the same problems with lagging and lack of power upon acceleration soon recurred.

37. Plaintiff Falk took her car back to Premier Nissan on September 16, 2016, at 39,930 miles. Plaintiff Falk informed the technicians that the class vehicle jerked when accelerating and when shifting into gear from park. She went on a test drive with the service technician, who noticed the problems immediately and also noted that the vehicle hesitated. The technician said that “Nissan was notorious for problems with CVT. They get cars that need replacing all the time.” When Ms. Falk asked why Nissan continues to manufacture cars equipped with CVTs, the technician said that “it was trial and error. These cars needed to be driven very carefully, anything could mess it up.” The dealership kept Plaintiff Falk’s Sentra for almost two weeks. According to her service records, the technician observed Ms. Falk’s concerns that the vehicle jerks upon acceleration and when put into gear from park, as well as hesitation in the vehicle. The technicians did not find any stored codes or applicable service bulletins. They recommended dropping the transmission oil pan and looking for internal damage to the CVT assembly. Upon removing the oil pan, the technician found that the

transmission fluid was almost black and displayed a burnt odor. Based on the burnt fluid and jerking of the vehicle, the technician replaced the CVT Transaxle Assembly. Even this did not correct the defect in Ms. Falk's class vehicle.

38. Ms. Falk took the car in for service again to Premier Nissan on October 10, 2016, at 40,100 miles for the same problems. According to service records, she informed Nissan that the vehicle resists and shudders at 30 mph when driving and accelerating. The Nissan dealership told her that this is just the way the CVT works. She asked them to check it again, as she did not feel comfortable driving the vehicle, and they represented to her that everything was fine.

39. Everything was not fine. On May 1, 2017, at 49,491 miles, Ms. Falk tried to merge onto the freeway, but her vehicle would not achieve a speed of over 20 mph. She also informed Premier Nissan about a clunking noise that she heard when shifting into drive from park. Additionally, Ms. Falk confirmed that the same problems from her October 10, 2016 visit persisted. The technicians verified the clunking noise that occurs in Ms. Falk's vehicle when shifting out of park. The technician determined that TSB 12-055e applied to Ms. Falk's vehicle and applied grease to the bearing surfaces of the vehicle on both sides.

40. The same problems continued. Ms. Falk again brought her vehicle to Premier Nissan on May 27, 2017 at 50,715 miles. She informed the technicians that the vehicle felt like it was going to stall on the freeway and that she continued to hear clunking noises when shifting from park to drive and, additionally, when shifting to reverse the vehicle. The dealership could not replicate any of Plaintiff Falk's issues and performed no fix.

41. On June 6, 2017, at 51,131 miles, Plaintiff Falk went back to Premier Nissan and represented that she was experiencing all of the same issues that occurred on her prior visits. Again, Nissan could not replicate the issues and did not perform a fix.

42. Despite providing Nissan and its authorized dealer with ample opportunity to repair her vehicle, Plaintiff Falk continues to experience the CVT Defect.

Cynthia Garrison

43. On October 12, 2015, Plaintiff Garrison purchased a new 2015 Nissan Sentra for about \$20,000 from Sullivan Brothers Nissan Lincoln Mercury, Inc. (“Sullivan Brothers”) in Kingston, Massachusetts.

44. On the first day of her purchase, Plaintiff Garrison noticed symptoms of the defect, including hesitation before acceleration, shuddering and severe juddering while braking, and lag and jumping while accelerating. Plaintiff Garrison became concerned that the defect was a safety issue and brought her vehicle in for repair just a month after she purchased it.

45. On November 9, 2015, at just 1,264 miles, Plaintiff Garrison brought her vehicle to Sullivan Brothers and informed them of the CVT Defect in her vehicle. The technicians took the vehicle for a test drive and noted that the vehicle displayed a rough idle and hesitated before acceleration. Despite observing Plaintiff Garrison’s concerns, the technician concluded that the vehicle was operating as designed and did not perform any repairs.

46. On January 13, 2016, at 4,954 miles, Plaintiff Garrison again brought her vehicle in for repair and informed the technician that her vehicle felt like it was going to stall and indicated a drop in RPMs when coming to a stop. The technician could not duplicate the issue during a road test and could not find any stored computer codes, and did not perform any repairs.

47. Because Plaintiff Garrison continued to experience problems with her vehicle, she emailed Nissan Consumer Affairs and informed them that her engine and transmission were not synchronized. She summarized that, as a result, the car vibrates when increasing or decreasing in speed, the car shakes while coming to a complete stop as if she is driving on cobblestone streets, the tachometer drops rapidly when coming to a stop, and the engine idle increases before it comes to a rest. She reported that, while driving on the highway at 60 mph, her car began to shake violently and that the problem could cause a severe accident. She also

mentioned that she did not believe the car was safe. Nissan's consumer affairs specialist responded by saying that her concerns would require additional research and by forwarding the case to a "Regional Consumer Affairs Specialist" who specializes in these types of concerns. The Regional Consumer Affairs Specialist directed Plaintiff Garrison to bring her vehicle to Balise Nissan for further inspection.

48. In April of 2016, at 9,892 miles, Plaintiff Garrison brought her vehicle to Balise Nissan in Hyannis, Massachusetts for further repair. The technician could not replicate the issue on a test drive, but found a TSB that addressed her symptoms (NTB14-118B). The technician reprogrammed the Transmission Control Module per the latest TSB.

49. Plaintiff Garrison continued to experience problems with the transmission in her vehicle and brought it to Sullivan Brothers on October 7, 2016 at 17,587 miles for repair. She informed the technician about the fluctuating RPMs and the way the car bucked when coming to a stop. The technician could not duplicate her concerns during a road test and did not perform any repairs.

50. Despite providing Nissan and its authorized dealers with several opportunities to repair her vehicle, Plaintiff Garrison continues to experience the CVT Defect.

Indhu Jayavelu

51. On or about November 25, 2016, Plaintiff Jayavelu purchased a new 2016 Nissan Sentra from Fred Martin Nissan in Akron, Ohio for \$17,700.

52. Almost immediately after her purchase, Plaintiff Jayavelu's class vehicle began to judder and would fail to properly accelerate. On November 25, 2016 at 720 miles, Plaintiff Jayavelu sought an inspection of the class vehicle at Airport Nissan of Cleveland in Cleveland, Ohio. She represented that she felt a vibration through the steering wheel when braking to a stop and when driving about 20-25 mph. The service technician's notes indicate that Nissan could not replicate her concern and made no repair.

53. Plaintiff Jayavelu again brought her vehicle in for repair at 829 miles on

December 19, 2016. She brought the vehicle to Nissan of North Olmsted, LLC in North Olmsted, Ohio. She stated that she felt vibration and that her vehicle would not accelerate properly when her vehicle was accelerating from 20-40 mph and when slowing down to a stop. The technicians test drove the vehicle and agreed that the vehicle vibrated. Because the technician could not find a code, however, Nissan did nothing to fix the vehicle and advised Ms. Jayavelu to call Nissan Customer Affairs.

54. Ms. Jayavelu called Nissan Customer Affairs, but the representative said that Nissan could not help her because the dealership did not find any stored codes in her vehicle.

55. Despite providing Nissan and its authorized dealer with more than one opportunity to repair her vehicle, Plaintiff Jayavelu continues to experience the transmission failure.

Michael Knotts

56. Mr. Knotts is, and at all times relevant to this action has been, a resident of Brooklyn Park, Minnesota. Plaintiff, thus, is a citizen of Minnesota. On or about October 24, 2012, Plaintiff purchased a new Nissan Versa from Morrie's Nissan, an authorized Nissan dealership located in Brooklyn Park, Minnesota. The Vehicle was built with a CVT.

57. The salespeople at the dealership orally advised Plaintiff that the CVT was a new, superior transmission that was higher quality and would result in greater efficiency and savings. Those representations were made before Plaintiff completed the transaction.

58. Neither the salespeople nor anyone else at the dealership ever informed Plaintiff of any defects or problems with the CVT.

59. Plaintiff viewed the Vehicle's window sticker at the dealership prior to purchasing the Vehicle. The window sticker did not inform Plaintiff of any defects or problems with the CVT.

60. Plaintiff received and reviewed the Vehicle's maintenance guide at the dealership prior to purchasing the Vehicle. The maintenance guide did not inform Plaintiff of any defects or problems with the CVT.

61. While in Minnesota, Plaintiff conducted independent research prior to purchasing the Vehicle. This research included Internet research on Nissan's website and on third-party websites, such as Consumer Reports. None of his research indicated that there were any defects or problems with the Vehicle's CVT.

62. On the basis of his personal experience owning Nissan vehicles in the past, the questions he asked and information he obtained at the dealership, and the independent research he conducted, Plaintiff believed the Vehicle would be reliable and free from defects. That was Plaintiff's belief both before and at the time he purchased the Vehicle.

63. At the time of purchase, Plaintiff understood that the CVT was a new, improved, high quality feature of the Vehicle.

64. If *any* of Nissan's advertisements or marketing materials had accurately disclosed the CVT defect, it is likely that the defect would have been sufficiently widely reported that Plaintiff would have learned of the CVT defect through his research, through the materials he viewed at the dealership, or in his conversations with salespeople at the dealership before he purchased the Vehicle.

65. Plaintiff would not have purchased the Vehicle, or he would have paid less for it, if he had learned or been made aware that the CVT was defective.

66. Per the requirements of the Warranty, Plaintiff operated his Vehicle in a manner consistent with its intended use at all times. Nevertheless, Plaintiff experienced a safety issue with his Vehicle, involving the inability to accelerate in traffic after braking at an intersection. On one particular occasion, after having braked at a red light, Plaintiff attempted to accelerate across the intersection when the light turned green. His Vehicle, however, would not accelerate beyond a crawl, causing him to block and delay traffic behind him and rendering him barely able to move the car into the shoulder of the road so that he could avoid the danger of moving so slowly at a traffic-heavy intersection.

67. In or about March 2017, once Plaintiff noticed his acceleration problems were pervasive, he took his vehicle to Victory Auto Service & Glass in Brooklyn Park, Minnesota.

The mechanic at the time presumed it was a fuel injection issue.

68. On or about April 25, 2017, when Plaintiff's Vehicle again would not accelerate at an intersection, the Vehicle was towed to Victory Auto Service & Glass, a repair shop in Brooklyn Park, Minnesota. The shop recognized the problem was with the transmission. The shop removed and replaced the transmission and the Nissan CVT transmission fluid.

69. In the end of April 2017, Plaintiff contacted Nissan about his defective CVT, explaining his pervasive acceleration problems. Nissan told Plaintiff it would not cover the cost of the repairs under its Warranty because this issue manifested itself outside the Warranty period and he had repairs done by service providers other than Nissan.

70. As a result of Nissan's failure to repair the known safety defect, Plaintiff was required to pay more than \$3,300 to replace the defective CVT. The total cost of towing the Vehicle rendered inoperable as a result of the defect to the repair shop, testing the transmission to assess the problem, removing and replacing the transmission, and replacing the Nissan CVT transmission fluid was \$3,857.24.

71. Plaintiff has been damaged and suffered ascertainable losses as a consequence of Nissan's misconduct alleged herein, including, *inter alia*, the more than \$3,300 he paid to replace the defective CVT.

Waldo Leyva

72. Plaintiff Waldo Leyva is a California citizen who resides in San Jacinto, California.

73. On or around April 27, 2015, Plaintiff Leyva purchased a new 2015 Nissan Sentra with a CVT transmission from Pedder Nissan, an authorized Nissan dealer in Hemet, California.

74. Plaintiff Leyva purchased his Sentra primarily for personal, family, or household use.

75. Passenger safety and reliability were factors in Plaintiff Leyva's decision to purchase his vehicle. Before making his purchase, Plaintiff Leyva test drove his vehicle with a dealership salesperson and believed that the Sentra would be a safe and reliable vehicle. Further, over a period of several years prior to his purchase in April 2015, Plaintiff was exposed to Nissan's advertising campaign, including television commercials that generally depicted Nissan vehicles to be of good quality. Further, Plaintiff Leyva test drove the vehicle prior to purchase with a salesperson.

76. Nissan's omissions were material to Plaintiff Leyva. Had Nissan disclosed its knowledge of the CVT Defect before he purchased his 2015 Sentra, Plaintiff Leyva would have seen and been aware of the disclosures. Furthermore, Plaintiff Leyva would not have purchased his vehicle, or would have not paid the purchase price charged by Nissan, had he known of the CVT Defect.

77. After purchasing his Sentra, Plaintiff Leyva experienced symptoms of the CVT Defect, including trouble getting up to speed occasionally. On or around March 10, 2017, with approximately 64,450 miles on the odometer, Plaintiff Leyva took his vehicle back to Pedder Nissan in Hemet because the check engine light came on. The transmission failed during a test drive by the service technician, who informed Plaintiff Leyva that he needed a new transmission. Plaintiff Leyva's deductible for the repair was \$100.

78. At all times, Plaintiff Leyva, like all Class Members, has driven his Sentra in a manner both foreseeable and in which it was intended to be used.

Amanda Macri

79. In December 2013, Plaintiff Amanda Macri purchased a new 2013 Nissan Sentra from Glendale Nissan in Glendale Heights, Illinois for \$23,000.

80. During the period January to May 2016, Plaintiff Macri first noticed that the RPMs were fluttering on the highway, even on cruise control, and when driving up and down hills. The vehicle shook when at a stop and hesitated when accelerating from a stop.

81. In July 2016, Plaintiff Macri took the vehicle to Nissan of St. Charles in St.

Charles, Illinois at 42,125 miles and informed the service department that the vehicle was shaking when it accelerated and jerking when coming to a complete stop. The service records indicate that the technician could not replicate the defect and did nothing to fix the vehicle because no codes appeared in the computer.

82. Plaintiff Macri again brought the vehicle to Nissan of St. Charles in February 2017 at 54,594 miles and stated that, at 60 mph, the RPMs were bouncing between 1000-3000, particularly while on cruise control driving uphill. The service notes indicate that the technician could not replicate the problem and refused to perform any repairs.

83. In March 2017, Plaintiff Macri called Nissan and spoke with a regional specialist. The specialist said that, if the dealer cannot replicate the issue, Nissan could not help her.

84. In April 2017 at 56,817 miles, Plaintiff Macri brought her vehicle to Wickstrom Chevrolet in Roselle, Illinois because the transmission began to sputter randomly at higher speeds. The technician at Wickstrom Chevrolet is a family friend of Plaintiff and she trusted him to diagnose the failures in the vehicle where Nissan repeatedly failed to do so. The technician identified the issues that Plaintiff Macri experienced and recommended that Nissan perform a fluid flush and replace the spark plugs. At that point, Plaintiffs' authorized Nissan dealership – Nissan of St. Charles – had been so hostile to her that she did not feel comfortable turning to them for that particular fix, especially because they denied that a problem existed every time she took the vehicle in for repair.

85. Despite providing Nissan and its authorized dealer with multiple opportunities to repair her vehicle, Plaintiff Macri continues to experience the transmission failure.

Danielle Trotter

86. In April 2013, Plaintiff Trotter purchased a new 2013 Nissan Sentra for \$27,133.20 from South Colorado Springs Nissan in Colorado Springs, Colorado.

87. Within the first month of her purchase, at approximately 333 miles, Plaintiff Trotter noticed the CVT Defect, including that the vehicle nearly stalled at stoplights, vibrated

and jerked under acceleration, had severe lag, would not go more than 20 mph without shaking and exhibited severe juddering at higher speeds.

88. Plaintiff Trotter took her vehicle to South Colorado Springs Nissan in June 2013 at 333 miles. She told the technician that the vehicle idles roughly at a stop light and she can feel the vibration through the steering wheel. According to the service records, the technician confirmed a problem with the RPMs at idle and performed the March 15, 2013 TSB to her vehicle. Plaintiff Trotter disputes that the technician repaired the vehicle. Instead, Plaintiff Trotter maintains that the technician informed her that her vehicle's computer was recalled and that they needed to update the software. The technician then told her that South Colorado Springs Nissan's computers were down, but that the car was safe to drive in the meantime. The technician did not tell Ms. Trotter that there was anything wrong with the transmission.

89. In March 2017 at 113,462 miles, Plaintiff Trotter took her vehicle to Woodmen Nissan in Colorado Springs, Colorado and informed the technicians that the vehicle would not go over 20 mph. During the test drive, the technician could not duplicate Plaintiff Trotter's concern and, therefore did not proceed with a transmission fix.

90. In May 2017, Plaintiff Trotter again brought her vehicle to Woodmen Nissan because the vehicle had no power when coming off the highway and when trying to leave a stop light. Ms. Trotter also stated that the vehicle would shake and judder when coming off the freeway. When the technicians test drove the vehicle, they felt a shudder but did not find any diagnostic codes. The technicians diagnosed the issue as a potential internal CVT transmission issue and recommended that Plaintiff Trotter replace her transmission for \$3900. Plaintiff declined to replace the transmission, but the technicians nonetheless charged her \$122 for the labor involved in the diagnosis.

91. Despite providing Nissan and its authorized dealer with more than one opportunity to repair her vehicle, Plaintiff Trotter continues to experience the transmission failure.

Pamela Pritchett

92. Prichett purchased a 2013 Sentra in Montgomery, Alabama. Her car is equipped with Defendant's CVT. She experienced the following issues: it would jump, start, stop, bind, and lag unexpectedly, dangerously, and inappropriately. It became so bad that it was dangerous to drive. Her CVT ultimately failed, causing her car to be inoperable. As her vehicle is no longer under the manufacturer's warranty, she would have had to pay approximately \$4,500 in repair bills to replace the defective CVT with another CVT. The replacement CVT is no better than the original failed CVT.

93. When Ms. Pritchett purchased her vehicle, she relied upon representations of Nissan that the cars were “dependable” and “durable” and came with a “comprehensive” warranty. The representations were made in writing through Defendant’s advertising and websites and were also reinforced orally by the salespersons.

94. Ms. Pritchett’s vehicle was properly and routinely maintained. At many times, Ms. Pritchett complained to Nissan service centers that her vehicle did not appear to be shifting correctly and that there was an issue with the transmission. Each time, the service department conducted a computer diagnostic and advised that there was “nothing wrong” and that the transmission just needed to be “broken in.” The Nissan service centers refused to make any repair to the transmission, and thus the Defendant failed to repair the vehicles within the term of the warranty.

JURISDICTION AND VENUE

95. This is a class action.

96. Nissan North America, Inc. (“NNA”) is a corporation with its headquarters in the State of Tennessee. It is organized and in existence under the laws of the State of California and registered to do business in the State of Tennessee. Nissan conducts business in all fifty states. Nissan has established sufficient contacts in this district such that personal

jurisdiction is appropriate, and Nissan is deemed to reside in this district pursuant to 28 U.S.C. § 1391(a).

97. At all relevant times, Nissan was engaged in the business of designing, manufacturing, constructing, assembling, marketing, distributing, and/or selling automobiles and motor vehicle components in Tennessee and throughout the United States of America.

98. As set forth below, members of the proposed Class are citizens of states different from the home state of Defendants.

99. On information and belief, aggregate claims of individual Class Members exceed \$5,000,000.00 in value, exclusive of interest and costs.

100. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from one defendant, there are more than 100 Class members, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

101. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Nissan North America, Inc.'s principal place of business is in this judicial district, because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in and emanated from this judicial district, and because Defendant has caused harm to Class members residing in this District.

102. Plaintiff Patricia Weckwerth, a proposed class and Subclass representative, is an adult citizen of Georgia residing in Marietta, GA.

103. Plaintiff Patricia L. Cruz, a proposed Class and Subclass representative, is an adult citizen of New York.

104. Plaintiff Michelle Falk, a proposed Class and Subclass representative, is an adult citizen of California residing in San Jose, CA.

105. Plaintiff Cynthia Garrison, a proposed Class and Subclass representative, is an adult citizen on Massachusetts.

106. Plaintiff Indhu Jayavelu, a proposed Class and Subclass representative, is an adult citizen of Ohio.

107. Plaintiff Michael Knotts, a proposed Class and Subclass representative, is an adult citizen of Minnesota.

108. Plaintiff Waldo Leyva, a proposed Class and Subclass representative, is an adult citizen of California residing in San Jacinto, CA.

109. Plaintiff Amanda Macri, a proposed Class and Subclass representative, is an adult citizen of Illinois.

110. Plaintiff Danielle Trotter, a proposed Class and Subclass representative, is an adult citizen of Colorado.

111. Plaintiff Pamela Pritchett, a proposed Class and Subclass representative, is an adult citizen of Alabama.

FACTUAL ALLEGATIONS

112. Nissan is known throughout the United States as a major manufacturer of automobiles and related products, which are sold under the Nissan brand.

113. Nissan designed, manufactured, imported, distributed, and/or marketed the Class Vehicles in the United States, including in Tennessee, California, and throughout the United States and its territories. Nissan also provides sales, repair and maintenance services for the Class Vehicles through its nationwide network of authorized dealers and service providers.

114. On information and belief, the only method Nissan makes available for the purchase of Class Vehicles is through its nationwide network of authorized dealers.

115. The CVT is an automatic transmission that uses two variable-diameter pulleys with a steel belt running between them to change speed, instead of a gearbox and clutch system. Rather than relying on the fixed gear ratios of the traditional automatic transmission, the pulleys can adjust their width to make the belt turn faster or slower, depending on the speed of the vehicle and the torque needed. The CVT thus “simultaneously adjusts the diameter of the ‘drive pulley’ that transmits torque from the engine and the ‘driven pulley’ that transfers torque to the wheels” to allow for an infinite number of gear ratios.² In theory, the CVT chooses the gear ratio optimum for driving conditions.

116. The CVT, allegedly offering more efficient power delivery and better fuel economy, is standard in the Class Vehicles.

117. The illustration in figure one, below, depicts the way the CVT’s belt and pulley system adjusts the gear ratio to change speed:



Figure one – Xtronic CVT belt and pulley system

118. Owners and lessees complain that their vehicles take an inordinately long time to accelerate from a stop or low speed, exhibit a hard deceleration or “clunk” when drivers either slow down or accelerate at low speeds, shudder and shake or make a loud clunking or knocking sound when the CVT finally selects the appropriate gear ratio, and completely fail to

² Nissan Motor Corporation, *XTRONIC CVT*, <http://www.nissan-global.com/EN/TECHNOLOGY/OVERVIEW/cvt.html>.

accelerate. Owners and lessees also frequently complain of unusually high RPMs or a loud whining once they achieve speed and which exceeds their reasonable expectations for noise from the CVT. Finally, in addition to hesitations, slow response, and loud noises, the lifespan of the CVT in the Class Vehicles is unreasonably short.

119. Nissan sold the class vehicles with a 5-year, 60,000-mile powertrain warranty that purports to cover the CVT. However, owners and lessees have complained that their CVTs failed and required replacement just outside the 60,000-mile warranty period. As Class members have reported to the National Highway Traffic Safety Administration (“NHTSA”), Nissan’s authorized dealerships are replacing transmissions both within, and just outside, the 60,000-mile warranty period.

120. The CVT Defect alleged is inherent in and the same for all Class Vehicles.

121. On information and belief, dating back to at least 2013, Nissan was aware of material facts regarding the CVT Defect, but failed to disclose them to owners and lessees. As a result of this failure, Plaintiffs and Class Members have been damaged.

The CVT Defect Poses an Unreasonable Safety Hazard

122. The CVT Defect poses an unreasonable safety hazard. Hesitations, slow/no responses, hard braking or catastrophic transmission failure impair drivers’ control over their vehicles, which significantly increases the risk of accidents. For example, turning left across traffic in a vehicle with delayed and unpredictable acceleration is unsafe. In addition, these conditions can make it difficult to safely change lanes, merge into traffic, turn, brake slowly or accelerate from stop light/sign, and accelerate onto highways or freeways. See ¶ 71, *infra*.

A. Complaints Lodged with NHTSA

123. Federal law requires automakers like Nissan to be in close contact with NHTSA regarding potential auto defects, including imposing a legal requirement (backed by criminal

penalties) compelling the confidential disclosure of defects and related data by automakers to NHTSA, including field reports, customer complaints, and warranty data. See TREAD Act, Pub. L. No. 106-414, 114 Stat. 1800 (2000).

124. Automakers have a legal obligation to identify and report emerging safety-related defects to NHTSA under the Early Warning Report requirements. *Id.* Similarly, automakers monitor NHTSA databases for customer complaints regarding their automobiles as part of their ongoing obligation to identify potential defects in their vehicles, including safety-related defects. *Id.* Thus, Nissan knew or should have known of the many complaints about the CVT Defect logged by NHTSA's Office of Defects Investigation ("ODI"), and the content, consistency, and large number of those complaints alerted, or should have alerted, Nissan to the CVT Defect.

125. For years, owners of Nissan Sentra, Nissan Versa, and Nissan Versa Note vehicles have publicly complained to the United States government about the CVT Defect in Class Vehicles. The ODI is an office within NHTSA. ODI conducts defect investigations and administers safety recalls to support the NHTSA's mission to improve safety on the Nation's highways. All automobile manufacturers routinely monitor and analyze NHTSA complaints because this information is used in determining if a recall should be issued. *See* <https://www-odi.nhtsa.dot.gov/recalls/recallprocess.cfm> (last visited Dec. 08, 2017). Indeed, automobile manufacturers are required by law to report any potential safety defects to the United States government.

126. The following complaints made to NHTSA and elsewhere online demonstrate that the defect is widespread and dangerous and that it manifests without warning. The complaints also indicate Nissan's awareness of the problems with the CVT and Defect, including how dangerous they are for drivers. These safety complaints relate to the CVT

Defect (spelling and grammar mistakes remain as found in the original) (Safercar.gov, *Search for Safety Issues* (November 2017)). Additional complaints from Nissan Sentra owners are attached to this Complaint as Exhibit 1.

2013 Nissan Versa

- a. **DATE OF INCIDENT:** March 4, 2014
DATE COMPLAINT FILED: March 6, 2014
NHTSA/ODI ID: 10567709
SUMMARY: TL* THE CONTACT OWNS A 2013 NISSAN VERSA. THE CONTACT STATED THAT WHILE DRIVING APPROXIMATELY 50 MPH, THE VEHICLE SUDDENLY STALLED. THE VEHICLE WAS RESTARTED AND OPERATED NORMALLY FOR APPROXIMATELY 5 MILES BEFORE STALLING A SECOND TIME. THE CONTACT INDICATED THAT THE FAILURE WAS RECURRING. THE VEHICLE WAS TAKEN TO THE DEALER BUT THE DEFECT COULD NOT BE DUPLICATED AND NO REPAIRS WERE PERFORMED. THE CONTACT ALSO STATED THAT THE TRANSMISSION ERRONEOUSLY ENGAGED INTO NEUTRAL. THE MANUFACTURER WAS NOT CONTACTED. THE FAILURE MILEAGE WAS 3000. *TR
- b. **DATE OF INCIDENT:** April 9, 2014
DATE COMPLAINT FILED: June 12, 2015
NHTSA/ODI ID: 10811142
SUMMARY: TL* THE CONTACT OWNS A 2013 NISSAN VERSA. WHILE DRIVING AT VARIOUS SPEEDS, THE VEHICLE CHANGED INTO DIFFERENT GEARS AND THE BRAKE PEDAL EXTENDED TO THE FLOORBOARD WHEN IT WAS DEPRESSED. THERE WERE NO WARNING LIGHTS ILLUMINATED. THE DEALER DIAGNOSED THAT THE TRANSMISSION NEEDED TO BE REPLACED. THE VEHICLE WAS REPAIRED WITH A NEW TRANSMISSION, BUT THE FAILURE PERSISTED. THE MANUFACTURER WAS NOTIFIED OF THE FAILURE. THE FAILURE MILEAGE WAS 20,000.
- c. **DATE OF INCIDENT:** November 4, 2015
DATE COMPLAINT FILED: November 10, 2015
NHTSA/ODI ID: 10789688
SUMMARY: CVT TRANS INTERNAL FAILURE @60,933 MI. , TRANS MADE A LOUD CLUNKING SOUND BEFORE BECOMING INOPERABLE, REQUIRED A TOW TRUCK TO GET TO DEALER. NOW HAS NEW CVT TRANS @ NO COST BECAUSE CAR WAS COVERED BY WARRANTY VEHICLE DIED ON HWY EXIT RAMP.
- d. **DATE OF INCIDENT:** January 19, 2016
DATE COMPLAINT FILED: April 23, 2016

NHTSA/ODI ID: 10861088

SUMMARY: I PURCHASED A USED CAR FROM MR. BILL MOTOR CO IN ARLINGTON, TX ON PIONEER PARKWAY. THE VEHICLE STARTED TO OVERHEAT. I CALLED TO INFORM MR. BILL MOTORS AND I WAS TOLD THEY WOULD SEND IT OUT TO BE LOOKED AT AND LET ME KNOW WHEN IT WAS READY FOR PICK UP. IT WAS TAKEN TO DG'S PERFORMANCE ON PIONEER PARKWAY FOR REPAIRS. ABOUT A WEEK LATER THE CAR RESUMED OVERHEATING, I CONTACTED MR. BILL MOTORS AGAIN AND THEY SAID THEY WOULD SEND THE VEHICLE OUT FOR REPAIR. THEY SENT IT TO LONGHORN TRANSMISSIONS. AS MY DAUGHTER WAS HEADED TO SCHOOL AFTER THE REPAIRS WERE COMPLETED ON I-20 IN ARLINGTON, TX THE CAR STARTS TO OVERHEAT AND STOPS ON HER, SHE COULD NOT DRIVE THE CAR. SHE CALLS LONGHORN AND THEY SEND A TOW TO GET HER. SHE WAS TOLD THEY DID NOT PLACE THE CAP ON THE TRANSMISSION WHEN THEY ADDED FLUID TO IT SO THEY WOULD TAKE CARE OF IT. TWO DAYS LATER THE CAR IS HEATING AGAIN. I CONTACT MR. BILL MOTORS AGAIN IN PERSON SO THEY COULD SEE AND WITH A VIDEO OF WHAT THE CAR HAD BEEN DOING, THEY TELL ME THEY WILL WORK ON IT THE NEXT DAY. I COULD NOT DRIVE THE CAR FROM THE LOT, THE ENGINE LIGHT WAS ON AND I ROLLED INTO THE STREET. TWO SALES MEN HAD TO PUSH THE CAR UNTO THE PROPERTY FROM THE STREET. TWO DAYS GO BY AND I AM TOLD THAT IT IS A TRANSMISSION ISSUE THAT WILL COST ME \$1500 AND TAKE A WEEK TO REPAIR FROM SCOTT AND HE STATES THAT MATT ANOTHER MANAGER IS PRESENT WITH HIM. I CALLED TO DISCUSS STATUS UPDATE, MISSING ITEMS FROM THE CAR TO FIND OUT THEY WERE CHARGING ME \$235 FOR THE TOW THAT LONGHORN TRANSMISSION BILLED THEM. I EXPLAINED THAT I HAD NO KNOWLEDGE OF THIS CHARGE, NOR DO I FEEL RESPONSIBLE FOR THE CHARGE. THEY DID NOT PUT THE CAP ON THEY SHOULD BE RESPONSIBLE FOR THE CHARGE AND THAT YOU DO NOT CHARGE ANYONE WITHOUT DISCUSSING THE AMOUNT WITH THE PERSON. I ASKED FOR THE TOTAL COST OF THE REPAIR AND I STATED I WANTED TO SPEAK TO THE REPAIR PLACE. I WAS GIVEN A NUMBER FOR JEFF.

e. **DATE OF INCIDENT:** December 15, 2016

DATE COMPLAINT FILED: December 18, 2015

NHTSA/ODI ID: 10947231

SUMMARY: THIS NISSAN VEHICLE'S CVT TRANSMISSION FAILED UNDER WARRANTY AND WAS REPLACED. THAT TRANSMISSION FAILED AGAIN IN LESS THAN SIX MONTHS AND BECAUSE IT WAS OUTSIDE THE REPLACEMENT TRANSMISSION'S WARRANTY, THE DEALER NOR NISSAN WILL REPLACE THE DEFECTIVE TRANSMISSION. I DON'T WANT TO REPLACE THE TRANSMISSION FOR A THIRD TIME WITH WHAT APPEARS TO BE A DEFECTIVE PRODUCT THAT WILL LIKELY FAIL AGAIN AND IS A SERIOUS SAFETY ISSUE

THAT NISSAN WILL NOT ACCEPT RESPONSIBILITY FOR.

- f. **DATE OF INCIDENT:** February 7, 2017
DATE COMPLAINT FILED: February 7, 2017
NHTSA/ODI ID: 10950138
SUMMARY: TRANSMISSION FAILURE AT 65000, 5K BEYOND WARRENTY. TRANSMISSION IS SLIPPING BETWEEN GEARS AROUND 35-40 MPH
- g. **DATE OF INCIDENT:** August 25, 2017
DATE COMPLAINT FILED: August 28, 2017
NHTSA/ODI ID: 11020026
SUMMARY: NISSAN CVT TRANSMISSION EXPERIENCING ISSUES, BEING VERY UNSAFE. WHILE DRIVING DOWN THE ROAD NORMALLY, THE CAR STARTED REVING VERY HIGH. AFTER PULLING OVER AND TURNING THE CAR OFF, THEN TURNING IT BACK ON, IT CONTINUED TO REV OVER 3,000 RPM AT ABOUT 10-15 MPH AND NEVER "SHIFT" INTO HIGHER GEAR. THIS HAS HAPPENED TWICE BEFORE, AND TURNING THE CAR OFF AND ON SOLVED THE ISSUE. IT WAS SERVICED BY THE DEALERSHIP WITH NEW CVT FLUID, BUT NOW THE PROBLEM HAS PERSISTED AND HAS NOT GONE AWAY WITH SHUTTING THE VEHICLE OFF AND ON. IT MOST RECENTLY HAPPENED WHILE DRIVING, LUCKILY THERE WERE NO OTHER CARS NEARBY, AND I HAD TO HAVE THE VEHICLE TOWED.
- h. **DATE OF INCIDENT:** September 4, 2017
DATE COMPLAINT FILED: September 13, 2017
NHTSA/ODI ID: 11023375
SUMMARY: IT HAS A PROBLEM WITH THE TRANSMISSION IN THE DEALER TOLD ME THAT I HAVE TO BUY A NEW TRANSMISSION AND ONLY HAS 85700 MILES
- i. **DATE OF INCIDENT:** November 7, 2017
DATE COMPLAINT FILED: November 16, 2017
NHTSA/ODI ID: 11046595
SUMMARY: I RECENTLY PURCHASED THIS 4 YEAR OLD VEHICLE WITH 62000 MILES ON IT. DRIVING ON THE HIGHWAY AT 65 MILES PER HOUR, THE VEHICLE SUDDENLY LOST POWER. BY THE GRACE OF GOD, I WAS ABLE TO MANEUVER OFF THE HIGHWAY WITHOUT BEING RUN OVER BY THE SEMI TRUCKS TRAVELING THE HIGHWAY WITH ME. I HAD THE VEHICLE TOWED TO A NISSAN DEALERSHIP WHERE I WAS TOLD THE TRANSMISSION WAS "DEFECTIVE" AND WOULD NEED TO BE REPLACED. AFTER LOOKING INTO THIS ISSUE, I FIND THOUSANDS OF PEOPLE WITH THE EXACT SAME COMPLAINT AND ONE CLASS ACTION LAW SUIT ALREADY SETTLED OVER THE SAME ISSUE. HOW CAN A MANUFACTURER BE ALLOWED TO

CONTINUE USING A FAULTY TRANSMISSION AND NOT BE MADE RESPONSIBLE FOR ITS CORRECTION? THESE VEHICLES ARE NOT CHEAP, AND THOSE OF US PAYING FOR THEM DID NOT PURCHASE A DISPOSABLE VEHICLE!

- j. **DATE OF INCIDENT:** January 19, 2018
DATE COMPLAINT FILED: January 20, 2018
NHTSA/ODI ID: 11063898
SUMMARY: 01/19/2018- MY CAR NO LONGER MOVED FORWARD- AS IF STUCK IN NEUTRAL.....
- k. **DATE OF INCIDENT:** January 26, 2018
DATE COMPLAINT FILED: February 22, 2018
NHTSA/ODI ID: 11074342
SUMMARY: TL* THE CONTACT OWNS A 2013 NISSAN VERSA. WHILE DRIVING 45 MPH, THE RPMS INCREASED TO 5,000. THE ACCELERATOR PEDAL WAS APPLIED, BUT FAILED TO RESPOND WITHOUT WARNING. THE VEHICLE WAS TAKEN TO AN INDEPENDENT MECHANIC AND INFORMED THE CONTACT TO TAKE THE VEHICLE TO A LOCAL DEALER. THE VEHICLE WAS TOWED TO A LOCAL DEALER (ALAN WEBB NISSAN, LOCATED AT 3608 NE AUTO MALL DR, VANCOUVER, WA 98662) WHERE IT WAS DIAGNOSED THAT THE CTV TRANSMISSION NEEDED TO BE REPLACED. THE VEHICLE WAS REPAIRED, BUT THE FAILURE RECURRED. THE VEHICLE WAS TAKEN BACK TO THE LOCAL DEALER, BUT THEY WERE UNABLE TO DUPLICATE THE FAILURE. THE MANUFACTURER WAS NOTIFIED OF THE ISSUE AND OPENED CASE NUMBER: 29733173 BUT NO FURTHER ASSISTANCE WAS PROVIDED. THE FAILURE MILEAGE WAS 104,000.
- l. **DATE OF INCIDENT:** February 12, 2018
DATE COMPLAINT FILED: March 22, 2018
NHTSA/ODI ID: 11080976
SUMMARY: DRIVING MY NISSAN SINCE COUPLES WEEKS BEFORE I START FEALING LOOSING POWER KEEP DRIVING TOOK IT TO THE MECHANIC AND TOLD THE PROVLEM MUST BE THE TRANSMISSION I ALWAYS DRIVE AT 78 WEST FRONT ELIZABTH NJ TO EXIT 12 AND NEVER HAVE ANY ISSUE LIKE THIS I ONLY HAVE THIS CAR FOR NO MAR THAN 2 YEARS ITS SAD THAT THR CAR GET BROKEN THE TRANSMISSION SO SOON
- m. **DATE OF INCIDENT:** December 4, 2017
DATE COMPLAINT FILED: March 22, 2018
NHTSA/ODI ID: 11080979
SUMMARY: THE TRANSMISSION WENT OUT AT 85,000 MILES, TOOK IT TO A NISSAN DEALERSHIP AND THE SERVICE MANAGER SAID THAT HE DEALS WITH IT ALL TIME AND IS A VERY COMMON PROBLEM WITH THOSE TRANSMISSIONS AND DIDNT UNDERSTAND WHY NISSAN STILL USED THEM. SPOKE TO NISSAN USA AND THEY

WANTED TO FIGHT TO PAY FOR THE COST AND WANTED TO REBUILD THE TRANSMISSION. THE SERVICE TECH LAUGHED AND SAID YOU COULDN'T REBUILD IT BECAUSE ITS A CLOSED SYSTEM. ONLY OWNERS OF THE CAR AND HAD TO REPLACE THE TRANSMISSION WITH 85,000 MILES ON IT.

- n. **DATE OF INCIDENT:** April 30, 2018
DATE COMPLAINT FILED: May 3, 2018
NHTSA/ODI ID: 11091469
SUMMARY: I DRIVE A 2013 NISSAN VERSA. I'VE HAD IT ABOUT 4 YEARS, THE CAR HAS ABOUT 40,000 MILES. RECENTLY, MY CAR STARTED SHUTTERING (VIBRATING) AS I ACCELERATE. I'VE TAKEN MY CAR TO THE DEALERSHIP TWICE (THIRD TIME WILL BE EITHER TOMORROW OR TUESDAY) AND THEY CANNOT FIGURE OUT WHAT'S GOING ON WITH IT. I DON'T KNOW IF THIS IS DANGEROUS OR NOT AND NOT ONLY DO I DEPEND ON THIS CAR, BUT I DRIVE AN 82 YEAR OLD WOMAN AROUND TO DR APPOINTMENTS. NISSAN ITSELF DOESN'T WANT TO DO ANYTHING ABOUT THIS PROBLEM (YOU KNOW, LIKE FINDING OUT WHY THIS IS HAPPENING.) THIS IS RIDICULOUS AND THE NHTSA NEEDS TO NOT ONLY HOLD THEM ACCOUNTABLE, BUT ALSO FORCE NISSAN TO FIX THIS PROBLEM. I'M PAYING A BOAT LOAD OF MONEY AND TIME TRYING TO GET TO THE BOTTOM OF THIS ISSUE

2014 Nissan Versa

- o. **DATE OF INCIDENT:** October 7, 2013
DATE COMPLAINT FILED: October 7, 2013
NHTSA/ODI ID: 10546976
SUMMARY: INTERMITTENT LACK OF ACCELERATION. HAPPENED 4 TIMES IN 6 DAYS. TRIED ACCELERATING FROM STOP TO ENTER CROSS STREET AND FOUND NO ACCELERATION AND NO ENGINE INCREASE. TRAVELED 50 FEET AT 6 TO 10 MPH BEFORE A RESPONSE WITH PEDAL TO THE FLOOR. TURNED INTO DEALER, BUT THERE WAS NO RESOLUTION. THIS IS A POSSIBLE DEADLY PROBLEM. *TR
- p. **DATE OF INCIDENT:** January 27, 2014
DATE COMPLAINT FILED: December 29, 2013
NHTSA/ODI ID: 10561585
SUMMARY: PULLING AWAY FROM A TOLL BOOTH ON I-80, CAR WOULD NOT ACCELERATE. CHECK ENGINE LIGHT. TOWED TO DEALER AT OWNER'S EXPENSE, PULLED TRAN CODES P0500, P1574, P1715, P1720 AND P0720. ONLY HAD CAR FOR 5 DAYS. AFTER 17 DAYS AT DEALER, REPLACED 2 SENSORS, 31935-1XF00 SENSOR ASMY-REV (N/C) 1 31935-1XF01 SENSOR ASMY-REV AT RECOMMENDATION OF NISSAN TECH LINE. DEALER WAS UNABLE TO REPLICATE THE PROBLEM PRIOR TO REPAIR. THIS WAS A LIFE THREATENING

OCCURRENCE, CAR WOULD NOT ACCELERATE WHILE PULLING INTO TRAFFIC. *TR

- q. **DATE OF INCIDENT:** March 18, 2014
DATE COMPLAINT FILED: April 10, 2014
NHTSA/ODI ID: 10578933
SUMMARY: THE CVT WILL SHIFT INTO A LOWER GEAR WHILE STOPPED WITH CONSTANT BRAKE PRESSURE. 3 TO 10 SECONDS AFTER A COMPLETE STOP.

THIS "LOWER SHIFTING" CAUSES THE CAR TO MOVE FORWARD WITHOUT THE KNOWLEDGE OF THE DRIVER SHOULD THE DRIVER THINK HE/SHE IS STOPPED AND PERFORMING OTHER NORMAL TASKS (I.E SETTING NAVIGATION OR RADIO,)

THIS HAS THE POSSIBILITY OF CAUSING VEHICLE DAMAGE OR PEDESTRIAN INJURY; WITHOUT THE KNOWLEDGE OF THE DRIVER.

I CAN EASILY MAKE A VIDEO OF THIS PROBLEM AVAILABLE. *TR

- r. **DATE OF INCIDENT:** March 5, 2014
DATE COMPLAINT FILED: April 22, 2014
NHTSA/ODI ID: 10584277
SUMMARY: TL* THE CONTACT OWNS A 2014 NISSAN VERSA. THE CONTACT STATED THAT WHILE TURNING AT VARIOUS SPEEDS, THE VEHICLE LOST ACCELERATION POWER. THE VEHICLE WAS TAKEN TO THE DEALER BUT THE FAILURE COULD NOT BE DUPLICATED OR DIAGNOSED. THE MANUFACTURER WAS NOT NOTIFIED OF THE FAILURE. THE FAILURE MILEAGE WAS 560. UPDATED 06/10/14 MA

THE CONSUMER STATED THERE WAS A HESITATION WHEN ACCELERATING FROM A STOPPED POSITION OR WHEN SLOWLY ACCELERATING. UPDATED 07/23/14

- s. **DATE OF INCIDENT:** July 24, 2014
DATE COMPLAINT FILED: July 24, 2014
NHTSA/ODI ID: 10616071
SUMMARY: 2014 NISSAN VERSA NOTE WITH 9501 MILES AT TIME OF LAST INCIDENT.

WHEN THE PROBLEM OCCURS THE CAR SHIFTS ROUGH AT LOW SPEEDS (10 MPH) TO MEDIUM SPEEDS (45 MPH). WHILE THE CAR IS SHIFTING ROUGH THE RPMS OF THE ENGINE MAINTAINS A NORMAL FLUX IN RPM BUT NOTHING DRASTIC LIKE AN ENGINE THAT IS STRUGGLING TO STAY RUNNING. ONCE THE CAR COMES OUT OF THE ROUGH SHIFTING THEN THE CAR QUICKLY STALLS. WHEN THE CAR STALLS IT DOES NOT SPIT AND SPUTTER LIKE A CAR HAVING PROBLEMS RUNNING. THIS HAS HAPPENED 3 TIMES

WITHIN THE 9501 MILE THAT WE HAVE DRIVEN THE CAR. THIS HAS HAPPENED AT 45 MPH WHILE DRIVING IN TRAFFIC AND WHILE MOVING THROUGH A PARKING LOT AT ABOUT 10 MPH BACK TO BACK WITHIN A MIN OF EACH STALLING AT ABOUT 10 MPH.

THE OWNERS MANUAL SAYS TO USE AT LEAST 87 AKI AND THE LOWEST RATING IN OUR STATE IS 87. WE HAVE ALWAYS USED AT LEAST THE LOW GRADE AND AT TIMES USED MID-GRADE 89.

NISSAN DEALERSHIP ONLY SUGGESTION IS TO USE PREMIUM GAS.
*TR

- t. **DATE OF INCIDENT:** July 21, 2014
DATE COMPLAINT FILED: August 3, 2014
NHTSA/ODI ID: 10618427
SUMMARY: CAR SURGES FORWARD AFTER STOPPING. ITS LIKE THE TRANSMISSION HAS JUMPED FORWARD. IF YOUR FOOT ISN'T FIRMLY ON THE BRAKE, IT COULD HIT A CAR IN FRONT. IT DOES IT ALMOST ALL THE TIME.

WINDSHIELD WASHERS AIM VERY LOW, WITH NO ADJUSTMENT TO RAISE THEM UP. *TR

- u. **DATE OF INCIDENT:** August 30, 2014
DATE COMPLAINT FILED: November 10, 2014
NHTSA/ODI ID: 10653912
SUMMARY: I PURCHASED THIS CAR BRAND NEW AND HAVE BEEN UNSATISFIED EVER SINCE. THE CAR SEEMS TO HAVE A TRANSMISSION PROBLEM. THE TRANSMISSION IS LOUD AND SEEMS TO LAG WHEN I'M ATTEMPTING TO ACCELERATE. EVEN AT LOW SPEEDS, IT'S LOUD. I ALSO SMELL COOLANT ON A REGULAR BASIS AND THE CAR SHIFTER MAKES A LOUD CLUNKING SOUND WHEN REVERSING WHETHER I'M ON A FLAT SURFACE OR IN THE DRIVE WAY. THIS IS NOT CHARACTERISTIC OF A "BRAND NEW" VEHICLE AND IT NEEDS TO BE LOOKED INTO AND RECALLED. *TR

- v. **DATE OF INCIDENT:** July 24, 2014
DATE COMPLAINT FILED: April 27, 2015
NHTSA/ODI ID: 10713214
SUMMARY: I PURCHASED A 2014 NISSAN VERSA FROM MAITA NISSAN IN SACRAMENTO (NOW CALLED SACRAMENTO NISSAN) ON SEPTEMBER 12, 2014 AND I'M JUST NOT SATISFIED. THE VIN NUMBER IS 3N1CN7AP8EK445673 I PURCHASED A 2014 NISSAN VERSA FROM MAITA NISSAN IN SACRAMENTO (NOW CALLED SACRAMENTO NISSAN) AND I'M JUST NOT SATISFIED. THIS CAR DOES NOT AT ALL SOUND LIKE A NEW CAR. I DROVE IT OFF THE LOT WITH 9 MILES ON IT, BUT IMMEDIATELY NOTICED HOW DIFFICULT IT IS FOR THE TRANSMISSION TO SMOOTHLY GET INTO

GEAR. IT'S LOUD AND ALMOST SOUNDS LIKE IT'S COMPLETELY BROKEN. WHEN I PUT THE CAR IN REVERSE I HEAR A LOUD CLUNKING SOUND WHETHER IT'S ON A FLAT SURFACE OR IN THE DRIVEWAY. I'VE DISCUSSED HEARING THIS SOUND BEFORE 4 DIFFERENT TIMES AND ALSO WENT TO THE NISSAN SERVICE DEPARTMENT 4 TIMES. I'M BEING TOLD NOTHING IS WRONG. I DIDN'T PURCHASE A "BRAND NEW" CAR TO HAVE ALL OF THESE PROBLEMS. I CALLED NISSAN CONSUMER AFFAIRS AND ADVISED THEM ABOUT THE ISSUES AND REQUESTED A BUY BACK. AFTER WAITING 3 WEEKS FOR AN ANSWER, THEY ADVISED ME ON 4/9/15 THAT THEY ARE NOT GOING TO ACCOMMODATE MY REQUEST.

I FEEL THIS CAR HAS AN UNSAFE TRANSMISSION AND BRAKING SYSTEM. PLEASE INVESTIGATE THIS ISSUE.

- w. **DATE OF INCIDENT:** April 22, 2016
DATE COMPLAINT FILED: April 23, 2016
NHTSA/ODI ID: 10861064
SUMMARY: CVT STARTED SLIPPING AS SEEN BY TACHOMETER JUMPING UP AND HEARING THE ENGINE REV UP AS I WENT UP A SMALL HILL (MUCH LIKE IF I HAD A CLUTCH TO PUSH IN ON A REGULAR TRANSMISSION) LATER THAT DAY ON THE WAY HOME ON THE INTERSTATE ON LEVEL ROAD DID THE SAME THING. PULLING UP A SMALL HILL AS I PROCEED TO THE DEALERSHIP AND GIVING IT GAS TO GET UP THAT HILL, CVT MADE A VERY LOUD 'THUMP' (LIKE I POPPED THE CLUTCH). CAR IS NOT SAFE TO DRIVE NOW. CAR HAS ONLY 51,000 MILES ON IT.
- x. **DATE OF INCIDENT:** October 11, 2016
DATE COMPLAINT FILED: October 13, 2016
NHTSA/ODI ID: 10915678
SUMMARY: ON 10/11/2016 MY CARS CHECK ENGINE LIGHT CAME ON FOR THE FIRST TIME EVER SINCE I BOUGHT THE CAR, WHILE I WAS DRIVING HOME FROM WORK ON THE FREEWAY, MY CAR WOULD SHIFT HARD TRYING TO GET INTO A HIGHER GEAR AND THEN WHEN I PRESSED ON THE GAS PEDAL YOU COULD HEAR THE CAR ACCELERATE BUT IT WOULD NOT SHIFT AND ASIDE OF THE CHECK ENGINE LIGHT COMING ON THAT IS WHY I BROUGHT IT INTO THE DEALERSHIP AND THEY DIAGNOSED IT AS WELL AS FOUND OUT THERE WAS AN OUTSTANDING RECALL ON THE CVT PROGRAM IN THAT YEAR MAKE AND MODEL OF CAR.
- y. **DATE OF INCIDENT:** December 2, 2016
DATE COMPLAINT FILED: December 7, 2016
NHTSA/ODI ID: 10930328
SUMMARY: WHEN ACCELERATING FROM A STOP MY CAR WILL SHUTTER AND ALMOST STALL. THIS IS ESPECIALLY UNNERVING WHEN TURNING LEFT. THIS HAPPENS ALMOST EVERY TIME.

- z. **DATE OF INCIDENT:** February 28, 2017
DATE COMPLAINT FILED: March 6, 2017
NHTSA/ODI ID: 10958889
SUMMARY: CVT SLIPS, THROTTLES, MAKE CLUNKING NOISE.

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- aa. **DATE OF INCIDENT:** February 28, 2017
DATE COMPLAINT FILED: March 6, 2017
NHTSA/ODI ID: 10958892
SUMMARY:... THE DEALERSHIP WANTS TO "FIX" THE CVT PROBLEM AT \$ 4000.00!

EVERYONE IS AWARE OF THE CVT PROGRAMMING PROBLEM WITH THIS MODEL. EVEN NISSAN ISSUED A SERVICE BULLETIN TO TRY TO FIX IT.! AT NO AVAIL.

MY ADVICE, STAY AWAY FROM NISSAN VEHICLES!.

- bb. **DATE OF INCIDENT:** May 26, 2017
DATE COMPLAINT FILED: May 29, 2017
NHTSA/ODI ID: 10992042
SUMMARY: IN MOTION. THIS CAR WOULD VIBRATE WHILE STEERING (TURNING) AND ACCELERATING, FORCING THE RMPs TO FLEX UP WITHOUT GAIN OF POWER. THE RMPA WOULD RANDOMLY FLEX UP AND DOWN WHILE DRIVING AT A MAINTAINED SPEED. THEN A DAY AT A STORE I TURN THE CAR ON, WENT TO PUT IT IN DRIVE AN IT STALLED OUT- 5 TIMES TO GET TO TO MOVE. THEN IT WOULD STALL OUT WHILE COMING TO A STOP/AT A STOP/STILL IN GEAR (DRIVE) SO I WOULD HAVE TO SLAM IT INTO NEUTRAL WHEN SLOWING DOWN FOR A STOP OR AT A STOP. UNTIL ONE DAY AS I WAS DRIVING I DIDN'T NEED TO COMPLETELY STOP AS I TURNED TO ANOTHER ROAD BC NO ONE WAS COMING, AS I USED THE ACCELERATOR TO GAIN MY SPEED THE RMP FLEXED UP AND DOWN BUT MY SPEED DECREASED LEADING TO THE CAR STALLING OUT ON SIDE OF ROAD. I TURNED IT OFF THEN TRIED TO START IT AND TO PUT IT IN GEAR IT AGAIN STALLED OUT, AFTER THAT IT WOULDN'T TURN OVER AN IT GOT TOWED TO MY PLACE WHERE IT SITS AND DOESN'T START OR MOVE, IT HAS 3 RECALLS COME TO FIND OUT AN I CONTACTED NISSAN WHICH TOLD ME TO CONTACT THE NEAREST NISSAN DEALERSHIP THAT TOLD ME TO GO CALL NISSAN. SO PRETTY MUCH I'VE GOTTEN ZERO INFORMATION AN A RUN AROUND. THIS CAR IS A SAFETY HAZARD. I'M LUCKY I WASN'T DRIVING 60MPH OR MORE AND THE ENGINE SHUTS OFF AND EVERYTHING LOCKS UP. WILL BE TRYING TO START THIS CAR TO DETERMINE IF IT SHOULD NEED TO BE TOWED 3 HOURS AWAY FROM THE NEAREST NISSAN DEALERSHIP.

- cc. **DATE OF INCIDENT:** July 13, 2017
DATE COMPLAINT FILED: September 14, 2017
NHTSA/ODI ID: 11023479
SUMMARY: TL* THE CONTACT OWNS A 2014 NISSAN VERSA. WHILE DRIVING ON SEVERAL OCCASIONS, THE ENGINE STALLED AND LOST POWER. THERE WERE NO WARNING INDICATORS ILLUMINATED. THE VEHICLE WAS TAKEN TO HAYWARD NISSAN (24644 MISSION BLVD, HAYWARD, CA 94544 (510) 372-2800) WHERE NO DIAGNOSTIC FAILURE CODES WERE FOUND AND THE FAILURE COULD NOT BE REPLICATED. THE VEHICLE WAS TAKEN TO AUTOCOM NISSAN OF CONCORD (1290 CONCORD AVE, CONCORD, CA 94520 (925) 275-5634) WHERE IT WAS DIAGNOSED THAT THE CVT TRANSMISSION NEEDED TO BE REPLACED. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS NOTIFIED OF THE FAILURE, BUT DID NOT OFFER ANY ASSISTANCE. THE APPROXIMATE FAILURE MILEAGE WAS 140,000.
- dd. **DATE OF INCIDENT:** November 1, 2017
DATE COMPLAINT FILED: November 20, 2017
NHTSA/ODI ID: 11047405
SUMMARY: THE CVT TRANSMISSION LEFT MY DAUGHTER STRANDED IN ORLANDO FL. SHE LIVES IN JACKSONVILLE FL. 2.5 HOURS AWAY. THE CAR WOULD NOT ACCELERATE WHEN SHE TRIED TO GET ON THE HIGHWAY TO HEAD HOME AFTER CLASS. WENT DOWN TO ORLANDO WITH MY TRUCK, RENTED A TOW DOLLY FROM U-HAUL AND TOWED THE CAR BACK TO JACKSONVILLE FL. I AM A ASE CERTIFIED TECHNICIAN. I CONNECTED MY (\$600.00) LAUNCH CR129 PRO SCANNER. IT DOES OBDII, ABS, SRS, TRANSMISSION. NO CODES NO MATTER HOW IT DROVE. AFTER 3 DAYS OF TROUBLESHOOTING I DECIDED TO TAKE IT TO THE DEALER. THEY DIAGNOSED IT AS THE CVT TRANSMISSION AND IT NEEDS A NEW ONE AT THE COST OF \$3800.00. THE CAR HAS 66,000 MILES AND IS A 2014. FILED A COMPLAINT WITH NISSAN AND WAS TURNED DOWN FOR ANY HELP. THIS IS A MAJOR PROBLEM WITH JATCO TRANSMISSIONS, THE MANUFACTURER KNOWS IT, NISSAN KNOWS IT, MITSUBISHI & SUBARU BOTH USE THE SAME JATCO TRANSMISSION AND HAVE SIMILAR PROBLEMS. THE ISSUES ARE WIDE SPREAD OVER MULTIPLE CAR MANUFACTURERS AND ALL OF THEM ARE NOT TAKING RESPONSIBILITY FOR THE PROBLEMS. A 2014 WITH 66000 MILES SHOULD NOT NEED A TRANSMISSION. IT IS A SAFETY HAZARD PLAIN AND SIMPLE.
- ee. **DATE OF INCIDENT:** January 3, 2018
DATE COMPLAINT FILED: January 4, 2018
NHTSA/ODI ID: 11058497
SUMMARY: BOUGHT THIS VERSA BRAND NEW IN 2014. HAD CVT

RECALL WORK DONE IN 2016. SHORTLY AFTER WORK WAS COMPLETED, VEHICLE STARTED TO EXPERIENCE EXTREME SHUDDERING AFTER A COMPLETE STOP AND DURING TAKE OFF. VEHICLE SHIFTS FROM GEAR TO GEAR HARD AND WITH A JERK. IT WILL BARELY ACCELERATE AFTER A STOP. TOOK TO MECHANIC TO HAVE TRANSMISSION FLUSHED, HOPING THIS WOULD HELP AND WAS NOTIFIED THAT THERE WERE TRANSMISSION ISSUES THAT A FLUSH WOULD NOT HELP. TAKING TO A NISSAN MECHANIC FOR A DIAGNOSTIC. VEHICLE HAS 106,000 MILES, BUT IS USED ONLY FOR LONG STRETCHES OF HIGHWAY COMMUTES. THE VEHICLE HAS BEEN TAKEN CARE OF VERY WELL, WITH ALL SCHEDULED MAINTENANCE AT APPROPRIATE INTERVALS. IT SHOULD NOT BE EXPERIENCING TRANSMISSION ISSUES THIS EARLY. IT FEELS LIKE THIS CAR IS A THROWAWAY VEHICLE.

ff. **DATE OF INCIDENT:** December 9, 2017

DATE COMPLAINT FILED: January 15, 2018

NHTSA/ODI ID: 11062796

SUMMARY: I WENT TO PICK UP MY DAUGHTER FROM DAYCARE ON DAY IN DECEMBER 2017. I STOPPED AT A STOPLIGHT AND WHEN IT TURNED GREEN I WENT TO ACCELERATE AND MY CAR WOULD BARELY CREEP, I BARELY MADE IT THROUGH A TURN LIGHT AND CLOSE TO GETTING HIT. I COULD BARELY GET UP TO 15MPH. I ENDED UP TAKING IT TO A SHOP AND WAS TOLD A PULLEY BROKE ON THE TRANSMISSION! IT SUPPOSEDLY CAUSED SHRAPNEL TO SHOOT INTO THE TRANSMISSION AND TOLD COULD OF GOTTEN INTO THE MOTOR! SO I WAS TOLD \$4000 FOR A REBUILT TRANSMISSION.

gg. **DATE OF INCIDENT:** January 10, 2018

DATE COMPLAINT FILED: January 5, 2018

NHTSA/ODI ID: 11062823

SUMMARY: DRIVING CAR AT HIGHWAY SPEEDS AND LOST THE ABILITY TO MAINTAIN SPEED. HAD TO PULL ALONGSIDE ROAD. HAD CAR TOWED TO MY MECHANIC WHERE IT WAS DETERMINED THE TRANSMISSION FAILED.

hh. **DATE OF INCIDENT:** October 20, 2017

DATE COMPLAINT FILED: April 17, 2018

NHTSA/ODI ID: 11088641

SUMMARY: THE CVT TRANSMISSION IS FAILING LOSS OF POWER WHILE DRIVING

CAN'T DRIVE CAR OVER 55 MPH

TRANSMISSION OIL LEAKS

SLIPPING AND JERKING

THE RPM OF THE ENGINE CAN FLUCTUATE A LOT WHILE DRIVING, ESPECIALLY WHEN ACCELERATING.

- ii. **DATE OF INCIDENT:** March 1, 2018
DATE COMPLAINT FILED: May 16, 2018
NHTSA/ODI ID: 11094061
SUMMARY: I PURCHASED A 2014 NISSAN VERSA IN 2016 AND TWO YEARS LATER, THE TRANSMISSION IS SHOT. THE DEALER CONFIRMED IT WAS THE TRANSMISSION.

Other Class Vehicle CVT Complaints

- jj. **DATE OF INCIDENT:** January 6, 2017
DATE COMPLAINT FILED: February 8, 2017
NHTSA/ODI ID: 10950261
SUMMARY: " TAKATA RECALL" MY 2015 NISSAN VERSA IS DRIVING SLOW AND THERE IS NO EXCELARATION, THE CAR WONT DRIVE OVER 35 MILES AND THE CAR IS CONSTANTLY DRIVING SLOW. I AM ABLE TO TAKE THE CAR TO O'REILYS BY HOME AND THEY WERE ABLE TO COMPLETE A DIAGNOSTICS ON THE CAR AND THEY ADVISE ME THAT IS WAS A TRANSMISSION ISSUE. I HAD A PRIVATE MECHANIC TO COME TO HOME AND HE ADVISE THE SAME. I CHECK NISSAN OF NORTH AMERICA WEBSITE AND I SEE THERE WAS A RECALL FOR THE NISSAN VERSA BUT THAT WAS IN 2015 FOR THE CVT-TRANSMISSION AND THIS HAPPEN TO MY CAR IN JAN 2017. I DIDNOT HAVE ANY WARNINGS ON MY DASH BOARDS, AND I WAS IN TRAFFIC WHEN IT HAPPEND. I FIRST BROUGHT THE CAR IN TO THE DEALERSHIP IN JAN 2015 FOR THE FOOT PEDAL AND THE CAR STAYED THERE ALMOST 2 MONTHS BEFORE THEY FINALLY FIXED IT CORRECTLY AND THEN I NOTICE A RECALL AFTER THAT. I BOUGHT MY CAR BRAND NEW IN DEC 2014 AND THE CAR IS NOT EVEN 2 YEARS OLD FOR THE TRANSMISSION TO BE GONE. I DO NOT HAVE AN EXTENDED WARRANTY AND WHY SHOULD I SINCE IT IS A BRAND NEW CAR. WHEN THE CAR WAS DRIVING SLOW ON THE EXPRESSWAY I HAD MY CHILDREN IN THE CAR AND IT COULD HAVE PLAY OUT WORST. I WAS ABLE TO PULL THE CAR OVER TO THE SIDE LET IT SIT AND THEN I STARTED IT BACK AGAIN DRIVING WITH MY HAZARD LIGHTS ON AND THE CAR KEPT JERKING AND NEVER GOING OVER 35 MILES, THE CAR REVS ON ITS OWN WITHOUT STEPPING ON THE FOOT PEDAL. WHEN I DRIVE THE CAR NOW I DO NOT GO FURTHER THAN 3 MILES FROM MY HOME FOR FEAR THE CAR WILL STOP AGAIN OR I CAN BE IN A SERIOUS ACCIDENT. I LIVE BY 2 MAJOR EXPRESSWAYS THAT TRUCK USE AND I CANT AFFORD TO TAKE THE CHANCE WITH GETTING HIT FROM BEHIND. TRYING TO MAKE 1 TURN OFF MY STREET THE CAR JUST REVS AND THEN IT SLOWS DOWN AND THEN ALL OF SUDDEN THE CAR WILL SPEED OFF ON IT OWN TO ABOUT 35 MILES.I CALLED THE DEALERSHIP AND THEY WANT TO CHARGE ME 4,000.00 TO PUT

A BRAND NEW TRANSMISSION WHICH I DONT HAVE.

kk. **DATE OF INCIDENT:** February 2, 2018

DATE COMPLAINT FILED: February 4, 2018

NHTSA/ODI ID: 11066861

SUMMARY: MY 2015 NISSAN VERSA TRANSMISSION HAS GONE OUT AND IT ONLY HAS 79K MILES I PURCHASED IT BRAND NEW IN OCT OF 2015. I AM JUST CHECKING TO SEE IF THE TRANSMISSION WAS INSTALLED IN 2014 SINCE THOSE TRANSMISSIONS WERE RECALLED ON THE 2014 VERSAS WERE USED IN THE 2015 VERSAS. THE TRANSMISSION SHOULD NOT HAVE FAILED WITH THAT MILEAGE. I AM SURE NISSAN IS AWARE OF THIS ISSUE WITH CUSTOMERS, AS I HAVE FOUND SEVERAL COMPLAINTS FROM NISSAN VERSA OWNERS. WE NEED A RECALL ON THESE VEHICLES CONSUMERS SIMPLY CANNOT PAY THOUSANDS OF DOLLARS TO HAVE THEM REPLACED THIS IS A MANUFACTURERS DEFECT AND NISSAN SHOULD BE MADE TO PAY FOR THE TOTAL REPAIRS TO REPLACE THESE TRANSMISSIONS ON ALL THE 2015 VERSAS, MAYBE YOU COULD LOOK INTO THIS. MY CAR IS AT THE DEALERSHIP WAITING TO BE INSPECTED AS THEY ARE TWO WEEKS BEHIND AND NOW I HAVE TO RENT A VEHICLE TO GET TO WORK. PLEASE TAKE THIS COMPLAINT INTO SERIOUS CONSIDERATION.

ll. **DATE OF INCIDENT:** December 2, 2017

DATE COMPLAINT FILED: April 9, 2018

NHTSA/ODI ID: 11084044

SUMMARY: OUR NISSAN VERSA HAS HAD TO HAVE ITS TRANSMISSION REPLACED AT 24,711 MILES. WHILE DRIVING TO WORK, THE CAR COMPLETELY DIED WHILE I WAS DRIVING IN TRAFFIC. THE TRANSMISSION WAS REPLACED AT THE NISSAN DEALERSHIP. NOW AT 33,XXX MILES IT SOUNDS LIKE IT IS GOING BAD AGAIN.

B. Customer Complaints on Third-Party Websites

127. Customers similarly complained about the defect on various online forums.

Below are some examples.

- a. **June 29, 2015** - Just wondering how many versa owners out there have cvt transmission shudder issues. My car now has 37500k miles and i'd say this issue started around 5-6 k miles ago. It seems to shudder during the first fluctuation in rpms. I called nissan and was told this issue is normal however my car hasnt always had an issue. Should i be concerned about this? Is this an indication that my tran is starting to fall apart? (*Available at* <http://www.nissanversafortms.com/general-technical-electrical/25385-2014-nissan-versa-sv-cvt-shudder.html>) (Emphasis Added)
- b. **October 28, 2015** - My wife's 2014 Versa SV Sedan does the exact same thing. It

didn't operate that way when we first purchased it. We had the dealership take a look at it when we brought it in for an oil change, they performed a software update on the transmission which made the transmission behave differently but did not resolve the issue. They also supposedly replaced the front wheel bearings as they were supposedly bad. Issue started at around 15,000 miles after an oil change at the dealership. Our issue seems to manifest only after the car has been running for a bit, if you slow down to a stop or near stop then accelerate, it will hesitate, shudder, then go.

2014 model isn't covered by the extended warranty that was given to 2008-2012 owners, so it's the standard 60,000-mile powertrain warranty. If the behavior continues, we'll trade it in for a Kia before the expiration of the warranty. I don't want to be stuck with a \$3,000 repair bill to have them swap it for a rebuilt CVT transmission. Supposedly these JACO transmissions have a lot of problems.

I will update here every few months whenever there is any service performed, etc. I expect to have them look at it again at the next oil change. (*Id.*)

- c. **December 13, 2015:** My 2014 Versa does the same thing. I took it in for the recall on the CVT software update a couple of weeks ago, hoping that it would be fixed. It didn't fix it. It actually only changed the point when it shudders. It was doing it around 20-30mph or somewhere around there after taking off, now it happens as soon as I hit the gas to take off. It doesn't do it all of the time, but it is annoying. Not sure if I'm going to bother with the hassle of taking it back in or just hoping it holds out until I can trade it off. (*Id.*)
- d. **October 19, 2016:** Resurrecting this old thread as I had posted on it before. The software upgrade didn't help on ours. As of today, the dealership has told us that we will be receiving a new transmission as the CVT in our 2014 SV has failed at 45,000 miles.

Thankfully covered by warranty, I'm not sure we will buy another Nissan with a CVT ever again. We certainly will get rid of the car before the 60,000-mile power train warranty expires. (*Id.*)

Nissan Had Superior and Exclusive Knowledge of the CVT Defect

128. Nissan had superior and exclusive knowledge of the CVT Defect and knew or should have known that the defect was not known or reasonably discoverable by Plaintiffs and Class Members before they purchased or leased the Class Vehicles.

129. Plaintiffs are informed and believe and based thereon allege that before Plaintiffs purchased their respective Class Vehicles, and since 2013, Nissan knew about the CVT Defect through sources in its exclusive and/or superior knowledge, including pre-release

testing data, early customer complaints to Nissan and its dealers who are their agents for vehicle repairs, testing conducted in response to those complaints, high failure rates and replacement part sales data, customer complaints to NHTSA (which Nissan monitors), by developing technical service bulletins in an effort to address the CVT Defect, and through other aggregate data from Nissan dealers about the problem.

130. Nissan is experienced in the design and manufacture of automobiles. As an experienced manufacturer, Nissan conducts tests, including pre-sale durability testing, on incoming components, including the Xtronic CVT, to verify the parts are free from defect and align with Nissan's specifications.³ Thus, Nissan knew or should have known the CVT was defective and prone to put drivers in a dangerous position due to the inherent risk of the defect.

131. Additionally, on information and belief, Nissan knew of the impact of this defect from the sheer number of reports received from dealerships. Nissan's customer relations department, which interacts with individual dealerships to identify potential common defects, has received numerous reports regarding the defect, which led to the release of the TSBs. Nissan's customer relations department also collects and analyzes field data including, but not limited to, repair requests made at dealerships, technical reports prepared by engineers who have reviewed vehicles for which warranty coverage is being requested, parts sales reports, and warranty claims data.

132. Nissan's warranty department similarly analyzes and collects data submitted by

³ Akweli Parker, *How Car Testing Works*, HOWSTUFFWORKS.COM, <http://auto.howstuffworks.com/car-driving-safety/safety-regulatory-devices/car-testing.htm> ("The idea behind car testing is that it allows manufactures to work out all the kinks and potential problems of a model before it goes into full production.") (last viewed September 11, 2017).

its dealerships in order to identify trends in its vehicles. It is Nissan's policy that when a repair is made under warranty the dealership must provide Nissan with detailed documentation of the problem and the fix employed to correct it. Dealerships have an incentive to provide detailed information to Nissan, because they will be reimbursed for any repairs if the justification is sufficiently detailed.

133. In fact, James ("Jim") Blenkarn, Nissan's Senior Manger, Systems Quality Improvement, has publicly confirmed Plaintiffs' allegations. Mr. Blenkarn, in response to a question "On how Nissan monitors quality after a vehicle is launched" stated:

"For the first six months, sometimes longer, of every new product, we have a team that focuses strictly on the product and examines every claim that comes in for that vehicle model. Our engineers have to target reporting something if it is a 0.5 incident rate. That's our threshold."⁴

134. Nissan acknowledged the CVT Defect through issuing Technical Service Bulletins to its authorized dealerships. See Exhibit 2.

135. On August 13, 2015, Nissan issued Service Campaign Bulletin SB-10058399-9756 for the Class Vehicles. SB10058399-9756 was entitled "Voluntary Service Campaign 2013-2014 Sentra, 2012-2014 Versa Sedan, and 2014 Versa Note; CVT Reprogramming." This campaign was issued to address noise, vibration and poor acceleration caused by belt slippage in the CVT transmission. The repair provided through campaign is a reprogramming of the Transmission Control Module ("TCM").

136. On April 7, 2016, Nissan issued Technical Service Bulletin ("TSB") NTB14-

⁴ "5 Minutes with... Jim Blenkarn, senior manager, systems quality improvement, Nissan North America" Richard Truett, April 16, 2018 *Automotive News*. <http://www.autonews.com/article/20180416/RETAIL05/180419990/5-minutes-with-jim-blenkarn-senior-manager-systems-quality>

118b for the Class Vehicles. The TSB was issued to address “Judder on Deceleration Under 15 MPH.” Specifically, the TSB was released to correct “judder or shake (pulsing sensation, or fore/aft sensation) ... while slowing to a stop.” The repair procedure provided was a reprogramming of the TCM. On information and belief, the problem persisted and TSB NTB14-118b was superseded on October 13, 2017 by NTB14-118c, which addressed the same complaint but expanded the TSB to additional model years and further reprogrammed the TCM. NTB14-118b superseded NTB14-118a, which on information and belief was issued by Nissan on or before May of 2015.

137. On April 11, 2017, Nissan issued TSB NTB15-087a for the Nissan Juke (and other vehicles). This TBS was entitled “CVT With 4 Cylinder Engine Valve Body Replacement With Confirmed DTC.” The repair procedure listed on the TSB is a replacement of the CVT valve body assembly with a new one. On information and belief, the same repair procedure was issued for the other Class Vehicles, on or before June of 2015, and identified as NTB15-037. NTB15-037 was superseded multiple times, with the currently operative iteration being NTB15-037d issued October 11, 2017.

138. On November 20, 2017, Nissan issued TSB NTB17-034d for the Class Vehicles. This TSB is entitled “2014-201 Nissan Sentra, Versa Sedan, 2017 Versa Note; CVT Judder and/or P0746/P0965 Stored. The TSB was intended to address customer reports of transmission judder (shake, shudder, single or multiple bumps or vibration), hesitation on acceleration, lack of power or RPM Flare. The repair procedure involved a reprogram of the TCM.

139. On September 28, 2017, Nissan issued TSB NTB15-069a for the Class Vehicles. This TSB is entitled “Voluntary Service Campaign 2012-2014 Sentra, 2012-2014 Versa Sedan, and 214 Versa Note; CVT Reprogramming.” The TSB was intended to

reprogram the TCM to address customer complaints with the CVT. On information and belief, NTB15-069a superseded NTB15-069, which was originally released on or before September of 2015.

140. On February 1, 2018, Nissan issued TSB NTB17-034e for the Class Vehicles. This TSB is entitled “2013-2017 Sentra and Versa Sedan, and 214-2017 Versa Note; CVT Judder and/or P0746/P0965 Stored.” The TSB was intended to address customer reports of transmission judder (shake, shudder, single or multiple bumps or vibration), hesitation on acceleration, lack of power or RPM Flare. The repair procedure involved a reprogram of the TCM. On information and belief, it was a revision to NTB17-034d.

141. On information and believe, each TSB issued by Nissan was approved by manager, directors, and/or executives at Nissan. Therefore, on information and belief, Nissan’s managers, directors, and/or executives knew, or should have known, about the CVT Defect, but refused to disclose the CVT Defect to prospective purchaser and owners, and/or actively concealed the CVT Defect.

142. The existence of the CVT Defect is a material fact that a reasonable purchaser or lessee would consider when deciding whether to purchase or lease a Class Vehicle. Had Plaintiffs and other Class Members known that the Class Vehicles were equipped with transmission subject to premature failure, they would have paid less for the Class Vehicles or would not have purchased or leased them.

143. Reasonable purchasers and lessees, like Plaintiffs, reasonably expect that a vehicle’s transmission is safe, will function in a manner that will not pose a safety risk, and is free from defects. Plaintiffs and Class Members further reasonably expect that Nissan will not sell or lease vehicles with known safety defects, such as the CVT Defect, and will disclose any such defects to its customers when it learns of them. They did not expect Nissan to fail to

disclose the CVT Defect to them and to continually deny it.

Nissan Has Actively Concealed the CVT Defect

144. Despite its knowledge of the CVT Defect in the Class Vehicles, Nissan actively concealed the existence and nature of the defect from Plaintiffs and Class Members.

Specifically, Nissan failed to disclose or actively concealed at and after the time of purchase, lease, or repair:

- (a) all known material defects or material nonconformity of the Class Vehicles, including the defects pertaining to the CVT;
- (b) that the Class Vehicles, including the CVT, were not in good in working order, were defective, and were not fit for their intended purposes; and
- (c) that the Class Vehicles and the CVT were defective, despite the fact that Nissan learned of such defects as early as 2013.

145. When customers present their Class Vehicles to an authorized Nissan dealer for CVT repairs, rather than repair the problem under warranty, Nissan dealers either inform customers that their vehicles are functioning properly or conduct repairs that merely mask the CVT Defect.

146. Nissan has caused Plaintiffs and Class Members to expend money and/or time at its dealerships to diagnose, repair or replace the Class Vehicles' CVT and/or related components, despite Nissan's knowledge of the CVT Defect.

Nissan Has Unjustly Retained a Substantial Benefit

147. On information and belief, Plaintiffs allege that Nissan unlawfully failed to disclose the alleged defect to induce them and other putative Class Members to purchase or lease the Class Vehicles.

148. Plaintiffs allege further that Nissan thus engaged in deceptive acts or practices

pertaining to all transactions involving the Class Vehicles, including Plaintiffs’.

149. As discussed above, therefore, Plaintiffs allege that Nissan unlawfully induced them to purchase their respective Class Vehicles by concealing a material fact (the defective CVT) and that they would have paid less for the Class Vehicles, or not purchased them at all, had they known of the defect.

150. Accordingly, Nissan’s ill-gotten gains, benefits accrued in the form of increased sales and profits resulting from the material omissions that deceived customers should be disgorged.

CLASS ACTION ALLEGATIONS

151. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

152. The Class and Sub-Class are defined as:

Class: All current and former owners and lessees of 2013-2017 Nissan Sentra (B17), 2014-2017 Nissan Versa Note (E12), or 2012-2017 Nissan Versa (N17) vehicles equipped with a DX or DX-K Continuously Variable Transmission (“Class Vehicles”) who purchased or leased the vehicle in the United States or its Territories. (the “Nationwide Class” or “Class”).

California Sub-Class: All members of the Nationwide Class who purchased or leased their vehicles in the State of California.

CLRA Sub-Class: All members of the California Sub-Class who are “consumers” within the meaning of California Civil Code § 1761(d).

Florida Sub-Class: All members of the Nationwide Class who purchased or leased their Class Vehicles in the state of Florida.

New York Sub-Class: All members of the Nationwide Class who purchased or leased their Class Vehicles in the state of New York.

Massachusetts Sub-Class: All members of the Nationwide Class who purchased or leased their Class Vehicles in the state of Massachusetts.

Ohio Sub-Class: All members of the Nationwide Class who purchased or leased their Class Vehicles in the state of Ohio.

Minnesota Sub-Class: All members of the Nationwide Class who purchased or leased their Class Vehicles in the state of Minnesota.

Illinois Sub-Class: All members of the Nationwide Class who purchased or leased their Class Vehicles in the state of Illinois.

Colorado Sub-Class: All members of the Nationwide Class who purchased or leased their Class Vehicles in the state of Colorado.

Alabama Sub-Class: All members of the Nationwide Class who purchased or leased their Class Vehicles in the state of Alabama.

153. Excluded from the Class and Sub-Classes are: (1) Nissan, any entity or division in which Nissan has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3) any Judge sitting in the presiding state and/or federal court system who may hear an appeal of any judgment entered; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiffs reserve the right to amend the Class and Sub-Class definitions if discovery and further investigation reveal that the Class and Sub-Class should be expanded or otherwise modified.

154. Numerosity: Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. The Class Members are readily identifiable from information and records in Nissan's possession, custody, or control, as well as from records kept by the Department of Motor Vehicles.

155. Typicality: Plaintiffs' claims are typical of the claims of the Class in that

Plaintiffs, like all Class Members, purchased or leased a Class Vehicle designed, manufactured, and distributed by Nissan. The representative Plaintiffs, like all Class Members, has been damaged by Nissan's misconduct in that they have incurred or will incur the cost of repairing or replacing the defective CVT and/or its components. Furthermore, the factual bases of Nissan's misconduct are common to all Class Members and represent a common thread resulting in injury to the Class.

156. Commonality: There are numerous questions of law and fact common to Plaintiffs and the Class that predominate over any question affecting Class Members individually. These common legal and factual issues include the following:

- (a) Whether Class Vehicles suffer from defects relating to the CVT;
- (b) Whether the defects relating to the CVT constitute an unreasonable safety risk;
- (c) Whether Nissan knows about the defects pertaining to the CVT and, if so, how long Nissan has known of the defect;
- (d) Whether the defective nature of the CVT constitutes a material fact;
- (e) Whether Nissan has a duty to disclose the defective nature of the CVT to Plaintiffs and Class Members;
- (f) Whether Plaintiffs and the other Class Members are entitled to equitable relief, including a preliminary and/or permanent injunction;
- (g) Whether Nissan knew or reasonably should have known of the defects pertaining to the CVT before it sold and leased Class Vehicles to Class Members;
- (h) Whether Nissan should be declared financially responsible for notifying the Class Members of problems with the Class Vehicles and for the

costs and expenses of repairing and replacing the defective CVT and/or its components;

- (i) Whether Nissan is obligated to inform Class Members of their right to seek reimbursement for having paid to diagnose, repair, or replace their defective CVT and/or its components;
- (j) Whether Nissan breached the implied warranty of merchantability.

157. Adequate Representation: Plaintiffs will fairly and adequately protect the interests of the Class Members. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including consumer and product defect class actions involving cars, and they intend to prosecute this action vigorously.

158. Predominance and Superiority: Plaintiffs and Class Members have all suffered and will continue to suffer harm and damages as a result of Nissan's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Nissan's misconduct. Absent a class action, Class Members will continue to incur damages, and Nissan's misconduct will continue without remedy or relief. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that it will conserve the resources of the courts and the litigants and promote consistency and efficiency of adjudication.

FIRST CLAIM FOR RELIEF

(Breach of Express Warranty)

On behalf of the Class, or Alternatively, the California, Ohio, New York, Colorado, Massachusetts, Illinois, Florida, Minnesota, and Alabama Subclasses and their Named Representatives

159. Plaintiffs, individually and on behalf of the Class or, in the alternative, for the California, Ohio, New York, Colorado, Massachusetts, Illinois, Florida, Minnesota, and Alabama Subclasses, hereby incorporate the allegations in paragraphs 1 through 163 as though fully set forth herein.

160. Each class vehicle sold by Nissan included an express Warranty that covered, in part, the transmission and warranted that it would repair or replace any defects in materials and workmanship in the class vehicles.

161. Nissan provided all purchasers and lessees of the class vehicles with a written Warranty that “begins on the date the vehicle is delivered to the first retail buyer or put into use, whichever is earlier.” Under the Warranty’s Powertrain Coverage, Nissan expressly warranted that the Warranty “covers any repairs needed to correct defects in materials or workmanship.” The Warranty’s Powertrain Coverage covers the vehicles for 60 months or 60,000 miles, whichever comes first. Nissan promised to cover listed powertrain components under its Warranty, including the transmission components such as the “[t]ransmission and [t]ransaxle [c]ase and all internal parts, torque converter and converter housing, automatic transmission control module, transfer case and all internal parts, seals and gaskets, clutch cover, A/T cooler, and electronic transmission controls.”

162. Nissan maintains a full-time Quality Engineer for “Total Customer Satisfaction,” at its headquarters near Nashville, Tennessee, whose responsibilities include analysis of field data (warranty, JD Power, IQS, etc.) to identify priority issues to be addressed, report quality results and action plans to executive management, perform static and dynamic evaluations of vehicle quality, and incorporate feedback from current model quality

into the new product development process. The Quality Engineer reports to the Office of the Overseas Chief Quality Engineer (OCQE).

163. In addition, Nissan maintains a full-time Quality Process Engineer at its headquarters near Nashville, Tennessee whose responsibilities are to analyze warranty data and reduce warranty claims and develop and present solutions to field concerns in formal reviews with executive management.

164. Through its personnel, whose responsibilities include monitoring defects, analyzing warranty and field data, and reporting findings to executive management, as well as through its highly developed internal information and reporting systems, Defendant has been made aware of the defective CVT for years, but failed to notify Plaintiffs and members of the proposed Class and Subclasses during the warranty period and failed to repair the defect free of charge.

165. Plaintiffs also gave notice to Nissan of their vehicles' defect through its dealer and agent and through its customer service division, and gave Nissan a chance to repair the defect under the express warranty. Nissan was also on notice of the defect by virtue of the NHTSA and other complaints set forth herein, as well as its internal investigation of the defect in class vehicles as early as 2013.

166. Nissan breached its warranties by offering for sale and selling defective vehicles that were by construction defective and unsafe and refusing to recognize or permanently repair the defect, thereby subjecting the occupants of the class vehicles purchased or leased to damages and risks of loss and injury.

167. Nissan's warranty to repair the class vehicles fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs, the Class, and the Subclasses whole because Nissan has been unable to repair the defect or has refused to replace the transmission with a different, functional transmission. As Nissan's Technical Service Bulletins demonstrate, Nissan is incapable of repairing the defect, despite repeated attempts to do so.

168. Accordingly, Plaintiffs, the Class, and the Subclasses are not limited to the limited warranty of “repair” and Plaintiffs, the Class, and the Subclasses seek all remedies allowed by law.

169. Plaintiffs and the Class or, in the alternative, the California, Ohio, New York, Colorado, Massachusetts, and Illinois Subclasses seek full compensatory damages allowable by law, attorneys’ fees, costs, punitive damages, restitution, the repair or replacement of all class vehicles, the refund of money paid to own or lease all class, and appropriate equitable relief including injunctive relief, a declaratory judgment, and a court order enjoining Nissan’s wrongful acts and practices, and any other relief to which Plaintiffs and the Class or the California, Ohio, New York, Colorado, Massachusetts, and Illinois Subclasses may be entitled.

SECOND CLAIM FOR RELIEF

(Breach of Implied Warranty)

On behalf of the Class, or Alternatively, the California, Ohio, New York, Colorado, Massachusetts, Illinois, Florida, Minnesota, and Alabama Subclasses and their Named Representatives

170. Plaintiffs, individually, and for the Class or, in the alternative, the California, Ohio, New York, Colorado, Massachusetts, Illinois, Florida, Minnesota, and Alabama Subclasses, hereby incorporate the allegations in paragraphs 1 through 163 as though fully set forth herein.

171. Nissan impliedly warranted that the class vehicles, which it designed, manufactured, sold, or leased to Plaintiffs and the Class or Subclasses were merchantable, fit and safe for their ordinary use, not otherwise injurious to purchasers and lessees, and equipped with adequate safety warnings.

172. Because the class vehicles are equipped with a defective transmission system, the vehicles purchased or leased and used by Plaintiffs and the Class or Subclasses are unsafe,

unfit for their ordinary use when sold, and not merchantable. Nissan breached the implied warranty of merchantability, as stated in the Uniform Commercial Code, by selling or leasing class vehicles to Plaintiffs and the Class or Sub-Class Members.

173. Nissan breached the implied warranty of merchantability, pursuant to Ohio common law, by selling or leased class vehicles to Plaintiff Jayavelu and Members of the Ohio Subclass. Because Plaintiff Jayavelu and Members of the Ohio Subclass are remote purchasers who seek purely economic losses, Plaintiff Jayavelu and the Members of the Ohio Subclass bring this claim for breach of implied warranty in tort.

174. Plaintiffs and the Class or Subclasses seek full compensatory damages allowable by law, attorneys' fees, costs, punitive damages, restitution, the repair or replacement of all class vehicles, the refund of money paid to own or lease all class vehicles, and appropriate equitable relief including injunctive relief, a declaratory judgment, and a court order enjoining Nissan's wrongful acts and practices and any other relief to which Plaintiffs and the Class or Subclasses may be entitled.

THIRD CLAIM FOR RELIEF

(Breach of Express and implied Warranty under the Magnuson-Moss Warranty Act, 15

U.S.C. §§ 2301, *et seq.*)

On behalf of the Class, or Alternatively, the California, Ohio, New York, Colorado, Massachusetts, Illinois, Florida, Minnesota, and Alabama Subclasses and their Named Representatives

175. Plaintiffs, individually, and for the Class or, in the alternative, the California, Ohio, New York, Colorado, Massachusetts, Illinois, Florida, Minnesota, and Alabama Subclasses, hereby incorporate the allegations in paragraphs 1 through 163 as though fully set forth herein.

176. The Class Vehicles are a "consumer product" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

177. Plaintiffs and Class Members are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

178. Nissan is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

179. Every class vehicle is backed by a New Vehicle Limited Warranty (“Warranty”). Nissan’s Warranty covers any repairs needed to correct defects in materials or workmanship of covered parts. The basic coverage period lasts 36 months or 36,000 miles, whichever comes first, and the powertrain coverage lasts 60 months or 60,000 miles, whichever comes first. The powertrain coverage specifically applies to the engine, transmission and transaxle, drivetrain, and restraint system. Nissan explicitly extended the Warranty to all purchasers, lessees, and subsequent purchasers and lessees of class vehicles throughout the United States. The Warranty assured consumers that Nissan would repair any defect in materials or workmanship under normal use.

180. On information and belief, Nissan breached the express warranties by purporting to repair the transmission and its component parts by replacing the defective or damaged transmission components with the same defective components and/or instituting temporary fixes, on information and belief, to ensure that the CVT Defect manifests outside of the Class Vehicles’ express warranty period.

181. Plaintiffs gave Nissan notice of its breach by presenting their vehicles to Nissan dealerships for repairs that were not made.

182. However, Plaintiffs were not required to notify Nissan of the breach and/or were not required to do so because affording Nissan a reasonable opportunity to cure its breach of written warranty would have been futile. Nissan was also on notice of the defect from the complaints and service requests it received from Class Members, from repairs and/or

replacements of the transmission or a component thereof, and through other internal sources.

183. Additionally, Nissan breached the express warranty by performing illusory repairs. Rather than repairing the vehicles pursuant to the express warranty, Nissan falsely informed class members that there was no problem with their vehicle, performed ineffective software flashes, or replaced defective components in the CVT Transmissions with equally defective components, without actually repairing the vehicles.

184. Moreover, Nissan impliedly warranted that the Class Vehicles were of merchantable quality and fit for use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles and their CVT were manufactured, supplied, distributed, and/or sold by Nissan would provide safe and reliable transportation; and (ii) a warranty that the Class Vehicles and their CVT would be fit for their intended use while the Class Vehicles were being operated.

185. Contrary to the applicable implied warranties, the Class Vehicles and their CVTs at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and Class Members with reliable, durable, and safe transportation. Instead, the Class Vehicles are defective, including the defective design of their CVT.

186. Nissan's breach of express and implied warranties has deprived Plaintiffs and Class Members of the benefit of their bargain.

187. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum or value of \$25,000. In addition, the amount in controversy meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

188. Nissan has been afforded a reasonable opportunity to cure its breaches, including when Plaintiffs and Class Members brought their vehicles in for diagnoses and

repair of the CVT.

189. As a direct and proximate cause of Nissan's breach of express and implied warranties, Plaintiffs and Class Members sustained damages and other losses in an amount to be determined at trial. Nissan's conduct damaged Plaintiffs and Class Members, who are entitled to recover actual damages, consequential damages, specific performance, diminution in value, costs, attorneys' fees, and/or other relief as appropriate.

190. As a result of Nissan's violations of the Magnuson-Moss Warranty Act as alleged herein, Plaintiffs and Class Members have incurred damages.

FOURTH CLAIM FOR RELIEF

(Breach of Implied Warranty Pursuant to Song-Beverly Consumer Warranty Act, California Civil Code §§ 1792 and 1791.1, *et seq.*)

On behalf of the Plaintiffs Falk and Leyva and the California Subclass

191. Plaintiffs Falk and Leyva, individually and for the California Subclass, or, alternatively, the Class, hereby incorporate the allegations in paragraphs 1 through 163 as though fully set forth herein.

192. Plaintiffs Falk and Leyva, and California Subclass Members are "buyers" within the meaning of the Song-Beverly Consumer Warranty Act, California Civil Code § 1791(a).

193. Nissan is a "manufacturer" within the meaning of the Song-Beverly Consumer Warranty Act, California Civil Code § 1791(j).

194. Plaintiffs' vehicles are "consumer goods" within the meaning of the Song-Beverly Consumer Warranty Act, California Civil Code § 1791(a).

195. Nissan's Warranty is an "express warrant[y]" within the meaning of Song-Beverly Consumer Warranty Act, California Civil Code § 1791.2.

196. At all relevant times, Nissan manufactured, distributed, warranted, and/or sold the class vehicles. Nissan knew or had reason to know of the specific use for which the class

vehicles were purchased or leased.

197. Nissan provided an implied warranty to Plaintiffs Falk and Leyva and the California Subclass Members, which warranted that the class vehicles, including the components parts, are merchantable and fit for the ordinary purposes for which they were sold. However, *inter alia*, the transmissions in the class vehicles suffer from an inherent defect at the time of sale and, thereafter, are not fit for their ordinary purpose of providing reasonably safe and reliable transportation.

198. Nissan impliedly warranted that the class vehicles are of merchantable quality and fit for such use. The implied warranty includes, among other things: (i) a warranty that the class vehicles manufactured, supplied, distributed, and/or sold by Nissan are safe and reliable for providing transportation; and (ii) a warranty that the class vehicles are fit for their intended use.

199. Contrary to the applicable implied warranties, the class vehicles, at the time of sale and thereafter, were not fit for their ordinary and intended purpose of providing Plaintiffs Falk and Leyva and California Subclass Members with reliable, durable, and safe transportation. Instead, the transmissions in class vehicles are defective and suffer from transmission failures that compromise the reliability, durability, and safety of class vehicles.

200. As a result of Nissan's breach of the applicable implied warranties, owners and/or lessees of the class vehicles have suffered an ascertainable loss of money, property, and/or value of their class vehicles. Additionally, as a result of the transmission defect, Plaintiffs Falk and Leyva and California Subclass Members were harmed and suffered actual damages in that the class vehicles' transmission are substantially certain to fail or have failed before their expected useful life has run. The transmission failures create a high risk of accidents, injuries, and even death.

201. Nissan's actions, as complained of herein, breached the implied warranty that the class vehicles were of merchantable quality and fit for such use, in violation of California Civil Code §§ 1792 and 1791.1, *et seq.*

202. Plaintiffs Falk and Leyva and the California Subclass seek full compensatory damages allowable by law, attorneys' fees, costs, the repair or replacement of all class vehicles the refund of money paid to own or lease all class vehicles, and any other relief to which Plaintiffs, the California Subclass may be entitled.

FIFTH CLAIM FOR RELIEF

**(Violation of California's Consumers Legal Remedies Act,
California Civil Code §§ 1750, et seq.)**

**On behalf of the Plaintiffs Falk and Leyva and the CLRA Subclass, or, alternatively, the
Class.**

203. Plaintiffs Falk and Leyva, individually and on behalf of the CLRA Subclass, or, alternatively, the Class, hereby incorporate the allegations in paragraphs 1 through 163 as though fully set forth herein.

204. Defendant Nissan North America, Inc. is a "person" as defined by California Civil Code § 1761(c).

205. Plaintiffs Falk and Leyva are "consumers" within the meaning of California Civil Code § 1761(d) because they purchased their class vehicles primarily for personal, family, or household use.

206. By failing to disclose and concealing the defective nature of the transmissions from Plaintiffs Falk and Leyva and prospective Class and CLRA Subclass Members, Nissan violated California Civil Code § 1770(a), as they represented that the class vehicles and their transmissions had characteristics and benefits that they do not have and represented that the class vehicles and their transmissions were of a particular standard, quality, or grade when they were of another. *See* Cal. Civ. Code §§ 1770(a)(5) & (7).

207. Nissan's unfair and deceptive acts or practices occurred repeatedly in Nissan's trade or business, were capable of deceiving a substantial portion of the purchasing public,

and imposed a serious safety risk on the public.

208. Nissan knew that the class vehicles and their transmissions suffered from an inherent defect, were defectively manufactured or contained defective materials, and were not suitable for their intended use and as a result of the defect known to Nissan as alleged herein, created an unreasonable safety risk for class members.

209. As a result of their reliance on Nissan's omissions and/or misrepresentations, owners and/or lessees of the class vehicles suffered an ascertainable loss of money, property, and/or value of their class vehicles. Additionally, as a result of the transmission defect, Plaintiffs Falk and Leyva and the Class and California Subclass Members were harmed and suffered actual damages in that the class vehicles' transmission or transmission components are substantially certain to fail or have failed before their expected useful life has run.

210. Nissan had a duty to Plaintiffs Falk and Leyva and the Class and California Subclass Members to disclose the defective nature of the transmissions and/or the associated repair costs because:

211. Nissan was in a superior position to know the true state of facts about the safety defect in the class vehicles' transmissions;

212. Plaintiffs Falk and Leyva and the Class and California Subclass Members could not reasonably have been expected to learn or discover that their transmissions had a dangerous safety defect until it manifested; and

213. Nissan knew that Plaintiffs Falk and Leyva and the Class and California Subclass Members could not reasonably have been expected to learn of or discover the safety defect.

214. In failing to disclose the defective nature of the transmissions, Nissan knowingly and intentionally omitted material facts and breached its duty not to do so.

215. The facts about the transmission defect that Nissan concealed from or failed to disclose to Plaintiffs Falk and Leyva and the Class and California Subclass Members are material in that a reasonable purchaser or lessee would have considered them to be important

in deciding whether to purchase or lease the class vehicles or pay less for them. Had Plaintiffs Falk and Leyva and the Class and California Subclass Members known that the class vehicles' transmissions were defective, they would not have purchased or leased the class vehicles or would have paid less for them.

216. Plaintiffs Falk and Leyva and the Class and California Subclass Members are reasonable purchasers and lessees who do not expect the transmissions installed in their vehicles to exhibit the aforementioned transmission failures.

217. As a result of Nissan's conduct, Plaintiffs Falk and Leyva and the Class and California Subclass Members were harmed and suffered actual damages in that the class vehicles experienced and may continue to experience the aforementioned transmission failures. As a direct and proximate result of Nissan's unfair or deceptive acts or practices, Plaintiffs Falk and Leyva and the Class and California Subclass Members suffered and will continue to suffer actual damages.

218. Plaintiff Falk sent Nissan a letter on August 21, 2017 by United States Postal Service Certified Mail and FedEx Priority Overnight that provided notice of its violations of the CLRA pursuant to California Civil Code § 1782(a). Nissan has failed to provide appropriate relief for their violations of the CLRA within thirty days, as required by the statute. Nissan sent its insufficient response to Plaintiff Falk's notice letter on September 25, 2017. Plaintiff Leyva sent Nissan a letter on August 29, 2017 by United States Postal Service Certified Mail and First Class Mail that provided notice of its violations of the CLRA pursuant to California Civil Code § 1782(a). Nissan has failed to provide appropriate relief for their violations of the CLRA within thirty days, as required by the statute. Nissan sent its insufficient response to Plaintiff Leyva's notice letter on October 2, 2017.

219. Therefore, Plaintiffs Falk and Leyva and the California Subclass Members, or, alternatively, the Class Members, seek full compensatory and punitive damages allowable by law, the repair or replacement of all class vehicles the refund of money paid to own or lease all class vehicles monetary, and injunctive and equitable relief, along with any other remedies

available by law.

SIXTH CLAIM FOR RELIEF

(Violation of California’s Business & Professions Code § 17000, *et seq.*)

**On behalf of the Plaintiffs Falk and Leyva and the California Subclass, or, alternatively,
the Class.**

220. Plaintiffs Falk and Leyva, individually and on behalf of the California Subclass, or, alternatively, the Class, hereby incorporate the allegations in paragraphs 1 through 163 as though fully set forth herein.

221. California Business & Professions Code § 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or misleading advertising.”

222. Reasonable purchasers and lessees, such as Plaintiffs Falk and Leyva and the Class and California Subclass Members, do not expect their transmissions to exhibit problems such as shaking, juddering, shuddering, jerking, delayed acceleration, and, eventually, complete transmission failure.

223. Nissan knew the class vehicles and their transmissions suffered from inherent defects, were defectively designed or manufactured, would fail prematurely, and were not suitable for their intended use and created an unreasonable safety risk.

224. In failing to disclose the defects with the transmission, Nissan knowingly and intentionally concealed material facts and breached its duty not to do so.

225. By their conduct, Nissan has engaged in unfair competition and unlawful, unfair, and fraudulent business practices.

226. Nissan had a duty to Plaintiffs Falk and Leyva and the Class and California Subclass Members to disclose the defective nature of the class vehicles and their transmissions because:

227. Nissan was in a superior position to know the true facts about the safety defect in the class vehicles’ transmissions;

228. Nissan made partial disclosures about the quality of the class vehicles without revealing the defective nature of the class vehicles and their transmissions; and

229. Nissan actively concealed the defective nature of the class vehicles and their transmissions from Plaintiffs Falk and Leyva and the Class and California Subclass.

230. The facts regarding the transmission defect that Nissan concealed from or failed to disclose to Plaintiffs Falk and Leyva and the Class and California Subclass are material in that a reasonable person would have considered them to be important in deciding whether to purchase or lease class vehicles. Had Plaintiffs Falk and Leyva and the Class and California Subclass Members known that the class vehicles' transmissions were defective and posed a safety hazard, then Plaintiffs Falk and Leyva and the Class and California Subclass Members would not have purchased or leased class vehicles equipped with transmissions, or would have paid less for them.

231. Nissan continues to conceal the defective nature of the class vehicles and their transmissions even after Class Members began to report problems.

232. Nissan's conduct was and is likely to deceive customers. Nissan's unfair or deceptive acts or practices occurred repeatedly in Nissan's trade or business and were capable of deceiving a substantial portion of the purchasing public.

233. Nissan's acts, conduct and practices were unlawful, in that they constituted:

- a. Violations of the California Consumer Legal Remedies Act;
- b. Violations of the Song-Beverly Consumer Warranty Act;
- c. Violations of the express warranty provisions of California Commercial Code section 2313; and
- d. Violations of the other causes of action set forth in this Complaint.

234. As a result of their reliance on Nissan's omissions and/or misrepresentations, owners and/or lessees of the class vehicles suffered an ascertainable loss of money, property, and/or value of their class vehicles. Additionally, as a result of the transmission defect, Plaintiffs Falk and Leyva and the Class and California Subclass Members were harmed and

suffered actual damages in that the class vehicles' transmission and/or transmission components are substantially certain to fail before their expected useful life has run.

235. As a direct and proximate result of Nissan's unfair and deceptive practices, Plaintiffs Falk and Leyva and the Class and California Subclass have suffered and will continue to suffer actual damages.

236. Nissan has been unjustly enriched and should be required to make restitution to Plaintiffs Falk and Leyva and the Class and California Subclass pursuant to §§ 17203 and 17204 of the Business & Professions Code.

237. Plaintiffs Falk and Leyva and the California Subclass, or, in the alternative, the Class, seek all remedies available pursuant to §17070, *et seq.* of the Business & Professions Code, including full compensatory damages allowable by law, attorneys' fees, costs, the repair or replacement of all class vehicles the refund of money paid to own or lease all class vehicles, appropriate equitable relief including injunctive relief, a declaratory judgment, a court order enjoining Nissan's wrongful acts and practices, and any other relief to which Plaintiff and the California Subclass may be entitled.

SEVENTH CLAIM FOR RELIEF

(Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01, *et seq.*)

On Behalf of Plaintiff Jayavelu and the Ohio Subclass, or, alternatively, the Class.

238. Plaintiffs Jayavelu, individually, and on behalf of the Ohio Subclass, or, alternatively, the Class, hereby incorporates the allegations in paragraphs 1 through 163 as though fully set forth herein.

239. Nissan is a "supplier," as defined by Ohio Rev. Code § 1345.01.

240. Plaintiff Jayavelu is a "consumer," as defined by Ohio Rev. Code § 1345.01.

241. As a result of placing a defective product into the stream of commerce, Nissan has breached its implied warranty in tort, which is an unfair and deceptive act as defined in Ohio Rev. Code § 1345.09(B).

242. Nissan has committed unfair and deceptive acts, in violation of Ohio's Consumer Sales Practices Act, by knowingly placing into the stream of commerce Class Vehicles equipped with defective transmissions that result in, among other problems, sudden and unexpected failure of the vehicles' power.

243. Moreover, Nissan has committed unfair, deceptive, and unconscionable acts by knowingly concealing the defect in the class vehicles, failing to inform Plaintiff Jayavelu and the other Ohio Subclass Members of this defect, and in the following ways:

- a. At the time of sale, Defendant knowingly misrepresented and intentionally omitted and concealed material information regarding the class vehicles by failing to disclose to Plaintiff Jayavelu and Ohio Subclass Members the known defects in the transmissions and the known risks associated therewith.
- b. Thereafter, Defendant failed to disclose the defects to Plaintiff Jayavelu and the Ohio Subclass Members, either through warnings or recall notices, and/or actively concealed from them the fact that the class vehicles' transmissions were defective, even though Nissan knew of such defects: (1) at the time of manufacturing, during pre-market testing; (2) at the point where NHTSA began to record complaints about the defect in October 2012; or, at the latest, (3) from its own Technical Service Bulletins dating back to January 2013.
- c. Defendant forced Plaintiff Jayavelu and Ohio Subclass Members to expend sums of money at its dealerships and elsewhere to repair and/or replace the defective transmissions on the class vehicles, despite Defendant's prior knowledge of the defects at the time of purchase.
- d. Additionally, Defendant, in administering the Warranty, engaged in materially misleading deceptive acts and practices by replacing failing transmissions with equally defective units and denying the existence of and refusing to repair the widely known problems with the transmissions without a particular code appearing in the vehicles' computers.
- e. Furthermore, Defendant engaged in materially misleading and deceptive acts by continuing to sell the class vehicles to the consuming public and to represent

that these vehicles were in good working order, merchantable, and not defective, despite Defendant's knowledge that the vehicles would not perform as intended, represented, and warranted and that the above described defects would cause purchasers to incur significant out-of-pocket costs and expenses.

244. The aforementioned conduct is and was deceptive and false and constitutes an unconscionable, unfair, and deceptive act or practice in that Defendant has, through knowing, intentional, and material omissions, concealed the true defective nature of the transmissions.

245. By making these misrepresentations of fact and/or material omissions to prospective customers while knowing such representations to be false, Defendant has misrepresented and/or knowingly and intentionally concealed material facts in breach of its duty not to do so.

246. Members of the public were deceived by Defendant's failure to disclose and could not discover the defect themselves before suffering their injuries.

247. The Ohio Attorney General has made available for public inspection prior state court decisions which have held that acts and omissions similar to kinds alleged in this Complaint, including, but not limited to, the concealment and/or non-disclosure of a dangerous defect, constitute deceptive sales practices in violation of Ohio's Consumer Sales Practices Act. These cases include, but are not limited to, the following:

- a. *Mason v. Mercedes Benz USA, LLC* (OPIF #10002382);
- b. *State ex rel. Betty D. Montgomery v. Ford Motor Co.* (OPIF #10002123);
- c. *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.* (OPIF #10002025);
- d. *Bellinger v. HewJayavelu-Packard Co.*, No. 20744, 2002 Ohio App. LEXIS 1573 (Ohio Ct. App. Apr. 10, 2002) (OPIF #10002077);
- e. *Borrer v. MarineMax of Ohio*, No. OT-06-010, 2007 Ohio App. LEXIS 525 (Ohio Ct. App. Feb. 9, 2007) (OPIF #10002388);
- f. *State ex rel. Jim Petro v. Craftmatic Organization, Inc.* (OPIF #10002347);
- g. *Mark J. Cranford, et al. v. Joseph Airport Toyota, Inc.* (OPIF #10001586);

- h. *State ex rel. William J. Brown v. Harold Lyons, et al.* (OPIF #10000304);
- i. *Brinkman v. Mazda Motor of America, Inc.*, (OPIF #10001427);
- j. *Khouri v. Don Lewis*, (OPIF #100001995);
- k. *Mosley v. Performance Mitsubishi aka Automanage*, (OPIF #10001326);
- l. *Walls v. Harry Williams dba Butch's Auto Sales*, (OPIF #10001524); and,
- m. *Brown v. Spears*, (OPIF #10000403).
- n. *Williams v. Am. Suzuki Motor Corp.*, 2008 Ohio 3123; 2008 WL 2571584 (June 23, 2008)

248. Nissan committed these and other unfair and deceptive acts in connection with the marketing and sale of the class vehicles.

249. As a direct and proximate result of these unconscionable, unfair, and deceptive acts or practices, Plaintiff Jayavelu and Ohio Subclass Members have been damaged because they: purchased class vehicles they otherwise would not have purchased, paid more for Class Vehicles than they otherwise would have paid, paid for transmission diagnoses, repairs, and replacements, towing, and/or rental cars, and are left with class vehicles of diminished value and utility because of the defect. Meanwhile, Nissan has sold more class vehicles than it otherwise could and charged inflated prices for class vehicles, thereby unjustly enriching itself.

250. Plaintiff Jayavelu and Ohio Subclass Members seek restitution of the substantial sums of money they expended, including to replace their Nissan Sentras' defective transmissions, which Defendant knew about prior to the sale of the class vehicles.

251. Plaintiff Jayavelu and the Ohio Subclass also seek appropriate equitable relief, including an order requiring Nissan to adequately disclose and remediate the transmission defect and enjoining Nissan from incorporating the defective transmissions into its vehicles in the future.

252. Nissan is liable to Plaintiff Jayavelu and the other Ohio Subclass Members for compensatory damages, injunctive/equitable relief, and attorneys' fees pursuant to Ohio Rev. Code § 1345.09.

EIGHTH CLAIM FOR RELIEF

(Deceptive Acts and Practices Unlawful, N.Y. Gen. Bus. Law § 349, *et seq.*)

On Behalf of Plaintiff Cruz and the New York Subclass, or, alternatively, the Class.

253. Plaintiff Cruz, individually, and on behalf of the New York Subclass, or, alternatively, the Class, hereby incorporates the allegations in paragraphs 1 through 163 as though fully set forth herein.

254. Defendant sold and/or leased the Class Vehicles knowingly concealing that they contained the defects alleged.

255. Defendant's acts are and were deceptive acts or practices which are and/or were, likely to mislead a reasonable person purchasing the class vehicles. Nissan's aforementioned deceptive acts and practices are material, in part, because they concern an essential facet of the class vehicles' functionality and safety. The sale and distribution of the class vehicles in New York was a consumer-oriented act and thereby falls under the New York deceptive acts and practices statute, General Business Law Section 349.

256. Defendant's practices, acts, policies and course of conduct violated New York's General Business Law Section 349 Deceptive Acts and Practices, N.Y. Gen. Bus. Law § 349 (McKinney), *et seq.*, in that:

- a. At the time of sale, Defendant knowingly misrepresented and intentionally omitted and concealed material information regarding the class vehicles by failing to disclose to Plaintiff Cruz and New York Subclass Members the known defects in the transmissions and the known risks associated therewith.
- b. Thereafter, Defendant failed to disclose the defects to Plaintiff Cruz and the New York Subclass Members, either through warnings or recall notices, and/or actively concealed from them the fact that the class vehicles' transmissions were defective, despite the fact that the company knew of such defects: (1) at the time of manufacturing, during pre-market testing; (2) at the point where NHTSA began to record complaints about the defect in October 2012; or, at

the latest, (3) from its own Technical Service Bulletins dating back to January 2013.

- c. Defendant forced Plaintiff Cruz and the New York Subclass Members to expend sums of money at its dealerships to repair and/or replace the defective transmissions, despite the fact that Defendant had prior knowledge of the defects at the time of purchase.
- d. Additionally, Defendant, in administering the Warranty, engaged in materially misleading deceptive acts and practices by replacing failing transmissions with equally defective units and denying the existence of and refusing to repair the widely known problems with the transmissions without a particular code appearing in the vehicles' computers.
- e. Furthermore, Defendant engaged in materially misleading and deceptive acts by continuing to sell the class vehicles to the consuming public and to represent that these vehicles were in good working order, merchantable, and not defective, despite Defendant's knowledge that the vehicles would not perform as intended, represented, and warranted and that the above described defects would cause purchasers to incur significant out-of-pocket costs and expenses.

257. The aforementioned conduct is and was deceptive and false and constitutes an unconscionable, unfair, and deceptive act or practice in that Defendant has, through knowing, intentional, and material omissions, concealed the true, defective nature of the transmissions in Nissan Sentra, Versa, and Versa Note vehicles.

258. By making these misrepresentations of fact and/or material omissions to prospective customers while knowing such representations to be false, Defendant has misrepresented and/or knowingly and intentionally concealed material facts and breached its duty not to do so.

259. Defendant's misrepresentations of fact and/or material omissions caused injury and actual damages to Plaintiff and the Class and New York Class Members.

260. Members of the public were deceived by Defendant's failure to disclose and

could not discover the defect themselves before suffering their injuries. As a direct and proximate result of these unconscionable, unfair, and deceptive acts or practices, Plaintiff Cruz and the Class and New York Class Members have been damaged as alleged herein and are entitled to recover actual damages to the extent permitted by law, including class action rules, in an amount to be proven at trial.

261. Plaintiff Cruz and New York Subclass Members, or, alternatively, the Class Members, seek restitution of the substantial sums of money they expended to repair and replace the defective transmissions in the Class Vehicles, which Defendant knew about prior to the sale of the class vehicles and further seek statutory damages or actual damages, whichever is greater for their injuries.

262. Plaintiff Cruz and New York Subclass Members, or, alternatively, the Class Members, also seek appropriate equitable relief, including an order requiring Nissan to adequately disclose and remediate the transmission defect and an order enjoining Nissan from incorporating the defective transmissions into its vehicles in the future.

NINTH CLAIM FOR RELIEF

(Colorado's Consumer Protection Act,

Col. Rev. Stat. § 6-1-101, *et seq.*)

On Behalf of Plaintiff Trotter and the Colorado Subclass, or, alternatively, the Class

263. Plaintiff Trotter, individually, and on behalf of the Colorado Subclass, or, alternatively, the Class, hereby incorporates the allegations in paragraphs 1 through 163 as though fully set forth herein.

264. Nissan is a “person,” as defined by § 6-1-102(6) of the Colorado Consumer Protection Act (“Colorado CPA”).

265. Plaintiff Trotter is a “consumer,” as defined by the Col. Rev. Stat. § 6-1-113(1)(a), who purchased or leased one or more class vehicles.

266. The Colorado CPA prohibits deceptive trade practices in the course of a

person's business. Nissan engaged in deceptive trade practices prohibited by the Colorado CPA, including: (1) knowingly making a false representation as to the characteristics, uses, and benefits of the class vehicles that had the capacity or tendency to deceive Plaintiff Trotter and Colorado Subclass Members; (2) representing that the class vehicles are of a particular standard, quality, and grade even though Nissan knew or should have known they are not; (3) advertising the class vehicles and/or the defective CVT installed in them with the intent not to sell or lease them as advertised; and (4) failing to disclose material information concerning the class vehicles that was known to Nissan at the time of advertisement, sale or lease with the intent to induce Plaintiff Trotter and the Colorado Subclass Members to purchase, lease or retain the class vehicles.

267. In the course of its business, Nissan failed to disclose and actively concealed the dangers and risks posed by 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 or lease of the class vehicles.

268. Nissan's actions as set forth above occurred in the conduct of trade or commerce. Nissan's unfair or deceptive acts or practices, including these concealments, omissions, and suppressions of material facts, had a tendency or capacity to mislead, tended to create a false impression in purchasers or lessees, were likely to and did in fact deceive reasonable purchasers and lessees, including Plaintiff Trotter, the Class, and the Colorado Subclass, about the true safety and reliability of the class vehicles, the quality of Nissan's brands, and the true value of the class vehicles.

269. Nissan intentionally and knowingly misrepresented material facts regarding the class vehicles with intent to mislead Plaintiff Trotter, the Class, and the Colorado Subclass.

270. Nissan knew or should have known that its conduct violated the Colorado CPA.

271. Nissan owed Plaintiff Trotter, the Class, and the Colorado Subclass a duty to disclose the true safety and reliability of the class vehicles because Nissan:

- a. Possessed exclusive knowledge of the dangers and risks posed by the foregoing;
- b. Intentionally concealed the foregoing from Plaintiff Trotter, the Class, and the Colorado Subclass; and/or
- c. Made incomplete representations about the safety and reliability of the foregoing generally, while purposefully withholding material facts from Plaintiff Trotter, the Class, and the Colorado Subclass that contradicted these representations.

272. In light of the class vehicles' defect, and the stigma attached to class vehicles due to the defect and Nissan's failure to disclose the same, the class vehicles are now worth significantly less than they would be otherwise. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a manufacturer that purchasers and lessees learn makes unsafe vehicles and conceals defects rather than promptly remedying them.

273. Plaintiff Trotter, the Class, and the Colorado Subclass suffered ascertainable loss caused by Nissan's misrepresentations and its failure to disclose material information. Had they been aware of the class vehicles' defect, Plaintiff Trotter, the Class, and the Colorado Subclass would have paid less for their class vehicles or would not have purchased or leased them at all. Plaintiff Trotter, the Class, and the Colorado Subclass did not receive the benefit of their bargain as a result of Nissan's misconduct.

274. Plaintiff Trotter, the Class, and the Colorado Subclass risk irreparable injury as a result of Nissan's acts and omissions in violation of the Colorado CPA, and these violations present a continuing risk to Plaintiff Trotter, the Class, and the Colorado Subclass, and the general public. Nissan's unlawful acts and practices complained of herein affect the public interest.

275. As a direct and proximate result of Nissan's violations of the Colorado CPA,

Plaintiff Trotter and the Colorado Subclass have suffered injury-in-fact and/or actual damage.

276. Pursuant to Colo. Rev. Stat. § 6-1-113, Plaintiff Trotter individually and on behalf of the Colorado Subclass, or, alternatively, the Class, seeks monetary relief against NISSAN measured as the greater of (a) actual damages in an amount to be determined at trial and discretionary trebling of such damages, or (b) statutory damages in the amount of \$500 for each Plaintiff Trotter and each Member of the Colorado Subclass, or, alternatively, the Class.

277. Plaintiff Trotter also seeks an order enjoining Nissan's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the Colorado CPA.

TENTH CLAIM FOR RELIEF

(Massachusetts' Consumer Protection Act,

Mass. Gen Laws, ch. 93A, et seq.)

On Behalf of Plaintiff Garrison and the Massachusetts Subclass, or, alternatively, the Class

278. Plaintiff Garrison, individually, and on behalf of the Massachusetts Subclass, or, alternatively, the Class, hereby incorporates the allegations in paragraphs 1 through 163 as though fully set forth herein.

279. Plaintiff Garrison asserts this cause of action on behalf of herself and the Massachusetts Class.

280. Mass. Gen. Laws ch. 93A § 2 provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

281. At all relevant times, Nissan was engaged in commerce within the meaning of Mass. Gen. Laws, ch. 93A.

282. As alleged more fully herein, Nissan has violated Mass. Gen. Laws, ch. 93A in

that it used unconscionable business practices by failing to disclose, at the point of sale or otherwise, that the transmissions in class vehicles are defective and pose a safety hazard.

283. As a direct and proximate result of Nissan's conduct, Plaintiff Garrison, the Class, and other members of the Massachusetts Subclass have been harmed in that they purchased class vehicles they otherwise would not have, paid more for class vehicles than they otherwise would, paid for transmission diagnoses, repairs, and replacements, towing, and/or rental cars, and are left with class vehicles of diminished value and utility because of the defect. Meanwhile, Nissan has sold more class vehicles than it otherwise could have and charged inflated prices for class vehicles, unjustly enriching itself thereby.

284. Pursuant to Mass. Gen. Laws ch. 93A § 3, Plaintiff Garrison seeks damages and appropriate equitable relief, including an order requiring Nissan to adequately disclose and repair the transmission defect, and an order enjoining Nissan from incorporating the defective transmission into its vehicles in the future.

285. Plaintiff Garrison made a demand for relief, in writing, to Nissan at least thirty (30) days prior to filing this amended Complaint, on August 21, 2017, as required by Mass. Gen. Laws ch. 93A § 9. Nissan has declined Plaintiff's request.

286. Based on the foregoing, Plaintiff Garrison, the Class, and the Massachusetts Subclass are entitled to all remedies available pursuant to Mass. Gen. Laws ch. 93A, § 9, including refunds, actual damages, or statutory damages in the amount of 25 dollars per violation, whichever is greater, double or treble damages, attorney fees and other reasonable costs. Plaintiff Garrison, the Class, and the Massachusetts Class also request that the Court award equitable relief, including an order requiring Nissan to adequately disclose and repair the transmission defect and an order enjoining Nissan from incorporating the defective transmissions into its vehicles in the future.

ELEVENTH CLAIM FOR RELIEF

(Illinois Uniform Deceptive Trade Practices Act

815 ILCA 510/1, et seq.)

On Behalf of Plaintiff Macri and the Illinois Subclass, or, alternatively, the Class

287. Plaintiff Macri, individually, and on behalf of the Illinois Subclass, or, alternatively, the Class, hereby incorporates the allegations in paragraphs 1 through 163 as though fully set forth herein.

288. Plaintiff Macri is a “person” as defined by 815 ILCS 510/1.

289. Defendant Nissan North America, Inc. is a “person” as defined by 815 ILCS 510/1.

290. By representing that the class vehicles had characteristics and benefits that they do not have and represented that the class vehicles and their transmissions were of a particular standard, quality, or grade when they were of another, Nissan violated 815 ILCS 510/1(a)(5) & (a)(7).

291. Nissan misrepresented that the class vehicles were free from defects in their transmissions.

292. Nissan knew of the defects in the transmissions of the class vehicles, including in Plaintiff Macri’s 2013 Sentra, at the time the vehicles were purchased.

293. Nissan concealed the defects in the class vehicles from Plaintiff Amanda Macri and other members of the Illinois Subclass.

294. Had Plaintiff Macri and Illinois Subclass Members known that the class vehicles’ transmissions were defective, they would not have purchased or leased the class vehicles or would have paid less for them.

295. As a result of Nissan’s conduct, Plaintiff Macri and Illinois Subclass Members were harmed and suffered actual damages in that the class vehicles experienced and may continue to experience the aforementioned transmission failures.

296. As a direct and proximate result of Nissan’s unfair or deceptive acts and

practices, Plaintiff Macri and Illinois Subclass Members suffered and will continue to suffer actual damages.

297. Plaintiff Macri and Illinois Subclass Members are entitled to injunctive relief, attorneys' fees and costs, and any other relief provided by law.

TWELFTH CLAIM FOR RELIEF

(Illinois' Consumer Fraud and Deceptive Business Practices Act

815 ILCS 505/1, et seq.)

On Behalf of Plaintiff Macri and the Illinois Subclass, or, alternatively, the Class

298. Plaintiff Macri, individually, and on behalf of the Illinois Subclass, or, alternatively, the Class, hereby incorporates the allegations in paragraphs 1 through 163 as though fully set forth herein.

299. Plaintiff Macri is a "person" as defined by 815 ILCS 505/1(c).

300. Defendant Nissan North America, Inc. is a "person" as defined by 815 ILCS 505/1(c).

301. By offering the class vehicles for sale through its authorized dealers, selling the class vehicles, and distributing the class vehicles, Nissan engaged in "trade" and "commerce" as defined by 815 ILCS 505/1(f).

302. By misrepresenting that the class vehicles did not contain a defect and that Nissan could repair the defect in parts covered under the Warranty, omitting the existence of a transmission defect in class vehicles at the time of purchase and when owners brought their vehicles in for repair due to the transmission failures, and failing to advise owners of class vehicles of the transmission defect post-purchase, Nissan engaged in unfair and deceptive practices in the conduct of trade or commerce in violation of 815 ILCS 505/2.

303. Nissan knew of the defects in the transmissions of the class vehicles, including in Plaintiff Macri's 2013 Sentra, at the time the vehicles were purchased.

304. Nissan intended for Plaintiff Macri, the Class, and the the Illinois Subclass to

rely on its misrepresentations and omissions and purchase the class vehicles under the assumption that they were safe to operate and did not contain a defect in parts covered under the Warranty that Nissan could not fix.

305. Had Plaintiff Macri, the Class, and the Illinois Subclass Members known that the class vehicles' transmissions were defective, they would not have purchased or leased the class vehicles or would have paid less for them.

306. As a result of Nissan's conduct, Plaintiff Macri, the Class, and the Illinois Subclass Members were harmed and suffered actual damages in that the class vehicles experienced and may continue to experience the aforementioned transmission failures.

307. As a direct and proximate result of Nissan's unfair or deceptive acts or practices, Plaintiff Macri, the Class, and Illinois Subclass Members suffered and will continue to suffer actual damages.

308. Plaintiff Macri, the Class, and Illinois Subclass Members are entitled to actual damages, punitive damages, injunctive relief, attorneys' fees and costs, and any other relief provided by law.

THIRTEENTH CLAIM FOR RELIEF

(Declaratory Judgment Act, 28 U.S.C. § 2201, et seq. and Fed. R. Civ. P. 57)

On behalf of the Class, or Alternatively, the California, Ohio, New York, Colorado, Massachusetts, Illinois, Florida, Minnesota, and Alabama Subclasses and their Named Representatives

309. Plaintiffs, individually and on behalf of the Class or, in the alternative, for the California, Ohio, New York, Colorado, Massachusetts, Illinois, Florida, Minnesota, and Alabama Subclasses, hereby incorporate the allegations in paragraphs 1 through 163 as though fully set forth herein.

310. Declaratory relief is intended to minimize "the danger of avoidable loss and unnecessary accrual of damages." 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2751 (3d ed. 1998).

311. There is an actual controversy between Nissan and Plaintiffs concerning whether the class vehicles' transmission defect creates an unreasonable safety hazard. Pursuant to 28 U.S.C. § 2201, the Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

312. Despite long knowing the nature of the class vehicles' defect and its likelihood of placing Plaintiffs, the Class, the California, Ohio, New York, Colorado, Massachusetts, Illinois, Florida, Minnesota, and Alabama Subclasses, and the public at risk of grave injury, Nissan refuses to publicly acknowledge that the class vehicles contain a dangerous defect. Instead, Nissan has unsuccessfully attempted to remediate the defect without advising its consumers and other members of the public of the defect. Nissan has uniformly refused to permanently repair the defect and, upon information and belief, does not always cover the defect under the warranty.

313. Accordingly, based on Nissan's failure to act, Plaintiffs seek a declaration that the class vehicles are defective, as alleged herein, covered under the Warranty, and that the Warranty fails of its essential purpose because Nissan cannot repair or replace the defective transmissions. The defective nature of the class vehicles is material and requires disclosure to all persons who own them.

314. The declaratory relief requested herein will generate common answers that will settle the controversy related to the alleged defective nature of the class vehicles and the reasons for their repeated failure. There is an economy to resolving these issues as they have the potential to eliminate the need for continued and repeated litigation.

FOURTEENTH CLAIM FOR RELIEF

**(Violation of the Florida Deceptive and Unfair Trade Practice Act, §§ 501.201, *et seq.*,
Florida Statutes)**

On behalf of the Florida Subclass, or, alternatively, the Class.

315. Plaintiff Weckworth, individually, and on behalf of the Florida Subclass, or,

alternatively, the Class or, hereby incorporates the allegations in paragraphs 1 through 163 as though fully set forth herein.

316. Plaintiff is a “consumer” as defined by Florida Statute §501.203(7), and the subject transactions are “trade or commerce” as defined by Florida Statute §501.203(8).

317. Nissan manufactures Nissan vehicles, which are “goods” within the meaning of FDUPTA.

318. FDUPTA was enacted to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

319. For the reasons discussed herein, Nissan violated and continues to violate FDUPTA by engaging in the herein described unconscionable, deceptive, unfair acts or practices proscribed by Florida Statute §§ 501.201, *et seq.* Nissan’s omissions and practices described herein were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment. By failing to disclose and concealing the defective nature of the transmission from Plaintiffs and prospective Class Members, Nissan violated FDUPTA, as it represented that the Class Vehicles and their transmissions had characteristics and benefits that they do not have, and represented that the Class Vehicles and their transmissions were of a particular standard, quality, or grade when they were of another.

320. Nissan’s unfair and deceptive acts or practices occurred repeatedly in Nissan’s trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

321. Nissan knew that the Class Vehicles and their transmissions suffered from an inherent defect and were not suitable for their intended use.

322. As a result of their reliance on Nissan’s omissions, owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, as a result of the defective transmissions, Plaintiff and Class Members

were harmed and suffered actual damages in that the Class Vehicles' transmissions are defective.

323. Nissan was under a duty to Plaintiff and Class Members to disclose the defective nature of the transmissions and/or the associated repair costs because:

- a. Nissan was in a superior position to know the true state of facts about the safety defect in the Class Vehicles' transmissions;
- b. Plaintiff and Class Members could not reasonably have been expected to learn or discover that their transmissions had a dangerous safety defect until it manifested; and
- c. Nissan knew that Plaintiff and Class Members could not reasonably have been expected to learn of or discover the safety defect.

324. In failing to disclose the defective nature of the transmissions, Nissan knowingly and intentionally concealed material facts and breached its duty not to do so.

325. The facts Nissan concealed from or failed to disclose to Plaintiff and Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Class Vehicles or pay less. Had Plaintiff and Class Members known that the Class Vehicles' transmissions were defective, they would not have purchased or leased the Class Vehicles or would have paid less for them.

326. Plaintiff and Class Members are reasonable consumers who do not expect the transmissions installed in their vehicles to exhibit the problems described herein. This is the reasonable and objective consumer expectation relating to vehicle transmissions.

327. As a result of Nissan's conduct, Plaintiff and Class Members were harmed and suffered actual damages in that, on information and belief, the Class Vehicles experienced and will continue to experience transmissions problems.

328. As a direct and proximate result of Nissan's unfair or deceptive acts or practices alleged herein, Plaintiff and Class Members suffered and will continue to suffer actual damages and are entitled to recover actual damages to the extent permitted by law,

including class action rules, in an amount to be proven at trial. In addition, Plaintiff and Class Members seek equitable and injunctive relief against Nissan on terms that the Court considers reasonable, and reasonable attorneys' fees.

FIFTEENTH CLAIM FOR RELIEF

(Violations of MPCFA, Minn. Stat. § 325D.44, *et seq.*)

On behalf of the Minnesota Subclass, or, alternatively, the Class.

329. Plaintiff Michael Knotts, individually, and on behalf of the Minnesota Subclass, or, alternatively, the Class or, hereby incorporates the allegations in paragraphs 1 through 163 as though fully set forth herein.

330. Nissan engaged in deceptive trade practices in the course of business, in violation of the MPCFA, in the following ways:

- a. Nissan violated Minn. Stat. § 325D.44(5) by representing that the Vehicles and the CVTs therein had characteristics, uses, and benefits that they did not have;
- b. Nissan violated Minn. Stat. § 325D.44(7) by representing that the Vehicles and the CVTs therein were of a particular standard or quality when they were, in fact, defective; and
- c. Nissan violated Minn. Stat. § 25D.44(13) by engaging in conduct that created a misunderstanding among Plaintiff and the Class members as to the quality and longevity of the CVTs and the Vehicles.

331. Minnesota Statute § 325D.13 provides that “no person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise.” Consumer protection laws of other states make similar conduct unlawful.

332. By engaging in the conduct described herein, Defendant violated and continues to violate Minn. Stat. § 325D.13 and the similar laws of other states.

333. Nissan knew that the CVTs were defective, posing serious safety risks to its customers and other drivers on the road, did not tell anyone about the defect, and continued to sell the defective CVTs. The safety risk that accompanies a defective CVT, namely, an inability to accelerate and maintain control of the Vehicle while driving, is a material fact; had Plaintiff and the other Class members known about it, they would have either not purchased or leased the Vehicles or would have paid less for them. Nissan violated Minn. Stat. § 325D.44 through this material omission. Nissan's misrepresentations and omissions were made to the public at large, affecting thousands of Class members whose safety was put at risk in driving Subject Vehicles and who were economically injured by having to pay for CVT repairs out-of-pocket. As such, this is an appropriate action under the MPCFA.

334. This action benefits the public by addressing this serious safety concern that affects drivers of the Subject Vehicles, as well as other drivers on the road who are at risk for accident or injury if they are driving near or behind a Subject Vehicle when it fails to accelerate.

335. Nissan's deceptive scheme was carried out in Minnesota and affected Plaintiff and the Class members.

336. Nissan failed to advise the public about what it knew about the defect in the CVTs.

337. As a direct and proximate result of Nissan's deceptive conduct in violation of Minn. Stat. § 325D.44, *et seq.*, Plaintiff and the Class members have been damaged.

SIXTEENTH CLAIM FOR RELIEF

(Violations of MPCFA, Minn. Stat. § 325F.68, *et seq.*)

On behalf of the Minnesota Subclass, or, alternatively, the Class.

338. Plaintiff Michael Knotts, individually, and on behalf of the Minnesota Subclass, or, alternatively, the Class or, hereby incorporates the allegations in paragraphs 1 through 163

as though fully set forth herein.

339. Plaintiff, the Class members, and Nissan are all “persons” within the meaning of the MPCFA, Minn. Stat. § 325F.68.

340. The Vehicles are “merchandise” within the meaning of the MPCFA, Minn. Stat. § 325F.68.

341. Nissan engaged in deceptive practices related to the sale of its product, including (1) selling and leasing Subject Vehicles with defective CVTs; and (2) failing to disclose or concealing this known defect and risk, to the detriment of Plaintiff and the Class members.

342. Nissan’s deceptive scheme was carried out in Minnesota and affected Plaintiff and the Class members.

343. Nissan intended that Plaintiff and Class members rely on the acts of concealment, omissions, and misrepresentations regarding the nature of the CVTs, so that Plaintiff and the Class members would purchase the Subject Vehicles.

344. Plaintiff and the Class members did, in fact, rely on the acts of concealment and omissions regarding the nature of the CVTs.

345. Had Plaintiff and the Class members known about the defective CVTs, they either would not have purchased or leased the Subject Vehicles, or would have paid less for them.

346. Where, as here, Plaintiff’s claims inure to the public benefit, Minnesota’s private-attorney general statute, Minn. Stat. § 8.31, subdiv. 3a, allows individuals who have been injured through a violation of the MPCFA to bring a civil action and recover damages, together with costs and disbursements, including reasonable attorneys’ fees.

347. Therefore, Nissan used unfair methods of competition and unfair or deceptive acts or practices in conducting its business.

348. Through these deceptive statements and misleading omissions, Nissan violated Minn. Stat. § 325F.69 and proximately caused damage to Plaintiff and the Class members.

SEVENTEENTH CLAIM FOR RELIEF

(Violations of Minnesota False Statement in Advertising Act,

Minn. Stat. § 325F.67)

On behalf of the Minnesota Subclass, or, alternatively, the Class.

349. Plaintiff Michael Knotts, individually, and on behalf of the Minnesota Subclass, or, alternatively, the Class or, hereby incorporates the allegations in paragraphs 1 through 163 as though fully set forth herein.

350. Minnesota's False Statement in Advertising Act ("FSAA"), Minn. Stat. § 325F.67, provides a cause of action to "any person, firm, corporation, or association" who purchases goods or services through advertising which "contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading."

351. Consumer protection laws of other states make similar conduct unlawful.

352. Where, as here, Plaintiff's claims inure to the public benefit, Minnesota's private-attorney general statute, Minn. Stat. § 8.31, subdiv. 3a, allows individuals who have been injured through a violation of the FSAA to bring a civil action and recover damages, together with costs and disbursements, including reasonable attorneys' fees.

353. By engaging in the conduct herein, Defendant violated and continues to violate Minn. Stat. § 325F.67 and the similar laws of other states.

354. Defendant's misrepresentations, knowing omissions, and use of other sharp business practices include, by way of example:

- a. Defendant's fraudulent, misleading, and deceptive statements relating to the true characteristics, standards, quality, and grade of the CVTs and the Vehicles;
- b. Defendant's fraud and misrepresentations by omission, of information about the defective nature of the CVTs in the Vehicles, the improper design of the CVTs in the Vehicles, and Defendant's knowledge of those defects; and

c. Defendant's concealment of the true nature of its defective CVTs in the Vehicles.

355. Defendant and its agents and distributors also made untrue, deceptive, and misleading assertions and representations about the Vehicles by making and repeating the various statements about the alleged quality of the Vehicles referenced herein.

356. Plaintiff viewed statements and received communications about the Vehicle and its CVT. As discussed in more detail above, these statements and communications included the window sticker, the maintenance guide, conversations with salespeople at the dealership, a review of Nissan's website concerning the Vehicle, and internet research on third-party websites concerning the Vehicle. These communications occurred in Minnesota and before Plaintiff purchased the Vehicle.

357. As a result of viewing those statements and having those communications, Plaintiff understood (both before and at the time he purchased the Vehicle) that the Vehicle would be reliable and free from defects. Plaintiff further understood that the CVT was a new, improved, high-quality feature of the Vehicle.

358. Had Plaintiff learned or received information that the CVT was defective, he would not have purchased the Vehicle, or he would have paid less for it.

359. As a result of Defendant's conduct, Plaintiff and the Class members have suffered actual damages in that they purchased a Vehicle, as described herein. The defective nature of the CVTs in the Vehicles renders the Vehicles useless. There is an association between Defendant's acts and omissions as alleged herein and the damages suffered by Plaintiff and the Class members.

360. As a result of Defendant's untrue, deceptive, and misleading assertions and representations about the Vehicles, Plaintiff and the Class members have and will continue to suffer damages that include not only the full cost to replace the Vehicles, but also include, without limitation, consequential and incidental damages.

361. As a direct and proximate result of Defendant's unlawful acts described above,

Plaintiff and the Class members have been injured and seek damages, as well as the declaratory and injunctive relief set forth below in the Prayer for Relief.

EIGHTEENTH CLAIM FOR RELIEF

(Unjust Enrichment)

On behalf of the Class, or Alternatively, the California, Ohio, New York, Colorado, Massachusetts, Illinois, Florida, Minnesota, and Alabama Subclasses and their Named Representatives

362. Plaintiffs, individually and on behalf of the Class or, in the alternative, for the California, Ohio, New York, Colorado, Massachusetts, Illinois, Florida, Minnesota, and Alabama Subclasses, hereby incorporate the allegations in paragraphs 1 through 163 as though fully set forth herein.

363. Plaintiffs bring this cause of action on behalf of themselves and the Class, or, in the alternative, on behalf of the California, New Jersey, and Florida Sub-Classes.

364. As a direct and proximate result of Nissan's failure to disclose known defects, Nissan has profited through the sale and lease of the Class Vehicles. Although these vehicles are purchased through Nissan's agents, the money from the vehicle sales flows directly back to Nissan.

365. Additionally, as a direct and proximate result of Nissan's failure to disclose known defects in the Class Vehicles, Plaintiffs and Class Members have vehicles that require repeated, high-cost repairs that can and therefore have conferred an unjust substantial benefit upon Nissan.

366. Nissan has been unjustly enriched due to the known defects in the Class Vehicles through the use money paid that earned interest or otherwise added to Nissan's profits when said money should have remained with Plaintiffs and Class Members.

367. As a result of the Nissan's unjust enrichment, Plaintiffs and Class Members

have suffered damages.

NINETEENTH CLAIM FOR RELIEF

(Fraud and Suppression Claim)

On behalf of the Alabama Subclass, or, Alternatively, the Class

368. Plaintiff Pritchett, individually and on behalf of the Alabama Subclass or, in the alternative, the Class, hereby incorporates the allegations in paragraphs 1 through 163 as though fully set forth herein.

369. Plaintiff Pritchett and the Alabama Subclass purchased or leased the Affected Vehicles.

370. At all relevant times, Defendant had the duty and obligation to disclose to the Plaintiffs and Subclass the dangers and defects of the CVT in the Affected Vehicles.

371. Nissan breached that duty by falsely promoting the CVT as durable, safe, and long-lasting.

372. Had Plaintiff and the Subclass known the truth, specifically that the CVT was not durable, safe, and long-lasting and, to the contrary, was defective and dangerous, they would not have purchased or leased their vehicles, or they would have paid far less to buy or lease them.

373. As a result, Plaintiff and the Subclass suffered pecuniary injuries, including, but not limited to, loss of value, loss of use of the vehicles, inconvenience, and repair costs. Nissan's false promotion of the CVT was the proximate cause of those losses. Those losses exceed \$5,000,000.00.

374. Additionally, Defendant omitted, suppressed, or concealed material facts of the dangers and defects of the CVT, leading to the same result: first, had Plaintiff and the Class

members been informed of the truth, specifically that the CVT was not durable, safe, and long-lasting and, to the contrary, was defective and dangerous, they would not have purchased or leased their vehicles, or they would have paid far less to buy or lease them; and second, the Plaintiffs and Subclass suffered pecuniary injuries proximately caused by Nissan's suppression of the material facts of the defects and dangers, and those injuries include, but are not limited to, loss of value, loss of use of the vehicles, inconvenience, and repair costs. Those injuries exceed \$5,000,000.00.

RELIEF REQUESTED

375. Plaintiffs, on behalf of themselves and all others similarly situated, request the Court to enter judgment against Nissan, as follows:

- (a) An order certifying the proposed Class and Subclasses, designating Plaintiffs as named representative of the Class, and designating the undersigned as Class Counsel;
- (a) A declaration that Nissan is financially responsible for notifying all Class Members about the defective nature of the CVT, including the need for periodic maintenance;
- (b) An order enjoining Nissan from further deceptive distribution, sales, and lease practices with respect to Class Vehicles; compelling Nissan to issue a voluntary recall for the Class Vehicles pursuant to 49 U.S.C. § 30118(a); compelling Nissan to remove, repair, and/or replace the Class Vehicles' defective CVT and/or its components with suitable alternative product(s) that do not contain the defects alleged herein; enjoining Nissan from selling the Class Vehicles with the misleading information; and/or compelling Nissan to reform its warranty, in a

manner deemed to be appropriate by the Court, to cover the injury alleged and to notify all Class Members that such warranty has been reformed;

- (c) A declaration requiring Nissan to comply with the various provisions of the Song-Beverly Act and all other causes of action alleged herein and to make all the required disclosures;
- (d) An award to Plaintiffs and the Class for compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial;
- (e) Any and all remedies provided pursuant to the Song-Beverly Act, including California Civil Code section 1794;
- (f) Any and all remedies provided pursuant to the Magnuson-Moss Warranty Act;
- (g) A declaration that Nissan must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of its Class Vehicles or make full restitution to Plaintiffs and Class Members;
- (h) An award of attorneys' fees and costs, as allowed by law;
- (i) An award of attorneys' fees and costs pursuant to California Code of Civil Procedure § 1021.5;
- (j) An award of pre-judgment and post-judgment interest, as provided by law;
- (k) Leave to amend the Complaint to conform to the evidence produced at trial; and
- (l) Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

229. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demands a trial by jury of any and all issues in this action so triable.

DATED: June 6, 2019

Respectfully submitted,

/s/ Cody R. Padgett

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