

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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,

PLAINTIFFS,

v.

NISSAN NORTH AMERICA, INC.,

DEFENDANT.

Case No. 3:18-cv-00588

Judge Eli Richardson
Magistrate Judge Alistair E. Newbern

**DECLARATION OF GARY E. MASON
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND IN SUPPORT OF
FEES AND COSTS**

I, Gary E. Mason, hereby declare as follows:

1. I am admitted *pro hac vice* and am counsel of record for Plaintiffs in the above-captioned matter. I respectfully submit this declaration in support of the Motion for Final Approval of Class Action Settlement. I have personal knowledge of the facts stated below and, if called upon, could competently testify thereto.

Background

2. I am a Founding Partner at Whitfield Bryson & Mason LLP (“WBM”), one of the counsel of record for Plaintiffs in the above-captioned action, and a nationally recognized leader of the class action bar.

3. I am a member of the Bar of the District of Columbia, the Bar of the State of Maryland, and the Bar of the State of New York. I have been admitted to practice before

the United States District Courts for the District of Colorado, District of the District of Columbia, Northern District of Illinois, District of Maryland, Northern District of New York, Western District of New York, Northern District of Ohio, and the Western District of Pennsylvania. I have also been admitted to practice before the United States Court of Appeals for the 4th Circuit, 5th Circuit, 6th Circuit, 9th Circuit, and the District of Columbia Circuit, as well as the United States Court of Federal Claims and the Supreme Court of the United States.

4. My firm, WBM, is a nationwide class action firm, with offices in Washington, D.C.; Raleigh, NC; Nashville, TN; and Madisonville, KY. Founded in 2012, WBM was created by a merger of three firms, each with decades of experience representing plaintiffs in class actions, mass torts, and individual cases throughout the United States.

5. WBM has a well established practice in automotive defect class actions and has obtained final approval of numerous class action settlements providing relief to owners/lessees. *See In re Gen. Motor Corp. Speedometer Prods. Liab. Litig.*, MDL No. 1986 (W.D. Wash. 2007) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective speedometers); *Baugh v. The Goodyear Tire & Rubber Co.* (2002) (class settlement of claims that Goodyear sold defective tires that are prone to tread separation when operated at highway speeds; Goodyear agreed to provide a combination of both monetary and non-monetary consideration to the Settlement Class in the form of an Enhanced Warranty Program and Rebate Program); *Lubitz v. DaimlerChrysler Corp.*, No. BER-L-4883-04 (N.J. Super. Ct. Law Div. 2006) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective brake system; creation of \$12 million fund; 7th largest judgment or settlement in New Jersey). In addition, we are actively litigating two class actions against Chrysler (excessive oil consumption and defective tire valves), one class action against Hyundai (premature rusting), and one class action against Honda (transmission judder).

6. Short biographies summarizing my experience and that of other attorneys at WBM, as well as a condensed version of WBM's accomplishments and further experience in consumer and other complex class actions, are set forth in WBM's firm resume, attached hereto as **Exhibit A**.

7. WBM, with co-counsel Capstone Law APC ("Capstone") and Berger Montague PC ("Berger Montague"), represent Plaintiffs Patricia Cruz, Michelle Falk, Cynthia Garrison, Indhu Jayavelu, Waldo Leyva, Amanda Macri, Danielle Trotter, and Patricia Weckwerth ("Plaintiffs")¹. These Plaintiffs, along with Plaintiffs of related cases, Michael Knotts and Pamela Pritchett, all filed class actions against Defendant Nissan North America, Inc. ("Defendant" or "Nissan") stemming from the design and manufacture of the allegedly defective CVT transmissions in the Sentra and Versa Class Vehicles. These consolidated actions are: (1) *Falk v. Nissan N. Am., Inc.*, No. 4:17-cv-04871 (N.D. Cal. filed Aug. 22, 2017); (2) *Pritchett v. Nissan N. Am., Inc.*, No. 2:17-cv-00736 (M.D. Ala. filed Oct. 27, 2017); (3) *Knotts v. Nissan N. Am., Inc.*, No. 0:17-cv-05049 (D. Minn. filed Nov. 7, 2017); and (4) *Norman v. Nissan N. Am., Inc.*, No. 3:18-cv-00588 (M.D. Tenn. filed June 26, 2018) (collectively, "Nissan CVT Litigation").

8. The above-named Plaintiffs in the Nissan CVT Litigation were added to the above-captioned matter (the original *Norman* case) for consolidation of settlement approval. *See* 1st Am. Compl., ECF No. 68.

The Falk and Norman Cases' Procedural History

9. On August 22, 2017, WBM and Berger Montague, with their co-counsel in the *Falk* case, Migliaccio & Rathod LLP ("Migliaccio & Rathod"), Parker Waichman LLP ("Parker Waichman"), Kantrowitz Goldhammer & Graifman, P.C. ("KGG") and Bronstein Gewirtz & Grossman ("BGG"), filed a detailed Class Action Complaint against

¹ These Plaintiffs are also represented by the law firms of Migliaccio & Rathod, Parker Waichman, KGG, and BGG.

Nissan in the United States District Court for the Northern District of California on behalf of Plaintiffs Michelle Falk, Indhu Jayavelu, Patricia Cruz, Danielle Trotter, and Amanda Macri (collectively, “*Falk* Plaintiffs”); state subclasses of 2013-present Nissan Sentra owners and lessees for the states of California, Colorado, Illinois, New York, and Ohio; and a nationwide class of 2013-present Nissan Sentra owners and lessees. *See* Compl., *Falk v. Nissan N. Am., Inc.*, No. 3:17-cv-04871 (N.D. Cal. Aug. 22, 2017), ECF No. 1. The Complaint included allegations of Nissan’s knowledge of various consumer complaints and consumers’ concern regarding the Nissan Sentra’s alleged CVT transmission judder.

10. Lawrence Deutsch and Jeffrey Osterwise of Berger Montague, Shimon Yiftach and Peretz Bronstein of BGG, Nicholas A. Migliaccio and Jason S. Rathod of Migliaccio & Rathod, Gary S. Graifman and Jay I. Brody of KGG, Daniel Calvert and Catherine S. Blackshear of Parker Waichman, and Jennifer S. Goldstein and I, Gary E. Mason, of WBM appeared as counsel on the initial Complaint.

11. On September 19, 2017, the Parties stipulated to the filing of the *Falk* Plaintiffs’ First Amended Complaint, adding Cynthia Garrison as a named Plaintiff to thereby add a proposed class of Massachusetts purchasers/lessees asserting claims under Massachusetts law. *See* Stip., *Falk* (No. 3:17-cv-04871), ECF No. 17. On September 27, 2017, the *Falk* Plaintiffs filed their First Amended Complaint, adding Plaintiff Cynthia Garrison and a Massachusetts subclass. Am. Compl., *Falk* (No. 3:17-cv-04871), ECF No. 19.

12. On October 26, 2017, Nissan filed a motion to dismiss some, but not all, of the *Falk* Plaintiffs’ fifteen (15) causes of action. Nissan did not move to dismiss Plaintiffs Falk and Garrison’s breach of implied warranty claims under California and Massachusetts law, Plaintiff Falk’s California consumer protection claims, and Plaintiff

Macri's Illinois consumer protection claims. Def.'s Mot. to Dismiss, *Falk* (No. 3:17-cv-04871), ECF No. 35.

13. Following briefing and argument by the Parties, on May 16, 2018, the *Falk* court denied in substantial part Nissan's Motion to Dismiss the First Amended Complaint. Specifically, the court denied Nissan's motion to dismiss the *Falk* Plaintiffs' express and implied warranty claims and Magnuson-Moss Warranty Act claims. The court granted Nissan's motion to dismiss Plaintiff Macri's implied warranty claim under Illinois law and Plaintiff Jayavelu's implied warranty claim under Ohio law. The court also denied Nissan's motion to dismiss Plaintiffs' state consumer protection statute claims, except Plaintiff Jayavelu's Ohio Consumer Sales Practices Act claim. Finally, the court denied Nissan's motion to dismiss the *Falk* Plaintiffs' claims for declaratory relief but granted its motion to dismiss the unjust enrichment claims and claims for equitable relief. Order, *Falk* (No. 3:17-cv-04871), ECF No. 62.

14. On June 6, 2018, the *Falk* Plaintiffs filed their Second Amended Complaint adding Plaintiff Waldo Leyva, who had filed an overlapping complaint on September 11, 2017 in the United States District Court for the Central District of California entitled *Leyva v. Nissan N. Am., Inc.*, No. 5:17-cv-01870-FMO. Leyva voluntarily dismissed that action to join the *Falk* case, following an agreement between the plaintiffs in both cases to minimize duplication of expense and effort. The Second Amended Complaint also included amended allegations for Plaintiff Jayavelu's Ohio Consumer Sales Practices Act and implied warranty claims. 2nd Am. Compl., *Falk* (No. 3:17-cv-04871), ECF No. 67.

15. The Parties had briefed Defendant's Motion to Dismiss Plaintiffs' Second Amended Complaint at the time the Parties reached the Settlement. On August 27, 2019, the *Falk* court terminated the motion as moot, without prejudice to refile should the Settlement not become effective. Order, *Falk* (No. 3:17-cv-04871), ECF No. 102.

16. On June 26, 2018, Berger Montague, Capstone, and WBM filed suit on behalf of Plaintiffs Cheyne Norman, Patricia Weckwerth, and Sophia Wescott (“*Norman Plaintiffs*”) against Nissan North America, Inc. (the United States subsidiary) and Nissan Motor Co., Ltd. (the Japanese parent company, hereinafter referred to as “Nissan Japan”) (collectively, “Defendants” or “Nissan”) in the Middle District of Tennessee on behalf of themselves and other persons who purchased or leased any 2013-2017 Nissan Versa, Versa Note or Juke equipped with an Xtronic CVT. *Norman v. Nissan N. Am., Inc.*, No. 3:18-cv-00588 (M.D. Tenn. filed June 26, 2018).

17. In the *Norman* action, the Parties negotiated a discovery and tolling agreement whereby Nissan Japan agreed to be subject to discovery in exchange for a dismissal without prejudice.

18. After entering into a stipulation setting a briefing schedule and extending the deadline for Defendants to respond, Nissan filed its motion to dismiss Plaintiffs’ complaint on August 29, 2018. Defs.’ Mot. to Dismiss, *Norman* (No. 3:18-cv-00588), ECF No. 47. The motion was briefed and under submission when the Parties negotiated this Settlement. *See* Pls.’ Resp. to Defs.’ Mot. to Dismiss, *Norman* (No. 3:18-cv-00588), ECF No. 54; Defs.’ Reply in Supp. to Mot. to Dismiss, *Norman* (No. 3:18-cv-00588), ECF No. 56.

19. Because the Nissan Juke claims are being settled in a separate action, the Plaintiffs with Nissan Juke vehicles, Cheyne Norman and Sophia Wescott, have been removed from the operative complaint for Sentra and Versa cars. Instead, they are the lead plaintiffs in the current *Norman* action, No. 3:18-cv-00543 (Mid. D. Tenn. filed June 8, 2018) (formerly known as *Madrid v. Nissan N. Am., Inc.*). The Nissan Juke claims are being presented separately, but concurrently, for settlement approval.

Pre-Suit Investigation and Discovery

20. Beginning in early 2017, counsel in the *Falk* case began receiving communications from Nissan Sentra owners complaining of issues with their vehicles' transmissions. Over one hundred (100) complaints were investigated prior to commencing the earliest-filed action of the Nissan CVT Litigation, the *Falk* case.

21. *Falk* Plaintiffs all purchased a Class Vehicle—Plaintiff Falk purchased a 2015 Sentra; Plaintiff Jayavelu purchased a 2016 Sentra; Plaintiff Cruz purchased a 2014 Sentra; Plaintiff Trotter purchased a 2013 Sentra; Plaintiff Macri purchased a 2013 Sentra—and complained that their vehicles' transmissions suffered from a transmission judder, despite several attempts to have Nissan dealerships diagnose and correct the problem under their vehicles' warranties.

22. Counsel researched the history of Plaintiffs' purchases of their vehicles and their service records before bringing this class action lawsuit.

23. Plaintiff Cynthia Garrison, who purchased a 2015 Sentra, also complained that her vehicle's transmission suffered from a transmission judder, despite several attempts to have Nissan dealerships diagnose and correct the problem under their vehicle's warranty, so she was added as a class representative for a proposed Massachusetts subclass.

24. In addition to interviewing and responding to Plaintiffs Cruz, Falk, Garrison, Jayavelu, Macri, and Trotter, regarding their potential claims, WBM, along with co-counsel, responded to several hundred inquiries from Class Members and investigated many of their reported claims. From pre-suit investigation and continuing over the course of litigation, WBM and co-counsel conducted detailed interviews with Class Members regarding their pre-purchase research, their purchasing decisions, and their repair

histories, and developed a plan for litigation based on Class Members' reported experiences with their Class Vehicles.

25. WBM researched publicly available information and materials through the National Highway Traffic Safety Administration ("NHTSA") concerning consumer complaints regarding the alleged CVT defect, as well as Nissan's response to this alleged defect. WBM reviewed and researched consumer complaints and discussions of the alleged CVT defect in articles and forums online, in addition to various Nissan manuals and technical service bulletins ("TSBs") discussing CVT issues. Finally, WBM conducted research into the various causes of action and analyzed similar automotive actions.

26. WBM, along with co-counsel, conducted an extensive search to identify experts suitable to provide guidance and, ultimately, expert opinions about technical and engineering matters likely to arise during the litigation. During the course of investigation and early phase of litigation, WBM and co-counsel ultimately retained William Mark McVea, a mechanical engineer specializing in power transmission devices and continuous variable transmissions ("CVTs"), in particular.

27. While the first Motion to Dismiss was pending in the *Falk* case, the Parties negotiated an initial case management statement, which they submitted on November 14, 2017. J. Case Mgmt. Statement, *Falk* (No. 3:17-cv-04871), ECF No. 43. Lawrence Deutsch of Berger Montague, Shimon Yiftach of BGG (our local counsel), and I, along with counsel for Nissan, appeared before Judge Haywood Gilliam on November 14, 2017, after which the Parties negotiated and submitted a supplemental case management statement. J. Suppl. Case Mgmt. Statement, *Falk* (No. 3:17-cv-04871), ECF No. 51. I took the lead and was the primary appearing before the court at this hearing at which I also responded to the court's questions related to the Motion to Dismiss, assisted by my

co-counsel Lawrence Deutsch. The court granted in part and denied in part Nissan's Motion to Dismiss by order dated May 16, 2018. *See Order, Falk* (No. 3:17-cv-04871) ECF No. 62 (the case in large part survived, including the breach of express warranty claim, breach of implied warranty claim, Magnuson Moss Warranty Act claim and the various state law consumer fraud claims, *e.g.*, Colorado, Massachusetts, California and New York).

28. The *Falk* action, after two amended complaints were filed, included seven named Plaintiffs representing a nationwide class as well as classes in California, New York, Colorado, Massachusetts, Ohio, and Illinois and covering 2012-2017 Nissan Sentra vehicles. The *Falk* Plaintiffs defeated Nissan's Motion to Dismiss, from the First Amended Complaint, several state consumer protection statute claims, express warranty claims, implied warranty claims, and Magnuson-Moss Warranty Act claims, with the Court dismissing without prejudice only Plaintiff Jayavelu's Ohio Consumer Sales Practices Act claim and individual implied warranty claim. Thereafter, the *Falk* Plaintiffs filed their Second Amended Complaint adding Plaintiff Leyva, who had filed an overlapping complaint on September 11, 2017 in the United States District Court for the Central District of California entitled *Leyva v. Nissan North America, Inc.*, Case No. 5:17-cv-01870 FMO. The Second Amended Complaint also included amended allegations for Plaintiff Jayavelu's Ohio Consumer Sales Practices Act and implied warranty claims. The Parties had fully briefed Defendant's Motion to Dismiss Plaintiffs' Second Amended Complaint at the time the Parties reached the Settlement. The Court terminated the motion as moot, without prejudice to refiling should the Settlement not become effective. The *Falk* Plaintiffs simultaneously engaged in discovery which is discussed in further detail below.

29. The Parties exchanged initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) and continued to pursue preliminary discovery while the first Motion to Dismiss was pending.

30. On February 23, 2018, the *Falk* Plaintiffs served fifty-three (53) Requests for Production seeking emails among Nissan employees, emails between Nissan North America and Nissan Japan, and emails between Nissan and its transmission supplier, JATCO, regarding transmission issues that Nissan identified and memorialized in its TSBs. Nissan served its responses on May 2, 2018. On May 25, 2018, Nissan served each of the *Falk* Plaintiffs with forty-two (42) Requests for Production and eighteen (18) interrogatories. WBM, working closely with co-counsel and Plaintiffs, prepared responses and objections for each Plaintiff, which were served on August 24, 2018.

31. Following the favorable May 26, 2018 Motion to Dismiss Order, the *Falk* Plaintiffs conducted eight (8) meet-and-confer teleconferences with Nissan regarding Nissan's ESI obligations, custodial email searches, and ESI searches of several additional databases. When the negotiations did not resolve key questions, counsel for Plaintiffs drafted and served on Defendants a Motion to Compel (but held in abeyance from filing while negotiations continued) further responses to twenty-six (26) of Plaintiffs' Requests for Production. Ultimately, Nissan agreed to conduct searches of several databases, including custodial email searches, and to further produce responsive documents.

32. The Parties also heavily negotiated a protective order regarding confidentiality of documents and information produced in discovery. On June 14, 2018, the Parties' proposed stipulated protective order was submitted by administrative motion. Stip. Protective Order, *Falk* (No. 3:17-cv-04871), ECF No. 68. On June 15, 2018, the court granted the motion and entered the protective order. Order, *Falk* (No. 3:17-cv-04871), ECF No. 69.

33. Defendant produced over 17,000 pages of documents, including spreadsheets of warranty and customer complaints containing thousands of rows of data; owners' manuals; maintenance and warranty manuals; design documents (*e.g.*, technical

drawings); internal Nissan project files containing tests, investigation reports, countermeasure evaluations; TSBs; field reports; and internal Nissan emails regarding the alleged CVT failures. WBM, along with co-counsel Capstone and Berger Montague, reviewed this discovery, aggressively pursuing and securing supplemental document productions. Throughout this process, WBM, along with co-counsel Capstone and Berger Montague, identified information that was instrumental in moving this case to a settlement and to advance the interests of the Settlement Class during mediation.

Mediations, Settlement, and Motion for Preliminary Approval of the Settlement

34. Following the above motion practice and the exchange of thousands of pages of documents and data, counsel for Plaintiffs and Defendant in the *Falk* case met in December 2018 to discuss settlement and agreed to try to mediate this case as well as claims in related cases concerning Nissan's CVT transmissions.

35. On February 19, 2019, counsel for Plaintiffs and Defendant participated in an all-day mediation before Mr. Hunter R. Hughes III, an experienced mediator in Atlanta, Georgia, to explore resolution of claims pertaining to the Nissan Juke, Versa, and Sentra vehicles.

36. Although the Parties did not settle at the first mediation session, the Parties continued their settlement negotiations telephonically with the assistance of the mediator.

37. On April 9, 2019, the Parties conducted a second in-person all-day face-to-face negotiation in Chicago, Illinois. At the close of this second session, the Parties had agreed on the principal terms of the proposed class settlement relief. Later in April, further evolution of the settlement terms took place in conjunction with the negotiations of the related cases concerning Nissan Altima's CVT transmissions before mediator Hughes in Atlanta, Georgia. After the Parties had agreed on the framework and material terms for settlement, they began negotiating through telephonic conferences, via email, and with

the assistance of Mr. Hughes, to ultimately agree upon appropriate requests for service awards and Plaintiffs' attorneys' fees and expenses.

38. In May 2019, the Parties were finally able to document the formal terms of their agreement to resolve the litigation. All terms of the Settlement are the result of extensive, adversarial, and arms' length negotiations between experienced counsel for both sides.

39. Plaintiffs Cruz, Falk, Garrison, Jayavelu, Leyva, Macri, Trotter, and Weckwerth were informed and engaged throughout the mediation and settlement process.

40. On June 6, 2019, Class Counsel filed Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and supporting documentation, including the executed Settlement Agreement, which summarized the material terms of the Settlement Agreement, including the benefits to the Settlement Class, attorneys' fees and expenses, class representative incentive payments, releases of claims, the details of the plan for notifying the Class Members, and the legal standards and argument requesting the Court's preliminary approval of the Parties' Settlement Agreement. *See* Pls.' Mot. for Prelim. Approval, ECF No. 71; Settlement Agreement, ECF No. 74-2. The Motion for Preliminary Approval was also supported by declarations of Class Counsel for this Settlement on behalf of the Sentra and Versa vehicles in the Settlement Class including: Cody Padgett (Capstone), Lawrence Deutsch (Berger Montague), Gary E. Mason (WBM), Taylor C. Bartlett (Heninger Garrison Davis LLC), Melissa Weiner (Pearson, Simon & Warshaw, LLP) and Natalie Finkelman (Shepherd, Finkelman, Miller & Shah, LLP); a declaration of a representative of the proposed Claims Administrator, Carla Peak for KCC, LLC; and other relevant records and filings.²

² On June 19, 2019, WBM, Berger Montague, Capstone and counsel for Nissan filed a joint status report and motion for stay of all proceedings in the *Falk* case to inform that court of Plaintiffs' preliminary approval of the Settlement. *J. Mot. to Stay, Falk* (No. 3:17-cv-04871), ECF No. 98.

41. On June 21, 2019, this Court directed the Parties to file a joint supplemental brief to clarify, *inter alia*, a reasonable estimate of the value of the Settlement benefits to the Settlement Class to assist the Court in evaluating the reasonableness of the requested amount of attorneys' fees. *See* Order, ECF No. 95. In response, the Parties submitted a joint supplemental brief wherein Plaintiffs stated that Plaintiffs' expert, Lee M. Bowron, ACAS, MAAA, conservatively estimated minimum retail value to the Settlement Class of the extended warranty and reimbursement coverage provided for by the Settlement to be \$407,122,000. J. Suppl. Br. at 12, ECF No. 101.

42. On July 16, 2019, the Court granted Plaintiffs' Unopposed Motion for Preliminary Approval. *See* Order, ECF No. 102.

43. Subsequently, on September 16, 2019, WBM, Berger Montague, Capstone, and counsel for Nissan filed a joint status report in the *Falk* case to inform that court that this Court had granted preliminary approval of the Settlement to which *Falk* Plaintiffs Cruz, Falk, Garrison, Jayavelu, Leyva, Macri, and Trotter are parties. J. Status Report, *Falk* (No. 3:17-cv-04871), ECF No. 103.

Motion for Final Approval of the Settlement Agreement

44. Class Counsel prepared their Motion for Attorneys' Fees, Costs, and Service awards and their Motion for Final Approval of Class Settlement, supported with law and Class Counsel's Declarations, all of which are being filed concurrently with this Declaration. Class Counsel also must prepare for and attend the Court's final approval and fairness hearing, scheduled for March 6, 2020. *See* Order, ECF No. 111. Class Counsel will expend additional hours to guide the Settlement after final approval, including oversight of the settlement administration process.

Settlement Benefits and Recognition of Difficulties Associated with Litigation

45. Class Counsel, including WBM, have been responsible for the prosecution of this action and for the negotiation of this Settlement. WBM, along with co-counsel, has vigorously represented the interests of the Class Members throughout the course of the litigation and settlement negotiations.

46. The Settlement is an excellent result as it provides the Settlement Class with meaningful relief, including an extended two-year/24,000 mile warranty, full or partial reimbursement for prior repairs, as well as additional terms to protect Class Members.

47. Plaintiffs remain convinced that their case has merit, but recognize the substantial risk that comes along with continued litigation. Based on their investigation and confirmatory discovery, Plaintiffs' Counsel believe they could obtain class certification, defeat all dispositive motions filed by Defendant, and proceed to trial on the merits. However, this Settlement is an excellent result for Class Members, given the relevant relief provided as compared to the risks of litigation.

Class Counsel and Plaintiffs Have Invested Significant Time in the Prosecution in this Action and are Adequate Representatives of the Settlement Class

48. Throughout the course of investigation, pleadings, mediation, and filing of the Settlement Agreement with the Court, WBM has devoted significant time and resources to the investigation and development, litigation, and resolution of this case.

49. In addition to myself, the following WBM lawyers made substantial contributions to achieving this Settlement:

- (a) John C. Whitfield;
- (b) Danielle L. Perry; and

(c) Jennifer S. Goldstein.

50. The hourly rates for WBM's attorneys are: \$875.00 for Gary E. Mason; \$350.00 for John C. Whitfield; \$350.00 for Danielle L. Perry; and \$350.00 for Jennifer S. Goldstein. These rates reflect current market rates by private attorneys of similar experience, expertise, and reputation for comparable work.

51. Since the inception of the earliest-filed case in the Nissan CVT Litigation—the *Falk* case—my firm has devoted a total of 1400.19 attorney and paralegal hours, which were reasonable and necessary to prosecute this case. Specifically, WBM, with co-counsel, made the following contributions on behalf of the Settlement Class: initial fact investigation and legal research; interviewing clients for pre-suit investigation; researching and drafting Complaints; briefing (and defeating) Rule 12 motions; conducting written discovery, including facilitating eight (8) meet and confer negotiations and preparing a motion to compel; analyzing records and spreadsheets of information produced by Defendant; locating and vetting experts; preparing for and participating in numerous mediation sessions; engaging in extended settlement negotiations with Defendant's counsel; drafting preliminary and final approval papers; responding to Class Member inquiries; and overseeing the notice process.

52. The following chart identifies the attorneys and paralegals who worked on this matter, their positions, hours worked, hourly rate, and corresponding fee:

Name:	Position:	Hourly Fee:	Hours:	Amount:
Gary E. Mason	Partner	\$850.00	202.95	\$177,581.25
John C. Whitfield	Partner	\$350.00	3.5	\$1,225.00
Danielle L. Perry	Associate	\$350.00	4.5	\$1,575.00
Jennifer S. Goldstein	Associate	\$350.00	543.5	\$190,225.00
Giovanni S. Colon	Paralegal	\$170.00	200.95	\$34,161.50

Jean M. Jones	Paralegal	\$150.00	288.25	\$44,127.50
Joan K. Tyson	Paralegal	\$100.00	2.5	\$250.00
Morgan M. Beauchamp	Paralegal	\$150.00	2.5	\$375.00
Matthew J. Wicher	Paralegal	\$170.00	89	\$15,130.00
Taylor L. Heath	Paralegal	\$150.00	34.6	\$6,727.50
		Total:	1400.19	\$469,840.25

53. WBM has minimized duplication of services by coordinating all tasks assigned in the litigation. Where multiple attorneys participated, joint participation was necessary because of time constraints, the complexity of the problems, or for effective and efficient communication among several firms essential for informed, group decision-making.

54. We participated in this case on a contingent-fee basis, which involved risk of not prevailing and therefore not being paid for our work. On the other hand, we also understood that the law would compensate us for such risk if we did prevail. We could not take such a risk without assurances of adequate compensation for favorable results for the Settlement Class. Moreover, the lengthy, intensive, and protracted litigation track and the time and resources dedicated to this case prevented our firms from taking and working on other matters.

55. WBM expended \$22,743.51 in unreimbursed expenses which were reasonable and necessary for the prosecution of this case. These expenses which are accurately reflected in our firm's books and records, include following:

Service of Process & Filing Fees:	\$310.00
Legal Research:	\$1,100.36
Postage/Facsimile/Express Delivery:	\$132.27
Copying Charges & Printing:	\$10.59
Telephone Expenses:	\$71.95

Travel/Meals/Lodging:	\$14,875.03
Document Management & Translation:	\$853.99
Miscellaneous	\$5,389.32
TOTAL	\$22,743.51

56. In addition to the substantial amount of time and resources that WBM, along with co-counsel Berger Montague and Capstone, has contributed to the investigation and development, litigation, and resolution of this case, co-counsel in the *Falk* case—KGG (total lodestar of \$125,812.50), BGG (total lodestar of \$55,571.00), and Migliaccio & Rathod (total lodestar of \$33,378.00), mentioned *supra* ¶ 9, and who will not be submitting separate declarations—have also expended time and resources towards this case. KGG, BGG, Migliaccio & Rathod, and Parker Waichman, along with WBM, initiated the *Falk* case. These firms assisted WBM with pre-suit discovery, such as analyzing the defect, including research on degree of seriousness and degree of prevalence, determining how to structure the multistate class, and vetting vehicle owners who sought to be plaintiffs in the case; participating in the drafting of the initial Class Action Complaint; participating in the drafting of the First Amended Class Action Complaint; receiving, reviewing and analyzing Defendant’s Motion to Dismiss the First Amended Class Action Complaint; engaging in legal research and the briefing of the opposition to Defendant’s Motion to Dismiss, which resulted in a positive opinion; reviewing, revising and finalizing of the Second Amended Class Action Complaint; reviewing the discovery demands of Defendant and drafting portions of the Plaintiffs’ discovery responses; receiving and reviewing the document production from Defendant; engaging in document review of Defendant’s production; attending various telephonic and in-person meetings with lead counsel regarding litigation strategy; and fielding telephone inquiries and engaging in various discussions with Class Members regarding the litigation and Settlement.

57. Plaintiffs Cruz, Falk, Garrison, Jayavelu, Leyva, Macri, Trotter, and Weckwerth made substantial contributions to the litigation, including sharing their experiences and evidence with WBM and co-counsel, reviewing pleadings, responding to extensive written discovery, assisting counsel in fact investigation necessary to develop the case and negotiate settlement terms, making their vehicles available for inspection, and working with counsel to preserve evidence. Based upon their efforts and the excellent results they achieved for the Settlement Class, an award of \$5,000.00 to each of these lead Plaintiffs is warranted.

58. Plaintiffs Cruz, Falk, Garrison, Jayavelu, Leyva, Macri, Trotter, and Weckwerth reviewed and agreed to the terms of the Settlement before it was executed.

59. These Plaintiffs did not have interests at odds with the interests of the Class Members.

Conclusion

60. As a result of this litigation, all current and former owners receive substantial benefits and received notice of and a remedy for the alleged CVT defect and judder condition. Based on my experience, the Settlement is fair, reasonable, and adequate, and it treats all Class Members equitably. I ask that the Court approve the Settlement, award full fees and costs to Plaintiffs' Counsel, and award \$5,000.00 to each lead Plaintiff.

Dated: January 24, 2020

Respectfully submitted,



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