UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

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 J. Richardson Magistrate Judge Alistair E. Newbern Date: March 6, 2020 Time: 1:30 p.m. Courtroom: 874

PLAINTIFFS' RESPONSE TO THE SETTLEMENT OBJECTIONS

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I. INTRODUCTION

Patricia Cruz, Michelle Falk, Cynthia Garrison, Indhu Jayavelu, Michael Knotts, Waldo Leyva, Amanda Macri, Danielle Trotter, Patricia Weckwerth, and Pamela Pritchett ("Plaintiffs") submit this Response in support of the Motion for Final Approval of Class Action Settlement[1] ("Motion for Final Approval") and Motion for Attorneys' Fees, Costs/Expenses, and Class Representative Service Awards ("Motion for Attorneys' Fees"). This Response addresses and rebuts the 42 Class Member objections to the Settlement that were filed.[2] For the reasons set forth in greater detail below, the Court should overrule all objections, and issue an order approving the Settlement and awarding the attorneys' fees, costs, and service awards in full.

II. THE RESPONSE OF THE CLASS IS EXCELLENT AND SUPPORTS FINAL APPROVAL

The objection and opt-out deadline expired on February 7, 2020. A total of only 3,892 of the 2,892,596 Class Members (or 0.135%) opted out and only 42 (or 0.001%) have objected. Such a small number of objections and opt outs, particularly for a settlement class of this size, demonstrates in itself the

[1] All capitalized terms used herein are the same as those used in the Settlement Agreement, ECF No. 74-2.

[2] A total of 16 Class Members mailed objections to counsel for the Parties but neglected to send their objections to the Court, as required by the settlement. *See* objections of Melinda Adams; Catherine Butterworth; Timothy Scott Flatman; Michael Frisch; Lilia Garcia; Dennis Greenfield; John Henderson; Marilyn Jackson; Katrina Jones; Joshua Knight; Donald Lesher; Julia Lloyd; Jami Lund; Vikky Monterroza; James & Julie Morrison; and M. Elaine Proctor. These objections substantially overlap with the 42 objections that were sent to with the Court, and can be broken down more or less as follows:

Nature of Objection	Class Members
Length of Warranty Extension	Catherine Butterworth; Timothy Scott Flatman; Lilia R. Garcia; Katrina Jones; Donald Lesher; Julia Lloyd; and Vikky Monterroza.
Reimbursement for Incidental/Consequential Damages	Michael Frisch and James & Julie Morrison.
Alleged Diminution of Value	Dennis Greenfield
Miscellaneous Objections re Sufficiency of Remedies / Complaints About Process	Melinda Adams; John Henderson; Marilyn Jackson; Joshua Knight; M. Elaine Proctor.
Objections as to Attorneys' Fees	Jami Lund

fairness, adequacy, and reasonableness of the Settlement. *Whitford v. First Nationwide Bank*, 147 F.R.D. 135, 141 (W.D. Ky.1992) ("[t]he small number of objectors is a good indication of the fairness of the settlement") (citing *Laskey v. Int'l Union*, 638 F.2d 954 (6th Cir. 1981)); *McGee v. Continental Tire N. Am., Inc.*, No. CIV. 06-6234(GEB), 2009 WL 539893 (D.N.J. Mar. 4, 2009) (75 opt outs from a class of 285,998 shows that "the Class [ ] strongly favors approval of the Settlement"); *Yaeger v. Subaru of America*, No. 14-4490-JBS, 2016 WL 4541861, at *14 (D.N.J. Aug. 31, 2016) (finding favorable class reaction where 28 class members objected out of 665,730 class notices or 0.005% and 2,328 individuals (or 0.35%) opted out); *McLennan v. LG Electronics USA, Inc.*, No. 2:10-CV-03604 WJM, 2012 WL 686020, at *6 (D.N.J. Mar. 2, 2012) (107 opt-outs out from a class of 418,411 favored approval of settlement); *Skeen v. BMW of North America*, No. 13-1531-WHW, 2016 WL 4033969, at *8 (D.N.J. July 26, 2016) (finding favorable class reaction when 123 out of 186,031 recipients of class notices opted out, and 23 submitted objections).

Indeed, "[a] certain number of . . . objections [and opt-outs] are to be expected in a class action . . . If only a small number are received, the fact can be viewed as indicative of the adequacy of the settlement," and "[a] court should not withhold approval of a settlement merely because some class members object." *In re Skechers Toning Shoe Prods. Liab Litig.*, No. 3:11-MD-2308-TBR, 2013 WL 2010702, at *7 (W.D. Ky. May 13, 2013) (citations omitted). Here, "[t]hat the overwhelming majority of class members have elected to remain in the Settlement Class, without objection, constitutes the 'reaction of the class,' as a whole, and demonstrates that the settlement is 'fair, reasonable, and adequate.'" *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 527 (E.D. Mich. 2003) (citation omitted).

Moreover, the reaction also compares favorably to class member reactions to other automotive settlements approved by federal courts. *See, e.g., Eisen v. Porsche Cars N. Am.*, No. 11-09405-CAS, 2014 WL 439006, at *5 (C.D. Cal. Jan. 30, 2014) ("Although 235,152 class notices were sent, 243 class members have asked to be excluded, and only 53 have filed objections to the settlement."); *Milligan v. Toyota Motor Sales, U.S.A., Inc.*, No. C 09-05418 RS, 2012 WL 10277179, at *7 (N.D. Cal. Jan. 6, 2012) (finding favorable reaction where 364 individuals opted out [0.06%] and 67 filed objections [0.01%] following a mailing of 613,960 notices); *Browne v. Am. Honda Motor Co.*, No. 09-06750-MMM, 2010

WL 9499072, at *14 (C.D. Cal. July 29, 2010) (finding favorable class reaction where, following a mailing of 740,000 class notices, 480 (0.065%) opted out and 117 (0.016%) objected).

By granting preliminary approval, this Court has already determined that the Settlement Agreement is fair, reasonable and adequate, subject to objections. With only a relative handful of objections—or 0.001% of the Settlement Class—all lacking in merit, the Court's preliminary assessment has been separately endorsed by the Settlement Class. Accordingly, this Court should grant final approval.

III. THE COURT SHOULD OVERRULE ALL OBJECTIONS TO THE SETTLEMENT

In any litigation involving a large class, an absence of objections would be "extremely unusual." *See In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 478 (S.D.N.Y. 1998) (observing that "[i]n litigation involving a large class, it would be 'extremely unusual' not to encounter objections."). Here, a relatively small number of Class Members—42 out of 2,892,596 —have objected to the Settlement. Their objections largely overlap and can be classified into five distinct categories of objections: (1) complaints about the sufficiency of the extended warranty (i.e., that it should cover more miles or years) and/or complaints about being outside of the extended warranty and nevertheless wishing to qualify for the Settlement's benefits because the Class Members experienced problems when their Class Vehicles were within the warranty; (2) complaints that the Settlement should have reimbursed Class Members who already paid for extended warranties; (3) general objections to the sufficiency of the Settlement's remedies, or that the Settlement should have provided Class Members' own preferred remedies and perks, such as a recall, a complete "fix" for their CVT issues, and/or reimbursement for various kinds of incidental/consequential costs and damages; (4) general objections to Nissan having produced the Class Vehicles with the alleged defect; and (5) a (lodged but not filed) objection as to attorneys' fees.

Nature of Objection[3]	Class Members
Length of Warranty Extension	Laurie Balubar (1); Sharon Bayly (2); Anthony Boronczyk (3); Avis Chatman (4); Susan Church Tajima (5); Matthew Dama (6); Roman Dzhurinsky (7); Steven Fast (8); Marie Antoinette Geurts (9); Seyedali Ghahari (10); Steven & Robin Kearns (11); Jacob Lewis (12); Jane Moore (13); Kim Nguyen (14); Tracy Rasinski (15); Gina Riva (16); Marcia Rodriguez (17); John and Joyce Romanski (18); Brian Stavlo (19); Thomas Vickers (20); Jeana Walton-Day (21); Joanne Weisman (22); Susan White (23); Halid Yerebakin (24).
Reimbursement for Class Members Who Already Purchased Extended Warranties	Giuseppe Baiamonte (25); Dustin Zak (26)
Preferred Remedies / Reimbursement for Incidental/Consequential Damages	Adrian Coyoc (27); Rebecca Morris & Andrew Gordon (28); Earl LaPlace, Jr. (29); Cynthia Seibert (30); Martha Gomez Zorrilla (31).
Diminution of Value	Kirsten Loid (32); John O'Mara (33); Arthur Rhea (34); Amy Suchy (35)
Sufficiency of Voucher	Gregg McCallum (36); Marylou Powers (37)
Vehicle Recall or CVT "Fix"	LaShawn Jackson (38); Jessica Moore (39); Cynthia Newsome (40); James Reed (41)
Settlement's Requirements	Robert Hull (42)

A. The Court Should Overrule Objections to the Length of the Extended Warranty

The most common objection to the Settlement is that the extended warranty is insufficient and does not cover repairs far enough into the future. As a general matter, these objections amount to little more than second-guessing of the parties' determination that an 84 month/84,000 mile warranty extension is fair in light of the risks of further litigation. This cannot serve as a basis for sustaining the objections, since objectors could simply have opted out if they fall outside of the coverage period. *See Alin v. Honda Motor Co.*, No. 08-4825, 2012 WL 8751045, at *15 (D.N.J. Apr. 13, 2012) ("It was

[3] For illustrative purposes, the chart above groups each Class Member's *principal* grievance by major category of objection. Although these Class Members often had multiple such grievances to the Settlement, in the interest of avoiding repetition, the Parties believe it is more efficient to respond to each category of objection raised than to repeat their responses to each individual Class Member's multiple overlapping objections. Separately, David Johnson also wrote to the Court about the settlement. His submission does not appear to be an objection to the Settlement, but rather a request to participate. Mr. Johnson's submission is therefore not treated as an objection to the Settlement.

reasonable to exclude older, more traveled vehicles from coverage, and these objectors are free to opt out of the settlement and pursue new litigation if they so desire.").

There is nothing unusual about extending warranty coverage to a reasonable length, as "[o]ther courts have upheld similar class action settlements which place age and mileage restrictions" for benefits. *See Sadowska v. Volkswagen Group of America*, No. 11-00665, 2013 WL 9600948, *6 (C.D. Cal. Sep. 25, 2013) (overruling objection that extended warranty benefit for CVT transmission offered by the settlement is insufficient). This is because "negotiating a cut-off at some point was necessary and is reasonable because settlement is the result of compromise." *In re Nissan Radiator/Transmission Cooler Litigation*, No. 10-CV-7493-VB, 2013 WL 4080946, at *12 (S.D.N.Y. May 30, 2013). Further, "it is not the role of the Court to determine where the cut-off should be and impose that line on the parties." *Id*. Indeed, a settlement necessarily "involves some line-drawing, and full compensation is not a prerequisite for a fair settlement." *Asghari v. Volkswagen Grp. of Am., Inc.*, No. CV1302529MMMVBKX, 2015 WL 12732462, at *28 (C.D. Cal. May 29, 2015) (internal quotations deleted); *Aarons v. BMW of N. Am., LLC*, No. 11-7667-PSG, 2014 WL 4090564, at *12 (C.D. Cal. Apr. 29, 2014) (explaining that all limits on compensation are "by their nature somewhat arbitrary" but approving the mileage cut-off for compensation given that it "was the product of arms'-length negotiation"). Here, the Settlement terms were negotiated after months of mediated sessions and in full consideration of the litigation risks and the millions of consumers receiving a meaningful benefit under the Settlement.

Fundamentally, a "[s]ettlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Moreover, the Settlement must be evaluated by "[w]eighing the uncertainty of relief against the immediate benefit provided in the settlement." *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005).

There is a reason similar settlement benefits have been approved in several courts across the country: they are fair and offer significant value to a large number of Class Members. Specifically, the vehicle age and mileage extension in the Settlement is substantially similar to that approved in an

automotive settlement involving Nissan vehicles equipped with CVT transmissions in *Batista v. Nissan N. Am., Inc.*, No. 1:14-cv-24728-RNS (S.D. Fla. June 29, 2019). In *Batista*, as here, the settlement provided a twenty-four (24) month or twenty-four thousand (24,000) miles warranty extension (whichever occurs first). The district court in *Batista* found that the "benefits to the Settlement Class constitute fair value given in exchange for the release of the claims of the Settlement Class . . . [and that] the consideration to be provided under the Settlement is reasonable considering the facts and circumstances of [the] case, the types of claims and defenses asserted in the lawsuit, and the risks associated with the continued litigation of these claims.").

Similarly, in *Collado v. Toyota Motor Sales, U.S.A., Inc.*, Nos. CV-10-3113-R, 2011 WL 5506080, at *2 (C.D. Cal. Oct. 17, 2011), the district court rejected objections that the settlement's two-year, 20,000-mile warranty extension was unfair, stating that "there has to be some reasonable limit to the warranty period, as any longer warranty period would defeat the purpose of a limited warranty." And in *Nissan Radiator*, No. 10 CV 7493 VB, 2013 WL 4080946 (S.D.N.Y. May 30, 2013), the court held that objections to the 10–year/100,000–mile warranty extension cut-off were "not a basis for finding the settlement is unfair or unreasonable." *Id.* at *11. As the court in *Nissan Radiator* held, "negotiating a cut-off at some point was necessary." *Id.* at *12.

The benefits of extended warranties as settlement consideration have been recognized by numerous courts. *See Klee v. Nissan N. Am., Inc.*, No. 12-8238 AWT, 2015 WL 4538426, at *8 (C.D. Cal. July 7, 2015) (extended warranty was fair settlement consideration because it was directed at repairing the alleged harm and noting that other courts had approved extended warranties with age and mileage restrictions as settlement considerations); *Eisen,* 2014 WL 439006, at *8 (C.D. Cal. Jan. 30, 2014) (approving settlement agreement with an extended warranty and noting that "it is significant that the Settlement Agreement provides extended warranty coverage that exceeded the warranties provided" at the time of purchase).

Accordingly, the Court should overrule all objections to the sufficiency of the warranty extension as it is fair and reasonable.

B. The Court Should Overrule Objections to Lack of Reimbursement for Purchases of Extended Warranty Coverage

A handful of Class Members have objected because the Settlement does not reimburse those Class Members who already purchased extended warranty coverage. First, such purchased extended warranty coverage is not limited to coverage for the CVT defect alleged in this lawsuit or addressed by the Settlement. Because these purchased extended warranties are broader than the Warranty Extension, lack of reimbursement for their purchase does not render the Settlement unfair. *See Mendoza v. Hyundai Motor Co.*, Ltd., No. 15-CV-01685-BLF, 2017 WL 342059, at *10 (N.D. Cal. Jan. 23, 2017) (overruling objections that the settlement did not reimburse the cost of previously purchased extended warranties). To the contrary, it "would not be logical to refund the whole purchase price of the extended warranty where it provides exclusive coverage for a myriad of repairs beyond [what is available here]." *Yaeger v. Subaru*, No. 114CV4490JBSKMW, 2016 WL 4541861, at *14 (overruling the exact same objection as raised here). And, "nothing in the class settlement voids the valuable coverage of any extended warranty." *Id.*

Second, the purchase of extended warranty coverage was voluntary. The Court should not be persuaded that to be fair, the Settlement must reimburse these voluntary purchases. *See Sadowska*, 2013 WL 9600948, at *6 (overruling objections where the objector was not required to purchase the third party service contract); *see also Eisen*, 2014 WL 439006, at *6 ("[I]t is not unfair to be [sic] limit recovery to actual net out-of-pocket costs.").

Third, class members who purchased extended warranties still receive value from the Settlement because the purchased extended warranties typically have large deductibles, and class members will not have to pay any deductible for qualifying repairs under the Extended Warranty offered in the Settlement.

Accordingly, the Court should overrule all objections regarding the lack of reimbursement for extended warranty purchases.

C. The Court Should Overrule Objections Relating to Class Members' Own Preferred Benefits

A number of Class Members have complained that the Settlement is deficient because it does not include their own preferred remedies and benefits; i.e., these Class Members have proposed to amend the

Settlement to include additional perks and benefits, each suited to the Class Member's specific needs and desires. But "the issue here is whether the relief provided in the settlement, taken as a whole, is adequate and reasonable, not whether something more lucrative might make the settlement more favorable to Class Members or certain Class Members." *Elkins v. Equitable Life Ins. of Iowa*, No. 96-296, 1998 WL 133741, at *30 (M.D. Fla. Jan. 27, 1998). Accordingly, in evaluating the Settlement's overall benefit to the Class Members as a whole, the Court should deny these individualized objections that would not inure to the benefit of the entire Class.

1. The Court Should Overrule All Objections Regarding Lack of Reimbursement for Incidental/Consequential Damages

A few Class Members argue that the Settlement is inadequate because it does not compensate Class Members for alleged incidental and consequential damages. These objections must be overruled, as the Settlement cannot be found unfair or unreasonable simply because the negotiated deal does not compensate Class Members for consequential damages such as lost productivity, time, and frustration—highly individualized alleged damages. *See Mendoza*, 2017 WL 342059, *10 ("[T]he Court finds that a class settlement is not capable of resolving every possible consequential damages claim that a Class Member may wish to pursue"); *Milligan*, 2012 WL 10277179, at *7 ("The settlement also does not provide compensatory damages for those class members who suffered incidental losses… Objectors who raised these concerns could have simply opted out of the Settlement.").

That some class members may not be fully compensated for their alleged consequential damages is not grounds for finding a settlement unfair. *See Browne*, 2010 WL 9499072, at *18 ("While the proposed settlement does not perfectly compensate every member of the class, it is unlikely that any settlement of the claims of a class of more than 740,000 members would achieve such a result"); *Glass v. USB Finan. Svcs.*, No. 06-cv-4068, 2007 WL 221862, *6 (N.D. Cal. Jan. 26, 2007) ("Settlements by their very nature are not intended to provide full compensation for the claimed losses and consequently cannot be calculated with the same precision as actual damages"). The Settlement is meant to benefit the many Class Members who do not wish to file an individual action in court, including those who do not have strong individual claims but who would still benefit from the relief it provides. *See Eisen*, 2014 WL

439006, at *7 (citing cases overruling objections because "class members could have opted out if they objected to the benefits offered by the settlement."); *Aarons*, 2014 WL 4090564, at *13 (overruling objections that the settlement did not provide adequate compensation for certain categories of Class Members because "[t]o the extent those individuals believe the settlement to be unfair, they could have opted out of the class.").

In short, these objectors simply demand to "have a better deal," which is not the basis for a valid objection. *See Perez v. Asurian*, 501 F. Supp. 2d 1360, 1382 (S.D. Fla. 2007) (holding that objections based on a desire to have a better deal cannot be sustained). A handful of class members requesting additional benefits is not grounds for finding a settlement unfair. *See Browne,* 2010 WL 9499072, at *18 ("While the proposed settlement does not perfectly compensate every member of the class, it is unlikely that any settlement of the claims of a class of more than 740,000 members would achieve such a result.").

2. The Court Should Overrule All Objections Regarding Lack of Compensation for Alleged Diminution of Value

Under the Settlement, former owners of Class Vehicles who had two or more transmission repairs can receive a voucher in the amount of $1,000 for the purchase or lease of a new Nissan vehicle. If those former owners also paid out of pocket for qualifying repairs, they can submit a claim for reimbursement of their out-of-pocket payments for parts and labor instead of receiving the voucher. Several Class Members argue that the Settlement should further compensate Class Members who were forced to sell their Class Vehicles at a reduced price due to the alleged defect; i.e., the Settlement should compensate them for their diminution of value claims.

The Court should overrule these objections because it would be impracticable for the administrator to determine which claimant would have a valid diminution of value claim. For instance, would a Class Member's bare assertion that his or her failure to sell a vehicle at "fair market value" be treated as a prima facie case of diminution of value, particularly without evidence as to the actual condition of the vehicle at the time of sale (which might not even be available now)? Certainly, such assertions would not be accepted by courts in determining liability. *See In re Imprelis Herbicide Mktg*., 296 F.R.D. 351, 368 (E.D. Pa. 2013) (rejecting former owners' objection that settlement failed to fairly

compensate them vis-à-vis current owners because objectors have shown no damages "aside from speculating, i.e., with no supporting evidence, that they had suffered a loss in property value."). Indeed, "courts have rejected abstract claims for diminution-in-value damages allegations of actual or attempted sale at a diminished price." *Nissan Radiator,* 2013 WL 4080946, at *14.

Because diminution of value is difficult to prove, an overwhelming number of courts have rejected the contention that a settlement is unfair because it does not compensate for diminished value. *See Yaeger*, 2016 WL 4541861, *15 (overruling objection based on diminution of value and observing that "evidence of diminished value of a particular vehicle, given the multiple variables determining market value, may be difficult to obtain and to prove."); *Eisen*, 2014 WL 439006, at *8 ("These objectors have not taken into account the difficulties of establishing class-wide diminution in value damages[.]"); *Vaughn v. Am. Honda Motor Co.*, 627 F. Supp. 2d 738, 749 (E.D. Tex. 2007) ("It does not make the settlement unfair or unreasonable that the class has to release speculative claims for diminution of value."); *Nissan Radiator*, 2013 WL 4080946, at *14 (finding that class counsel reasonably excluded diminution of value claims because they "present additional challenges because proving them requires individualized inquiry."); *Milligan*, 2012 WL 10277179 at *7 (overruling objection and observing that "diminution in value cases face significant obstacles regarding proof."); *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160 (C.D. Cal. 2010) (no reimbursement for trade-ins and sales at a loss).

3. The Court Should Overrule the Objections to the Sufficiency of the Vouchers

Several Class Members object to the Settlement on the ground that the voucher benefit is not helpful to Class Members who have no interest in buying a new car. The voucher benefit was negotiated to provide some relief to the small group of former owners of Class Vehicles who had two or more CVT repairs during their period of ownership. Certain former owners may also be eligible for reimbursement of expenses for qualifying repairs and may select the reimbursement option rather than the voucher if they do not believe the voucher benefits them. Former owners who do not believe that the voucher is helpful to them, and do not have reimbursable repair expenses, were of course free to opt out of the Settlement. In negotiating a Settlement, Class Counsel attempted to secure relief for the largest percentage of Class

Members, taking into account the inherent need for compromise in order to achieve a favorable result. Settlements are by definition the product of compromise, and the possibility "that a settlement could have been better . . . does not mean the settlement presented was not fair, reasonable or adequate." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

Moreover, the Court cannot impose a "better settlement," as the Court "does not have the power to alter the terms of the proposed settlement." *Yaeger*, 2016 WL 4541861, at *17. The Court's duty is to "approve the settlement, taking all relevant facts and circumstances into account" or "reject the proposed settlement and put the case back on the litigation track." *Id*. The proposed Settlement should be finally approved, as the terms are fair, reasonable and adequate in light of the significant risks of further litigation, as shown by the low number of objections and opt-outs.

4. The Court Should Overrule all Objections Regarding the "Failure" of the Settlement to Provide a Total "Fix" of Their CVT Issues And/Or a Recall

A small group of Class Members generally fault the Settlement for not providing an option to "fix" their Class Vehicles and/or for not recalling the Class Vehicles. These objections are based on a fundamental misunderstanding of what the Settlement is meant to accomplish. As a foundational matter (and the foundation of nearly all class settlements), the Settlement itself is not an admission of defect, wrongdoing or liability on the part of Nissan. Accordingly, a requirement to "fix" the alleged defect or issue a recall, runs counter to the spirit of class action negotiation and settlement. The purpose of the Settlement is to provide Class Members with fair, adequate, and reasonable remedies for their claims, which the Settlement here more than provides.

Settlements are by their very nature compromises of disputed claims that provide "fair, adequate, and reasonable" relief—not total fixes. Settlements are not designed to provide class members with a "total fix" of the issue, even if such a fix were available, as defendants rarely, if ever, concede that there is an issue that needs to be "fixed." Nissan did not make such a concession here, and would vigorously oppose the class' claims if the Court were to reject the Settlement and put the case back on a litigation track.

5. The Court Should Overrule the Objections to the Settlement's Eligibility Requirements

A number of Class Members have asked for the Settlement's eligibility requirements to be either universally waived or simply "relaxed" in their particular cases. For example, Robert Hull states: "I object to the settlement because I should not have to pay hundreds of dollars to 'maybe' qualify to get my CVT replaced," given that Mr. Hull's vehicle is not in running condition.

Mr. Hull's objection and others like it are premised on a fundamental misunderstanding of the Settlement. First, the Settlement extends the warranty on Class Vehicles so that Mr. Hull and other Class Members who are within the extended warranty will not have to bear *any* out of pocket costs to repair/replace their CVTs. Second, Mr. Hull's decision to park his Class Vehicle in his "driveway since 2016 [because it is] unable [to be] driven," and to forego any attempt to have the vehicle inspected and problems diagnosed/fixed is his own prerogative, but it does not make the Settlement unreasonable. Indeed, the Settlement's warranty extension does not impose any new limitations or hurdles to receiving repairs—it simply extends the duration of the New Vehicle Limited Warranty that accompanied the vehicle that Mr. Hull purchased. The Settlement's remedies are valuable when Class Members take advantage of them. The fact that a Class Member would rather sit on his rights than partake in the Settlement's benefits cannot render the Settlement unreasonable.

Separately, some Class Members, such as Michael Blazek-Frisch and John Henderson, appear to argue that the Settlement's evidentiary requirements should be relaxed such as in cases where Class Members experienced problems that were not independently verified by a dealer. But this approach would create nearly insurmountable administrative burdens (and far too many individualized issues—a consideration in weighing the risk of proceeding with litigation). The most immediate problem would be proof of diagnostic/repair attempts, which in such cases would have to be based on ignored—and thus undocumented—complaints. This process would exacerbate proof problems, as claimants' submissions could be unreliable due to faulty recollections or an inability to explain why the complaint was disregarded by the dealer. Relieving Class Members of the obligation to show proof of repair also increases the likelihood of fraud. While these burdens of proof might be satisfied more easily in

individual cases, where a consumer's credibility and factual claims can be tested by the defendant and evaluated by the court or an arbitrator, if implemented in a settlement involving nearly 3 million Class Members, they would create a protracted claims process requiring the Claims Administrator to evaluate each claimant's subjective assertions, subject to challenge by Class Counsel or by Nissan. The Settlement cannot be found to be unfair because the Parties chose a more manageable solution that reduces the potential for fraud. *See Keegan v. Am. Honda Co.*, No. 10-09508-MMM, 2014 WL 12551213, at *15 (C.D. Cal. Jan. 21, 2014) (observing that settlements requiring documentary proof for claims are frequently approved "given the defendant's need to avoid fraudulent claims").

D. The Court Should Overrule all Objections to Attorneys' Fees

There is only one general objection as to attorneys' fees—an objection by Class Member Jami Lund. The objection generally argues that to award attorneys' fees as a percentage of the Settlement's benefits would amount to "a blight on the legitimacy of the judicial system, and exacerbate the divide between wealthy and the poor."

For the reasons discussed in greater detail in the Motion for Attorneys' Fees, given the amount of work performed by Plaintiffs' Counsel and the outstanding results achieved and other applicable factors, Plaintiffs' requests for attorneys' fees and costs are reasonable and should be approved. Ms. Lund's objection should therefore be overruled.

IV. CONCLUSION

Based on the foregoing, the Court should overrule the objections raised by Class Members and enter the proposed Order Granting Final Approval of the Class Action Settlement.

Dated: February 25, 2020

Respectfully submitted,

/s/ Cody R. Padgett

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