

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SARAH DUNCAN, RICHARD SILVER,  
ANTHONY WEISSENBURGER, JUDY  
WEISSENBURGER, SHAUN COONEY,  
CLINTON STEWART, MICHELLE LIM  
STEWART, VINCENT CHIARELLI, PHILIP  
DRAGONETTI, MICHELE MASZON, LISA  
SUROWEIC, and JOHN COMPTON,  
individually and on behalf of others similarly  
situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA, INC.,

Defendant.

Civil Action No. 1:16-CV-12120-DJC

~~PROPOSED~~ ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT

**ORDER**

WHEREAS, a class action lawsuit is pending before this Court where the Plaintiffs are Sarah Duncan, Richard Silver, Anthony Weissenburger, Judy Weissenburger, Shaun Cooney, Clinton Stewart, Michelle Lim Stewart, Vincent Chiarelli, Philip Dragonetti, Michele Maszon, Lisa Suroweic, and John Compton, suing individually and as the representatives of a class (“Plaintiffs”);

WHEREAS, on or about November 18, 2019, Plaintiffs executed a Confidential Settlement Term Sheet with Defendant Nissan North America, Inc. (“NNA”) (collectively, the “Parties”) concerning claims asserted in this lawsuit;

WHEREAS, on <sup>February 7, 2020</sup> ~~[DATE]~~, the Parties entered into a Settlement Agreement (the “Settlement Agreement”) concerning the claims in the Lawsuits<sup>1</sup>; and

WHEREAS, the Court has read and considered the Settlement Agreement and its attached exhibits, and has considered the arguments of counsel for the Parties in this matter and, good cause appearing,

**IT IS HEREBY ORDERED** that the Motion for Preliminary Approval of Class Action Settlement is **GRANTED, AND IT IS FURTHER ORDERED AS FOLLOWS:**

**PRELIMINARY CLASS SETTLEMENT APPROVAL  
AND SETTLEMENT HEARING**

1. The Court preliminarily certifies the Settlement Class, for settlement purposes only, consisting of: all current and former owners and lessees of Class Vehicles<sup>2</sup> who purchased or leased a Class Vehicle in Colorado, Florida, Maryland, Massachusetts, New Jersey, New York,

<sup>1</sup> This Order incorporates by reference the definitions in the Settlement Agreement, and all terms herein shall have the same meaning as set forth in the Settlement Agreement.

<sup>2</sup> The Class Vehicles are the 2004-2008 model year Nissan Maxima, 2004-2009 model year Nissan Quest, 2004-2006 model year Nissan Altima equipped with a VQ35 engine, 2005-2007 model year Nissan Pathfinder, 2005-2007 model year Nissan Xterra, and 2005-2007 model year Nissan Frontier equipped with a VQ40 engine.

Oregon, North Carolina, or Texas. Excluded from the Settlement Class are: (a) NNA and its officers, directors, employees and outside counsel; and its affiliates and the affiliates' officers, directors and employees; Nissan distributors and the distributor's officers and directors; and Nissan dealers and their officers, directors, and employees; (b) Plaintiffs' Counsel, and their employees; (c) judicial officers and their immediate family members and associated court staff assigned to this case, or the First Circuit Court of Appeals; and (d) persons or entities who or which timely and properly exclude themselves from the Settlement Class.

2. The Court preliminarily certifies that, for settlement purposes only, the requirements of FED. R. CIV. P. 23(a) and 23(b)(3) have been satisfied with regard to the Settlement Class, and finds that the class action settlement set forth in the Settlement Agreement entered into among the Parties and their counsel appears to be proper; is within the range of reasonableness for a class settlement; is the product of arm's length and informed negotiations; treats all Settlement Class Members fairly, and is presumptively valid, subject to any objections that may be raised at the Fairness Hearing. The Court further finds that the Parties conducted sufficient investigation and research, and their attorneys were able to reasonably evaluate their respective positions. The terms of the Settlement Agreement are, therefore, preliminarily approved, subject to further consideration at the Fairness Hearing.

3. During the Final Approval and Fairness Hearing, which shall be held before this Court on August 25, 2020, at 3 ~~pm~~/p.m. in Courtroom 11 of the United States District Court for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, 5th Floor, Boston, Massachusetts 02210, the Court will determine whether the proposed Settlement Agreement is fair, reasonable, and adequate, and whether final approval shall

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be given to it, and whether Plaintiffs' Counsel's application for an award of Attorneys' Fees and Expenses should be granted.

**NOTICE OF SETTLEMENT**

4. ~~The Claims Administrator shall prepare and provide the notices pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2 (2005), including but not limited to the notices to the United States Department of Justice and to the Attorneys General of all states in which Settlement Class Members reside, as specified in 28 U.S.C. § 1715, after the Court approves the Notice.~~

5. The Parties shall cause Notice of the proposed Settlement and the Fairness Hearing to Settlement Class Members as follows:

a. The Parties have agreed to designate Kurtzman Carson Consultants, LLC to serve as the independent third-party Claims Administrator (the "Claims Administrator") to assist in the Notice and Settlement claims administration process.

b. No later than ninety (90) days from the entry of this Order, the Claims Administrator shall commence the mailing of the Notice substantially in the form attached to the Settlement Agreement as Exhibit "A" which shall be mailed, postage prepaid, via the United States Postal Service, at the expense of NNA, to the Settlement Class for whom there is a last-known valid address and for whom addresses are obtained from a third-party, such as IHS Automotive or Experian, which maintains databases related to the automobile industry and which specializes in obtaining such information from, inter alia, the Department of Motor vehicle for the States of Colorado, Florida, Maryland, Massachusetts, New Jersey, New York, Oregon, North Carolina, and Texas. The Claims Administrator will review the address data provided by NNA and/or any third-party vendor, check

addresses for validity, eliminate duplications and process the addresses through the National Change of Address database for the purpose of updating the addresses.

c. The Claims Administrator will file with the Court and serve upon Plaintiffs' Counsel and NNA's Counsel no later than twenty-eight (28) days before the Fairness Hearing a declaration stating that Notice was disseminated in a manner consistent with the terms of the Settlement Agreement and this Preliminary Approval Order.

6. The Court approves the form of Notice. The Court finds that these procedures established for mailing and distribution of such Notice as set forth in this Order satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process. The Court further finds that these procedures are the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled thereto.

7. The Claims Administrator shall be responsible for receipt of all written communications from the Settlement Class and shall preserve same and all other written communications from Settlement Class Members or any other person in response to the Notice.

**CLASS REPRESENTATIVES AND CLASS COUNSEL**

8. The Court appoints the following individuals as representatives of the Settlement Class: Sarah Duncan, Richard Silver, Anthony Weissenburger, Judy Weissenburger, Shaun Cooney, Clinton Stewart, Michelle Lim Stewart, Vincent Chiarelli, Philip Dragonetti, Michele Maszon, Lisa Suroweic, and John Compton.

9. The Court appoints Kantrowitz, Goldhamer & Graifman, P.C. and Stull Stull & Brody as Class Counsel. The Court finds that the attorneys at these two law firms have demonstrable experience litigating, certifying, and settling class actions, and will serve as adequate counsel for the Settlement Class.

**REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASS**

10. A Settlement Class Member wishing to exclude himself/herself from the Settlement must send to the Settlement Administrator a signed letter including (a) his/her name, (b) address, ~~(c) telephone number, (d) model and year of vehicle, (e) the VIN number of the vehicle(s); (f)~~ mileage at the time of Notice, and (g) a clear statement communicating that he/she elects to be excluded from the Settlement Class. Any request for exclusion must be postmarked on or before the exclusion deadline provided in the Notice. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the date specified in the Notice, shall be bound by all terms of the Settlement Agreement and the Final Order and Judgment. The request must be personally signed by or on behalf of the Settlement Class Member requesting exclusion, and shall not be effective unless it is made in the manner and within the time set forth in this paragraph. No Settlement Class Member, or any person acting on behalf or in concert or participation with that Settlement Class Member, may request the exclusion of any other Settlement Class Member from the Settlement Class. In order to exclude himself or herself, a Class Member shall mail the request for exclusion so that the postmark is on or before a date to be specified in the Notice, which date shall be no later than twenty eight (28) days prior to the date set forth for the Final Fairness Hearing as specified in the Notice.

11. Copies of requests for exclusion shall be provided by the Settlement Administrator to Plaintiffs' Counsel and NNA's Counsel not later than three (3) business days after the deadline for submission of requests for exclusion. The original requests for exclusion will be filed with the

Court by the Settlement Administrator not later than ~~twenty~~ <sup>eight</sup> (28) days prior to the Fairness Hearing Date. 2002

12. All Settlement Class Members who have not submitted a timely and valid written request for exclusion from the Settlement Class will be bound by the Released Claims and other terms and conditions set forth herein and all proceedings, orders and judgments in the Lawsuits, even if those persons have previously initiated or subsequently initiated litigation or other proceedings against NNA, Nissan Motor Co., Ltd. ("NML"), or their subsidiaries, relating to the claims released pursuant to or covered by the terms of this Settlement.

**OBJECTIONS BY SETTLEMENT CLASS MEMBERS**

13. In accordance with the Settlement Agreement, any Settlement Class Member who has not requested exclusion from the Settlement Class and follows the procedure set forth in paragraph 14 below may appear at the Fairness Hearing to show cause as to why any terms of the proposed Settlement should not be approved as fair or reasonable, or why a judgment should not be entered thereon.

14. In order to contest the approval of the Settlement Agreement, a Settlement Class Member must serve Plaintiffs' Counsel and NNA's Counsel by mail at the addresses listed below and must file the Objection with the Court, which Objection must be filed and copies postmarked no later than twenty-eight (28) days prior to the Fairness Hearing date specified in the Notice. To state valid Objections to the Settlement, a Settlement Class Member making Objections must provide the following information in his or her written Objections: (a) the Settlement Class Member's full name, current address, and telephone number; (b) the model year and model of his or her vehicle(s) and approximate date(s) of purchase; (c) whether the Settlement Class Member still owns the vehicle(s); (d) the VIN number of the vehicle(s); (e) current odometer mileage of the

vehicle(s) currently owned; (f) a specific and clear statement of the Settlement Class Member's reasons for objecting to the Settlement, including the grounds for his or her position; (g) a detailed list of any other objections to any class action settlements submitted to any court, whether State, ~~Federal, or otherwise, in the United States in the previous five (5) years;~~ (h) ~~whether the Settlement~~ Class Member intends to appear at the Fairness Hearing and whether the Settlement Class Member will be represented by separate counsel; and (i) the Settlement Class Member's signature with the date of signature. Settlement Class Members may so object either on their own or through an attorney hired at their own expense.

15. Objections must be served by first class mail:

Upon NNA's Counsel at:

E. Paul Cauley, Jr.  
S. Vance Wittie  
FAEGRE DRINKER BIDDLE & REATH LLP  
1717 Main Street, Suite 5400  
Dallas, Texas 75201

and

Upon Class Counsel at:

Gary S. Graifman  
Jay I. Brody  
KANTROWITZ, GOLDHAMER & GRAIFMAN, P.C.  
747 Chestnut Ridge Road, Suite 200  
Chestnut Ridge, NY 10977

Howard Longman  
Patrick Slyne  
STULL STULL & BRODY  
6 East 45th Street, Fifth Floor  
New York, NY 10017

and



Upon the Claims Administrator at: <sup>Kurtzman</sup> Carson Consultants, LLC  
[INSERT] an address to be provided in Notice to Class members *dsj/c*

16. Any Settlement Class Member who does not make an Objection in the manner provided above shall be deemed to have waived such Objection and shall forever be foreclosed from making any Objection to the fairness or reasonableness of the proposed Settlement or the Final Order and Judgment to be entered approving the Settlement. Any Settlement Class Member who wishes to speak at the Fairness Hearing must follow the procedures outlined in the Notice that the Settlement Class Member receives.

17. Papers by counsel in connection with the Settlement shall be filed as follows: No later than thirty-five (35) days before the date set by the Court for the Fairness Hearing, Plaintiffs' Counsel will file a motion requesting that the Court enter the Final Approval Order and Final Judgment, which will, among other things, dismiss this lawsuit, with prejudice, subject to the continuing jurisdiction of the Court, approve the Settlement Agreement, certify the Settlement Class and render an award of Attorneys' Fees and Expenses. NNA may, at its discretion, submit such briefing as it deems necessary to support the motion for final approval, clarify its positions, and otherwise protect its interests. Such briefing by NNA will be due no later than fourteen (14) days before the date set by the Court for the Fairness Hearing. Class Counsel and NNA's Counsel shall also be entitled to file responses to any Objections which may have been filed, which responses shall be filed ten (10) days prior to the Fairness Hearing. Class Counsel may submit reply papers to any briefs filed by NNA no later than five (5) days prior to the date set by the Court for the Fairness Hearing.

**TERMINATION**

18. If the Court declines to enter a Final Approval Order and Final Judgment in accordance with all of the material terms of the Settlement Agreement, or the Final Approval Order

and Final Judgment does not for any reason become Final, the Parties to the Lawsuits will be returned to the same position as existed on <sup>February 6, 2020</sup> [DATE], and as if the Settlement Agreement had not been negotiated, made or filed with the Court. Should this occur, (a) the Parties to the Lawsuits

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~~shall move the Court to vacate any and all orders entered by the Court pursuant to the provisions~~ of the Settlement Agreement; and (b) neither the Settlement Agreement, nor any documents filed, submitted, or published pursuant to the Settlement Agreement may be used in any litigation (except to enforce the provisions of the Settlement Agreement) and nothing contained in the Settlement Agreement nor any documents filed, submitted, or published pursuant to the Settlement Agreement shall impact any legal proceedings.

19. In the event the Settlement is not finally approved by the Court, then in such event, the First Amended Complaint in the *Duncan* Action will be withdrawn. The Plaintiffs in the *Chiarelli* Action will resume litigation under the last complaint filed in the *Chiarelli* Action, being the First Amended Class Action Complaint (Docket Entry No. 5), and the Plaintiffs in the *Duncan* Action will resume litigation under the last complaint filed in the *Duncan* Action, being the Original Complaint (Docket Entry No. 1).

20. Except as to paragraphs 18, 19, and this paragraph 20, this Order shall be of no force or effect if the Settlement does not become final, and shall not be construed or used as an admission, concession or declaration by or against the Parties or members of the Settlement Class of the validity of any claim or counterclaim or any actual or potential fault, wrongdoing or liability whatsoever, or by or against the Parties or members of the Settlement Class, that their claims or counterclaims lack merit or that the relief requested in the Complaint or any counterclaims are inappropriate, improper, or unavailable, or as a waiver by any Party of any defense or claims it or they may have.

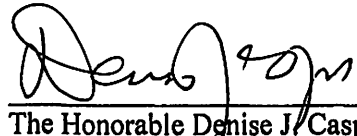
**POWERS AND JURISDICTION OF THE COURT**

21. The Court expressly reserves its right to adjourn or continue the Fairness Hearing or any further adjournment or continuance thereof, and to approve the Settlement Agreement, ~~including any modifications thereto which are acceptable to the Parties, without further notice to~~ Settlement Class Members.

22. Pending Final Approval of the Settlement, the Parties to the Settlement Agreement are directed to carry out their obligations under the terms thereof.

**IT IS SO ORDERED.**

Dated: February 20, 2020

  
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The Honorable Denise J. Casper  
United States District Court Judge