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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ORANGE**

Judge Richard Lee

12
13 CRISTIAN PASCAL and MARIA
MENGONI, on behalf of themselves and all
14 others similarly situated,

15 Plaintiffs,

16 v.

17 NISSAN NORTH AMERICA, INC., a
California Corporation; NISSAN MOTOR
18 CO., LTD., a Foreign Corporation; and DOES
1 through 10, inclusive,

19 Defendants.
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Case No. 30-2019-01085127-CU-BC-CJC

**FIRST AMENDED COMPLAINT AND DEMAND
FOR JURY TRIAL**

1. Violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*
2. Violation of the California Consumer Legal Remedies Act, Civ. Code, §1750, *et seq.*
3. Violation of California Unfair Competition Law, Bus. & Prof. Code, §17200, *et seq.*
4. Violation of California False Advertising Law, Bus. & Prof. Code, §17500, *et seq.*
5. Violation of the Song-Beverly Consumer Warranty Act for Breach of Implied Warranty of Merchantability, Civ. Code, § 1792 & 1791.1
6. Violation of the Song-Beverly Consumer Warranty Act for Breach of Express Warranties, Civ. Code, §§ 1793.2(d) & 1791.2
7. Breach of the Implied Warranty of Merchantability, Cal. U. Com. Code, § 2314
8. Breach of Express Warranty, Cal. U. Com. Code, § 2313
9. Breach of Contract/Common Law Warranty
10. Common Law Fraudulent Concealment

1 Plaintiffs Cristian Pascal and Maria Mengoni (“Plaintiffs”) bring this complaint against
2 Defendants Nissan North America, Inc., Nissan Motor Co., Ltd., and DOES 1 through 10 (“Defendants”),
3 and allege as follows:

4 **I. PARTIES**

5 1. Plaintiff Cristian Pascal, an adult male, is a resident and citizen of Orange County,
6 California.

7 2. Plaintiff Marica Mengoni, an adult female, is a resident and citizen of Orange County,
8 California.

9 3. Plaintiffs Cristian Pascal and Maria Mengoni (hereinafter collectively referred to as
10 “Plaintiffs”) bring this lawsuit on behalf of themselves, the putative class, and the general public.

11 4. Defendant Nissan North America, Inc., is a California corporation organized under the
12 laws of the State of California with its principal place of business in the State of Tennessee.

13 5. Defendant Nissan Motor Co., Ltd., is a foreign corporation with its principal place of
14 business in Japan.

15 6. Defendant Nissan North America, Inc., is a wholly owned domestic subsidiary of
16 Defendant Nissan Motor Co., Ltd.

17 7. Defendant Nissan North America, Inc., is the General Manager of Defendant Nissan Motor
18 Co., Ltd.

19 8. Infiniti is the luxury vehicle division of Nissan, which was started in 1989 in North
20 America. Nissan owns, and is the parent corporation of, Infiniti. Therefore, hereinafter, when the term
21 Nissan is used, it shall include Infiniti.

22 9. Defendants Nissan North America, Inc., Nissan Motor Co., Ltd., and DOES 1 through 10,
23 shall hereinafter be referred to collectively as “Nissan” or “Defendants.”

24 10. Plaintiffs sue fictitious Defendants DOES 1 through 10, inclusive, and each of them,
25 pursuant to Code of Civil Procedure section 474, because their names and/or capacities and/or facts
26 showing them to be liable to Plaintiffs are not presently known. Plaintiffs will seek leave to amend this
27 Complaint if necessary, to reflect the true names and capacities of such fictitious Defendants when
28 ascertained.

1 carbon monoxide meter and that there were no abnormal carbon monoxide readings. The second Nissan
2 dealer rebuffed Mr. Pascal's concerns and refused to test drive the vehicle with Mr. Pascal's carbon
3 monoxide meter (or their own), inspected the vehicle, and returned it to Mr. Pascal, claiming that they
4 could not duplicate the condition.

5 18. At times, when Mr. Pascal and his wife drove the Altima, they felt lethargic and sick. In
6 addition, Mr. Pascal experienced other physical symptoms which resolved when he stopped driving the
7 vehicle. Currently, Mr. Pascal refuses to drive or sell the Altima due to the risk of carbon monoxide
8 exposure and, as such, the vehicle is stored in a secure evidence storage facility in its original condition.
9 He was forced to purchase a new vehicle while still paying off the Nissan Altima.

10 19. Plaintiff Cristian Pascal has suffered an actual injury in fact, as exposure to carbon
11 monoxide (even at low levels) is a concrete harm that results in both physical injuries and economic loss.

12 **b. Plaintiff Maria Mengoni**

13 20. Ms. Mengoni purchased a 2016 Nissan Altima (VIN 1N4AL3AP6GC137824) for herself
14 and her husband, Carlos Mengoni, to drive. When they learned of the carbon monoxide leakage defect,
15 they became fearful of operating the vehicle.

16 21. Plaintiff Maria Mengoni has suffered an actual injury in fact, as exposure to carbon
17 monoxide (even at low levels) is a concrete harm that results in both physical injuries and economic loss.

18 **IV. PLAINTIFFS' GENERAL ALLEGATIONS**

19 22. Plaintiffs are informed and believe and thereon allege that their vehicles were defective at
20 the time of their manufacture, design, development, production, assembly, building, testing, inspection,
21 installation, equipping, endorsement, exportation, importation, wholesaling, retailing, selling, renting,
22 leasing, modification, and repair and entrustment, and that they failed to meet the reasonable expectations
23 of safety of the class of persons of which Plaintiffs were members, and that any benefits derived from the
24 design of said vehicles were substantially outweighed by the risk of harm inherent in said design, in that,
25 and not by way of limitation, despite the availability to Defendants of safer alternative designs, said
26 vehicles presented a substantial and unreasonable risk of injury to the users of said vehicles or those in
27 the vicinity of their use.
28

1 23. Specifically, Plaintiffs are informed and believe and thereon allege that said vehicles were
2 defective in their design, construction, assembly and manufacture, and were dangerous to life and limb
3 of the users and occupants thereof, in that, among other things and not by way of limitation, said vehicles
4 were prone to leak carbon monoxide into the passenger compartment during operation. The
5 aforementioned defects created substantial dangers which were unknown to Plaintiffs and the public in
6 general, and would not be recognized by the ordinary user, and said Defendants failed to give adequate
7 warning of such dangers.

8 24. The defects in the design, manufacture, configuration and assembly of the subject vehicles
9 were a substantial factor in causing the Plaintiffs' vehicles to leak carbon monoxide into the passenger
10 compartment.

11 25. Prior to the sale and distribution of said vehicles, Defendants Nissan and DOES 1 through
12 10, inclusive, knew the vehicles were in a defective condition as previously described. Further, said
13 Defendants, through their officers, directors and managing agents, had prior notice and knowledge from
14 several sources before the subject incident, including but not limited to the results of testing, reports,
15 complaints, documents, internal memoranda, correspondence, news reports, and industry publications,
16 that the subject vehicles were defective and presented a substantial and unreasonable risk of harm to the
17 American motoring public, including Plaintiffs, in that said defects unreasonably subjected occupants to
18 carbon monoxide exposure.

19 26. Despite such knowledge, Defendants Nissan and DOES 1 through 10, inclusive, acting
20 through their officers, directors and managing agents, for the purpose of enhancing Defendants' profits,
21 knowingly and deliberately failed to remedy the known defects in said vehicles, and failed to warn the
22 public, including Plaintiffs, of the extreme risk of injury occasioned by said defects. Said Defendants and
23 individuals intentionally proceeded with the design, manufacture, sale, distribution and marketing of said
24 vehicles, knowing persons would be exposed to serious potential danger in order to advance their own
25 pecuniary interest. Defendants' conduct was despicable, and so contemptible that it would be looked
26 down upon and despised by ordinary decent people, and said conduct was carried on by Defendants with
27 a willful and conscious disregard for the safety of Plaintiffs and others, entitling Plaintiffs to exemplary
28 damages under Civil Code section 3294.

1 27. As a result of the negligent and wrongful conduct of Defendants Nissan and DOES 1
2 through 10, inclusive, Plaintiffs have sustained injuries.

3 28. As a further result of the conduct of said Defendants, Plaintiffs incurred property and other
4 pecuniary losses as a result of the actions and inactions herein described.

5 29. As a further result of the conduct of said Defendants, Plaintiffs suffered both past and
6 future economic damages as a result of the actions and inactions herein described.

7 30. As a further direct and proximate result of the acts and omissions of Defendants, and each
8 of them, Plaintiffs have incurred general damages in an amount according to proof at trial.

9 **V. FACTS COMMON TO ALL CAUSES OF ACTION**

10 **a. The Dangers of Carbon Monoxide Exposure**

11 31. Carbon monoxide (CO) is a gas produced by incomplete combustion. It is colorless,
12 tasteless and odorless to human senses. The density of carbon monoxide is slightly less than that of air
13 and it distributes rapidly within spaces.

14 32. Carbon Monoxide is a component of motor vehicle exhaust, which contributes about 55
15 percent of all CO emissions nationwide.

16 33. Symptoms and signs of poisoning are dependent upon the ambient carbon monoxide level,
17 the duration of exposure, mass of the individual, and co-morbidities of the exposed person. For example,
18 at extremely high levels, symptoms are almost non-existent since the individual loses consciousness
19 before they can develop symptoms. At lower levels, common symptoms include headache, malaise,
20 fatigue, muscle aches, slowed mentation, and confusion. If ambient levels are enough, unconsciousness
21 or death can follow.

22 34. Carbon monoxide levels are measured in parts per million. The following table illustrates
23 the physiological effects associated with varying levels of carbon monoxide.

CO in ppm	Symptoms/Consequences
200	Mild headache, fatigue, nausea, dizziness and confusion
800	Dizziness, nausea, convulsions – 45 minutes; Death – 2 hours
1,200	Immediately dangerous to life and health
6,400	Death in 10 to 15 minutes
12,000	Immediate death

35. When inhaled, CO is absorbed from the lungs into the bloodstream. Because CO binds with hemoglobin with an affinity of more than 200 times that of oxygen, it forms a tight but reversible complex with hemoglobin, called carboxyhemoglobin (COHb). The COHb complex impairs the oxygen-carrying capacity of blood, causing reduced tissue oxygenation and ischemia. Because the COHb releases CO slowly, less hemoglobin will be available to transport oxygen from the lungs to the rest of the body, damaging tissue, and gradually suffocating the organs.

36. Patients can have an uneventful recovery following carbon monoxide poisoning without apparent adverse sequelae. However, adverse sequelae following carbon monoxide poisoning are common. Adverse sequelae can follow poisoning immediately and persist, or can manifest symptoms days, weeks, or months following poisoning. The late sequelae following poisoning may be due to apoptosis, adaptive immunological processes, including inflammation and alteration in neurotransmitters. Those who develop sequelae often have persistent headaches, cognitive impairments, generally in the domains of short-term memory, executive function and speed of processing, affective problems, and other neurological sequelae.

37. If poisoning is associated with prolonged loss of consciousness, more dramatic neurocognitive impairments can occur. Nevertheless, the peer-reviewed literature supports that loss of consciousness does not correlate and is not required for patients to have cognitive impairments or affective problems following poisoning.

38. Other common sequelae include depression and anxiety, which occur in approximately 50% of accidentally poisoned patients, likely from brain injury. Patients with sequelae often complain of headaches, dizziness and fatigue. Subtle motor and sensory abnormalities are seen, as well as vestibular

1 dysfunction. Patients with sequelae behave similarly to those with sequelae following traumatic brain
2 injury.

3 39. Magnetic resonance brain imaging (MRI) of poisoned patients has shown increased
4 numbers of hyperintensities, hippocampal atrophy, dilated perivascular spaces, and abnormalities in fiber
5 tracking (by diffusion tensor imaging), MR Spectroscopy, and functional MRI. Brain perfusion studies
6 have shown abnormal brain blood flow due to carbon monoxide poisoning. As patients with brain injury
7 age, they are at risk for early cognitive decline and Alzheimer’s disease.

8 40. Occasionally, poisoned patients manifest cardiac conditions such as mild heart failure and
9 an unexpected number of poisoning patients have mild pulmonary diffusion abnormalities.

10 41. Curative therapy for carbon monoxide-related brain injury and its associated adverse
11 sequelae does not exist.

12 **b. The Defect**

13 42. The Class Vehicles all have a defect that allows carbon monoxide to leak from the
14 vehicles’ exhaust system into the passenger compartment. The carbon monoxide enters the vehicle near
15 the rear seats and trunk. The carbon monoxide levels in the passenger compartment are most pronounced
16 when the vehicles’ air conditioning system is in recirculation mode and while the vehicles are being
17 operated at relatively higher speeds and RPMs over longer periods of time. Nissan has provided no
18 warnings of this defect to its customers or consumers.

19 **c. The Class Vehicles**

20 43. The below vehicles are subject to the Defect. As further testing and discovery is
21 conducted, the population of Class Vehicles may change, but the following list is the current group of
22 years, makes, and models that are alleged to be subject to the Defect:

- 23 • 2006-2019 Nissan Altima
- 24 • 2007-2013 Nissan Altima Coupe
- 25 • 2017-2019 Nissan Armada
- 26 • 2016-2019 Nissan Kicks
- 27 • 2008-2019 Nissan Maxima
- 28 • 2008-2019 Nissan Murano

- 1 • 2009-2019 Nissan 370Z
- 2 • 2013-2019 Nissan Versa
- 3 • 2013-2019 Infiniti Q50
- 4 • 2013-2019 Infiniti Q70
- 5 • 2013-2019 Infiniti QX30
- 6 • 2013-2019 Infiniti QX50
- 7 • 2013-2019 Infiniti QX60
- 8 • 2008–2017 Infiniti QX70
- 9 • 2010–2019 Infiniti QX80

10 **d. Notice**

- 11 44. Nissan knew of the Defect pursuant to several means, including the following:
- 12 a. Customer complaints to Nissan, NHTSA, and in online forums;
 - 13 b. Receipt of CLRA letters from the Plaintiffs;
 - 14 c. News of the well-publicized Ford carbon monoxide defect investigation and litigation
15 regarding Ford Explorers and law enforcement vehicles; and
 - 16 d. Internal discussions and documents at Nissan regarding the carbon monoxide defect.

17 **VI. TOLLING OF STATUTES OF LIMITATIONS**

18 45. Any applicable statute(s) of limitations have been tolled by Defendants’ knowing and
19 active concealment and denial of the facts alleged herein. Plaintiffs and the Members of the Class could
20 not have reasonably discovered the true, latent nature of the Defect until shortly before this class action
21 litigation was commenced.

22 46. In addition, even after Plaintiffs and Class Members contacted Nissan concerning the
23 Defect, they were routinely told by Nissan that the Class Vehicles were not defective, as set forth above,
24 when the true cause of the carbon monoxide exposure was Defendants’ defectively designed or
25 manufactured vehicles.

26 47. Nissan was and remains under a continuing duty to disclose to Plaintiffs and the Members
27 of the Class the true character, quality, and nature of the Class Vehicles, that they will require costly
28 repairs, pose safety concerns, and diminish the resale value of the Class Vehicles. As a result of the active

1 concealment by Nissan, any and all applicable statutes of limitations otherwise applicable to the
2 allegations herein have been tolled.

3 **VII. CLASS ALLEGATIONS**

4 48. Plaintiffs bring this action on their own behalf, and on behalf of a nationwide class,
5 defined as follows: **Nationwide Class:** All persons or entities in the United States who are current or
6 former owners and/or lessees of a Class Vehicle.

7 49. Members of the Nationwide Class have all suffered an actual injury in fact, as exposure
8 to carbon monoxide (even at low levels) is a concrete harm that results in both physical injuries and
9 economic loss.

10 50. Plaintiffs also seek to represent the following class of California consumers:
11 **California Class:** All persons or entities in the state of California who purchased or leased a Class
12 Vehicle. Each member of the California Class is also a member of the Nationwide Class.

13 51. Members of the California Class have all suffered an actual injury in fact, as exposure to
14 carbon monoxide (even at low levels) is a concrete harm that results in both physical injuries and
15 economic loss.

16 52. Together, the Nationwide Class and the California Class shall be collectively referred to
17 herein as the “Class.” Excluded from the Class are Nissan (including Infiniti), its affiliates, employees,
18 officers and directors, persons or entities that purchased the Class Vehicles for resale, and the Judge(s)
19 assigned to this case. Plaintiffs reserve the right to modify, change, or expand the Class definitions based
20 on discovery and further investigation.

21 53. **Numerosity:** Upon information and belief, the Class is so numerous that joinder of all
22 Class Members is impracticable. While the exact number and identities of individual members of the
23 Class are unknown at this time, such information being in the Defendants’ sole possession and obtainable
24 by Plaintiffs only through the discovery process, Plaintiffs believe, and on that basis alleges, that millions
25 of Class Vehicles have been sold and leased in United States that are the subject of the Class. By way of
26 example, Plaintiffs’ research indicates the following sales numbers for just a portion of the Class Vehicles
27 for which data is currently available to Plaintiffs:

- 28
 - 2006-2018 Nissan Altima: 3,126,130

- 1 • 2008-2014 and 2016-2018 Nissan Maxima: 537,626
- 2 • 2009-2018 Nissan Murano: 583,109
- 3 • 2013-2018 Nissan Versa: 406,275
- 4 • 2013-2018 Infiniti QX60: 170,668

5 54. **Existence and Predominance of Common Questions of Fact and Law:** Common
6 questions of law and fact exist as to all members of the Class. These questions predominate over the
7 questions affecting individual Class Members. These common legal and factual questions include, but
8 are not limited to, whether:

- 9 a) the Class Vehicles were sold with defects;
- 10 b) Nissan knew about the Defect but failed to disclose it and its consequences
11 to Nissan customers;
- 12 c) Nissan misrepresented the safety of the Class Vehicles;
- 13 d) a reasonable consumer would consider the Defect or its consequences to be
14 material;
- 15 e) Nissan should be required to disclose the Defect's existence and its
16 consequences; and
- 17 f) Nissan's conduct violates the California Legal Remedies Act, California
18 Unfair Competition Law, and the other statutes asserted herein.

19 55. **Typicality:** All of Plaintiffs' claims are typical of the claims of the Class because
20 Plaintiffs purchased their vehicles with the same defective vehicle design as other Class Members.
21 Furthermore, Plaintiffs and all members of the Class sustained monetary and economic injuries including,
22 but not limited to, ascertainable losses arising out of Nissan's wrongful conduct. Plaintiffs advance the
23 same claims and legal theories on behalf of themselves and all absent Class Members.

24 56. **Adequacy:** Plaintiffs adequately represents the Class because their interests do not
25 conflict with the interests of the Class they seek to represent, they have retained counsel who are
26 competent and highly experienced in complex class action litigation, and Plaintiffs intend to prosecute
27 this action vigorously. Plaintiffs and their counsel are well-suited to fairly and adequately protect the
28 interests of the Class.

57. **Superiority:** A class action is superior to all other available means of fairly and efficiently
adjudicating the claims brought by Plaintiffs and the Class. The injury suffered by each individual Class

1 member is relatively small in comparison to the burden and expense of individual prosecution of the
2 complex and extensive litigation necessitated by Nissan’s conduct. It would be virtually impossible for
3 Class Members on an individual basis to effectively redress the wrongs done to them. Even if Class
4 Members could afford such individual litigation, the courts cannot. Individualized litigation presents a
5 potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and
6 expense to all parties and to the court system, particularly where the subject matter of the case may be
7 technically complex. By contrast, the class action device presents far fewer management difficulties, and
8 provides the benefits of single adjudication, an economy of scale, and comprehensive supervision by a
9 single court. Upon information and belief, individual Class Members can be readily identified and
10 notified based on, *inter alia*, Nissan’s vehicle identification numbers, warranty claims, registration
11 records, and database of complaints.

12 58. Nissan has acted, and refused to act, on grounds generally applicable to the Class, thereby
13 making appropriate final equitable relief with respect to the Class as a whole.

14 **VIII. CAUSES OF ACTION**

15 **a. Claims Brought on Behalf of the Nationwide Class**

16 **COUNT I:**

17 **VIOLATIONS OF THE MAGNUSON-MOSS WARRANTY ACT**

18 **(15 U.S.C. § 2301, *et seq.*)**

19 **(By All Plaintiffs on behalf of the Nationwide Class and the California Class)**

20 59. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph
21 as though fully set forth at length herein.

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

24 61. Nissan is a supplier and warrantor within the meaning of 15 U.S.C. §§ 2301(4)-(5).

25 62. The Class Vehicles, including Plaintiffs’ vehicles, are “consumer products” within the
26 meaning of 15 U.S.C. § 2301(1).

27 63. Nissan’s new vehicle warranty is a “written warranty” within the meaning of 15 U.S.C. §
28 2301(6).

1 64. Nissan breached its express warranties by:

- 2 a) providing the Class Vehicles, which present an unreasonable risk of carbon monoxide
3 exposure, and are thus not fit for their ordinary purpose of providing safe and reliable
4 transportation;
- 5 b) by refusing and/or failing to repair or replace the defective vehicles' materials and/or
6 design defects that cause the Class Vehicles to leak carbon monoxide into the
7 passenger compartment; and
- 8 c) refusing and/or failing to honor the express warranties by repairing or replacing, free
9 of charge, the consequential damage resulting from the Class Vehicles that have
10 experienced carbon monoxide leakage.

11 65. Plaintiffs and the other Class Members relied on the existence and length of the express
12 warranties in deciding whether to purchase or lease the Class Vehicles.

13 66. Nissan's breach of express warranties has deprived Plaintiffs and the other Class Members
14 of the benefit of their bargain.

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

18 68. Nissan has been given reasonable opportunity to cure its breach of the written warranties.
19 Alternatively, Plaintiffs and the other Class Members are not required to do so because affording Nissan
20 a reasonable opportunity to cure its breach of written warranties was, and is, futile. Nissan was also on
21 notice of the alleged defect from the complaints and service requests it received from Class Members, as
22 well as from Nissan's own warranty claims, customer complaint data, NHSTA complaints, and lawsuits.

23 69. As a direct and proximate cause of Nissan's breach of the written warranties, Plaintiffs
24 and the other Class Members sustained damages and other losses in an amount to be determined at trial.
25 Nissan's conduct damaged Plaintiffs and the other Class Members, who are entitled to recover actual
26 damages, consequential damages, specific performance, diminution in value, costs, including statutory
27 attorney's fees and/or other relief as deemed appropriate.
28

b. Claims Brought on Behalf of the California Class

COUNT II:

VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT (“CLRA”)

(Civ. Code, § 1750, et seq.)

(By All Plaintiffs on Behalf of the Nationwide Class and the California Class)

70. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

71. Nissan is a “person” as that term is defined in Civil Code section 1761(c).

72. Plaintiffs and the Class Members are “consumers” as that term is defined in Civil Code section 1761(d).

73. Nissan engaged in unfair and deceptive acts in violation of the CLRA by the practices described above, and by knowingly and intentionally concealing from Plaintiffs and Class Members that the Class Vehicles suffer from a defect(s) (and the costs, risks, and diminished value of the vehicles as a result of this problem). These acts and practices violate, at a minimum, the following sections of the CLRA:

- Representing that goods or services have sponsorships, characteristics, uses, benefits or quantities which they do not have, or that a person has a sponsorship, approval, status, affiliation or connection which he or she does not have;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and
- Advertising goods and services with the intent not to sell them as advertised.

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

75. Nissan knew that the Class Vehicles’ were defectively designed or manufactured, would fail without warning, and were not suitable for their intended use of safe and reliable transportation. Nissan nevertheless failed to warn Plaintiff and the Class Members about these inherent dangers despite having a duty to do so.

1 76. Nissan had the duty to Plaintiffs and the Class Members to disclose the Defect and the
2 defective nature of the Class Vehicles because:

- 3 a) Nissan was in a superior position to know the true state of facts about the Defect
4 and associated repair costs in the Class Vehicles;
- 5 b) Plaintiffs and the Class Members could not reasonably have been expected to learn
6 or discover that the Class Vehicles had dangerous defects until the defects became
7 manifest;
- 8 c) Nissan knew that Plaintiffs and the Class Members could not reasonably have been
9 expected to learn about or discover the Defect and its associated repair costs; and
- 10 d) Nissan actively concealed the Defect, its causes, and resulting effects through
11 deceptive marketing campaigns designed to hide the life-threatening problems
12 from Plaintiffs and other Class Members; and/or
- 13 e) Nissan made incomplete representations about the safety and reliability of the
14 Class Vehicles generally, while purposefully withholding material facts from
15 Plaintiffs and other Class Members that contradicted these representations

16 77. In failing to disclose the Defect and the associated safety risks and repair costs resulting
17 from it, Nissan has knowingly and intentionally concealed material facts and breached its duty to disclose.

18 78. The facts Nissan concealed or did not disclose to Plaintiffs and the Class Members are
19 material in that a reasonable consumer would have considered them to be important in deciding whether
20 to purchase the Class Vehicles or pay a lesser price. Had Plaintiffs and the Class known the Class Vehicles
21 were defective, they would not have purchased the Class Vehicles or would have paid less for them.

22 79. Plaintiffs provided Nissan with notice of its violations of the CLRA pursuant to California
23 Civil Code § 1782(a). Nissan and its counsel received and responded to Plaintiffs' CLRA letters, and no
24 further action was taken by Nissan.

25 80. Nissan's fraudulent and deceptive business practices proximately caused injuries to
26 Plaintiffs and the other Class Members.

27 81. Therefore, Plaintiffs and the other Class Members seek all available relief under the
28 CLRA.

COUNT III:

VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW

(Bus. & Prof. Code, § 17200)

(By All Plaintiffs on Behalf of the Nationwide Class and the California Class)

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5 82. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph
6 as though fully set forth at length herein.

7 83. The California Unfair Competition Law (“UCL”) prohibits acts of “unfair competition,”
8 including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or
9 misleading advertising.” Bus. & Prof. Code, § 17200.

10 84. Nissan has engaged in unfair competition and unfair, unlawful, or fraudulent business
11 practices by the conduct, statements, and omissions described above, and by knowingly and intentionally
12 concealing from Plaintiffs and other Class Members that the Class Vehicles suffer from the Defect (and
13 the costs, safety risks, and diminished value of the vehicles as a result of these problems). Nissan should
14 have disclosed this information because it was in a superior position to know the true facts related to the
15 Defect, and Plaintiffs and Class Members could not have been reasonably expected to learn or discover
16 these true facts.

17 85. The Defect constitutes a safety issue triggering Nissan’s duty to disclose.

18 86. By its acts and practices, Nissan has deceived Plaintiffs and is likely to have deceived the
19 public. In failing to disclose the Defect and suppressing other material facts from Plaintiffs and other
20 Class Members, Nissan breached its duty to disclose these facts, violated the UCL, and caused injuries
21 to Plaintiffs and the Class Members. Nissan’s omissions and acts of concealment pertained to information
22 material to Plaintiffs and other Class Members, as it would have been to all reasonable consumers.

23 87. The injuries Plaintiffs and the Class Members suffered greatly outweigh any potential
24 countervailing benefit to consumers or to competition, and they are not injuries that Plaintiffs and the
25 Class Members could or should have reasonably avoided.

26 88. Nissan’s acts and practices are unlawful because they violate Civil Code sections 1668,
27 1709, 1710, and 1750 *et seq.*, and Commercial Code section 2313.

28

1 89. Plaintiffs seeks to enjoin Nissan from further unlawful, unfair, and/or fraudulent acts or
2 practices, to obtain restitutionary disgorgement of all monies and revenues Nissan has generated as a
3 result of such practices, and all other relief allowed under Business & Professions Code section 17200.

4 **COUNT IV:**

5 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**

6 **(Bus. & Prof. Code, § 17500, et seq.)**

7 **(By All Plaintiffs on Behalf of the Nationwide Class and the California Class)**

8 90. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph
9 as though fully set forth at length herein.

10 91. Business & Professions Code section 17500 states: “It is unlawful for any . . . corporation
11 . . . with intent directly or indirectly to dispose of real or personal property . . . to induce the public to
12 enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . .
13 from this state before the public in any state, in any newspaper or other publication, or any advertising
14 device, . . . or in any other manner or means whatever, including over the Internet, any statement . . .
15 which is untrue or misleading, and which is known, or which by the exercise of reasonable care should
16 be known, to be untrue or misleading.

17 92. Nissan caused to be made or disseminated through California and the United States,
18 through advertising, marketing and other publications, statements that were untrue or misleading, and
19 which were known, or which by the exercise of reasonable care Nissan should have known to be untrue
20 and misleading to consumers, including Plaintiffs and other Class Members.

21 93. Nissan has violated section 17500 because its misrepresentations and omissions regarding
22 the safety, reliability, and functionality of the Class Vehicles were material and likely to deceive a
23 reasonable consumer.

24 94. Plaintiffs and the other Class Members have suffered injuries in fact, including the loss of
25 money or property, resulting from Nissan’s unfair, unlawful, and/or deceptive practices. In purchasing
26 or leasing their Class Vehicles, Plaintiffs and the other Class Members relied on Nissan’s
27 misrepresentations and/or omissions with respect to the Class Vehicles’ safety and reliability. Nissan’s
28 representations were untrue because it distributed the Class Vehicles with the Defect. Had Plaintiffs and

1 the other Class Members known this, they would not have purchased or leased the Class Vehicles or
2 would not have paid as much for them. Accordingly, Plaintiffs and the other Class Members did not
3 receive the benefit of their bargain.

4 95. All the wrongful conduct alleged herein occurred, and continues to occur, in the conduct
5 of Nissan's business. Nissan's wrongful conduct is part of a pattern or generalized course of conduct that
6 is still perpetuated and repeated, both in the state of California and nationwide.

7 96. Plaintiffs, individually and on behalf of the other Class Members, request that the Court
8 enter such orders or judgments as may be necessary to enjoin Nissan from continuing its unfair, unlawful,
9 and/or deceptive practices, and restore to Plaintiffs and the other Class Members any money Nissan
10 acquired by unfair competition, including restitution and/or restitutionary disgorgement, and for such
11 other relief set forth below.

12 **COUNT V:**

13 **VIOLATIONS OF THE SONG-BEVERLY ACT – BREACH OF IMPLIED WARRANTY**

14 **(Civ. Code, §§ 1792, 1791.1, et seq.)**

15 **(By All Plaintiffs on Behalf of the Nationwide Class and the California Class)**

16 97. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph
17 as though fully set forth at length herein.

18 98. At all relevant times hereto, Nissan was the manufacturer, distributor, warrantor, and/or
19 seller of the Class Vehicles. Nissan knew or should have known of the specific use for which the Class
20 Vehicles were purchased.

21 99. Nissan provided Plaintiffs and the Class Members with an implied warranty that the Class
22 Vehicles, and any parts thereof, are merchantable and fit for the ordinary purposes for which they were
23 sold. The Class Vehicles, however, are not fit for their ordinary purpose because, inter alia, the Class
24 Vehicles suffered from an inherent defect at the time of sale.

25 100. The Class Vehicles are not fit for the purpose of providing safe and reliable transportation
26 because of the Defect.

27 101. Nissan impliedly warranted that the Class Vehicles were of merchantable quality and fit
28 for such use. This implied warranty included, inter alia, the following: (i) a warranty that the Class

1 Vehicles were manufactured, supplied, distributed, and/or sold by Nissan were safe and reliable for
2 providing transportation; and (ii) a warranty that the Class Vehicles would be fit for their intended use—
3 providing safe and reliable transportation—while the Class Vehicles were being operated.

4 102. Contrary to the applicable implied warranties, the Class Vehicles were not fit for their
5 ordinary and intended purpose of providing safe and reliable transportation. Instead, the Class Vehicles
6 suffer from a defective design(s) and/or manufacturing defects(s).

7 103. Nissan’s actions, as complained of herein, breached the implied warranty that the Class
8 Vehicles were of merchantable quality and fit for such use in violation of Civil Code sections 1792 and
9 1791.1.

10 **COUNT VI:**

11 **VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH OF**
12 **EXPRESS WARRANTIES**

13 **(Civ. Code, § 1793.2(d) & 1791.2)**

14 **(By All Plaintiffs on Behalf of the Nationwide Class and the California Class)**

15 104. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph
16 as though fully set forth at length herein.

17 105. Plaintiffs bring this claim on behalf of themselves and on behalf of the Members of the
18 Nationwide Class. Alternatively, Plaintiffs bring this claim on behalf of themselves and on behalf of the
19 Members of the California Class.

20 106. Plaintiffs and the Class Members who purchased or leased the Class Vehicles in California
21 are “buyers” within the meaning of Civil Code section 1791.

22 107. The Nissan vehicles are “consumer goods” within the meaning of Civil Code section
23 1791(a).

24 108. Nissan is a “manufacturer” of the Class Vehicles within the meaning of Civil Code section
25 1791(j).

26 109. Plaintiffs and the Class bought/leased new motor vehicles manufactured by Nissan.
27
28

1 110. Nissan made express warranties to Plaintiffs and the Class within the meaning of
2 California Civil Code sections 1791.2 and 1793.2, both in its warranty manual and advertising, as
3 described above.

4 111. The Class Vehicles had and continue to have defects that were and continue to be covered
5 by Nissan's express warranties and these defects substantially impair the use, value, and safety of
6 Nissan's vehicles to reasonable consumers like Plaintiffs and the Class.

7 112. Plaintiffs and the Class delivered their vehicles to Nissan or its authorized repair facility
8 for repair of the defects and/or notified Nissan in writing of the need for repair of the defects because
9 they reasonably could not deliver the vehicles to Nissan or its authorized repair facility due to fear carbon
10 monoxide exposure.

11 113. Nissan and its authorized repair facilities failed and continue to fail to repair the vehicles
12 to match Nissan's written warranties after a reasonable number of opportunities to do so.

13 114. Plaintiffs and the Class Members gave Nissan or its authorized repair facilities at least two
14 opportunities to fix the defects unless only one repair attempt was possible because the vehicle was later
15 destroyed or because Nissan or its authorized repair facility refused to attempt the repair.

16 115. Nissan did not promptly replace or buy back the vehicles of Plaintiffs and the Class.

17 116. As a result of Nissan's breach of its express warranties, Plaintiffs and the Class received
18 goods whose dangerous condition substantially impairs their value to Plaintiffs and the Class. Plaintiffs
19 and the Class have been damaged as a result of the products' malfunctioning, and the nonuse of their
20 vehicles.

21 117. Pursuant to Civil Code sections 1793.2 & 1794, Plaintiffs and the Class are entitled to
22 damages and other legal and equitable relief including, at their election, the purchase price of their
23 vehicles, or the overpayment or diminution in value of their vehicles.

COUNT VII

BREACH OF IMPLIED WARRANTY

(Cal. U. Com. Code, § 231)

(By All Plaintiffs on Behalf of the Nationwide Class and the California Class)

118. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

119. Plaintiffs bring this claim on behalf of themselves and on behalf of the Members of the Nationwide Class. Alternatively, Plaintiffs bring this claim on behalf of themselves and on behalf of the Members of the California Class.

120. Nissan was at all relevant times the manufacturer, distributor, warrantor, and/or seller of the Class Vehicles. Nissan knew or had reason to know of the specific use for which the Class Vehicles were purchased.

121. Nissan provided Plaintiffs and the other Class Members with an implied warranty that the Class Vehicles and any parts thereof are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe transportation at the time of sale or thereafter because, *inter alia*, there are defects in the Class Vehicles that result in carbon monoxide exposure to the vehicle occupants.

122. Therefore, the Class Vehicles are not fit for their particular purpose of providing safe and reliable transportation.

123. Nissan impliedly warranted that the Class Vehicles were of merchantable quality and fit for such use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles manufactured, supplied, distributed, and/or sold by Nissan were safe and reliable for providing transportation and would not experience premature and catastrophic failure; and (ii) a warranty that the Class Vehicles would be fit for its intended use while being operated.

124. 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 and the other Class Members with reliable, durable, and safe transportation. Instead, the Class Vehicles suffer from a defective design(s) and/or manufacturing defect(s).

1 Nissan also knew about the Defect but chose instead to conceal it as a means of avoiding compliance
2 with its warranty obligations.

3 135. As a direct and proximate cause of Nissan's breach, Plaintiffs and the other Class
4 Members bought or leased Class Vehicles they otherwise would not have, overpaid for their vehicles, did
5 not receive the benefit of their bargain, and their Class Vehicles suffered a diminution in value. Plaintiffs
6 and the Class Members have incurred and will continue to incur costs related to the Defect's diagnosis
7 and repair.

8 136. Any attempt to disclaim or limit these express warranties vis-à-vis consumers is
9 unconscionable and unenforceable under the circumstances here. Specifically, Nissan's warranty
10 limitations are unenforceable because it knowingly sold a defective product without giving notice of the
11 Defect to Plaintiffs or the Class.

12 137. The time limits contained in Nissan's warranty period were also unconscionable and
13 inadequate to protect Plaintiffs and Class Members. Among other things, Plaintiffs and Class Members
14 had no meaningful choice in determining these time limitations, the terms of which unreasonably favored
15 Nissan. A gross disparity in bargaining power existed between Nissan and the Class Members because
16 Nissan knew or should have known that the Class Vehicles were defective at the time of sale and would
17 fail well before their useful lives.

18 138. Plaintiffs and the Class Members have complied with all obligations under the warranty,
19 or otherwise have been excused from performance of said obligations as a result of Nissan's conduct.

20 **COUNT IX:**

21 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

22 **(Under California Law)**

23 **(By All Plaintiffs on Behalf of the Nationwide Class and the California Class)**

24 139. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph
25 as though fully set forth at length herein.

26 140. Nissan was at all relevant times the manufacturer, distributor, warrantor, and/or seller of
27 the Class Vehicles. Nissan knew or had reason to know of the specific use for which the Class Vehicles
28 were purchased.

1 141. Nissan provided Plaintiffs and the Class Members with an implied warranty that the Class
2 Vehicles and any parts thereof are merchantable and fit for the ordinary purposes for which they were
3 sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable
4 and safe transportation at the time of sale or thereafter because, *inter alia*, the Class Vehicles suffered
5 from the Defect at the time of sale. Therefore, the Class Vehicles are not fit for their particular purpose
6 of providing safe and reliable transportation.

7 142. Nissan impliedly warranted that the Class Vehicles were of merchantable quality and fit
8 for such use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles
9 were manufactured, supplied, distributed, and/or sold by Nissan were safe and reliable for the purpose
10 for which they were installed in the vehicles; and (ii) a warranty that the Class Vehicles would be fit for
11 their intended use while being operated.

12 143. Contrary to the applicable implied warranties, the Class Vehicles at the time of sale and
13 thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and the other Class
14 Members with reliable, durable, and safe transportation. Instead, the Class Vehicles suffer from a
15 defective design(s) and/or manufacturing defect(s).

16 144. Nissan's actions, as complained of herein, breached the implied warranty that the Class
17 Vehicles were of merchantable quality and fit for such use.

18 **CAUSE OF ACTION X**

19 **COMMON LAW FRAUDULENT CONCEALMENT**

20 **(Under California Law)**

21 **(By All Plaintiffs on Behalf of the Nationwide Class and the California Class)**

22 145. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph
23 as though fully set forth at length herein.

24 146. Plaintiffs brings this claim on behalf of themselves and on behalf of the Nationwide Class
25 or, alternatively, on behalf of the California Class.

26 147. Nissan made material omissions concerning a presently existing or past fact. For example,
27 Defendant did not fully and truthfully disclose to their customers the true nature of the inherent defect of
28 the Class Vehicles, which was not readily discoverable until years later. As a result, Plaintiffs and the

1 other Class Members were fraudulently induced to lease and/or purchase the Class Vehicles with said
2 defect and all the resultant problems.

3 148. These omissions were made by Defendant with knowledge of their falsity, and with the
4 intent that Plaintiffs and the Class Members rely on them.

5 149. Plaintiffs and the Class Members reasonably relied on these omissions and suffered
6 damages as a result. Plaintiffs and the Class members who purchased or leased the Class Vehicles would
7 not have purchased or leased them at all and/or would have paid significantly less for them had the true
8 nature of the Defect been disclosed to them.

9 **IV. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs Cristian Pascal and Maria Mengoni, individually and on behalf of all
11 others similarly situated, respectfully request that this Court:

- 12 A. Determine that the claims alleged herein may be maintained as a class action, and issue
13 an order certifying one or more Classes as defined above;
 - 14 B. Appoint Plaintiffs Cristian Pascal and Maria Mengoni as the representatives of the
15 Class(es) and their counsel as Class counsel;
 - 16 C. Award all actual, general, special, incidental, statutory, punitive, and consequential
17 damages and restitution to which Plaintiffs and the Class Members are entitled;
 - 18 D. Grant all relief available under the California Consumer Legal Remedies Act;
 - 19 E. Award pre-judgment and post-judgment interest on such monetary relief;
 - 20 F. Grant appropriate injunctive and/or declaratory relief, including, without limitation, an
21 order that requires Nissan to repair, recall, and/or replace the Class Vehicles and to extend
22 the applicable warranties to a reasonable period of time, or, at a minimum, to provide
23 Plaintiffs and Class Members with appropriate curative notice regarding the existence and
24 cause of the Defect;
 - 25 G. Award reasonable attorneys' fees and costs under California Code of Civil Procedure
26 section 1021.5, and all other applicable statutory and prudential authority for such;
 - 27 H. Grant such further relief that this Court deems appropriate.
- 28

1 Dated: February 6, 2020

Respectfully submitted,

2 Bailey Glasser LLP

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