

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

TERESA STRINGER, KAREN BROOKS,
WILLIAM PAPANIA, JAYNE NEWTON,
MENACHEM LANDA, ANDREA
ELIASON, BRANDON LANE, DEBBIE
O'CONNOR, MICHELLE WILLIAMS and
WAYNE BALNICKI, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

NISSAN OF NORTH AMERICA, INC. and
NISSAN MOTOR CO., LTD.

Defendants.

Case No. 3:21-cv-00099

CLASS ACTION

Judge William L. Campbell
Courtroom A826
Magistrate Judge Barbara D. Holmes
Courtroom 764

JURY TRIAL DEMANDED

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT**

I. INTRODUCTION

This Settlement addresses the claims of approximately 3.6 million current and former owners and lessees of 2014-2018 model year Nissan Rogue vehicles, 2015-2018 model year Nissan Pathfinder vehicles and 2015-2018 model year Infiniti QX60 vehicles equipped with a continuously variable transmission or CVT (the “Class Vehicles”). It provides Class Members with outstanding relief valued at over \$350 million, and has been very favorably received by Class Members with a miniscule number of objections and requests for exclusion to date.

Plaintiffs allege that the Class Vehicles’ CVTs are defective and prone to hesitating, stalling, jerking, lurching, revving, shaking, juddering and failing prematurely. Defendant Nissan North America, Inc. (“Nissan”) denies these allegations. After briefing and due consideration, on October 13, 2021, the Court granted preliminary approval of the Settlement, finding the Settlement within the range of likely approval as fair, reasonable, and adequate, conditionally certifying the Class for settlement purposes only, and directing that the settlement administrator, Kurtzman Carson Consultants LLC (“KCC”) provide Notice to the Class in accordance with the Notice Program. Preliminary Approval Order of Class Action Settlement (Dkt. No. 75) (“Preliminary Approval Order”).

The Settlement¹ extends powertrain coverage under the Class Vehicles’ New Vehicle Limited Warranty for transmission repairs by 24 months or 24,000 miles, whichever occurs first (the “Warranty Extension Period”), enabling Class Members to seek under-warranty transmission repairs after the expiration of their existing transmission warranty (the “Extended Warranty”). To

¹ The definitions in the parties’ Settlement Agreement (Dkt. No. 67-1, hereinafter “SA”) are incorporated herein by reference. All capitalized terms shall have the same meaning ascribed to them in the Settlement Agreement unless otherwise indicated.

ensure all eligible Class Members can fully participate in the benefits of the Settlement, the Extended Warranty will apply automatically to all Class Vehicles without the need for Class Members to submit a claim or take any other action. Nissan's liability is uncapped under this provision, ensuring that all Class Members with a Class Vehicle requiring a qualifying transmission repair during the Warranty Extension Period will be able to take advantage of this valuable benefit. The Extended Warranty represents a significant increase of the powertrain coverage available under the New Vehicle Limited Warranty for the Class Vehicles and is conservatively estimated by Plaintiffs' valuation expert to have a retail value of \$354,101,000. *See* Declaration of Lee M. Bowron filed in support of Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Expenses and Service Awards for Class Representatives ("Bowron Decl.") ¶ 4.²

The Settlement also includes a valuable reimbursement program that effectively makes the Extended Warranty retroactive. Under the Settlement, Nissan will reimburse Class Members the full amount they paid to an authorized Nissan or Infiniti dealer (or up to \$5,000 paid to a non-Nissan/Infiniti repair facility) for a qualifying repair or replacement of their Class Vehicle's transmission during the Warranty Extension Period. Additionally, if an authorized Nissan or Infiniti dealer recommended repair of a Class Vehicle's transmission during the vehicle's Warranty Extension Period, but the repair was performed outside of the Warranty Extension Period, Nissan will still reimburse the full amount paid to an authorized Nissan or Infiniti dealer (or up to \$5,000 paid to a non-Nissan/Infiniti repair facility), provided the repair is performed within ninety (90) days after the Notice Date and prior to the vehicle reaching 95,000 miles, whichever occurs earlier. Class Members need only complete a simple Claim Form and provide

² The Bowron Decl. is filed contemporaneously herewith.

documentation of a Qualifying Repair to receive reimbursement under the Settlement.

Finally, the Settlement provides a \$1,000 Voucher usable towards the purchase or lease of a new Nissan or Infiniti vehicle to all current and former Class Vehicle owners who had two or more qualifying transmission repairs or replacements as reflected by Nissan's warranty records and who, if eligible, opted not to submit a claim for reimbursement.

To date, the reaction of the Class to the Settlement has been extremely favorable: Co-Lead Class Counsel and Executive Committee Counsel ("Counsel") have received a grand total of 11 objections to the Settlement, and the Administrator has received only 122 requests for exclusion from Class Members. The Settlement is the result of extensive pre-filing investigation including consultation with technical experts, review and analysis of publicly available information concerning the Class Vehicles and their CVTs, and interviews with scores of Class Vehicle owners and lessees, as well as review of extensive additional post-filing information provided by Nissan and extended negotiations conducted by experienced class action litigators with the assistance of a highly-regarded mediator.

For the foregoing reasons and as explained more fully below, the Settlement represents a tremendous result for the Settlement Class, is fair, reasonable, and adequate, and should be granted final approval, and the Class should be certified for settlement purposes.

II. FACTUAL BACKGROUND

The complex procedural history of this matter, the extensive investigation and analysis of Counsel, Settlement negotiations, and the Notice Program, are detailed in the Declaration of J. Gerard Stranch, IV in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement Agreement and Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Class

Representative Service Awards (“Stranch Decl.”).³

III. TERMS OF THE SETTLEMENT

The following is a summary of the terms of the Settlement, as reflected in the Settlement Agreement and its Exhibits.

A. The Class Definition

Under the terms of the Settlement, the Parties agreed to certification of the following Settlement Classes for settlement purposes only:

Subclass A: All current and former owners and lessees of 2014-2018 model year Nissan Rogue vehicles equipped with a CVT who purchased or leased the vehicle in the United States or its Territories.

Subclass B: All current and former owners and lessees of 2015-2018 model year Nissan Pathfinder and 2015-2018 model year Infiniti QX60 vehicles equipped with a CVT who purchased or leased the vehicle in the United States or its Territories.

SA ¶¶ 38, 108. The following persons and entities are specifically excluded from the Settlement Class: (1) Nissan, any entity or division in which Nissan has a controlling interest, its/their legal representatives, officers, directors, assigns and successors; (2) any judge to whom this case is assigned and the judge’s clerks and any member of the judge’s immediate family, and the Sixth Circuit Court of Appeals; and (3) government purchasers and lessees. SA ¶ 38.

B. Settlement Benefits

Pursuant to the Settlement, Class Members are entitled to the following:

1. Extended Warranty Coverage

The Settlement extends the time and mileage durational limits for powertrain coverage under the applicable New Vehicle Limited Warranty for the Class Vehicles as to the transmission assembly (including the valve body and torque converter) and Automatic Transmission Control

³ The Stranch Decl. is filed contemporaneously herewith.

Unit (“ATCU”) by 24 months or 24,000 miles, whichever occurs first. SA ¶ 54.⁴ To take advantage of this benefit, Class Members need only bring their vehicle requiring a covered transmission repair to an authorized Nissan or Infiniti dealer during the vehicle’s Warranty Extension Period.

The Warranty Extension extends coverage over one of the Class Vehicles’ most costly and complex systems, the transmission. The Warranty Extension is a significant benefit to the Settlement Class conservatively estimated by Plaintiffs’ valuation expert at \$354,101,000. Bowron Decl. ¶ 4. As demonstrated by the robust market for extended warranties, vehicle owners value the protection and peace-of-mind that comes with an extended warranty. Unlike a fixed settlement fund that may be depleted, Nissan’s commitments under this provision are uncapped, ensuring that all Class Members can take advantage of this valuable benefit during their Class Vehicles’ Warranty Extension Period. An extended warranty is a particularly fair and suitable means of settling the claims at issue here because it provides relief directly proportional to the scope of the problem, thereby eliminating the potential for under-compensation. How much Nissan will pay to provide repairs under the Extended Warranty will depend on how many Class Members experience issues with their CVTs and present their vehicles for repair within the Extended Warranty Period.

2. Reimbursement for Qualifying Transmission Repairs

The Settlement enables Class Members to recover amounts previously paid to repair or replace their Class Vehicle’s transmission assembly (including the valve body and torque converter) and ATCU during the vehicle’s Warranty Extension Period, effectively making the Warranty Extension retroactive. Under the Settlement, Nissan will reimburse Class Members: (i)

⁴ The Warranty Extension is subject to terms and conditions of Class Vehicles’ original New Vehicle Limited Warranty.

100% of the amount they actually paid to an authorized Nissan or Infiniti dealer for a qualifying repair or replacement of their Class Vehicle's transmission during the vehicle's Warranty Extension Period, or (ii) up to \$5,000 of the amount they actually paid to a non-Nissan/Infiniti repair facility for such qualifying repair or replacement of their Class Vehicle's transmission during the vehicle's Warranty Extension Period. SA ¶ 56.

In addition to providing reimbursement for repairs made during the Warranty Extension Period, the Settlement also provides an avenue of relief to those Class Members who were told by a Nissan or Infiniti dealer that they needed a CVT repair during the Warranty Extension Period but who did not act until later (often due to financial hardship). Specifically, the Settlement reimburses Class Members 100% of the amounts they paid to an authorized Nissan or Infiniti dealer (or up to \$5,000 paid to a non-Nissan/Infiniti repair facility) for a qualifying transmission repair if the vehicle was diagnosed by a Nissan or Infiniti dealer as needing a transmission repair during the Warranty Extension Period, but was not repaired until after the Warranty Extension Period, as long as the repair occurred less than 90 days after the Notice Date and prior to the vehicle reaching 95,000 miles, whichever occurs first. SA ¶ 57. Replacing (or even repairing) a Class Vehicle's transmission can be extremely expensive. Stranch Decl. ¶ 58. Since the inception of the Lawsuits, Counsel have spoken with numerous individuals who simply could not afford to have their Class Vehicle's transmission repaired. *Id.* This provision provides valuable coverage for Class Members who, for financial reasons or otherwise, chose not to have a transmission repair performed prior to expiration of the Warranty Extension Period, even though it was recommended by a Nissan or Infiniti dealer during that period.

The claims process is designed to provide a simple and straightforward procedure for the submission of claims without unduly burdening Class Members. The Claim Form is a simple

document that requests the minimum amount of information necessary to process and verify a claim. SA, Ex. B. The Claim Form is available for viewing and download on the Settlement Website and can be submitted on the Website or by U.S. mail. SA ¶ 80. To obtain reimbursement, a Class Member need only timely submit a Claim Form, along with contemporaneous documentation sufficient to show that the Class Member paid out-of-pocket for a Qualifying Repair. SA ¶¶ 78-82. Class Members may submit a Claim Form at any time from the Notice Date up to and including ninety (90) days after the Notice Date or thirty (30) days after a Qualifying Repair, whichever is later. SA ¶¶ 7, 82. For Class Members whose Summary Notice was re-mailed, the Settlement Administrator will accept and consider Claim Forms received within ninety (90) days after the date of remailing of the Summary Notice. SA ¶¶ 7, 82

3. A Voucher for Current and Former Owners

In addition to the Warranty Extension, current and former Class Vehicle owners who received two or more qualifying transmission repairs or replacements during their period of ownership, as reflected by Nissan warranty records, are eligible to receive a \$1,000 Voucher towards the purchase or lease of a new Nissan or Infiniti vehicle. SA ¶ 12. There is no need to submit a claim to receive this benefit. The Settlement Administrator will mail Vouchers to all Class Members who qualify as reflected by Nissan warranty records. SA ¶ 59. Eligible Class Members have nine (9) months from the Settlement's Effective Date to redeem Vouchers and may use them in combination with all other types of valid discount offers, rebates and incentives. SA ¶ 59. Class Members who are eligible for both reimbursement of out-of-pocket costs and a Voucher must select the remedy they prefer. SA ¶ 62.

4. The Costs of Notice and Settlement Administration

Pursuant to the Settlement, Nissan will pay all costs of Notice and Settlement

administration. SA ¶ 64. Kurtzman Carson Consultants, LLC (“KCC”), the Settlement Administrator, reports notice and settlement administration costs of \$1,331,211.91 to date. Declaration of Lana Lucchesi Re: Notice Procedures (“Lucchesi Decl.”) ¶ 18.

C. Attorneys’ Fees, Costs, and Expenses, and Class Representative Service Awards

The Parties did not discuss attorneys’ fees, costs, and expenses, or Class Representative service awards, until after negotiation of the substantive relief to be provided to the Settlement Class. Stranch Decl. ¶ 43. Pursuant to the Settlement, Nissan has agreed not to oppose Co-Lead Class Counsels’ request for attorneys’ fees, costs, and expenses in the amount of \$6,250,000, and Class Representative service awards in the amount of \$5,000 for each Plaintiff, subject to Court approval. SA ¶¶ 113-114. These amounts will be paid by Nissan separate and apart from the relief going to the Settlement Class and, as a result, will not in any way diminish the recovery of the Settlement Class. SA ¶ 115.⁵

IV. THE HIGHLY EFFECTIVE COURT-APPROVED NOTICE PROGRAM

The Court-approved Notice Program was very successful. The postcard Summary Notice is estimated to have reached approximately 3,487,782 of the 3,678,041 names and addresses on the Class Member List, equating to a reach of approximately 94.82%. Stranch Decl. ¶ 23. As discussed below, this is an excellent result that easily satisfies due process.

Where a Class has been certified under Fed. R. Civ. P. 23(b)(3), “the [C]ourt must direct to class members the best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2). Notice serves to “afford members of the class due process which, in the context of the Rule 23(b)(3) class action, guarantees them the opportunity to be excluded from the class action and

⁵ Counsels’ Motion for Attorneys’ Fees, Reimbursement of Expenses and Class Representative Service awards is filed contemporaneously herewith.

not be bound by any subsequent judgment.” *Peters v. Nat’l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173–74 (1974)). “Due process requires reasonable effort to inform affected class members through individual notice, not receipt of individual notice.” *Fidel v. Farley*, 534 F.3d 508, 513–14 (6th Cir. 2008).

Following preliminary approval, the parties were diligent in working with KCC to provide the information and feedback necessary to mail the Class Notice on the earliest possible date. This included providing KCC with the data necessary to compile the Class List and working with KCC to review and finalize the postcard Summary Notice and Long Form Notice, the Settlement Website, and the IVR (Interactive Voice Response) script for the Settlement’s toll-free telephone hotline. As a result of these efforts, KCC was in a position to mail the Class Notice earlier than anticipated. Stranch Decl. ¶¶ 23-24. Thus, on December 7, 2021, the parties filed a Joint Motion to Reset the Fairness Hearing date seeking to advance the hearing date by two months from May 23, 2022 to March 21, 2022, which the Court granted. (Dkt. Nos. 76 and 77.)

On December 22, 2021, KCC caused 3,565,409 postcard Summary Notices to be mailed to Class Members via U.S.Mail. Lucchesi Decl. ¶ 9. Prior to mailing the postcard Summary Notices, KCC obtained current addresses from the databases of the various State departments of motor vehicles, removed records with invalid addresses and duplicate records and updated the remaining records using the National Change of Address database maintained by the United States Postal Service. *Id.* ¶ 8. For 30,400 postcard Summary Notices returned by the USPS with forwarding addresses, KCC promptly remailed the notices to the new address, and those notices were not returned as undeliverable. *Id.* ¶ 10. For 94,161 postcard Summary Notices returned as undeliverable by the USPS, KCC ran address searches and re-mailed postcard Summary Notices to 16,534 individuals for whom an alternative address was found, and those remailed notices were

not returned. *Id.* ¶ 11. As a result, approximately 94.82% percent of Class Members were successfully mailed postcard Summary Notice of the Settlement.⁶ Such notice readily satisfies the “best practicable” standard. *See also* Federal Judicial Center, *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* at 3 (2010) (recognizing 70% reach to be reasonable).

An informational website was established with an easy-to-remember domain name, www.RoguePathfinderQX60CVTSettlement.com, that was prominently displayed in the postcard Summary Notice, Claim Form, and Long-Form Notice. Lucchesi Decl. ¶ 12. The informational website includes a short summary of the Settlement, important dates relating to the Settlement (claims deadline, opt-out/objection deadline, final approval hearing date), answers to frequently asked questions, and contact information for the Settlement Administrator. *Id.* Through the informational website, Class Members are able to submit a Claim Form electronically, view and download a Claim Form, and view the Settlement Agreement, Long-Form Notice, and Preliminary Approval Order. *Id.* Plaintiffs’ Motion for Final Approval and supporting Memorandum of Law and Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards for Class Representatives will also be uploaded to the Settlement website after being filed with the Court. As of February 1, 2022, the Settlement website has received 48,178 visits. *Id.*

Prior to mailing Notice, KCC also established and continues to maintain a toll-free number Settlement telephone hotline. Lucchesi Decl. ¶ 13. By calling the toll-free number, persons interested in the Settlement can listen to information about the Settlement and/or obtain a copy of

⁶ Postcard Summary Notice was successfully mailed to 3,487,782 Class Members (3,565,409 – 94,161 + 16,534 = 3,487,782). Dividing the number of postcard Summary Notices successfully mailed by the estimated number of total Class Members (3,487,782/3,678,014) equals .9482.

the Long Form Notice and Claim Form,, and get answers to frequently asked questions. *Id.* As of February 1, 2022, KCC has received 19,531 calls to the toll-free Settlement telephone hotline. *Id.*

Based on the foregoing, it is clear that the highly successful Notice Program, as designed and implemented, constitutes the best notice practicable under the circumstances, complies with Fed. R. Civ. P. 23, and satisfies due process requirements.

V. THE SETTLEMENT MERITS FINAL APPROVAL

Settlements of class actions are strongly favored. As a matter of public policy, “[t]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” William Rubenstein, Alba Conte, and Herbert B. Newberg, *Newberg on Class Actions* § 13:44 (5th ed. 2015); *see also UAW v. GMC*, 497 F.3d 615, 632 (6th Cir. 2007) (noting “the federal policy favoring settlement of class actions”); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 530 (E.D. Mich. 2003) (“[T]here is a strong public interest in encouraging settlement of complex litigation and class action suits because they are notoriously difficult and unpredictable and settlement conserves judicial resources.”).

Fed. R. Civ. P. 23(e)(2), as recently amended, provides that in determining whether a settlement is fair, reasonable, and adequate at the final approval stage, a court must consider whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). Satisfaction of these factors demonstrates

the Settlement is fair, reasonable, and adequate, and should be granted final approval.

A. The Settlement Class Is Well Represented

Co-Lead Class Counsel and Executive Committee Counsel have significant experience prosecuting complex class actions, including automotive defect class cases, are well-versed in the legal claims and facts at issue in this case, and negotiated the Settlement providing significant and timely benefits to the Settlement Class. Stranch Dec., ¶¶ 50-54 and **Exhibit 2** (Bransetter Firm Resume); **Exhibits 5-9** (Declarations of Co-Lead Class Counsel Greenstone Law APC and Glancy Prongay & Murray LLP, and Executive Committee Counsel Barrack, Rodos & Bacine, Berger Montague PC and Keller Rohrback L.L.P.). Counsels' firm resumes are attached as exhibits to their respective declarations. They have and will continue to work diligently to advance the interests of Plaintiffs and the other Class Members.

Counsel engaged in extensive investigation of the facts and claims at issue. Stranch Decl., ¶¶ 30-48. From approximately a year prior to the filing of the initial complaint in this action through the present, counsel have been contacted by over 1,000 putative Class Members and have conducted in-depth interviews with many of them. *Id.*, ¶ 34. In numerous instances this time-consuming process involved second and third round interviews and detailed review of repair order documentation. *Id.* To understand the history, mechanics and severity of the alleged CVT Defect, counsel also reviewed all available Nissan Technical Service Bulletins (“TSBs”) for the Class Vehicles and related vehicles; consulted with professional automobile technical consultants; reviewed hundreds of consumer complaints filed with the National Highway Transportation Safety Authority (“NHTSA”) or reported on private websites that collect and voice consumer complaints; reviewed maintenance manuals and warranty information for the Class Vehicles; and, extensively reviewed prior class action settlements and market actions taken by Nissan with respect to other

Nissan vehicles equipped with CVTs. *Id.*, ¶¶ 27-28.

During the course of settlement negotiations, Counsel obtained additional information from Nissan concerning the Class Vehicles' service history and CVT countermeasures over time. Stranch Decl. ¶ 46. To date, Nissan has produced approximately 19,448 pages of documents to Plaintiffs, including detailed warranty information; project files; TSBs; investigation reports; Countermeasure Action Requests ("CAR"); customer complaints; and related materials. In addition, Nissan has produced a database comprised of 123,244 rows of warranty claim-related information for CVT repairs and replacements to the Class Vehicles with comprehensive data for tens of thousands of vehicles serviced under warranty, including, *inter alia*, Vehicle Identification Number ("VIN"), make and model year, in service date, engine type, transmission type, claim type, production date, repair date, mileage at repair, cost of parts, cost of labor, operations codes, and detailed comments regarding the specific repair. *Id.*, ¶ 52. In addition, Counsel personally interviewed a Nissan engineer responsible for field quality investigation and overview of CVT incidents in the field, concerning the history of the Class Vehicles' CVTs; issues experienced by consumers with their CVTs; Nissan's investigation process; the Class Vehicles' CVT incident rate over time; countermeasures taken by Nissan to address CVT issues; and the information and documents provided by Nissan to Counsel. Stranch Decl. ¶ 53.

All of this data and information was important to understanding the performance history of the CVTs in Class Vehicles and the adequacy of the relief provide by the Settlement, and this data supports final approval. *Id.*; *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) ("In the context of class action settlements, formal discovery is not a necessary ticket to the bargaining table where the parties have sufficient information to make an informed decision about settlement."); Manual for Complex Litigation (Fourth) § 13.12 (2004) (recognizing

that the benefits of settlement are diminished if it is postponed until discovery is completed and approving of targeting early discovery of information needed for settlement negotiations). Informal discovery is a recognized method of minimizing the cost, delay, and burden associated with formal discovery. *See id.* at § 11.423 (2004). Indeed, to further such ends, courts are to “encourage counsel to exchange information, particularly relevant documents, without resort to formal discovery.” *Id.*

Plaintiffs have likewise worked diligently on behalf of the Settlement Class. They stepped forward to prosecute this action on behalf of all Class Members, provided service records and made themselves available to counsel as necessary, assisted with the drafting and review of the complaints, and reviewed and approved the Settlement. Stranch Decl. ¶ 75.

This factor favors final approval.

B. The Settlement Is the Product of Arm’s Length Negotiations

The Settlement is the product of hard-fought and arm’s length negotiations conducted by experienced counsel over an extended period of time. Stranch Decl. ¶¶ 45-48. For months leading up to mediation, the parties discussed the potential for settlement and Nissan shared important data regarding the history of the CVTs in the Class Vehicles. *Id.*, ¶ 42. On April 7, 2021, the parties engaged in a full-day mediation with the assistance of Hunter Hughes, a respected mediator. *Id.*, ¶ 43. Negotiations continued during the ensuing months, leading to the Parties’ execution of a detailed Term Sheet at the end of June 2021. *Id.*, ¶ 44. The parties then spent approximately two months negotiating the Settlement Agreement and related documents—a process involving the exchange of numerous drafts and multiple conversations and emails regarding the language of the Agreement, the notice documents, and other related matters. *Id.* The end result is a Settlement that provides significant and timely benefits to Class Members. This factor supports final

approval. See *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 277 (6th Cir. 2016) (“parties’ two-and-a-half years of litigation, extensive discovery, ongoing settlement negotiations, and formal mediation session all weighed against the possibility of fraud or collusion”); *Applegate-Walton v. Olan Mills, Inc.*, No. 3:10-cv-00224, 2010 U.S. Dist. LEXIS 77965, at *5 (M.D. Tenn. Aug. 2, 2010) (finding no risk of fraud or collusion where the settlement was “the result of intensive, arms-length negotiations, including mediation with an experienced third-party neutral”).

C. The Settlement Benefits Are Excellent

The immediacy and certainty of the significant recovery provided by the Settlement supports final approval. The benefits of the Settlement are excellent. The Settlement provides for a significant increase in Class Vehicles’ powertrain warranty for transmission repairs and reimburses Class Members 100% of amounts they paid to an authorized Nissan and Infiniti dealer (or up to \$5,000 paid to a non-Nissan/Infiniti repair facility) for qualifying transmission repairs during the Warranty Extension Period. SA ¶¶ 54, 56. The Settlement also reimburses Class Members 100% of the amounts they paid to an authorized Nissan or Infiniti dealer (or up to \$5,000 paid to a non-Nissan/Infiniti repair facility) to repair transmissions diagnosed by a Nissan or Infiniti dealer as needing a qualifying transmission repair during the Warranty Extension Period, but which were not repaired until after the Warranty Extension Period, so long as the repair occurred less than ninety (90) days after the Notice Date and prior to the vehicle reaching 95,000 miles, whichever occurred first. *Id.*, ¶ 57. If a Class Member paid for repairs on multiple occasions, he or she is entitled to reimbursement for all such qualifying repairs subject to the above conditions.

The Settlement also provides a \$1,000 Voucher usable towards the purchase or lease of a new Nissan or Infiniti vehicle to all current and former Class Vehicle owners who had two or more

qualifying transmission repairs or replacements as reflected by Nissan’s warranty records and who, if eligible, opted not to submit a claim for reimbursement. SA ¶¶ 12, 59. The Voucher will be provided automatically and may be used in combination with other valid discount offers, rebates, and incentives. *Id.*, ¶ 59.

These valuable benefits readily satisfy the applicable standard that the settlement be fair, reasonable and adequate.

In addition to the excellent benefits provided to the Settlement Class under the Settlement, the release of claims that the Settlement Class will provide to Nissan is limited and appropriate. The release extends only to claims based upon or related to Class Vehicle transmission design, manufacturing, performance or repair, including the claims asserted in the Lawsuits, and excludes (among other things) claims for breach of the New Vehicle Limited Warranty, as modified by the Warranty Extension, related to transmission design, manufacturing or performance based on events that occur after the Notice Date (“Future Transmission Claims”). SA ¶¶ 35, 101-106. The Settlement also includes an expedited resolution process to resolve such Future Transmission Claims. SA ¶ 104.

Settlements extending comparable relief to owners and lessees of other Nissan vehicles equipped with CVTs have previously received final approval. *See Gann, et al. v. Nissan No. Am., Inc.*, Case No. 3 :18-cv-00966, Dkt. No. 130 (M.D. Tenn. Mar. 10, 2020); *Weckwerth, et al., v. Nissan North America, Inc.*, No. 3:18-cv-00588, Dkt. No. 181 (M.D. Tenn. Mar. 10, 2020); *Norman, et al., v. Nissan North America, Inc.*, No. 3:18-cv-00534, Dkt. No. 102 (M.D. Tenn. Mar. 10, 2020).

1. The Risk, Expense, Complexity, and Likely Duration of Further Litigation Support Final Approval

The significant benefits of the Settlement, when weighed against the risk, expense,

complexity, and likely duration of continued litigation, support final approval of the Settlement. Stranch Decl. ¶ 64.

The Settlement provides excellent benefits to the Settlement Class while obviating the significant risks of further litigation. Litigating allegations of a vehicle defect concerning a complex component such as an automatic transmission typically involves protracted fact discovery and results in a costly, lengthy battle of experts. This case is no exception.

Prosecuting this case through trial and appeal would likely be lengthy, complex, and impose significant costs on all parties. *Ganci v. MBF Inspection Servs., Inc.*, No. 2:15-CV-2959, 2019 WL 6485159, at *3 (S.D. Ohio Dec. 3, 2019) (“Generally, [m]ost class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them” (quoting *In re Telectronics Pacing Sys., Inc.*, 137 F.Supp.2d 985, 1013 (S.D. Ohio 2001))). Nissan denies the existence of any CVT defect and, absent approval of the Settlement, will certainly continue to defend this litigation vigorously. Litigating this complex matter to final judgment would almost certainly require substantial motion practice, extensive fact discovery, class certification briefing, dispositive motions, a trial and, given the size of the putative Class and amount of money at stake, a lengthy appeal process. Stranch Decl. ¶ 64. Expert reports and testimony would be necessary to establish the alleged defect, show that it is common to the Class Vehicles, and prove that it causes transmission failure which is unrelated to and separate from normal transmission wear and tear. *Id.* This is particularly true here given that the allegedly defective component—the Class Vehicles’ CVTs—is one of the Class Vehicles’ most complex systems with hundreds of sub-components. Discovery would most likely have had to have been pursued both in the United States and Japan, where Nissan’s parent is located, and would have required significant travel and the translation and analysis of highly technical documents.

Plaintiffs would also have faced the risk that the Court might not certify a Class, or that they would not prevail at trial even if certified. *Id.*

The Settlement guarantees a timely and substantial recovery for the Settlement Class, obviating the need for a lengthy, complex, and uncertain trial. This factor supports final approval of the Settlement. *See UAW v. Gen. Motors Corp.*, No. 05-CV-73991-DT, 2006 WL 891151, at *18 (E.D. Mich. Mar. 31, 2006) (“The court shall consider the vagaries of the litigation and compare the significance of immediate recovery by way of compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, it has been held proper to take the bird in hand instead of a prospective flock in the bush”) (internal quotations and citations omitted); *see also Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) (“There are weighty justifications, such as the reduction of litigation and related expenses, for the general policy favoring the settlement of litigation.”); *In re Sunrise Sec. Litig.*, 131 F.R.D. 450, 455 (E.D. Pa. 1990) (approving a class action settlement because, in part, the settlement “will alleviate ... the extraordinary complexity, expense and likely duration of this litigation”).

2. The Proposed Method of Distributing Relief Supports Final Approval

Rule 23(e)(2)(C)(ii) requires consideration of “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.” The Advisory Committee’s notes to this provision instruct: “Often it will be important for the court to scrutinize the method of claims processing to ensure that it facilitates filing legitimate claims. A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding.” Fed. R. Civ. P. 23(e) Advisory Committee’s note to 2018 amendment.

Here, the primary relief offered by the Settlement—the Warranty Extension—will be

applied to the Class Vehicles automatically following final Settlement Approval. SA ¶ 54. No claim process is required. If a Class Vehicle transmission requires a qualifying repair or replacement during the Warranty Extension Period, a Class Member need only bring the vehicle to an authorized Nissan or Infiniti dealer to take advantage of this significant benefit. Stranch Decl. ¶ 56.

Submission of a Claim Form is required only to receive reimbursement of out-of-pocket payments for Qualifying Repairs, which is customary and appropriate since Class Members have access to the documents and other information needed to assess and process reimbursement claims. The Claim Form is a simple document that requests basic information and is designed to facilitate the filing of valid reimbursement claims by Class Members. SA, Ex. B. Claim Forms can be submitted online or by mail. *Id.*, ¶ 80. All Claim Forms will be processed by KCC, an experienced and nationally recognized class action administration firm. Checks will be mailed to those Class Members who submit valid claims. *Id.*, ¶ 78.

In addition, current and former Class Vehicle owners who qualify for a \$1,000 Voucher for the purchase or lease of a single new Nissan or Infiniti vehicle based on Nissan's warranty records, and who do not exclude themselves from the settlement or elect reimbursement, will be sent a Voucher automatically. SA ¶ 12.

The Settlement's methods of distributing relief to Class Members further support final approval.

3. The Terms of the Proposed Award of Attorneys' Fees Support Final Approval of the Settlement

Rule 23(e)(2)(C)(ii) requires consideration of "the terms of any proposed award of attorney's fees, including timing of payment." The Advisory Committee's notes instruct:

Examination of the attorney-fee provisions may also be valuable in assessing the fairness

of the proposed settlement. Ultimately, any award of attorney's fees must be evaluated under Rule 23(h), and no rigid limits exist for such awards. Nonetheless, the relief actually delivered to the class can be a significant factor in determining the appropriate fee award.

Fed. R. Civ. P. 23(e) Advisory Committee's note to 2018 amendment.

This Settlement addresses the claims of approximately 3.6 million current and former owners and lessees of well over a million Class Vehicles. To provide the Court with a value to assist it in determining whether the attorneys' fees aspect of the Settlement is likely to be approved as fair, reasonable, and adequate, Plaintiffs' counsel retained Lee M. Bowron, ACAS, MAAA, an actuary who specializes in pricing and valuing extended service contracts and warranty extensions, to obtain a preliminary valuation of the Settlement's extended warranty coverage.

Based on the comprehensive warranty claims data provided by Nissan, Mr. Bowron conservatively estimates the minimum retail value to the Settlement Class of the Extended Warranty and reimbursement coverage provided for by the Settlement to be \$354,101,000. Stranch Decl. ¶ 67; Bowron Decl. ¶ 4.

Mr. Bowron's valuation does not include the value of the other components of the Settlement, including Vouchers for certain current and former owners, an expedited resolution process for Future Transmission Claims, and the substantial costs of notice and settlement administration in a case involving over 3.6 million Class Members. *Id.*

Plaintiffs believe this valuation alone readily supports the award of \$6,250,000 for attorneys' fees, costs, and expenses, which represents just 1.76% of Mr. Bowron's estimate and will be paid separate and apart from the Class relief. *See, e.g., In re Southeastern Milk Antitrust Litig.*, No. 2:07-CV-208, 2013 WL 2155387, at *3 (E.D. Tenn. May 17, 2013) (recognizing that a fee request of one-third of the recovery "is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *Gokare v. Fed. Express Corp.*,

No. 2:11-CV-2131, 2013 WL 12094887, at *4 (W.D. Tenn. Nov. 22, 2013) (“The requested attorneys’ fees award of 30.9% from the common fund is appropriate; the percentage requested is similar to or lower than percentage-of-the-fund awards approved in numerous other common fund cases in this Circuit”).⁷

Moreover, the parties adhered to best practices for class actions when negotiating the provisions of the Settlement concerning attorneys’ fees. The Parties did not discuss attorneys’ fees, costs, and expenses until after negotiation of the substantive relief to be provided to the Settlement Class. Stranch Decl. ¶ 47. The attorneys’ fees are to be paid by Nissan separate and apart from the benefits provided to the Settlement Class under the Settlement and will not diminish the Settlement Class’s recovery. SA ¶ 115. Additionally, Nissan has until twenty-eight (28) days after the Effective Date of the Settlement to cause the attorneys’ fees to be paid to Co-Lead Class Counsel—there is no quick pay provided for by the Settlement. SA ¶ 115.

The terms of the proposed attorneys’ fee award support final approval of the Settlement.

D. The Settlement Treats All Class Members Equitably

All Class Members will automatically receive the Warranty Extension on their Class Vehicles, which will extend the New Vehicle Limited Warranty coverage for transmission repairs by 24 months or 24,000 miles, whichever occurs first, for all Class Vehicles. In addition, all Class Members who qualify for reimbursement may submit a Claim Form, and all Class Members who qualify for a Voucher and do not elect reimbursement will receive one automatically. SA ¶¶ 54-60. The release provided for by the Settlement also applies equally to all Class Members. SA, ¶¶

⁷ In support of their contemporaneously filed Motion for Award of Attorneys’ Fees, Reimbursement of Expenses and Class Representative Service Awards, Plaintiffs have filed the Declaration of Brian T Fitzpatrick (“Fitzpatrick Decl.”), the nation’s foremost expert in attorneys’ fee awards in class action litigation. As explained by Mr. Fitzpatrick, given the value of the Settlement, Counsel’s requested fee is “well within the range of reasonableness.” Fitzpatrick Decl. ¶ 14.

35-36; 101-107. This factor supports final approval of the Settlement.

VI. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES ONLY

The Court's Preliminary Approval Order analyzed the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3), found the requirements satisfied, and certified the Class for settlement purposes only. Nothing has changed that would affect the Court's ruling on certification of the Settlement Class. For the reasons stated in the Preliminary Approval Order, the Court's certification of the Settlement Class for settlement purposes only should be affirmed. *See In re Auto. Parts Antitrust Litig.*, No. 12-MD-02311, 2018 WL 7108016, at *9 (E.D. Mich. Nov. 6, 2018) (affirming order certifying class for settlement purposes only).

VII. CONCLUSION

As the foregoing demonstrates, the Settlement is fair, reasonable, adequate, and satisfies the standard for final approval. Therefore, Plaintiffs, individually and on behalf of the Class, by and through Counsel, respectfully request that the Court enter an order: (1) finding that the Settlement is fair, reasonable, and adequate, and granting final approval of the Settlement; (2) certifying the Settlement Class for settlement purposes only; (3) finally approving appointment of Plaintiffs as Class Representatives; (4) finally approving appointment of Mark S. Greenstone of Greenstone Law APC, Marc L. Godino of Glancy Prongay & Murray LLP, and J. Gerard Stranch, IV of Branstetter, Stranch & Jennings PLLC as Co-Lead Class Counsel and Stephen R. Bassler of Barrack, Rodos & Bacine, Lawrence Deutsch of Berger Montague PC, and Ryan McDevitt of Keller Rohrback L.L.P., as Executive Committee Counsel; and (5) granting such other relief as the Court deems just and appropriate.

Respectfully submitted,

Dated: February 7, 2022

By: s/J. Gerard Stranch, IV
J. Gerard Stranch, IV (BPR #23045)
Benjamin A. Gastel (BPR #28699)
BRANSTETTER STRANCH & JENNINGS PLLC
223 Rosa L. Parks Avenue, Suite 200
Nashville, TN 37203
Tel: 615-254-8801
gerards@bsjfirm.com
beng@bsjfirm.com

Mark S. Greenstone (*pro hac vice*)
GREENSTONE LAW APC
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: (310) 201-9156
Facsimile: (310) 201-9160
mgreenstone@greenstonelaw.com

Marc L. Godino (*pro hac vice*)
GLANCY PRONGAY & MURRAY LLP
1925 Century Park East, Suite 2100
Los Angeles, California 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160
mgodino@glancylaw.com

Co-Lead Class Counsel

Stephen R. Basser (*pro hac vice*)
BARRACK, RODOS & BACINE
600 West Broadway, Suite 900
San Diego, CA 92101
sbasser@barrack.com

Lawrence Deutsch (*pro hac vice*)
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
ldeutsch@bm.net

Ryan McDevitt (*pro hac vice*)
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
mcdevitt@kellerrohrback.com

Executive Committee Counsel

John G. Emerson (*pro hac vice*)
EMERSON FIRM, PLLC
2500 Wilcrest Drive, Suite 300
Houston, TX 77042
jemerson@emersonfirm.com

Caroline Ramsey Taylor
WHITFIELD BRYSON LLP
518 Monroe Street
Nashville, TN 37208
caroline@whitfieldbryson.com

Other Plaintiffs' Counsel

CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was filed with the Court's Case Management/Electronic Case Filing System, this 7th day of February, 2022, and served upon the following counsel:

Danielle Manning
Glancy Prongay & Murray LLP
1925 Century Park East
Suite 2100
Los Angeles, CA 90067
Email: dmanning@glancylaw.com

Bradley J. Andreozzi
Faegre Drinker Biddle & Reath, LLP (Chicago Office)
191 N. Wacker Dr.
Chicago, IL 60606
Email: bradley.andreozzi@faegredrinker.com

E. Paul Cauley, Jr.
W. Vance Wittie
Faegre Drinker, Biddle & Reath, LLP (Dallas Office)
1717 Main Street
Suite 5400
Dallas, TX 75201
Email: paul.cauley@faegredrinker.com
Email: vance.wittie@faegredrinker.com

John S. Hicks
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (Nash)
211 Commerce Street
Suite 800
Nashville, TN 37201
Email: jhicks@bakerdonelson.com

By: /s/ J. Gerard Stranch, IV
J. Gerard. Stranch, IV