

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

RAFAEL SUAREZ, DAISY GONZALEZ,
and RICHARD BYRD, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.,

Defendant.

) Case No.: 3:21-cv-00393

) **Hon. William L. Campbell, Jr.**

) **CLASS ACTION**

**PLAINTIFFS' REPLY IN FURTHER SUPPORT OF
JOINT MOTION FOR FINAL APPROVAL OF SETTLEMENT
AND ENTRY OF FINAL ORDER AND JUDGMENT**

Plaintiffs Rafael Suarez, Daisy Gonzalez, and Richard Byrd (hereinafter, "Plaintiffs") respectfully submit this reply brief in further support of the parties' Joint Motion for Final Approval of Settlement and Entry of Final Order and Judgment ("Final Approval") (ECF No. 33).

The Settlement in this case provides excellent relief to Class Members, including: reimbursements for past headlamp replacements; an opportunity for all Class Vehicles to receive free replacement headlamps, regardless of the age or mileage of the vehicle; and a six-year extended warranty covering headlamp delamination. The Notice program was broad, including over 3.2 million direct mail notices to date, nationwide publication, digital advertising, a PR Newswire press release, and the Settlement website. In addition, the Settlement garnered significant media attention, and Lead Class Counsel have communicated directly with over 3,700 Class Members.

While the deadline to submit claims for reimbursements is not until April 25, 2022, over 6,700 putative Class Members have already submitted reimbursement claims, with a face value of nearly \$5.5 million. *See* Supplemental Declaration of Lana Lucchesi Re: Notice Procedures, filed contemporaneously herewith (“Supp. Lucchesi Decl.”), at ¶¶ 22-23.

Out of over 3.2 million Class Members, only one submitted an objection to the Settlement and that objection has now been withdrawn.¹ That is remarkable in a Class of this size, and it reflects the strength and overall fairness of the Settlement. The Settlement should be finally approved, so that eligible Class Members can begin to receive free replacement headlamps and reimbursements.

The parties also request that the Court approve an amendment to the Class Definition set forth at paragraph 69 of the Settlement. As set forth below, an error in an internal Nissan North America, Inc. (“NNA”) reference document caused an inadvertent error in identifying certain trim levels that were manufactured with LED or Xenon headlamps, which are excluded from the Class definition set forth in paragraph 69. The parties have executed an Amendment to the Settlement, attached hereto as Exhibit C, correcting the error. Further, KCC will send the Mailed Notice to all current and former owners and lessees of an additional 283,661 Vehicle Identification Numbers (“VINs”) that NNA has now identified as Class Vehicles. For the reasons discussed below, the parties do not believe that the error necessitates any extension of deadlines or delay in granting Final Approval or implementing the Settlement because the requirements of Rule 23 and due process have been met, notwithstanding the error. Thus, the

¹ The withdrawal of that objection is subject to Court approval pursuant to Rule 23(e)(5)(B)(i).

parties respectfully request that the Court grant final approval of the Settlement and enter the Proposed Final Judgment in the form submitted herewith.²

I. THE SETTLEMENT CLASS MEMBERS' REACTION TO THE SETTLEMENT TO DATE SUPPORTS FINAL APPROVAL

Out of over 3.2 million Class Members, only one objected to the settlement, and that objection has now been withdrawn.³ The fact that there are no pending objections to the Settlement, combined with the significant number of claims already received, demonstrates that the Settlement at issue here is abundantly fair. *See, e.g. In re Regions Morgan Keegan Secs*, 2013 U.S. Dist. LEXIS 205822, at *18 (W.D. Tenn. Sep. 5, 2013) (“The absence of timely [] objections to the Settlement favors approval.”). Indeed, it is rare for a class action settlement of this size to have no pending objections. *See, e.g., In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (“a low level of objection is a ‘rare phenomenon’”); *In re Nasdaq Market-Makers Antitrust Lit.*, 187 F.R.D. 465, 478 (S.D.N.Y. 1998) (“In litigation involving a large class, it would be extremely unusual not to encounter objections.”).

1. Whitaker Objection

Ms. Whitaker’s objection relates to the cut-off date for reimbursement claims. *See* Ex. A.

Under the Settlement, Class Members are entitled to claim reimbursement for replacement costs that they incurred at any time prior to the Notice Date, October 25, 2021. After the Notice Date, Class Members who are already outside the six-year extended warranty must wait for the Settlement to become Effective to receive free replacements from an NNA dealer. There are several reasons for this. It allows greater oversight over the administration of Settlement benefits, serves a cost saving function, and serves a fraud prevention function.

² Because of the NNA error, the Proposed Final Judgment submitted herewith varies slightly from the one previously submitted in that it corrects the Class definition.

³ In addition, only 13 Class Members opted out. *See* Supp. Lucchesi Decl., at Ex. H.

Ms. Whitaker owns a 2015 Altima purchased on August 22, 2014. Thus, she is currently outside of the six-year extended warranty period. She states that her driver's side headlamp had become dim, and, without knowing about the Settlement, she paid for a replacement at her local NNA dealer on October 27, 2021. On October 29, 2021, two days later, she received the Mailed Notice of the Settlement, which had been sent on October 25, 2021. She objected to the Settlement because, had she received the notice sooner, she says would have deferred the replacement until after the Effective Date.

While the timing of her repair was unfortunate, her objection actually highlights one of the major strengths of the Settlement. In many, if not most, class action settlements involving alleged vehicle defects, manufacturers provide an extended warranty and reimbursements for repairs that occur within the extended warranty, but they do not provide free repairs for Class Members who are already outside that warranty extension. *See e.g., Yaeger v. Subaru of Am., Inc.*, 2016 U.S. Dist. LEXIS 117193, at *27 (D.N.J. Aug. 31, 2016) (settlement provided for current owners to obtain free oil consumption testing and TSB repairs during an extended warranty period); *Berman v. GM Ltd. Liab. Co.*, 2019 U.S. Dist. LEXIS 200947, at *6 (S.D. Fla. Nov. 15, 2019) (class members were entitled to free replacement of piston assemblies at authorized dealerships, subject to an oil consumption diagnosis and their vehicle being within time and mileage limitations); *Collado v. Toyota Motor Sales, U.S.A., Inc.*, 2011 U.S. Dist. LEXIS 133572 (C.D. Cal. Oct. 17, 2011) (providing limited warranty extension for defective headlights for 5 years or 50,000 miles and reimbursement for out-of-pocket expenses incurred before the notice date). Here, if NNA had simply provided a six-year extended warranty and reimbursements for Class Members who replaced within that period, the Settlement likely would have been found fair, and Class Members, like Ms. Whitaker, who utilized their vehicle for more

than six years without replacing the headlamps would be entitled to nothing. However, Class Counsel negotiated a settlement that affords *all* Class Vehicle owners the opportunity to receive free replacements regardless of age or mileage of their vehicle. A condition of that benefit, however, is that Class Members who are outside the six-year period and who did not already replace their headlamps prior to October 25, 2021, must wait for the Settlement to become Effective, for the reasons stated above.

Thus, Ms. Whittaker's objection does not merit denial of final approval. "It is well settled ... that objections based purely upon individual claims of loss do not warrant disapproval of the proposed settlement." *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 528 (E.D. Ky. 2010) (internal quotations omitted). "The Court's role in assessing the fairness of a settlement is not to make a *de novo* evaluation of whether the measures applied to all claimants provide each individual with a satisfactory recovery." *Id.* "Rather, the criteria or methodology employed by the litigants is sufficient if its terms, when applied to the entire group of individuals represented, appear reasonable." *Id.*

The reimbursement cutoff date is fair, reasonable, and has a rational basis. Therefore, Ms. Whitaker's objection should be overruled. Nevertheless, NNA has agreed to reimburse Ms. Whitaker for her October 27, 2021 headlamp replacement, and Ms. Whitaker has withdrawn her objection, subject to Court approval. *See* Ex. B. Pursuant to Rule 23(e)(5)(B)(i), the parties respectfully request that the Court approve the withdrawal of her objection.

2. Melgoza Letter

Class Counsel also received a letter from Ms. Nancy Melgoza. *See* Ex. C. In her letter, Ms. Melgoza "object[s]" to her headlamps, which she says are malfunctioning. She does not object to any aspect of the Settlement. Lead Class Counsel spoke with Ms. Melgoza on

November 30, 2021 to ensure that she understands her right to obtain free replacement headlamps under the Settlement if her current headlamps are delaminated. She did not express any objection to the Settlement terms on that call. Nevertheless, as her letter refers to “objecting,” Class Counsel provide a copy for the Court’s consideration. The parties request that the Court overrule Ms. Melgoza’s “objection” to the Settlement, to the extent it can be considered one at all.

II. THE AMENDMENT TO THE SETTLEMENT AND ADDITIONAL NOTICE

The parties recently discovered that, due to an error in internal NNA reference material consulted during the process of creating the comprehensive list of vehicles included in the Settlement Class, the Class definition in the Settlement Agreement requires clarification and, relatedly, certain VIN numbers were inadvertently excluded from the direct mail notice program. The parties have therefore agreed to clarify the Class definition in the Settlement, subject to the Court’s approval, and send the direct mail notice to the additional Class Members who can be identified as current or former owners or lessees of those additional VINs. The parties do not believe this error necessitates any extension of deadlines or delay in conducting the Final Hearing or entry of a final judgment, for the reasons discussed below.

A. Description of the Error

The Settlement Class includes all 2013-2018 Nissan Altimas *manufactured with halogen headlamps*. Importantly, the notices disseminated by the Settlement Administrator—including the Mailed Notice, Summary Notice, PR newswire Press Release, Full Notice, and Settlement Website—state that the Class includes all “current or former owners or lessees of 2013-2018 Nissan Altimas manufactured with halogen headlamps.” *See* Supp. Lucchesi Decl., at Exhibits C-G. The Settlement Administrator, KCC, sent direct mail notice to over 3.2 million addresses

associated with over 1.43 million Vehicle Identification Numbers (“VINs”) identified as Class Vehicles by NNA. *See id.* at ¶ 12; *id.* at Ex. A.

Although the disseminated notices simply refer to Altimas “manufactured with halogen headlamps,” paragraph 69 of the Settlement (which is also incorporated in the class definition preliminarily approved by the Court (ECF No. 29, ¶ 4)), both defines the Class to include Altimas manufactured with halogen headlamps and also lists certain trim levels that were manufactured with LED or Xenon headlamps, which are excluded. The same list of excluded trims was set forth in FAQ 6 (“How do I know if my Altima was manufactured with halogen headlamps?”) in the Full Notice, which is available by request and on the Settlement Website.

As an outgrowth of a communication between Class Counsel and a Class Member in November, the parties discovered that an error in an internal NNA reference document, which was consulted in creating the list of VINs included in the Settlement Class, caused an inadvertent error in overly restricting the Class Vehicle VIN list and list of excluded trims. The discrepancy was related to certain plant-level manufacturing changes that were not fully reflected in the data used to create the list of excluded trims.

In order to correct the error, the parties have executed an amendment to paragraph 69 of the Settlement, and NNA has provided approximately 283,000 additional VINs to KCC, who is currently preparing to send direct mail notices to all associated addresses that can be obtained from state motor vehicle registration records.

The amendment changes paragraph 69 of the Settlement as follows.

“Settlement Class Vehicles” means all model year 2013–2018 Nissan Altimas, except the following excluded vehicles:

Model Years	Trim	Package/Edition (if applicable)
2013- 2018 <u>2015</u>	3.5L SL	
2017	3.5L <u>SL</u>	
<u>2016-2018</u>	<u>3.5L SL</u>	<u>with Tech package</u>
<u>2016-2017</u>	3.5L SR	
2016-2017	2.5L SR	with LED Appearance package
2016-2018	2.5L SR <u>SL</u>	with Tech package
2017	2.5L SR	Midnight Edition

For clarity, the Settlement Class Vehicles include all 2013-2018 Altimas manufactured with halogen headlamps, and excludes 2013-2018 Altimas manufactured with Xenon or LED headlamps.

See Ex. D. The parties also instructed KCC to edit FAQ 6 consistently, and this edit was made prior to the filing of this submission. No edits are necessary to the Mailed Notice, Summary Notice, Digital Ad Notices, or PR Press Release, all of which simply refer to the Class Vehicles as all 2013-2018 Altimas “manufactured with halogen headlamps.”

NNA provided KCC with the additional VINs on November 22, 2021, and KCC is in the process of obtaining associated address information from state motor vehicle records. *See* Supp. Lucchesi Decl., at ¶ 11. Barring unforeseen circumstances, KCC anticipates it will complete this supplemental mailing by January 20, 2022, which is on or before the earliest possible Effective Date of the Settlement. *Id.*

B. Rule 23(c)(2) and Due Process Have Been Satisfied

Notwithstanding the error, the parties agree that Rule 23(c)(2) and due process have been satisfied by the extensive notice that has already occurred and, therefore, no extension of the objection or opt out deadline is required.

The notice program here was very broad. It included: (1) direct mail to 3,249,364 Class Members; (2) nationwide publication in People magazine; (3) a digital media campaign with

over 5 million ads, (4) a PR Newswire press release, (5) the Settlement Website, and (6) publication on Lead Class Counsel's website. In addition, the Settlement garnered significant media coverage and has been discussed on several consumer forums and social media. *See* Supplemental Declaration of Timothy N. Mathews in Further Support of the Parties' Joint Motion for Final Approval of Class Action Settlement and Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Service Awards ("Supp. Mathews Decl."), filed contemporaneously herewith, at ¶¶ 5-6. Lead Class Counsel have also directly communicated with over 3,700 Class Members.

Due process and the Federal Rules require that absent class members be provided with "the best notice that is practicable under the circumstances" so that they have an opportunity to object and opt out. Fed. R. Civ. P. 23(c)(2)(B).

Individual notice is required to be sent "to all members who can be identified through reasonable effort." *Id.* Reasonable effort does not mean perfect, however. "Due process when viewed through the lens of objectivity does not require perfection." *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 177 F.R.D. 216, 234 (D.N.J. 1997). Further, "[w]hile the *plan for giving notice to the entire class* must be legally and constitutionally sufficient, there is no requirement that any particular class member receive 'individually sufficient notice.'" *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, 2007 U.S. Dist. LEXIS 35431, at *17 (N.D. Ohio May 15, 2007) (emphasis in original).

Where, as here, an error occurs in providing individual notice, courts have held that Rule 23(c)(2) and due process are nevertheless satisfied where the notice program includes other forms of notice, such as publication. For example, in *Friedman v. 24 Hour Fitness USA, Inc.*, 2010 U.S. Dist. LEXIS 143816, at *10-13 (C.D. Cal. July 12, 2010), the court held that Rule

23(c)(3) and due process were satisfied notwithstanding a notice error that resulted in approximately 12,500 identifiable class members not being sent a direct mail notice, where notice was also published in People magazine and online. *See also, e.g., Fidel v. Farley*, 534 F.3d 508, 515 (6th Cir. 2008) (holding that notice satisfied due process and Rule 23(b)(2) notwithstanding that some class members received late direct notice); *Trist v. First Fed. Sav. & Loan Asso.*, 89 F.R.D. 1, 3 (E.D. Pa. 1980) (approving notice procedure despite the fact that some class members were never sent a notice due to a clerical error).

“[T]he lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.” Federal Judicial Center, Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide; *see also, e.g., Kaufman v. Am. Express Travel Related Servs. Co., Inc.*, 877 F.3d 276, 287 (7th Cir. 2017) (approving notice plan that reached “approximately 70%” of millions of class members). Here, direct mail notice was timely sent to all addresses associated with over 83 percent of the Class Vehicles.

“[S]upplemental publication notice provides sufficient and adequate notice to those class members who, though known, could not be reached individually.” *Hall v. Best Buy Co.*, 274 F.R.D. 154, 168 (E.D. Pa. 2011). Indeed, class action settlements are regularly approved in cases where direct notice is not feasible or where the parties can only identify a portion of the class for direct notice. *See, e.g., Turner v. NFL (In re NFL Players' Concussion Injury Litig.)*, 307 F.R.D. 351, 385 (E.D. Pa. 2015) (finding publication notice program sufficient to supplement direct notice that would not reach all class members); *Clemans v. New Werner Co.*, 2013 U.S. Dist. LEXIS 104488, *14 (W.D. Wash. July 25, 2013) (approving notice program involving mailed and publication notice where parties had addresses for only some class members).

Plaintiffs submit that the requirements of Rule 23 and due process have been met here, notwithstanding the error that will result in direct mail notices being sent to some Class Members after the objection and exclusion deadlines. *See, e.g. Frost v. Household Realty Corp.*, 2004 U.S. Dist. LEXIS 32397, at *12-14 (S.D. Ohio Nov. 10, 2004) (“The fact that Plaintiffs did not receive actual notice of the settlement agreement, which included the requirements for excluding themselves from the class, does not dictate that the notice was insufficient or in violation of their due process rights.”); *McKinstry-Austin v. JPMorgan Chase Bank, N.A.*, 2015 U.S. Dist. LEXIS 126378, at *11-12 (E.D. Mich. Sep. 22, 2015) (citing *Frost*, 61 F. Supp. 3d at 745-46). The Mailed Notice was timely sent to the vast majority of Class Members, and the Mailed Notice was supplemented by publication in People magazine, significant digital advertising, and the PR newswire press release, plus the substantial media coverage and consumer interest garnered by the Settlement. Moreover, all these notices made clear that the Settlement Class includes *all* ’13-’18 Altimas manufactured with halogen headlamps.

In fact, at least 163 Class Members who own[ed] or lease[d] the vehicles that were mistakenly excluded from the direct mailing have *already* submitted reimbursement claims, demonstrating that the broad notice program was effective to get notice to the entire Class of owners and lessees of Altima “manufactured with halogen headlamps,” even though some Direct Mail notices will be sent late. *See* Supp. Lucchesi Decl., at ¶ 23.

Thus, the parties respectfully submit that the requirements of Rule 23(c)(2)(B) and due process have been satisfied, notwithstanding the error.

C. Additional Factors Weigh Heavily in Favor of Not Delaying Final Approval

Further, there are at least three important reasons why Class Counsel believe the best interests of the Class are best served by not delaying final approval of the Settlement.

1. There Are No Objections to the Settlement

First, as discussed *supra*, the lack of objections demonstrates that this Settlement is exceptionally fair to Class Members. As many courts have recognized, an important consideration in evaluating the sufficiency of notice is “not whether some individual [class members] got adequate notice, but whether the class as a whole had notice adequate to flush out whatever objections might reasonably be raised to the settlement.” *Fidel*, 534 F.3d at 513-14 (*quoting* *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)).

Here, direct mail notice was sent to over 3.2 million Class Members, in addition to the other forms of notice disseminated to all Class Members. There has been ample opportunity to flush out any possible objections to the Settlement, but the parties received just a single objection to the Settlement, which has now been withdrawn. The lack of objections is a very clear reflection of the strength and overall fairness of this Settlement and weighs heavily in favor of the conclusion that Final Approval should not be delayed as a result of the notice error.

2. Class Members Cannot Receive Free Replacement Headlamps Until After the Effective Date

Second, it would be unfair to delay providing the Settlement relief to Class Members as a result of NNA’s error. Under the Settlement, every Class Vehicle with dim, delaminated headlamps is eligible for free replacement headlamps from an NNA dealer, but not until the Settlement receives final approval and the Effective Date occurs.⁴ Many Class Members have contacted Lead Class Counsel expressing their desire to obtain free replacements as soon as possible due to perceived safety concerns.

⁴ Class Members who are currently within the extended six-year warranty period can pay for replacements now and seek reimbursement, but no free replacements will occur until after the Effective Date.

Particularly given that there are no pending objections to the Settlement, it would be unfair and unjust to delay access to the benefits of the Settlement. *See Friedman*, 2010 U.S. Dist. LEXIS 143816, at *11 (“the Court finds that it would be unfair to delay final approval of the settlement and receipt of the benefits provided by the settlement to approximately 1.8 million unaffected class memberships, in order to provide the approximately 12,500 class memberships (i.e., approximately 0.7% of the class) affected by the computer glitch with additional direct notice and an opportunity to opt and or object”). Delaying Final Approval will not result in any benefit to Class Members; it would only delay their ability to benefit from the Settlement.

3. Class Members to Whom the Supplemental Notices Will Be Sent Will Have Ample Time to Claim the Benefits of the Settlement

Third, there is ample time for all Class Members to take advantage of the full benefits of the Settlement even after the additional notices will be sent. As noted, KCC expects to mail the additional notices by January 20, 2022. The deadline for reimbursement claims under the Settlement is 95 days later, April 25, 2022. Thus, a Class Member who receives the supplemental notice will still have more than three months to submit a reimbursement claim, which is a very simple process that can be completed online or through the mail.

Further, all Class Members will have a full opportunity to receive free replacement headlamps after the Effective Date. The earliest possible Effective Date of the Settlement is January 20, 2022, and the supplemental notice will be mailed on or before then. Class Members who are within the six-year extended warranty period can simply go to an NNA dealer after the Effective Date to receive free replacements. For those who are outside the six-year extended warranty, KCC will mail the Out-of-Warranty Notice and Claim form within five days of the Effective Date. In other words, the additional Mailed Notice will not prejudice any Class Member’s ability to benefit from the Settlement.

D. The Court Should Approve the Settlement Amendment

Finally, because the amendment to paragraph 69 of the Settlement is fair, adequate, and in the best interest of Class Members, the Court should approve it. The amendment to paragraph 69 is largely a technical clarification to the Class definition. As noted, the Settlement itself and the notices always made clear that the Settlement Class includes “all ’13-’18 Altimas manufactured with halogen headlamps,” and excluded only those vehicles that were manufactured with Xenon or LED headlamps. While the amendment to paragraph 69 of the Settlement results in additional notices to be sent and a narrower exclusion list, it does not change the Class definition in any fundamental way.

Courts often exercise discretion in modifying settlement class definitions, particularly where necessary to clarify an ambiguity or correct a technical issue. In *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, 268 F. Supp. 2d 907, 918 n.17 (N.D. Ohio 2003), for example, following the court’s orders giving final approval to the settlement agreement, the parties offered several “mutually-agreed-upon amendments” to the settlement agreement. Because the “amendments were either minor and technical in nature, or were made for the purpose of improving the benefits given to the Plaintiff Class,” the court granted the motions to amend, “typically noting that it had ‘earlier concluded that the Settlement Agreement was fair, adequate, non-collusive, and reasonable, and meets the requirements of Fed. R. Civ. P. 23(e)’” and the “proposed amendment does not materially alter the Settlement Agreement, and does not change the Court’s fairness analysis, except possibly to increase the adequacy, fairness, and reasonableness of the Agreement by enhancing the overall value of the settlement to the Class.” *Id.* See also, e.g., *Eiji Kurihara v. Best Buy Co.*, 2009 U.S. Dist. LEXIS 141014, at *19 (N.D. Cal. Oct. 14, 2009) (granting stipulation of the parties filed after preliminary approval but prior

to the final approval hearing to clarify the settlement agreement to address an objection raised by a class member regarding the scope of the release); *Palombaro v. Emery Fed. Credit Union*, 2018 U.S. Dist. LEXIS 165970, at *5-6 (S.D. Ohio Sept. 27, 2018) (granting approval of settlement agreement which modified the certified class definition where “the parties became aware of a technical aspect of the class definition that required clerical modification to avoid potential ambiguities”); *Dewhurst v. Century Aluminum Co.*, 2017 U.S. Dist. LEXIS 77877, at *13 (S.D. W. Va. May 23, 2017) (“The court, in its discretion, finds that the modification of the class definition from the one contained in the class certification order is appropriate in order to facilitate the settlement between the parties and include additional persons affected by defendants’ [conduct]”); *Allen v. Similasan Corp.*, 2017 U.S. Dist. LEXIS 56333, at *8 (S.D. Cal. Apr. 12, 2017) (certifying proposed settlement class which expanded the previously certified class, finding “[t]he new class is more numerous than the originally certified one and the representation is equally as adequate”).

Accordingly, the parties respectfully request the Court exercise its discretion here to approve the amendment correcting the Settlement Class definition. Submitted herewith as Exhibit E is a revised Proposed Final Order and Judgment reflecting the correction to the Class definition.

III. CONCLUSION

For the foregoing reasons, the parties respectfully request the Court grant final approval of the Settlement, approve withdrawal of the Whitaker objection, and enter the Proposed Final Order and Judgment submitted herewith.

DATED: December 6, 2021

Respectfully submitted,

/s/ Timothy N. Mathews

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2021, I electronically filed the foregoing PLAINTIFFS' REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF SETTLEMENT AND ENTRY OF FINAL ORDER AND JUDGMENT with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

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/s/ Timothy N. Mathews
Timothy N. Mathews

Attorney for Plaintiffs

EXHIBIT A

11/02/2021

To Whom it May Concern,

My name is Lindsay Marie Whitaker, my maiden name was Lindsay Marie Hudson. My address is [REDACTED] Addison, Illinois zip code 60101. A phone number I can be reached at is 515-[REDACTED]. An email address I can be reached at is [REDACTED]. I have provided photocopies of my driver's license and marriage certificate to affirm these facts.

On August 22, 2014 I purchased a new 2015 Nissan Altima S, VIN# 1N4AL3APXFN307749. My name at the time was Lindsay Marie Hudson, I took my husband's last name when we were married the next year in 2015. I am the current owner of this vehicle. I have provided a copy of my most recent Illinois vehicle registration to affirm that I own this vehicle.

I am objecting to the terms of the settlement because under those terms I cannot seek reimbursement for the replacement of my car's Driver's side headlight assembly. Throughout September and October 2021, I had noticed a problem with my Driver's side headlight being dim. On October 24, 2021, one day before the notice date, I set up an appointment to have the problem looked at by Billy Kay Nissan in Downer's Grove, Illinois which is an Authorized Nissan Dealer, in addition to getting an oil change. My appointment was for October 26th 2021. I was told that the entire headlight assembly for the Driver's side would need to be replaced, as well as the passenger side light bulb. This repair was completed on October 27th. On October 29th I received the Notice of Class Action Settlement. This was the first I had heard of this class action lawsuit. According to the Settlement, I can only be reimbursed if I was charged by October 25th, 2021. Repairs were completed the 27th and I paid October 28th. If the notice date were set a few days later, I would be covered. Because my car was bought in July of 2014, 7 years ago, it does not fall under the 6-year extended warranty. Also, if I had received the notice prior to taking the car in, I could have waited to have the repair done as part of the one-time out-of-warranty repair process describe in the notice, but due to not having knowledge of it that opportunity too is foreclosed. Without some change, I have no way to be reimbursed for the money spent (\$349.64 for the headlight assembly, \$640.00 for Labor) on repairing this and will be prevented by the class action suit from taking any other action. I ask that this be addressed and the date after which one cannot apply for reimbursement be changed to cover myself and other owners who may have had their headlight assembly repaired during the time from October 26 until they received notice informing them of the possibility of out-of-warranty coverage. Under the new terms of the settlement, I should be reimbursed for the \$989.64 I spent correcting the issue.

Objection applies to a subset of the Settlement Class, specifically any member of the settlement class who had repairs done on October 26th 2021 or later but had not yet received notice that they were entitled to out-of-warranty repairs on their car that had been purchased more than 6 years ago.

I am not being assisted by any attorneys in writing this letter or being represented by them in this case. I have not objected to any other class action settlements in the last 4 years. I have attached what I believe are all relevant documents to my objection, listed on the second page. I do not intend to attend the Fairness Hearing either in person or through an attorney.

Sincerely,

Lindsay Marie Whitaker, nee Lindsay Marie Hudson

Lindsay Marie Whitaker 11/2/2021
Lindsay Marie Hudson

Attached to this letter should be:

A photocopy of my Driver's license

A photocopy of my marriage certificate

A photocopy of my most recent car registration

A photocopy of the page of my invoice from Bill Kay Nissan that deals with the specific replacement of the headlight assembly and the accompanying charges for parts and labor.

A photocopy of the email confirmation of my appointment, which I made on October 24th for October 26th.

A photocopy of the Notice of Settlement addressed to me that I received on October 29th.

ILLINOIS

Jesse White • Secretary of State

DRIVER'S LICENSE

USA

4a LIC No: [REDACTED]

3 DOB: [REDACTED]

4b EXP: [REDACTED]

4a ISS: 11/13/2020

1 WHITAKER

2 LINDSAY MARIE

3 [REDACTED]

4 ADDISON, IL 60101

9 CLASS: D

9a END: NONE

12 REST: B

15 SEX: F

16 HGT: 5'-04"

17 WGT: 175 lbs

18 EYES: HZL

5 DD 11132020395IS4627

TYPE: ORG



CERTIFICATION OF MARRIAGE

LICENSE NUMBER: [REDACTED]

BETWEEN

GROOM'S NAME: **RICHARD DYCUS WHITAKER**

AGE: 29

AND

BRIDE'S NAME: **LINDSAY MARIE HUDSON**

AGE: 32

ON

DATE OF MARRIAGE: **MAY 17, 2015**

**WERE UNITED IN MARRIAGE IN THE COUNTY OF COOK, AND STATE OF ILLINOIS
IN A RELIGIOUS CEREMONY**

BY

NAME: **BRADFORD B. WILSON**

OFFICIANT TITLE: **MINISTER**

AT

CITY OF CEREMONY: **DES PLAINES, ILLINOIS**

DATE RECORDED: **MAY 20, 2015**

APPLICATION DATE: **MAY 11, 2015**

This is to certify that this is a true and correct abstract from the official
record filed with the office of the Cook County Clerk.

6/4/2015 10:47

3119280

County of Cook
State of Illinois

Office of County Clerk
David Orr

David Orr
DAVID ORR COUNTY CLERK

Q411189

2022 Illinois Registration Identification Card

Jesse White, Illinois Secretary of State

ININ 05 / 17/21 :04:2288 :151.00 CC

Q411189 2F5085587 2206

Vehicle Year 2015	Vehicle Make NISSAN	VIN 1N4AL3APXFN307749
Weight or CC's	Body Style SEDAN	Application Type PASSENGER
Axles	Leased/Rental	Unit Number
File Number	County 022	DU PAGE
Driver's License Number(s) or FEIN(s)		Expiration Date JUNE 30, 2022
		Plate Number
Renewal Fee Due \$151.00		

LINDSAY HUDSON

ADDISON IL 60101-1839

Registration ID: 2062 1164 PIN: 8806
Q411189 0359

↑
This Identification Card must be carried at all times in those vehicles designed to carry more than 10 persons, or to pull or carry property, freight, or cargo: those that are designed or used for living quarters, and school buses (625 ILCS 5/3-416). If you travel outside Illinois, you may be required to exhibit this vehicle registration identification card as proof of ownership.

TICKER INSTRUCTIONS

PLACE THIS VALIDATED DECAL ON YOUR REAR LICENSE PLATE

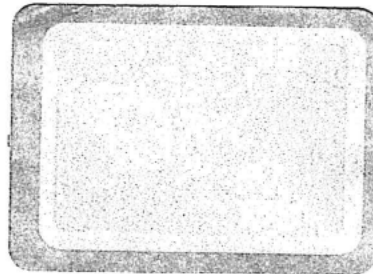
- Clean the license plate by removing all dirt, wax and tar.
- Wipe dry.
- Place renewal sticker on top of last year's sticker.
- Press firmly.

AUTION: After sticker has been applied, it cannot be moved without destroying it.

922297359



Year 2022



Peel Here

N2200033REGCARDST20210518055121871000



1601 Ogden Ave
Downers Grove, IL 60515
(630) 969-3200
Fax: (630) 829-4647
www.downersgrovenissan.com

SERVICE DEPARTMENT HOURS
7:00 a.m. to 6:00 p.m.
Monday - Friday
8:00 a.m. to 4:00 p.m. Saturday

R/O Open Date	R/O Number
10/26/21	36056348/1
R/O Close Date	Status
10/27/21	Pre-Invoice
Mileage In	Mileage Out
62772	62772
Service Advisor / Tag #	
RICK FUNSTON/015	

WHITAKER, LINSAY
[REDACTED]
ADDISON, IL 60101

Work Phone

Vehicle Identification Number

1N4AL3APXFN307749

Home Phone

Delivery Date

In-Service Date

219-

Body

Color

License Number

Year	Make	Model
2015	NISSAN	ALTIMA

4DR SDN

DESCRIPTION OF SERVICE AND PARTS

AMOUNT

#1 - INFO: INFORMATION ONLY

HEAK LAMP SEEMS DIM DRIVERS SIDE

Caused by

DRIVER'S HEADLAMP IS DIMMER THAN PASS. SIDE. FOUND
LENS HAS POOR REFLECTIVE PERFORMANCE & HARNESS AT
BULB CONNECTOR IS INTERNALLY CORRODED. ALSO,
PASS. SIDE BULB HAS SIGNS OF BEING BURNT.
RECOMMEND REPL. DRIVER'S HEADLIGHT ASSY. PASS.
BULB & REPAIR CONNECTOR.

Tech: Jay S. (406)

Installed: LAMP ASSY - HEAD, LH

Installed: BULB

Sub Total: 1015.70

1@349.64

1@26.06

640.00

349.64

26.06

#2 - 3K: EVERY 3000 MILES CHANGE OIL AND FILTER INSPECT FRONT
SUSPENSION, DRIVE LINE, STEERING, BRAKE
HOSES, & FLUIDS INSPECT TIRES AND INFLATE TO PROPER
TIRE PRESSURES

Tech: Jay S. (406)

Kit: 65FCP: 65F 5W30

Installed: WASHER DRAIN

Installed: OIL FILTER

Installed: GENUINE NIS 5W30 API SN

Sub Total: 23.40

7.95

15.45

Included
Included
Included

#3 * 24E: PERFORMED FUEL INJECTOR CLEANING PROCEDURE,
INSPECTED FUEL LINES & RAILS.

TERMS: STRICTLY CASH UNLESS ARRANGEMENTS ARE MADE. "I hereby authorize the repair work hereinafter to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in the vehicle in case of fire, theft, or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you or your employees permission to operate the vehicle herein described on streets, highways, or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto."

STATEMENT OF DISCLAIMER: The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The Seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

NO RETURN ON ELECTRICAL OR SAFETY ITEMS OR SPECIAL ORDERS.

X

ON BEHALF OF SERVICING DEALER, I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREON IS ACCURATE UNLESS OTHERWISE SHOWN. SERVICES DESCRIBED WERE PERFORMED AT NO CHARGE TO OWNER. THERE WAS NO INDICATION FROM THE APPEARANCE OF THE VEHICLE OR OTHERWISE, THAT ANY PART REPAIRED OR REPLACED UNDER THIS CLAIM HAD BEEN CONNECTED IN ANY WAY WITH ANY ACCIDENT, NEGLIGENCE OR MISUSE. RECORDS SUPPORTING THIS CLAIM ARE AVAILABLE FOR (1) YEAR FROM THE DATE OF SERVICE. THE INFORMATION CONTAINED HEREON IS NOT TO BE USED FOR INSPECTION BY MANUFACTURER'S REPRESENTATIVE.

LABOR

PARTS

DEDUCTIBLE

SUBLET

SHOP SUPPLIES

HAZARDOUS MATERIALS

SALES TAX OR TAX I.D.

SPECIAL ORDER DEPOSIT

DISCOUNTS

TOTAL DUE

Appointment Scheduled Online: Bill Kay Nissan of Downers Grove appointment on Oct 26, 2021 9:30:00 AM

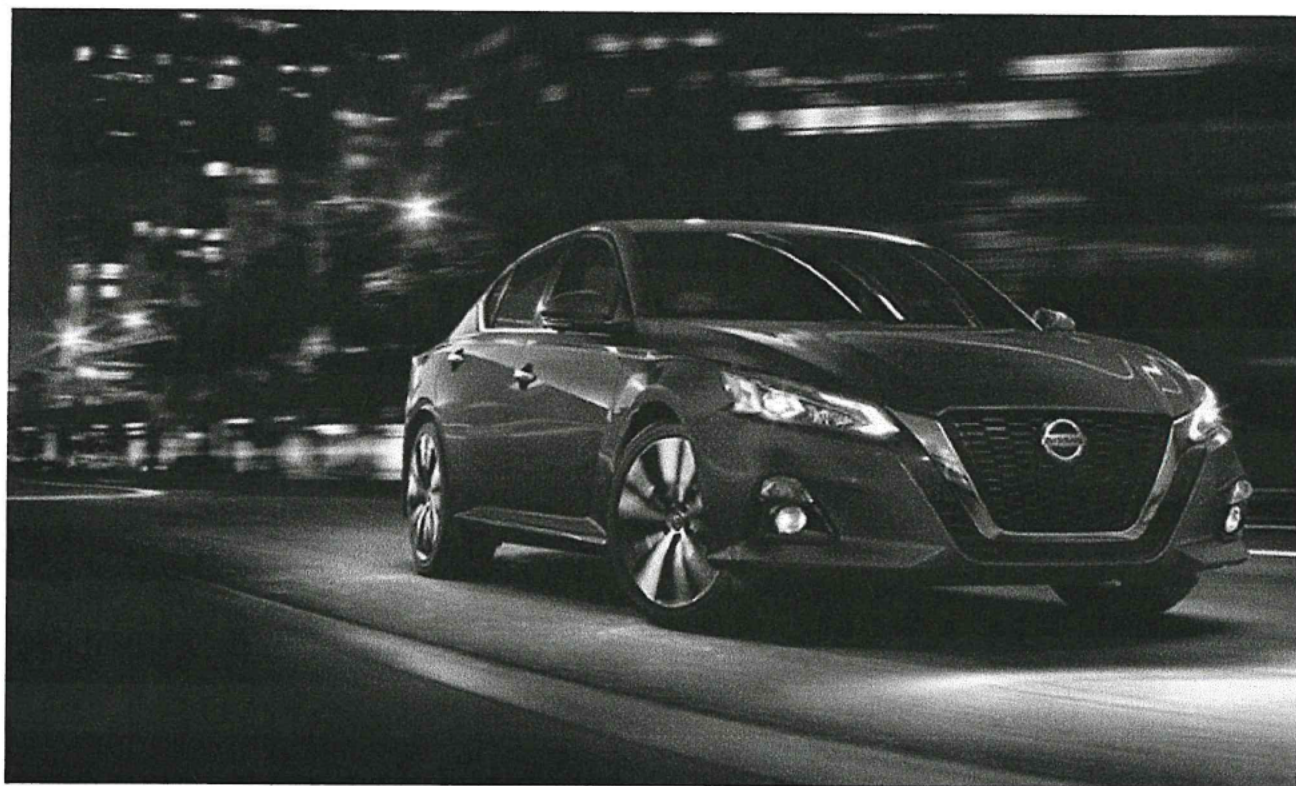
Bill Kay's Downers Grove <erike@billkay.com>

Sun 10/24/2021 9:55 AM

To:

1 attachments (1 KB)

X10EPNXX9N_en_US_Service_Appointments.vcs;



Hello Lindsay Whitaker,

Thank you for taking the time to schedule your service appointment in advance. Our factory-trained Certified Technicians will take great care of your vehicle.

For your convenience you can add this appointment time to your calendar using the attached file, if present, or by clicking the button below:

[ADD TO CALENDAR >](#)

Confirmation Code: X10EPNXX9N

Date and Time: Oct 26, 2021 9:30:00 AM

Vehicle: 2015 NISSAN ALTIMA

Advisor: Rick Funston

Requested Arrangement: Dropping off vehicle at the dealership

Repair Services:

Bulb or Lighting Concern

- Driver's side headlight is extremely dim and needs to be inspected and/or replaced.

Tell Us More

- Hood latch recall 20V-315

Did you know that you can manage your appointment online? Click the button below to make adjustments to your reservation, or you can reach us at **(630) 969-3200**.

[MANAGE SERVICE >](#)

We look forward to providing you with the highest level of service.

Sincerely,

Bill Kay Nissan of Downers Grove

1601 OGDEN AVE

DOWNERS GROVE, Illinois 60515

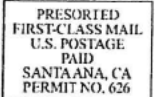
(630) 969-3200

[Website](#) | [Map to Dealer](#)



Suarez v. Nissan Settlement Administrator
P.O. Box 43199
Providence, RI 02940-3199

Electronic Service Requested



Postal Service: Please do not mark barcode
F1R4D-0665850 VI 36/1851/2832

VIN: 1N4AL3APXFN307749

Claim#: NIZ-12394589601-1947114

Lindsay M Hudson

Addison, IL 60101-1839



NIZ

NOTICE OF CLASS ACTION SETTLEMENT

Rafael Suarez, et al. v. Nissan North America, Inc., No. 3:21-cv-00393-WLC-AN (M.D. Tenn.)

A Settlement Involving Headlamps on 2013-2018 Nissan Altima Vehicles May Affect You.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

You are receiving this Notice because records indicate that you own or lease, or previously owned or leased, a 2013-2018 Nissan Altima that is included in a class action settlement. This Notice is a summary only. You can get more information at www.AltimaHeadlightSettlement.com or by contacting the Settlement Administrator, *Suarez v. Nissan Settlement Administrator*, P.O. Box 43250, Providence, RI 02940-3250 or calling 1-855-786-0996.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs allege that the headlights of 2013-2018 model year Nissan Altimas manufactured with halogen headlamps ("Class Vehicles") can become dim over time due to delamination of reflective surfaces inside the headlamp ("Headlamp Defect"). Nissan North America, Inc. ("Nissan") denies the allegations but has agreed to provide extended warranty coverage, cash reimbursement and other benefits to settle the claims.

HOW DO I KNOW IF I AM INCLUDED?

The Settlement Class consists of all United States residents who are current or former owners or lessees of 2013-2018 Nissan Altimas manufactured with halogen headlamps.

WHAT CAN I GET FROM THE SETTLEMENT?

The Settlement will become effective on the Effective Date, which will be 31 days after the Court enters a final order approving the Settlement, or after all appeals are exhausted, if an appeal is filed. Absent any appeals, the Effective Date is anticipated to occur around January 20, 2022, but this is subject to change. Check the Settlement website for updates.

The Settlement provides for the following benefits:

- (1) **Extended Warranty Covering Headlamp Dimming Due to Delamination:** Nissan will provide a three-year extension of the manufacturer's warranty (for a total of six years) covering headlamp dimming due to delamination. To receive replacement headlamps within the extended warranty period, bring your Class Vehicle to an Authorized Nissan Dealer after the Effective Date of the Settlement.
- (2) **Opportunity to Receive Replacement Headlamps for Class Vehicles That Are or Will Be Outside of the Extended Warranty as of the Effective Date:** If your Class Vehicle will already be outside the extended warranty on the Effective Date, you may still qualify for free replacement headlamps if you: (1) submit an "Out-of-Warranty Claim Form" within 65-days after the Effective Date of the Settlement, and (2) bring your vehicle to an Authorized Nissan Dealer within six months thereafter.

- (3) **Option to Obtain Immediate Replacement from an Authorized Nissan Dealer With Reimbursement:** If you are currently within the extended warranty period and you do not want to wait until the Effective Date of the Settlement to acquire replacement headlamps, you can pay out-of-pocket for replacement headlamps from an Authorized Nissan Dealer and submit a claim for reimbursement. Reimbursement claims must be submitted by April 25, 2022.
- (4) **Reimbursement of Out-of-Pocket Costs Incurred Up To October 25, 2021:** If you previously paid out-of-pocket to replace your headlamps due to dimming prior to October 25, 2021, you can submit a claim for cash reimbursement. The deadline to submit a reimbursement claim is April 25, 2022. You may seek reimbursement for parts, labor, and other costs incurred to replace your headlamps, regardless of whether the costs were incurred through an Authorized Nissan Dealer, but reimbursements for amounts paid to Independent Repair Facilities are capped at \$1,200 per headlamp pair. Reimbursements for amounts paid to Authorized Nissan Dealers are not capped. After October 25, 2021, only costs incurred through an Authorized Nissan Dealer are reimbursable.

Visit the Settlement Website, www.AltimaHeadlightSettlement.com, for more details.

WHAT ARE YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT?

Option 1: Receive Replacement Headlamps and/or Submit a Reimbursement Claim – You do not need to do anything to claim the extended warranty coverage, but to receive replacement headlamps under the extended warranty, you will need to bring your Class Vehicle to an Authorized Nissan Dealer after the Effective Date and within your extended warranty period.

If your Class Vehicle will already be outside the extended warranty period as of the Effective Date, you may still receive free replacements from an Authorized Nissan Dealer, but you must: (1) submit an Out-of-Warranty Claim Form within sixty-five days after the Effective Date, and (2) bring your vehicle to an Authorized Nissan Dealer within six months thereafter to obtain replacements.

If you prefer to obtain replacement headlamps before the Effective Date, you may elect to pay out-of-pocket for replacement headlamps and seek reimbursement. To qualify, you must: (1) obtain replacements from an Authorized Nissan Dealer, and (2) submit a valid reimbursement claim no later than April 25, 2022.

Finally, if you paid out-of-pocket costs to replace your headlamps due to dimming prior to October 25, 2021, even if the costs were not incurred through an Authorized Nissan Dealer, you can submit a claim for reimbursement of those costs no later than April 25, 2022. Such costs may include parts, shipping, and labor, but reimbursement is capped at \$1,200 per headlamp pair replaced through an independent repair shop. After October 25, 2021, only costs incurred through an Authorized Nissan Dealer are reimbursable.

Option 2: Exclude Yourself from the Settlement – If you do not wish to receive benefits from the Settlement and you want to retain your right to sue Nissan at your own expense on an individual basis, you must exclude yourself (opt out) online or in writing on or before November 22, 2021. If you exclude yourself, you cannot get any benefits from this Settlement. If you remain in the Settlement, you will receive the benefits of the Settlement but you will also release claims you might have against Nissan arising out of the headlamp defect alleged in the lawsuit.

Option 3: Object to the Settlement – You have a right to stay in the Class and argue in a written objection that the Settlement should not be approved. You will still be bound by the Settlement if it is approved and you cannot object if you exclude yourself from the Settlement. The deadline to object is November 22, 2021. You can also ask to speak in Court about the fairness of the Settlement.

Option 4: Do Nothing – If you do nothing, you will not receive any cash payment. You will be bound by the Settlement's terms and will lose the right to sue Nissan regarding the Headlamp Defect. All Class Members, however, will receive the benefit of the warranty extension, regardless of whether or not they submit a Claim Form.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a hearing in this case on **December 20, 2021 at 1:30 p.m.** in the Estes Kefauver Federal Building & Courthouse, 801 Broadway, Nashville, Tennessee 37203 to consider whether to approve the Settlement, an award of attorneys' fees and expenses, and service awards to the Class Representatives. Information about how to join the Final Approval hearing, whether it is held in person or by other means, shall be provided in a manner to be directed by the Court to the parties and to any Objecting Settlement Class Member who serves a timely objection with notice of intent to appear at the Final Approval hearing. The attorneys' fees, expenses, and service awards approved by the Court will be paid separately by Nissan and will not reduce the amount available to pay Settlement benefits. The motion for attorneys' fees and expenses will be posted on the website after it is filed. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.AltimaHeadlightSettlement.com or call 1-855-786-0996 for any updates about the hearing. The Court may also allow participation at this hearing via video or phone in light of the COVID-19 pandemic. If there are timely objections to the Settlement, the Court will consider them. The Court may listen to people who have asked to speak at the hearing. You or your attorney may appear at the hearing, at your own expense, but you don't have to. We do not know how long these decisions will take.

This Notice is a summary only.

You should review the full Notice for additional information about the Settlement and your rights at www.AltimaHeadlightSettlement.com or by contacting the Settlement Administrator, *Suarez v. Nissan Settlement Administrator*, P.O. Box 43250, Providence, RI 02940-3250 or calling 1-855-786-0996.

Cynthia Whitaker

Addison, IL

60101

Timothy Matthews
Chimicles Schwartz Kinner & Donaldson-Smith LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA
19041



1000



19041

U.S. POSTAGE PAID
EPA IL ENV
ADDISON, IL
60101
NOV 04, 21
AMOUNT
\$1.36
R2305P150535-13

EXHIBIT B

To Whom It May Concern,

I hereby withdraw my objection concerning the settlement agreement.

Sincerely,

Lindsay Marie Whitaker, nee Lindsay Marie Hudson

Lindsay Marie Whitaker
Lindsay Marie Hudson

12/2/2021

EXHIBIT C

Mail body:

Rafael Suarez, et al. v. Nissan North America, Inc., case No 3:21-CV-00393-WLC-AN

Nancy Contreras Melgoza
[REDACTED]

Plant City, Florida 33566

(813) [REDACTED]

"I Nancy Contreras Melgoza currently lease a 2014 Nissan Altima that I purchased in October 2019."

Car VIN number: 1N4AL3AP7EC112816

My specific reason for me objecting to this matter is that. First of all, since I purchased my Nissan Altima the headlamps we're working just fine back in October 2019. Then I started to noticed that the headlights beam would start bright when you started the car. After a few seconds you can see them delaminate and the beam would just light up really down low. Instead of up and ahead on the road. At night time I have to use my high beams instead of just having the normal headlamps, just so I can see perfectly the road ahead of me. I don't know why this is a problem with my Nissan if I just leased this car in 2019. I haven't got this problem checked at the dealership because my money is tight now with all my other living expenses, as I'm a single source of income at the moment. I believe that these headlamps are not safe for any of the Nissan owners. As it can cause an accident to our selves or other drivers or pedestrians.

This objection applies only to me as owner of my 2014 Nissan Altima. I used to own a Toyota Camry and I never had this problem of the headlamps delaminating.

Nancy Contreras Melgoza

Nancy Contreras Melgoza

11/17/2021

Florida DRIVER LICENSE

USA CLASS E

4a DL# [REDACTED]
 1 CONTRERAS MELGOZA
 2 NANCY
 3 DOB [REDACTED]
 4a ISS 09/24/2018
 5 DOB K/41809240212
 6a END NONE
 7a SEX F
 8a HGT 5-02"
 9a SAFE DRIVER
 12 REST A

Operation of a motor vehicle constitutes consent to any sobriety test required by law.

DONOR

Florida DRIVER LICENSE

USA CLASS E

4a DL# [REDACTED]
 1 CONTRERAS MELGOZA
 2 NANCY
 3 DOB [REDACTED]
 4a ISS 09/24/2018
 5 DOB K/41809240212
 6a END NONE
 7a SEX F
 8a HGT 5-02"
 9a SAFE DRIVER
 12 REST A

Operation of a motor vehicle constitutes consent to any sobriety test required by law.

DONOR

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

RAFAEL SUAREZ, DAISY GONZALEZ,
and RICHARD BYRD, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.,

Defendant.

Case No.: 3:21-cv-00393

**AMENDMENT TO CLASS ACTION
SETTLEMENT AGREEMENT**

CLASS ACTION

**AMENDMENT TO CLASS ACTION
SETTLEMENT AGREEMENT**

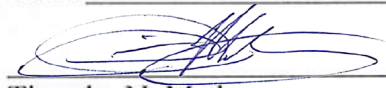
Rafael Suarez, Daisy Gonzalez and Richard Byrd, individually and as representatives of the Settlement Class, and Nissan North America, Inc., by and through their respective undersigned counsel, hereby agree to amend Paragraph 69 of the Class Action Settlement in this action as follows:

69. “Settlement Class Vehicles” means all model year 2013–2018 Nissan Altimas, except the following excluded vehicles:

Model Years	Trim	Package/Edition (if applicable)
2013-2018 <u>2015</u>	3.5L SL	
2017	3.5L <u>SL</u>	
<u>2016-2018</u>	<u>3.5L SL</u>	<u>with Tech package</u>
<u>2016-2017</u>	3.5L SR	
2016-2017	2.5L SR	with LED Appearance package
2016-2018	2.5L SR <u>SL</u>	with Tech package
2017	2.5L SR	Midnight Edition

For clarity, the Settlement Class Vehicles include all '13-'18 Altimas manufactured with halogen headlamps, and excludes '13-'18 Altimas manufactured with Xenon or LED headlamps.

Dated: 12/6/2021



Timothy N. Mathews
Samantha E. Holbrook
Alex M. Kashurba
Zachary P. Beatty
**CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP**

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361 West Lancaster Avenue
Haverford, PA 19041
Phone: (610) 642-8500
Fax: (610) 649-3633
tnm@chimicles.com
seh@chimicles.com
amk@chimicles.com
zpb@chimicles.com

Counsel for Plaintiffs

Dated: 12/6/2021



Brigid M. Carpenter
**BAKER, DONELSON, BEARMAN,
CALDWELL BERKOWITZ, PC**
1600 West End Avenue
Suite 2000
Nashville, TN 37203

Phone: (615) 726-7341
Fax: (615) 744-7341
bcarpenter@bakerdonelson.com

Counsel for Nissan North America, Inc.

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

RAFAEL SUAREZ, DAISY GONZALEZ,
and RICHARD BYRD, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.,
Defendant.

) Case No.: 3:21-cv-00393

) **Hon. William L. Campbell, Jr.**

) **CLASS ACTION**

) **[PROPOSED] FINAL ORDER AND**
) **JUDGMENT GRANTING FINAL**
) **APPROVAL OF CLASS ACTION**
) **SETTLEMENT AND AWARD OF**
) **ATTORNEYS' FEES AND EXPENSES**
) **AND PLAINTIFFS' INCENTIVE**
) **AWARDS**

This matter came before the Court for hearing pursuant to the Order Granting the Parties' Motion for Preliminary Approval of Class Action Settlement, dated July 26, 2021, ECF No. 29 ("Preliminary Approval Order"). Due and adequate notice having been given of the Settlement as required by the Preliminary Approval Order, the Court having held a hearing on the Parties' Joint Motion for Final Approval of Settlement and Entry of Final Judgment and Plaintiffs' Motion for Award of Attorneys' Fees and Expenses and Plaintiffs' Incentive Awards on December 20, 2021, and having considered all papers filed and argument made in connection therewith, and good cause appearing;

THE COURT HEREBY ORDERS, ADJUDGES AND DECREES as follows:

1. This Final Order and Judgment incorporates by reference the definitions in the Settlement Agreement dated May 9, 2021 (the "Agreement"), and all defined terms used herein have the same meanings ascribed to them in the Agreement.

2. This Court has jurisdiction over the subject matter of the Action and over all Parties thereto.

3. The Court reaffirms and makes final its provisional findings, rendered in the Preliminary Approval Order, that, for purposes of the Settlement, all prerequisites for maintenance of a class action set forth in Federal Rules of Civil Procedure 23(a) and (b) are satisfied. The Court hereby certifies the following Settlement Class, as modified, pursuant to a Stipulation between the Parties dated December 6, 2021:

“Settlement Class Vehicles” means all model year 2013–2018 Nissan Altimas, except the following excluded vehicles:

Model Years	Trim	Package/Edition (if applicable)
2013-2015	3.5L SL	
2017	3.5L SL	
2016-2018	3.5L SL	with Tech package
2016-2017	3.5L SR	
2016-2017	2.5L SR	with LED Appearance package
2016-2018	2.5L SL	with Tech package
2017	2.5L SR	Midnight Edition

For clarity, the Settlement Class Vehicles include all 2013-2018 Altimas manufactured with halogen headlamps, and excludes 2013-2018 Altimas manufactured with Xenon or LED headlamps.

Excluded from the Settlement Class are officers and directors of Nissan North America, Inc. (“NNA”) and its parents and subsidiaries, and any Judge to whom the litigation is assigned. Also excluded are Settlement Class Members who timely opt out or exclude themselves from the Settlement.

4. Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby grants final approval of the Settlement and finds that it is, in all respects, fair, reasonable, and adequate and in the best interests of the Settlement Class.

5. The Court finds that notice of this Settlement as required by Rule 23(e) of the Federal Rules of Civil Procedure was provided in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Settlement, to all persons entitled to such notice, and that this notice, coupled with all of the additional information contained in the Settlement Website, to which class members were directed by the various forms of Notice, satisfied the requirements of Federal Rule of Civil Procedure 23 and of Due Process.

6. In full accordance with the requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, the Settlement Administrator caused to be mailed a copy of the proposed class action settlement and all other documents required by said law to the Attorney General of the United States and the Attorneys General in each of the jurisdictions where class members reside. None of the Attorneys General filed objections to the Settlement. The Court finds and confirms that 28 U.S.C. § 1715 has been fully satisfied and that the Settlement is therefore entitled to binding effect as to all members of the Settlement Class who did not timely and validly opt out.

7. The Court has considered all relevant factors for determining the fairness of the Settlement and has concluded that all such factors weigh in favor of granting final approval. The Settlement was a result of arm's-length negotiation by experienced counsel with an understanding of the strengths and weaknesses of their respective cases. Negotiation occurred with the benefits of adequate investigation, settlement-related discovery, and due diligence, and with the assistance of a well-respected independent mediator. Among the factors that they considered are those set forth in the briefing on Final Approval as well as the briefing on the Motion for Attorneys' Fees. Lead Class Counsel have conducted a detailed investigation of the facts and analyzed the relevant legal issues. Although Lead Counsel believe the Settlement Class Members' claims have merit,

they also have reasonably and adequately examined the benefits to be obtained under the Settlement compared to the costs, risks, and delays associated with the continued litigation of these claims.

8. The Court finds that the Settlement is fair, reasonable, and adequate, particularly in light of the complexity, expense, and duration of the litigation and the risks involved in establishing liability and damages and in maintaining class action status through trial and appeal.

9. The benefits to the Settlement Class constitute fair value given in exchange for the release of the claims of the Settlement Class. The Court finds that the consideration to be provided under the Settlement is reasonable in type and scope considering the facts and circumstances of this case, the types of claims and defenses asserted in the Lawsuit, the claims to be released, and the risks associated with the continued litigation of these claims.

10. The Court finds that in all respects the Settlement treats class members equitably in relation to each other, and that the method of distributing relief is fair, appropriate and efficient. Those benefits that can be extended automatically (the warranty extension) are extended automatically. A claim form is only required for reimbursements, which is justified since NNA would not otherwise have all necessary information to determine the amount of and entitlement to the reimbursement. The method of processing those claim forms is likewise fair, reasonable and adequate. Finally, there are no side agreements aside from those expressed in the Settlement itself.

11. The Court directs the Parties and the Settlement Administrator to implement the Settlement according to its terms and conditions.

12. Upon the Effective Date, Representative Plaintiffs and all Settlement Class Members shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties from all Released Claims.

13. All Class Members were given a full and fair opportunity to participate in the Final Approval Hearing, and all members of the Settlement Class wishing to be heard have been heard. Class Members have also had a full and fair opportunity to opt out of the proposed Settlement and the Class.

14. The Persons identified in **Exhibit A** hereto requested timely and valid exclusion from the Settlement Class as of the Opt-Out Deadline. The Court agrees with and adopts the findings of the Settlement Administrator as to the validity of these opt outs. Any other opt outs are hereby ruled invalid and ineffective. These Persons shall not share in the benefits of the Settlement, and this Final Order and Judgment does not affect their legal rights to pursue any claims they may have against Defendant or any Released Party. All other members of the Settlement Class are hereinafter barred and permanently enjoined from prosecuting any Released Claims against the Released Parties in any court, administrative agency, arbitral forum, or other tribunal.

15. The Court hereby re-confirms that named Plaintiffs are suitable Class Representatives. The Court approves an award of \$5,000 to each of Plaintiffs Rafael Suarez, Daisy Gonzalez, and Richard Byrd as reasonable payment for his or her efforts, expenses and risks as Plaintiffs in bringing this lawsuit, which shall be paid by NNA as provided for in the Settlement.

16. Based upon the evidence submitted, the Court confirms its appointment of Timothy N. Mathews, Samantha E. Holbrook, Alex M. Kashurba, and Zachary P. Beatty of

Chimicles Schwartz Kriner & Donaldson-Smith LLP as Lead Class Counsel and John Spragens of Spragens Law PC as additional Class Counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are satisfied by this appointment. The Court finds that these attorneys possess the requisite knowledge, experience, and skills to advance the interests of the Settlement Class. The Court, after careful review of counsel's requested fee as compared to the overall value of the Settlement and counsel's expended efforts on the case, and after applying the appropriate standards required by relevant case law, hereby approves an award of \$2,500,000 to Lead Class Counsel as reasonable payment for Attorneys' Fees, Costs and Expenses, which shall be paid by NNA as provided in the Settlement.

17. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement, is or may be deemed to be or may be used as an addition of, or evidence of, (a) the validity of any Released Claim, (b) any wrongdoing or liability of Defendant, or (c) any fault or omission of Defendant in any proceeding in any court, administrative agency, arbitral forum, or other tribunal.

18. Without affecting the finality of this Judgment, this Court reserves exclusive jurisdiction over all matters related to administration, consummation, enforcement, and interpretation of the Settlement, and this Final Order and Judgment, including (a) distribution or disposition of the settlement funds; and (b) the Parties for the purpose of construing, enforcing, and administering the Settlement. If any Party fail(s) to fulfill its or their obligations under the Settlement, the Court retains authority to vacate the provisions of this Judgment releasing, relinquishing, discharging, barring and enjoining the prosecution of, the Released Claims against the Released Parties, and to reinstate the Released Claims against the Released Parties.

19. If the Settlement does not become effective, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Agreement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement.

20. The Court has considered the objections of putative Class Members and finds that they are unpersuasive and, therefore, overrules and denies them. The Court further approves the withdrawal of the objection from Ms. Lindsay Whitaker.

21. The Court hereby enters a judgment of dismissal, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, of the Released Claims by the Settlement Class Members, with prejudice and without costs, except as specified in this Order.

22. The Court finds that no just reason exists for delay in entering this Final Judgment and Order of Dismissal.

IT IS SO ORDERED.

DATED: _____

HONORABLE WILLIAM L. CAMPBELL, JR.
UNITED STATES DISTRICT JUDGE

EXHIBIT A

ClaimID	Last1	First1	City	St	VIN
11753893001	BALOG	VIVIEN S	BRIDGEPORT	CT	1N4AL3AP7HC230594
13253877501	BARSKY	ROBERT	PHILADELPHIA	PA	1N4AL3AP4FC220425
13259056601	BARSKY	ROBERT	PHILADELPHIA	PA	1N4AL3AP4JC223642
13251035201	BARSKY	ROBERT	PHILADELPHIA	PA	1N4AL3AP4DN478624
10630012001	BUSH	RYAN MICHAEL	KATY	TX	1N4AL3AP2JC231657
12058939401	CROWDER	MARVIN D	WATERBURY	CT	1N4AL3AP8JC260239
10237157001	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP1EN233670
10321075101	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP1GC154949
10690165501	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP3EC133596
10696655801	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP3EC175427
11030041501	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP4FN913922
11212905501	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP5EN234093
11403784001	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP6EC415053
10124546401	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP0HC478461
11718603001	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP7GC135127
11749857901	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP7GN312084
11807786701	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP8DC117330
11871065501	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP8EC274292
12291506901	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP9GN371315
12338695001	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3APXDN424910
11619388801	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP7EC411688
10625993301	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP2JC259720
10132334701	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP0HC158119
11206932001	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP5EC199955
11310007301	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP5GN382683
11790215901	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP8DC288207
12078109801	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP9DN455114
11962593301	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP8FN348901
12534650501	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3APXJC118863
12608822601	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP6DC136202
10673697801	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP3DN525934
10979853301	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP4FC190620
10781428601	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP3FC453633
11865626001	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP8DN563384
10398979101	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP2DC102385
12608260101	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP6DC134384
12428391301	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3APXFC438224
10960287001	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP4EN237471
11017665001	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP4FN350595
12426419001	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3APXFN345191
12323819501	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3APXDC299838
12101922601	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP9EC160947
11940651201	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP8FN872811
10481325801	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP2FC184265
11344605601	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP6DC258087
10841426701	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP3HC239566

10796147701	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP3GC111052
10652829401	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP3DN425722
10568765001	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP2GC255496
10226305001	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP1EC178357
10037858401	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP0FC273042
12460732901	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3APXGC188002
11636487701	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP7EN364022
11450737501	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP6FN328145
11208019401	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP5EN377240
11069286001	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP4FN916190
10941779301	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP4EN351700
10623553901	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP2JC102818
11454809201	GREAT WEST CASUALTY		S SIOUX CITY	NE	1N4AL3AP6FN313399
12942052901	GUTIERREZ	JOE A	HESPERIA	CA	1N4AL3AP3FC247776
10407839001	HILL	JOSHUA AARON	BEND	OR	1N4AL3AP2DC919629
12856818501	JIMENEZ	MONICA A	CANOGA PARK	CA	1N4AL3AP0HC488827
11804750401	KUTA	CHARLES	ELGIN	IL	1N4AL3AP7JC134924
10495126601	KUTA	CHARLES J	ELGIN	IL	1N4AL3AP2FC164579
12284359901	MANNERS	IRIS M	SPRNGFLD GDNS	NY	1N4AL3APXDC173480
11941410701	MANNERS	IRIS M	SPRNGFLD GDNS	NY	1N4AL3AP8FC595931
11802261101	MANNERS	IRIS M	SPRNGFLD GDNS	NY	1N4AL3AP7JC145101
13150142201	OSORIO	RICHARD P	HONOLULU	HI	1N4AL3AP9GC132942
10537264001	SELF	ALLEN	OWENSBORO	KY	1N4AL3AP2FN300455
13074654001	VISOIU	MIHAI	GARDEN GROVE	CA	1N4AL3AP7FC146482