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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CATHY BASHAW, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

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

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Cathy Bashaw (“Plaintiff”) brings this class action against Nissan North America,
2 Inc. (“NNA”) and Nissan Motor Co., Ltd. (“NMC”) (together, “Nissan” or “Defendants”),
3 individually and on behalf of all persons in the United States who purchased, own, owned, lease or
4 leased a 2015 or newer Nissan vehicle equipped with Forward Emergency Braking or Automatic
5 Emergency Braking system (collectively the “FEB system”), including but not limited to the
6 Nissan Rogue, Nissan Rogue Sport, Nissan Murano, Nissan Altima, Nissan Maxima, Nissan
7 Armada, Nissan Pathfinder, Nissan Leaf, and Nissan Sentra (the “Class Vehicles”) that were
8 designed, manufactured, distributed, marketed, sold, and/or leased by Nissan. The allegations
9 herein are based on personal knowledge as to Plaintiff’s own conduct and are made on information
10 and belief as to all other matters based on an investigation by counsel:

11 **NATURE OF THE ACTION**

12 1. This is a class action concerning a defect in the Forward Emergency Braking
13 system featured in every Class Vehicle. “This intelligent feature uses radar technology to monitor
14 a vehicle’s proximity to the vehicle ahead, giving the driver audible and visual display warnings to
15 help the driver reduce the vehicle’s speed if a potential frontal collision is detected. If the driver
16 fails to respond, the [Forward Emergency Braking] system can apply the brakes, helping the driver
17 to avoid the collision or reduce the speed of impact if it is unavoidable.”¹

18 2. However, Defendants wrongfully and intentionally concealed one or more defects
19 in the Class Vehicles’ front distance sensor, an integral component of the vehicles’ FEB systems
20 (the “FEB Defect”). The FEB Defect can cause the FEB system to falsely engage. The FEB
21 Defect can cause the Class Vehicles to detect non-existent obstacles, thereby automatically
22 triggering the brakes and causing the Class Vehicles to abruptly slow down or come to a complete
23 stop in the middle of traffic. In addition to the false engagements, the FEB Defect can also cause
24 the FEB system to deactivate itself, rendering the feature unavailable to the vehicle’s operator. In
25 such instances, the a warning flashes on the dashboard: “Front radar unavailable due to
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27 ¹ [https://www.nissanusa.com/experience-nissan/news-and-events/car-safety-features-
28 technology.html](https://www.nissanusa.com/experience-nissan/news-and-events/car-safety-features-technology.html) (last visited November 27, 2018).

1 obstruction.” In either scenario, the FEB system is not a safety feature, but rather an unpredictable
2 safety hazard.

3 3. The FEB Defect can occur without warning during vehicle operation, thereby
4 posing an unreasonable safety hazard to drivers, passengers, other motorists and pedestrians.
5 Many Class Vehicle owners have reported significant, unexpected slow-downs and stops due to
6 the false engagement of the Class Vehicle’s FEB system, even though no objects – vehicles,
7 pedestrians, or otherwise – were nearby. Class Vehicle owners have further complained that the
8 FEB system also frequently deactivates itself, rendering this safety feature useless.

9 4. The Class Vehicles are marketed as safe for use. Defendants failed to disclose the
10 FEB Defect to consumers, despite their knowledge that the Class Vehicles were defective and not
11 fit for their intended purpose of providing consumers with safe and reliable transportation at the
12 time of the sale and thereafter. Defendants have actively concealed the true nature and extent of
13 the FEB Defect from Plaintiff and other Class members, and have failed to disclose it to them at
14 the time of purchase or lease or thereafter. Had Plaintiff and Class members known about the FEB
15 Defect, they would not have purchased and/or leased the Class Vehicles or would have paid less
16 for them. As a result of their reliance on Defendants’ omissions and/or misrepresentations, Class
17 members have suffered an ascertainable loss of money, property, and/or loss in value of their Class
18 Vehicles.

19 5. Despite notice of the FEB Defect from, among other things, pre-production
20 testing, numerous consumer complaints, warranty data, and dealership repair orders, Defendants
21 have not recalled the Class Vehicles to repair the FEB Defect, have not offered Class members a
22 suitable repair or replacement free of charge, and have not offered to reimburse all Class members
23 the costs they incurred relating to diagnosing and repairing the FEB Defect or for the value
24 consumers paid for the FEB feature in the first place. Defendants have refused to repair or replace
25 the Class Vehicles despite the fact that the Class Vehicles are under a comprehensive warranty, as
26 explained in detail below. Thus, Defendants have wrongfully and intentionally transferred the cost
27 of repair of the FEB Defect to Plaintiff and members of the Classes by fraudulently concealing the
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1 existence of the FEB Defect.

2 6. Under warranties provided to Plaintiff and members of the Classes, Defendants
3 promised to repair or replace defective FEB components arising out of defects in materials and/or
4 workmanship, such as the FEB Defect, at no cost to owners or lessors of the Class Vehicles. For
5 illustrative purposes, NNA offers a 36-month or 36,000-mile Basic Warranty that “covers any
6 repairs needed to correct defects in materials or workmanship of all parts and components of each
7 new Nissan vehicle supplied by Nissan.”²

8 7. Defendants breached their express and implied warranties through which they
9 promised to, *inter alia*, (1) provide Class Vehicles fit for the ordinary purpose for which they were
10 sold; and (2) repair and correct manufacturing defects or defects in materials or workmanship of
11 any parts they supplied, including in the FEB System. Because the FEB Defect was present at the
12 time of sale or lease of the Class Vehicles, Defendants are required to repair or replace the Class
13 Vehicles pursuant to the terms of the warranty. Instead, Nissan has wrongfully shifted the cost of
14 repairing the FEB Defect, or replacing the vehicle, to Class members. These costs are significant,
15 and no reasonable consumer expects to incur such costs.

16 8. Knowledge and information regarding the FEB Defect is in the exclusive and
17 superior possession of Defendants and their network of authorized dealers. Despite this,
18 Defendants have failed to notify Plaintiff and Class members of the FEB Defect, who could not
19 have reasonably discovered the defect through due diligence. Similarly, Nissan has failed to
20 provide Class members with any fix or remedy for the FEB Defect, despite voluminous customer
21 complaints.

22 9. Defendants misrepresented the standard, quality, or grade of the Class Vehicles
23 and knowingly, actively, and affirmatively concealed the existence of the FEB Defect to increase
24 profits and decrease costs by selling additional Class Vehicles and transferring the cost of the
25 repair of the FEB Defect, or replacement of the vehicle, to Class members.

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27 _____
28 ² <https://owners.nissanusa.com/content/techpub/common/2016/2016-nissan-warranty-booklet.pdf>
(last visited November 26, 2018).

1 10. Defendants knowingly omitted, concealed and suppressed material facts regarding
 2 the FEB Defect, and misrepresented the standard, quality or grade of the Class Vehicles, which
 3 directly caused harm to Plaintiff and members of the Classes. As a direct result of Defendants'
 4 wrongful conduct, Plaintiff and members of the Classes have suffered damages, including, *inter*
 5 *alia*: (1) out-of-pocket expenses for repair of the FEB Defect; (2) costs for future repairs or
 6 replacements; (3) sale of their vehicle at a loss; (4) diminished value of their vehicles; and/or (5)
 7 the price premium attributable to the FEB feature.

8 11. Plaintiff and Class members therefore assert claims against Defendants for fraud,
 9 negligent misrepresentation, breach of express and implied warranties, violation of the Magnuson-
 10 Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, violation of the California Consumers Legal
 11 Remedies Act, California Civil Code § 1750, *et. seq.* ("CLRA"), violation of the Unfair
 12 Competition Law, California Business & Professions Code § 17200, and unjust enrichment.
 13 Plaintiff also asserts claims under New York General Business Law § 349 on behalf of a New
 14 York Subclass. As alleged herein, Defendants' wrongful conduct has harmed owners and lessors
 15 of the Class Vehicles, and Plaintiff and members of the Classes are entitled to damages and
 16 injunctive and declaratory relief.

JURISDICTION AND VENUE

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 18 12. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
 19 question). This Court has jurisdiction over supplemental state law claims pursuant to 28 U.S.C.
 20 § 1367.

21 13. This Court also has jurisdiction over this action pursuant to the Class Action
 22 Fairness Act ("CAFA"). 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest
 23 and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there are more
 24 than 100 members of the Classes, members of the Classes (as defined below) are citizens of states
 25 different from Defendants, and greater than two-thirds of the members of the Classes reside in
 26 states other than the states in which Defendants are citizens.

27 14. Venue properly lies in this District pursuant to 28 U.S.C. § 1391(b)(3) with
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1 respect to NNA because NNA is subject to personal jurisdiction in this District by virtue of its
2 status as a California corporation with a principal place of business outside of California. Venue
3 properly lies in this District pursuant to 28 U.S.C. § 1391(c)(3) with respect to NMC because, as
4 a non-resident of the United States, NMC “may be sued in any judicial district.”

5 **PARTIES**

6 **Plaintiff**

7 15. Plaintiff Cathy Bashaw is a citizen of the State of New York and resides in
8 Plattsburgh, New York. In or around the Fall of 2016, Plaintiff leased a 2017 Nissan Rogue SL
9 AWD from a Nissan-authorized dealer, Huttig Nissan of Plattsburgh, New York, for her personal
10 or household use.

11 16. Unbeknownst to Plaintiff at the time of leasing her Rogue, Plaintiff’s vehicle
12 contained the FEB Defect. None of the advertisements reviewed or representations received by
13 Plaintiff and members of the Classes contained any disclosure relating to the FEB Defect in the
14 Class Vehicles. Had Defendants disclosed the FEB Defect, Plaintiff would not have leased her
15 vehicle on the terms that she did, or she would have paid less for her vehicle.

16 17. When Plaintiff and Class members purchased or leased their Class Vehicles, they
17 reasonably relied on the expectation that the Class Vehicles were free from defects such as the
18 FEB Defect and/or would not pose an unavoidable safety risk. Had Defendants disclosed the
19 FEB Defect, Plaintiff and Class members would not have purchased or leased the Class Vehicles
20 or would have paid less for their vehicles.

21 18. The Class Vehicles were operated in a reasonably foreseeable manner and as the
22 vehicles were intended to be used. Plaintiff and Class members have suffered an ascertainable
23 loss as a result of Defendants’ deceptive conduct, breach of warranty, common law and statutory
24 duties, and omissions and/or misrepresentations associated with the FEB Defect, including but
25 not limited to, out-of-pocket losses and/or the costs of future repairs or replacements, the price
26 premium attributable to the FEB feature, and diminished performance and value of their
27 respective vehicles.
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1 19. Neither Defendants nor any of their agents, dealers, or other representatives
2 informed Plaintiff and Class members of the FEB Defect prior to the purchase or lease of the
3 Class Vehicles, nor at any time thereafter.

4 **Defendants**

5 20. Defendant NNA is a California corporation with its principal place of business
6 located at 983 Nissan Drive, Smyrna, TN 37167. NNA does business in throughout the United
7 States. NNA engages in business, including the design, manufacturing, advertising, marketing,
8 and sale of Nissan automobiles nationwide, including throughout New York and California.

9 21. Defendant NMC is a Japanese corporation headquartered in Yokohama, Japan.
10 NMC is the parent corporation of NNA. NMC, through its various agents and subsidiaries –
11 including NNA – designs, manufactures, markets, distributes and sells Nissan automobiles in
12 California and multiple other locations in the United States.

13 22. NNA and NMC sell Nissan vehicles through a network of dealerships that are the
14 agents of NNA and NMC.

15 23. There exists, and at all times herein existed, a unity of ownership between NMC,
16 NNA and their agents such that any individuality or separateness between them has ceased and
17 each of them is the alter ego of the others. Upon information and belief, at all times mentioned
18 herein, each Defendant was acting as an agent and/or employee of the other Defendant, and at all
19 times mentioned was acting within the course and scope of said agency and/or employment with
20 the full knowledge, permission, and consent of the other Defendant. In addition, each of the acts
21 and/or omissions of each Defendant alleged herein were made known to, and ratified by, the
22 other Defendant.

23 24. Upon information and belief, Defendant NMC communicates with Defendant
24 NNA concerning virtually all aspects of the Nissan vehicles it distributes within the United
25 States. At all relevant times, NNA acted as an authorized agent, representative, servant,
26 employee and/or alter ego of NMC while performing activities including but not limited to
27 advertising, warranties, warranty repairs, dissemination of technical information and monitoring
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1 the performance of Nissan vehicles in the United States, including substantial activities that
2 occurred within this jurisdiction.

3 25. At all times relevant to this action, Defendants manufactured, distributed, sold,
4 leased, and warranted the Class Vehicles under the Nissan brand name throughout the United
5 States. Defendants and/or their agents designed and manufactured the Class Vehicles.
6 Defendants and/or their agents also developed and disseminated the owner's manuals and
7 warranty booklets and information, advertisements, and other promotional materials relating to
8 the Class Vehicles.

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

10 **A. The Forward Emergency Braking (“FEB”) System Defect**

11 26. In 2016, Nissan began offering the feature known as “Forward Emergency
12 Braking” (“FEB”) as an option on the Class Vehicles. For example, FEB was available as a part
13 of the \$2,020 “SL Premium Package” option on the 2017 Nissan Rogue SL.³

14 27. Starting in 2018, Nissan began offering “Automatic Emergency Braking” (“AEB”)
15 feature, formally known as Forward Emergency Braking, as part of its newly-introduced
16 Intelligent Safety Shield (“ISS”). ISS is Nissan’s “way of looking out for you and yours by
17 monitoring, responding and protecting to help keep you and your passengers safe.” ISS is an
18 umbrella term for several technologies meant to assist drivers and boost safety, including the FEB
19 system. ISS and FEB are standard on many 2018 Nissan models, including the Nissan
20 Rogue/Rogue Sport, Nissan Altima, Nissan Murano, Nissan Leaf, Nissan Pathfinder, Nissan
21 Maxima, and Nissan Sentra.⁴ Nissan expects to sell roughly 1,000,000 of these vehicles in 2018
22 alone.⁵

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24 ³ <https://monroneylab.com/cars/80111-2017-nissan-rogue> (last visited November 26, 2018).

25 ⁴ <https://nissannews.com/en-US/nissan/usa/releases/nissan-to-offer-standard-automatic-emergency-braking-aeb-on-one-million-u-s-vehicles-in-2018-model-year?query=automatic+emergency+braking> (last visited November 26, 2018).

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27 ⁵ <https://www.nissanusa.com/experience-nissan/news-and-events/car-safety-features-technology.html> (last visited November 26, 2018).

1 28. FEB “provide[s] audible and visual alerts and apply braking to help you avoid or
2 mitigate a frontal collision with a vehicle ahead.” FEB relies on a front distance sensor in the
3 front grille to monitor a car’s proximity to the vehicle ahead, warn of possible collisions, and hit
4 the brakes if the driver cannot.

5 29. But a problem with the sensor modules in the Class Vehicles causes the FEB
6 system to frequently deactivate itself and/or to falsely engage FEB, thereby causing the Class
7 Vehicles to unexpectedly and abruptly slow down and/or come to a stop despite no obstacles
8 being nearby (the “FEB Defect”). The FEB Defect presents a safety hazard that renders the Class
9 Vehicles unreasonably dangerous to consumers because it severely impacts a driver’s ability to
10 control vehicle speed as expected under normal driving conditions and maintain an appropriate
11 speed based on traffic flow, thereby increasing the risk of a rear-end collision.

12 30. As Digital Trends detailed in September 2018:

13 After Digital Trends identified the issue in the 2018 Nissan Sentra
14 and brought it to the automaker’s attention, the company
15 acknowledged the problem, and said it was working to replace the
16 faulty part.

17 “Nissan is aware of a relatively limited population of Sentra
18 customers who are reporting conditions similar to that which you
19 described,” Dan Bedore, Director of Communications for Nissan,
20 told Digital Trends. “Our engineering team has identified the cause
21 to be a supplied-component issue... Nissan is well into the standard
22 process for obtaining counter-measure parts and informing our
23 dealers of the remedy, which is expected in the coming weeks.”

24 A Bosch spokesman told Digital Trends that it was helping Nissan
25 with the issue, but declined to specify which other automakers use the
26 module, or who make the radar chips within them.

27 “We hope you will appreciate that, as a matter of principle, we do
28 not comment on actions of our customers. We are working closely
with Nissan to support it in the measures it has taken. We hope you
will understand that only the automaker is in a position to answer
questions in detail,” the company said.⁶

⁶ <https://www.digitaltrends.com/cars/faulty-radars-compromising-nissan-emergency-braking-system/> (last visited November 27, 2018).

1 **B. Nissan’s Knowledge Of The FEB Defect**

2 31. Nissan became aware of the FEB Defect through sources not available to Plaintiff
3 and members of the Classes, including, but not limited to: pre-production testing, pre-production
4 design failure mode and analysis data, production design failure mode and analysis data, early
5 consumer complaints made exclusively to Nissan’s network of dealers and directly to Nissan,
6 aggregate warranty data compiled from Nissan’s network of dealers, testing conducted by Nissan
7 in response to consumer complaints, and repair order and parts data received by Nissan from
8 Nissan’s network of dealers and suppliers, including Bosch.

9 32. Nissan had and continues to have a duty to fully disclose the true nature of the FEB
10 Defect to Class Vehicle owners, among other reasons, because the FEB Defect poses an
11 unreasonable safety hazard; because Nissan had and has exclusive knowledge or access to
12 material facts about the Class Vehicles’ FEB systems that were and are not known to or
13 reasonably discoverable by Plaintiff and the other members of the Classes; and because Nissan
14 has actively concealed the FEB Defect from its customers at the time of purchase or repair and
15 thereafter.

16 33. Specifically, Defendants: (a) failed to disclose, at the time of purchase or repair and
17 thereafter, any and all known material defects or material nonconformities of the Class Vehicles,
18 including the FEB Defect; (b) failed to disclose, at the time of purchase or repair and thereafter,
19 that the Class Vehicles and their FEB systems were not in good working order, were defective
20 and prone to failure, and were not fit for their intended purpose; and (c) failed to disclose and/or
21 actively concealed the fact that the Class Vehicles and their FEB systems were defective, despite
22 the fact that Defendant learned of the FEB Defect before it placed the Class Vehicles in the
23 stream of commerce.

24 34. Nissan has been aware of problems with the FEB feature since at least 2015, given
25 its release of a series of Technical Service Bulletins (“TSBs”) to dealers related to the radar
26 sensor used in the Class Vehicles’ FEB systems starting in 2016. “Manufacturers typically issue
27 more TSBs in the first model year of a new or redesigned vehicle when, despite extensive pre-
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1 production testing, they discover design, engineering and manufacturing flaws after the vehicles
2 are exposed to the ultimate test – being driven in the real world.”⁷ As detailed further below, in
3 2015, Class members began complaining about the FEB Defect in model year 2015 Nissan
4 Muranos – the first Class Vehicle to offer the option.⁸ See *infra* ¶¶ 47-61.

5 35. On September 6, 2016, Nissan released Technical Service Bulletin NTB15-099b
6 concerning the radar sensor used in the Intelligent Cruise Control (“ICC”) and FEB systems in
7 the Class Vehicles.⁹ The TSB was designed to remedy two Diagnostic Trouble Codes (“DTCs”)
8 – DTC C1A16 (RADAR BLOCKED) and DTC C1A12 (LASER BEAM OFFCNTR) and
9 applied to the following Nissan vehicles: 2016 Altimas, 2016 Maximas, 2015-2016 Muranos,
10 2016 Murano Hybrids, 2015-2016 Rogues, and 2016 Sentras.

11 36. On November 28, 2016, Nissan released TSB NTB16-116 that noted a potential
12 impact on FEB.¹⁰

13 37. On August 1, 2017, Nissan issued TSB PC499 mandating a “quality assurance
14 hold” related to the “front camera.”

15 38. On February 1, 2018, Nissan released TSB NTB18-008 which “applie[d] only to
16 vehicles equipped with Automatic Emergency Braking (AEB) or Forward Emergency Braking
17 (FEB).”

18 39. On June 8, 2018, Nissan released TSB NTB18-041 concerning the “Unexpected
19 Operation of AEB, FEB OR FCW [Forward Collision Warning]” in 2018 Rogue, Rogue Hybrid,
20 and Rogue Sport vehicles. The TSB stated that “The following system(s) operate unexpectedly
21 or the customer reports unexpected operation: AEB (Automatic Emergency Braking); FEB
22 (Forward Emergency Braking); FCW (Forward Collision Warning). On July 19, 2018, Nissan
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25 ⁷ See <https://www.chicagotribune.com/classified/automotive/chi-recall-tsb-or-customer-service-campaign-whats-the-difference-story.html> (last visited November 30, 2018).

26 ⁸ See <https://www.youtube.com/watch?v=J-qiiVMReLw> (last visited November 30, 2018).

27 ⁹ <https://static.nhtsa.gov/odi/tsbs/2016/SB-10091586-2280.pdf> (last visited November 26, 2018).

28 ¹⁰ <https://www.nhtsa.gov/vehicle/2016/NISSAN/ROGUE/SUV/AWD#manufacturerCommunications> (last visited November 26, 2018).

1 released an amended TSB NTB18-041a, updated to include 2017-18 Rogue, Rogue Hybrid, and
2 Rogue Sport vehicles.

3 40. On August 17, 2018, Nissan released TSB PC637 informing dealers it was
4 “conducting a quality action to reprogram the Laser Radar and Advanced Drive Assist System
5 (ADAS) software the on specific MY2018 Rogue (T32) vehicles built in the Smyrna, TN
6 manufacturing plant. These vehicles are either currently in dealer inventory or assigned and in
7 transit to the dealer. The software update is designed to help improve the performance of
8 Automatic Emergency Braking (AEB), Forward Emergency Braking (FEB), and Forward
9 Collision Warning (FCW) systems in the affected vehicles.”

10 41. Nissan also has constantly tracked the National Highway Traffic Safety
11 Administration (“NHTSA”) database to track reports of defective FEB systems. From this
12 source, Nissan knew that the Class Vehicles were experiencing unusually high levels of false
13 engagements causing abrupt slow-downs or stops; or deactivations.

14 42. The following example complaints filed by consumers with NHTSA and posted on
15 the Internet demonstrate that the FEB Defect is a widespread safety hazard that continues to
16 plague the Class Vehicles. Consumer complaints began with the 2015 Nissan Murano:

- 17 • **November 4, 2016 – Winnetka, IL – Forward Collision Avoidance**
18 THE FORWARD EMERGENCY BRAKING SYSTEM WARNING LIGHT COMES ON
19 (THIS MEANS THE SENSOR IS NOT WORKING AND THE EMERGENCY
20 WARNING IS NOT WORKING; FURTHER YOU CANNOT USE CRUISE CONTROL
21 WHEN THE LIGHT IS ON). THIS HAS BEEN A PROBLEM FROM THE BEGINNING
22 OF OWNING THE CAR. THE DEALER TRIED MANY TIMES TO REPAIR THE
23 PROBLEM, ALL UNSUCCESSFUL. NEXT THE DEALER REPLACED THE SENSOR,
24 AND THE PROBLEM STILL EXISTS. THE WARNING LIGHT COMES ON WHEN
25 THE VEHICLE HAS BEEN DRIVEN FOR A FEW MINUTES- 5 TO 30 MINUTES
26 AFTER STARTING.
- 27 • **February 27, 2017 – West Hills, CA – Forward Collision Avoidance**
28 TL* THE CONTACT OWNS A 2015 NISSAN MURANO. WHILE DRIVING
VARIOUS SPEEDS, THE FORWARD BRAKING SYSTEM WARNING INDICATOR
ILLUMINATED. THE VEHICLE WAS TAKEN TO THE DEALER FOR ROUTINE
MAINTENANCE. THE CONTACT STATED TO THE TECHNICIAN THAT THE
FORWARD BRAKING WARNING INDICATOR ILLUMINATED. IT WAS
DIAGNOSED THAT THE WARNING INDICATOR WAS ILLUMINATED DUE TO
THE VEHICLE BEING BUMPED AND THAT THE EMERGENCY BRAKING
SYSTEM WAS TURNED OFF. THE ISSUE PERSISTED. THE VEHICLE WAS

1 TAKEN TO AN INDEPENDENT MECHANIC WHERE THE ISSUE COULD NOT BE
2 DIAGNOSED. THE CONTACT MENTIONED THAT THE VEHICLE WAS
3 PREVIOUSLY HIT A MONTH PRIOR. THE CONTACT ALSO STATED THAT THE
4 FRONT DRIVER AND PASSENGER SIDEVIEW MIRRORS "CLOSE VEHICLE"
5 WARNING SIGNALS NO LONGER ILLUMINATED WHEN OTHER VEHICLES
6 WERE CLOSE. THE MANUFACTURER WAS NOT MADE AWARE OF THE
7 FAILURES. THE FAILURE MILEAGE WAS 12,000.

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10 43. Complaints for the 2016 Nissan Murano are similar:

- 11 • **October 27, 2018 – Greensboro, NC – Forward Collision Avoidance**
12 ADAPTIVE CRUISE CONTROL AND FORWARD EMERGENCY BRAKING (FEB)
13 SYSTEM BECOMES SPONTANEOUSLY DISABLED DURING DRIVING. THIS
14 POSES A SERIOUS ISSUE WHEN ACTUALLY DRIVING THE CAR. THE CAR IS IN
15 MOTION WHEN THIS HAPPENS. THE SYSTEM CAN ONLY BE RESET BY
16 STOPPING THE CAR, TURNING OFF THE IGNITION AND THEN RE-STARTING
17 THE ENGINE.

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19 44. Complaints for the 2017 Nissan Murano are similar:

- 20 • **August 19, 2018 – Orland Park, IL – Forward Collision Avoidance**
21 MY VEHICLE HAD A WARNING LIGHT COME ON STATING "FRONT COLLISION
22 AVOIDANCE UNAVAILABLE". IT WOULD SHUT OFF THE CRUISE CONTROL.
23 TOOK IT INTO THE DEALER. THEY SAID THE VEHICLE OPERATED AS
24 DESIGNED. TOOK IT BACK IN SEVERAL WEEKS LATER DEMANDING THEY
25 FIX THE PROBLEM. TOOK A TEST DRIVE WITH THE TECHNICIAN. PROBLEM
26 DID NOT REOCCUR. I GOT OUT. THE TECHNICIAN STARTED THE CAR TO
27 PULL IT IN THE SHOP AND THE WARNING CAME ON. THEY TRACED THE
28 PROBLEM TO A SENSOR. THE SENSOR IS NOT AVAILABLE AND IS ON
BACKORDER. IN THE MEAN TIME THE CRUISE DOES NOT OPERATE AND THE
FRONT COLLISION AVOIDANCE DOES NOT WORK (WAITING 5 WEEKS NOW).
CANNOT DEPEND UPON THE COLLISION AVOIDANCE EVEN THOUGH THEY
ADVERTISE IT.

45. Complaints for the 2018 Nissan Murano are similar:

Sep 17, 2018 - Washington, DC - Forward Collision Avoidance

TL* THE CONTACT OWNS A 2018 NISSAN MURANO. WHILE DRIVING
VARIOUS SPEEDS, THE CRUISE CONTROL ENGAGED WITHOUT WARNING.
THE CONTACT STATED THAT THE CRUISE CONTROL FEATURE OF THE
VEHICLE WAS CONTROLLED BY A COLLISION CONTROL SYSTEM, WHICH
MALFUNCTIONED WHILE ON AN INCLINE AND WHILE DRIVING VARIOUS
SPEEDS ON A BRIDGE. EACH TIME THE FAILURE OCCURRED, THE VEHICLE
DECELERATED WITHOUT ANY WARNING OR BRAKE LIGHTS ILLUMINATED.
THE DEALER WAS NOT MADE AWARE OF THE FAILURE. THE
MANUFACTURER WAS MADE AWARE OF THE FAILURE AND PROVIDED THE
CONTACT WITH CASE NUMBER: 32755178. THE FAILURE MILEAGE WAS
APPROXIMATELY 500.

1 46. Complaints for the 2016 Nissan Rogue are similar:

2 • **July 2, 2018 – Nashville, TN – Forward Collision Avoidance**

3 FRONT COLLISION SENSOR GOES OFF AT RANDOM SPEEDS WHILE
4 TRAVELING FORWARD WITH NO ONE ON THE ROAD AHEAD. THE VEHICLE
5 AUTOMATICALLY APPLIES THE BRAKE IN SOME INSTANCES. THE
6 INFOTAINMENT SYSTEM ALSO RESETS ITSELF PERIODICALLY. PRIOR
7 SERVICE HAS HAD THE ENTIRE BODY CONTROL MODULE REPLACED, BUT
8 ELECTRICAL ISSUES PERSIST. MULTIPLE DEALERS HAVE NOT BEEN ABLE TO
9 RECREATE THE PROBLEM EVEN THOUGH ISSUES ARE STILL PRESENT.
10 SIGNIFICANT SAFETY HAZARD BY VEHICLE AUTOMATICALLY APPLYING
11 BRAKE RANDOMLY AND NISSAN STILL DOES NOTHING TO RESOLVE THE
12 ISSUE. THESE INSTANCE HAPPEN ON MULTIPLE OCCASIONS.

13 47. Complaints for the 2017 Nissan Rogue are similar:

14 • **Oct 09, 2018 - Villas, NJ - Forward Collision Avoidance**

15 TL* THE CONTACT OWNS A 2017 NISSAN ROGUE. WHILE DRIVING
16 APPROXIMATELY 40 MPH AND ATTEMPTING TO STOP THE VEHICLE, THE
17 BRAKE PEDAL TRAVELED TO THE FLOORBOARD WHEN IT WAS DEPRESSED.
18 THE VEHICLE DID NOT STOP AND REAR ENDED THE PRECEDING VEHICLE.
19 THERE WAS NO WARNING INDICATOR ILLUMINATED. THE AIR BAGS DID
20 NOT DEPLOY. A POLICE REPORT WAS FILED. THE CONTACT SUSTAINED
21 INJURIES THAT LATER REQUIRED MEDICAL ATTENTION. THE VEHICLE WAS
22 DAMAGED AND TOWED TO A PRIVATE PROPERTY. THE CONTACT CALLED
23 TEAM NISSAN AT (856) 696-2277 (LOCATED AT 1715 S DELSEA DR, VINELAND,
24 NJ 08360) AND WAS REFERRED TO THE MANUFACTURER. THE
25 MANUFACTURER WAS MADE AWARE OF THE FAILURE AND ASKED IF THE
26 CONTACT WANTED THE VEHICLE REPAIRED. THE VEHICLE WAS NOT
27 DIAGNOSED OR REPAIRED. THE FAILURE MILEAGE WAS APPROXIMATELY
28 13,000. THE VIN WAS NOT PROVIDED.

29 • **Mar 01, 2018 - Del Ray Beach, FL - Crash Imminent Braking**

30 TL* THE CONTACT OWNS A 2017 NISSAN ROGUE. THE CONTACT STATED
31 THAT THE FORWARD EMERGENCY BRAKING PACKAGE FUNCTION FAILED
32 TO PROVIDE A WARNING AND DID NOT BRAKE WITHOUT THE CONTACT
33 APPLYING FORCE TO THE BRAKE PEDAL. THE DEALER (WEST PALM BEACH
34 NISSAN, 3870 W BLUE HERON BLVD, RIVIERA BEACH, FL 33404, (561) 612-4825)
35 WAS NOTIFIED AND TESTED THE VEHICLE, CONSUMER WAS LATER TOLD
36 THAT TEST WAS UNOFFICIAL AS CORPORATE SAID TOLD THEM THEY
37 COULDN'T TEST FEATURE. DELRAY NISSAN SAID THE SAME FEATURE IN
38 INFINITI QX60 WORK PERFECTLY SO DOES CRUISE CONTROL BRAKING IN
39 BOTH VEHICLES. HOWEVER WITHOUT CRUISE CONTROL ACTIVATED THE
40 NISSAN FORWARD COLLISION SEEMS NOT WORK. THE APPROXIMATE
41 FAILURE MILEAGE WAS 130.

42 • **Jan 10, 2018 - Mansfield, OH - Forward Collision Avoidance**

43 THERE IS A SAFETY ISSUE WITH THE FRONT BRAKING SYSTEM. THERE IS
44 EVEN A DOCUMENT SEND TO THE NISSAN DEALERSHIPS NOTIFYING THEM

1 THAT IT IS A KNOWN ISSUE, BUT THERE IS NO FIX AS OF YET THE
 2 ENGINEERS CANNOT EVEN FIND A CAUSE FOR THE ISSUE. I ASKED FOR A
 3 COPY OF THE LETTER, BUT, OF COURSE, IT IS A "CONFIDENTIAL" DOCUMENT
 4 AND ONLY PRIVILEGED PARTIES ARE ABLE TO HAVE ACCESS TO IT. WHAT
 5 HAPPENS IS THERE WILL BE AN AUDIBLE BEEPING (TWO-THREE TIMES) AND
 6 IMMEDIATELY AFTER YOUR CAR WILL SLAM ON THE BRAKES ON IT OWN,
 7 WHICH IN TURN KICKS ON THE ANTI-LOCK BRAKES. THERE WILL BE
 8 NOTHING ON THE SENSOR OR NOTHING IN YOUR PATH IN FRONT OF YOU. IT
 9 DOES THIS SPONTANEOUSLY. THIS WAS WHILE I WAS DRIVING!!!! THIS HAS
 10 HAPPENED TO ME 3 TIMES ALREADY. WHEN HOOKED UP TO A DIAGNOSTIC
 11 TESTER, IT THROWS A CODE THAT THERE WAS SOMETHING IN FRONT OF
 12 THE SENSOR. THE DATE MARKED ON THIS CLAIM/REPORT WAS THE LAST
 13 TIME IT HAS HAPPENED....SO FAR....

9 • **Dec 31, 2017 - Vacaville, CA - Forward Collision Avoidance**

10 THIS VEHICLE WAS PURCHASED NEW FROM THE DEALERSHIP, NISSAN OF
 11 VACAVILLE, ON 9-16-2017. ON 10-26-2017 WHILE TRAVELING AT
 12 APPROXIMATELY 35 MPH THE VEHICLE'S FORWARD EMERGENCY BRAKING
 13 SYSTEM (FEB) SUDDENLY AND UNEXPECTEDLY ACTIVATED, BRING THE
 14 CAR TO A FULL AND COMPLETE STOP IN THE MIDDLE OF THE ROAD. THE
 15 BRAKING SYSTEM DISENGAGED WITHIN A FEW SECONDS AND I WAS ABLE
 16 TO PULL TO THE SIDE OF THE ROAD. THERE WERE NO ADVERSE
 17 CONDITIONS, OBSTRUCTIONS, OR VEHICLES WITHIN A DANGEROUS
 18 DISTANCE TO HAVE CAUSED THE ACTIVATION. THE DASHBOARD WARNING
 19 LIGHTS DISPLAYED THE ALERT MESSAGE "WARNING" "MALFUNCTION." THE
 20 VEHICLE WAS SUBSEQUENTLY TOWED TO AUTOCOM NISSAN OF CONCORD
 21 FOR SERVICE AND DIAGNOSIS. I WAS TOLD CODES U1002, C1B5D, AND
 22 C1A16-97 WERE STORED IN THE COMPUTER SYSTEM. C1A16-97 RELATES TO
 23 AN OBSTRUCTION OR BLOCKED RADAR SENSOR, BUT THAT ALL THE
 24 STORED CODES WERE IN THE PAST. C1A16-97 WAS STORED AT 1983 MILES - I
 25 EXPERIENCED NO ACTIVATION OF THE SYSTEM AT THAT TIME. ACCORDING
 26 TO THE DEALERSHIP THERE WERE NO STORED CODES RELATED TO TODAY'S
 27 INCIDENT. NISSAN TECH LINE MADE A REMOTE DIAGNOSIS AND
 28 CONCLUDED A LOOSE LICENSE PLATE FRAME LIKELY HAD CAUSED AND
 OBSTRUCTION, ACTIVATING THE SYSTEM. THIS IS IN CONFLICT WITH THE
 OWNERS MANUAL'S EXPLANATION OF FEB SHUT DOWN IN THE EVENT OF
 AN OBSTRUCTION. ON 12-19-2017 I RETURNED THE VEHICLE TO THE
 DEALERSHIP WHERE I PURCHASED THE CAR. AFTER FOUR DAYS OF
 DIAGNOSTIC AND ROAD TESTING I WAS TOLD THAT, ACCORDING TO
 NISSAN TECH LINE, SINCE THE DEALERSHIP WAS UNABLE TO DUPLICATE
 THE MALFUNCTION DURING THE TEST DRIVE, THEN THE CAR IS
 CONSIDERED OPERATIONAL AND SAFE AND COULD BE RETURNED TO THE
 CUSTOMER. AND ALTHOUGH FINDING MULTIPLE PAST CODES STORED ECM-
 UL00L, ASB-UL002, BCM UL000-00, UL000-01, CLB40-49, CLB30-49, UL000-00,
 ICC /ADAS-C1B53-04, CLB54-00, UL000-01 ALL INDICATION MALFUNCTION.
 NONE OF WHICH HAVE BEEN RESOLVED OR REPAIRED. ## VIN PASSED ##
 NISSAN ROUGE S FWD 2017.5 ##

1 • **Dec 22, 2017 - Roswell, GA - Forward Collision Avoidance**

2 THE FIRST TIME THE VEHICLE MALFUNCTIONED, I WAS DRIVING IN A
 3 GROCERY STORE PARKING LOT WITH A PERSONAL FRIEND AND SUDDENLY
 4 THE CAR'S EMERGENCY BRAKE PROTECTION ACTIVATED JOLTING THE CAR
 5 TO A STOP. THE SECOND OCCURRENCE WAS IN A PARKING DECK
 6 (DIFFERENT FROM THE FIRST LOCATION) AND THE CAR AGAIN ACTIVATED
 7 THE EMERGENCY BRAKE PROTECTION SYSTEM JOLTING THE CAR TO A
 8 STOP. I THEN FELT THIS WAS A SAFETY ISSUE AND BROUGHT THIS INTO THE
 9 NISSAN DEALERSHIP. THEY CHECKED THE CAR AND CALLED REPORTING
 10 THEY COULD NOT FIND ANYTHING WRONG WITH THE CAR AND I SHOULD
 11 PICK IT UP. I PICKED THE CAR UP AND CONTINUED TO DRIVE IT UNTIL I
 12 SWITCHED CARS WITH A PERSONAL FRIEND WHO USED THE CAR TO DRIVE
 13 ONE MILE BACK TO HOME DOWN A 4 LANE ROAD. UPON COMING TO AN
 14 INTERSECTION, SHE REPORTS SHE BEGAN SLOWING DOWN AND GOT IN A
 15 TURN LANE TO MAKE A LEFT ONTO OUR NEIGHBORHOOD ROAD AND AS
 16 SHE WAS APPROACHING THE LIGHT, THE CAR ACTIVATED THE EMERGENCY
 17 BRAKING SYSTEM, AGAIN JOLTING THE CAR TO A STOP. SHE STATES
 18 DURING AND AFTER THE CAR CAME TO A COMPLETE STOP, SHE KEPT HER
 19 FOOT ON THE BREAK THE ENTIRE TIME AND WHILE DECOMPRESSING THE
 20 BRAKE, THE CAR THEN JOLTED FORWARD CRASHING INTO THE CAR IN
 21 FRONT OF HER. I HAD THE CAR TOWED IN TO THE NISSAN DEALERSHIP AND
 22 HAD CORPORATE NISSAN STEP IN TO INVESTIGATE THE CAR. 6 WEEKS
 23 LATER THEY INVESTIGATED THE CAR REPORTING THAT NO ERROR WAS
 24 FOUND WITH THE CAR AND AGAIN I SHOULD PICK MY VEHICLE UP. I
 25 REQUESTED SPECIFIC TESTS AND ASKED THE TESTING PROCESS FOR THE
 26 CAR AND WAS ADVISED BY THE INVESTIGATION DEPARTMENT THAT THEY
 27 COULD NOT DISCLOSE THAT INFORMATION AND THAT THE TESTING AND
 28 RESULTS WERE "PROPERTY OF NISSAN" AND THAT THEY WERE NOT
 OFFERING ANY FURTHER ASSISTANCE.

19 • **Sep 30, 2018 - Carnegie, PA - Forward Collision Avoidance**

20 AUTO EMERGENCY BRAKING IS ACTIVATING WHEN THERE IS NO VEHICLE
 21 OR OBSTACLE IN FRONT OF ME. IT HAPPENEND THE FIRST TIME I LEFT THE
 22 DEALER ON AN OPEN HIGHWAY. IT HAPPENED AGAIN IN A DARK PARKING
 23 GARAGE, AND AGAIN WHEN I WAS GOING LESS THAN 10 MILES AN HOUR
 24 OVER RAILROAD TRACKS. IT HAPPENED TO MY HUSBAND GOING OVER A
 25 BRIDGE WITH METAL EXPANSION JOINTS. GOOD THING NO ONE WAS
 26 BEHIND US WHEN IT HAPPENED. I WILL BE CALLING THE DEALER IN THE
 27 MORNING. MY ROGUE HAS AROUND 3,000 MILES ON IT.

28 48. Complaints concerning the 2018 Nissan Rogue are similar:

25 • **Sep 24, 2018 - Medford, NY - Dynamic Brake Support/Brake Assist**

26 TL* THE CONTACT OWNS A 2018 NISSAN ROGUE. THE CONTACT STATED
 27 THAT THE VEHICLE'S AUTOMATIC BRAKING FEATURE INDEPENDENTLY
 28 ACTIVATED WHILE THE VEHICLE WAS BEING DRIVEN AT VARIOUS SPEEDS.
 THERE WERE NO OBSTACLES IN THE VEHICLE'S PATH. THE FAILURE
 OCCURRED WITHOUT WARNING ON APPROXIMATELY SIX OCCASIONS. THE

1 DEALER AND MANUFACTURER WERE NOT NOTIFIED OF THE FAILURE. THE
 2 VEHICLE WAS NOT DIAGNOSED OR REPAIRED. THE FAILURE MILEAGE WAS
 APPROXIMATELY 1,600.

3 • **Sep 17, 2018 - Lubbock, TX - Forward Collision Avoidance**

4 MY 2018 NISSAN ROGUE BRAKED SUDDENLY, FOR NO REASON. TRAVELING
 5 30 MPH ON A QUIET NEIGHBORHOOD STREET. THE LIGHTS ON THE
 DASHBOARD FLASHED BRIEFLY, THERE WAS A LOUD GRINDING NOISE,
 6 THEN SUDDEN AND COMPLETE STOP IN THE MIDDLE OF THE ROAD. NO
 CARS IN FRONT OR BACK OF MINE. THE ONLY THING IN THE ROAD WAS A
 7 METAL DRAIN COVER. VERY FRIGHTENING EXPERIENCE.

8 • **Jul 24, 2018 - The Villages, FL - Forward Collision Avoidance**

9 WE PURCHASED 2018 NISSAN ROGUE IN JUNE. TODAY WE DROVE 75 MILES
 AND THE EMERGENCY BRAKING ACTIVATED 4 TIMES FOR NO REASON.
 10 ONCE ON THE INTERSTATE, ONCE ON THE OFF RAMP, AND TWICE ON THE
 HIGHWAY. THERE WERE NO RR TRACKS OR OTHER OBSTACLES. THIS HAS
 11 HAPPEN TO ME ON TWO OTHER OCCASIONS. THE VEHICLE HAS ALMOST
 1000 MILES ON IT. I+M AFRAID SOMEONE WILL THINK I+M BRAKE CHECKING
 12 THEM! ILL BE SPEAKING TO THE DEALER, BUT I SAW OTHER COMPLAINTS
 HERE AND DECIDED TO REGISTER MINE ALSO. WHEN THIS HAPPENS IT
 13 SOUNDS AS IF YOU+RE DRIVING OVER +RUMBLE STRIPS+.

14 • **Jul 12, 2018 - Pittsburgh, PA - Forward Collision Avoidance**

15 TWO WEEK OLD NISSAN ROGUE. THE EMERGENCY BRAKING SYSTEM
 ACTIVATES IN THE PARKING GARAGE WHERE I WORK. IT SEEMS TO HAPPEN
 16 ANYWHERE IN THE GARAGE (ANY FLOOR) AND WHEN I SURPASS ~15MPH.
 SPOKE WITH THE DEALER AND THEY ARE GOING TO TAKE A LOOK AT IT,
 17 BUT GOING BY THE NUMBER OF SIMILAR COMPLAINTS ON THIS SITE I'M
 BEGINNING TO THINK NISSAN NEEDS TO ISSUE A FIX AND RECALL.

18 49. Complaints concerning the 2017 Nissan Maxima are similar:

19 • **Jul 11, 2018 - Magnolia, NJ - Forward Collision Avoidance**

20 THE PROBLEM BEGAN IN MY 2017 NISSAN MAXIMA. I TOLD THE
 DEALERSHIP THAT THE EMERGENCY AUTOMATIC BRAKING SYSTEM
 21 INITIATED WHILE NO OTHER CARS WERE AROUND. THEY TRADED ME IN TO
 THE 2018 NISSAN ROGUE AND THE SAME ISSUE HAS OCCURRED 3 TIMES IN
 22 THIS VEHICLE. EACH TIME, THERE WERE NO OTHER VEHICLES AROUND.
 THE DEALERSHIP CLAIMED THERE IS NOTHING WRONG WITH THE VEHICLE.
 23 IT WASN'T UNTIL I CONTACTED CORPORATE THAT THEY ADMITTED THEY
 KNOW THERE'S A DEFECT, BUT NO FIX WAS AVAILABLE YET. THEY
 24 KNOWINGLY JEOPARDIZED MY INFANT SON'S SAFETY AND LIED TO ME.
 THIS DEFECT IS SCARY AND SHOULDN'T BE ALLOWED TO BE SWEEPED UNDER
 25 THE RUG BY THE DEALERSHIPS. I NO LONGER FEEL SAFE DRIVING WITH
 26 NISSAN.

27 • **Jun 23, 2018 – Fort Lauderdale, FL - Forward Collision Avoidance**

28 APPLIED BRAKES IN EMERGENCY SITUATION. ABS SYSTEM FAILED TO

1 OPERATE AND ALL FOUR WHEELS LOCKED AND CAR SLID INTO OTHER
2 VEHICLE. ALSO CAR EQUIPPED WITH BRAKE ASSIST IT TO FAILED TO
3 OPERATE.

4 50. Consumers have logged similar complaints regarding the 2016 Nissan Altima:

5 • **October 1, 2016 – Dallas, TX – Forward Collision Avoidance**

6 TL* THE CONTACT OWNS A 2016 NISSAN ALTIMA. WHILE DRIVING VARIOUS
7 SPEEDS, THE FORWARD EMERGENCY BRAKING WARNING INDICATOR
8 ILLUMINATED AND CAUSED THE VEHICLE TO SLOW DOWN AND THEN STOP.
9 THE CONTACT TOOK THE VEHICLE TO A DEALER, BUT THERE WAS NO
10 RESOLUTION FOR THE ISSUE WITH THE EMERGENCY BRAKE. THE
11 MANUFACTURER WAS NOTIFIED OF THE ISSUE. THE FAILURE MILEAGE WAS
12 7,259.

13 51. Consumers have logged similar complaints regarding the 2017 Nissan Altima:

14 • **March 13, 2017 – Manchester, TN – Forward Collision Avoidance**

15 EMERGENCY FORWARD BRAKING DOES NOT DO ANYTHING THAT THE
16 NISSAN BOOK OUTLINES OR THE ON LINE VIDEO OUTLINES. I HAVE TWO
17 CASE NUMBERS 25746321 AND 25772524 AND TWO DEALERSHIPS THE WORK
18 REPORT SAYS NO CODE NO PROBLEM.

19 52. Consumers have logged similar complaints regarding the 2018 Nissan Altima:

20 • **November 30, 2018 – Louisville, KY – Electrical System**

21 I PURCHASED A NEW 2018 NISSAN, THE FRONT END COLLISION SENSOR IS
22 ALARMING AND HAS EVER SINCE THE CAR WAS NEW. I HAVE TAKEN IT TO
23 TWO DIFFERENT DEALERS AND THEY HAVE REFERRED ME TO NISSAN AND
24 SAY THAT I SHOULD WAIT FOR THE RECALL. I THINK THIS IS
25 UNACCEPTABLE AS MY CAR IS NOT SAFE WITH THE FRONT END COLLISION
26 NOT WORKING PROPERLY. PLEASE HELP ME FIX THIS PROBLEM. AS I AM
27 DRIVING DOWN THE ROAD, THE SENSOR ALARMS AND SAYS IT IS NOT
28 WORKING WHEN THERE IS NOTHING IN FRONT OF MY VEHICLE. I HAD ONE
DEALER TELL ME IT WAS PICKING UP THE SUN.....PLEASE HELP.

53. Consumers have logged similar complaints regarding the Nissan Leaf:

• **Jun 25, 2018 - Phoenix, AZ - Forward Collision Avoidance**

WHILE DRIVING FORWARD, THE VEHICLE SUDDENLY, UNEXPECTEDLY AND
VIOLENTLY APPLIES THE BRAKES WITHOUT ANY DRIVER INPUT
WHATSOEVER! THERE ARE NO OTHER VEHICLES OR PEDESTRIANS IN THE
VICINITY AT THE TIME. THIS SUDDEN BRAKING PROBLEM BEGAN ON OR
ABOUT 5/15/18 AND HAPPENED ON SEVERAL OCCASIONS AFTER THAT.
TWICE WHILE ENTERING THE UNDERGROUND PARKING GARAGE AT AN
OFFICE BUILDING AND TWICE WHILE DRIVING ON A CITY STREET. VEHICLE
HAS BEEN AT THE LOCAL NISSAN DEALER FOR OVER A WEEK BUT NEITHER
THE DEALERSHIP NOR THE MANUFACTURER APPARENTLY HAS ANY IDEA
HOW TO FIX THE PROBLEM. THEY THINK THAT THERE IS A FAULT IN THE
AUTOMATIC EMERGENCY BRAKING SYSTEM. THE SERVICE MANAGER TOLD
ME THAT OTHER INSTANCES OF THE SAME ISSUE HAVE BEEN REPORTED TO
NISSAN. THE SALESPERSON INDICATED THAT THERE WERE 4 OTHER

1 SIMILAR CASES AT THEIR DEALERSHIP ALONE.THEY ALSO WILL NOT LET US
2 TAKE THE VEHICLE HOME WITHOUT SIGNING A RELEASE OF LIABILITY
3 DOCUMENT. THE OBVIOUS CONCERN IS THAT THE EMERGENCY BRAKING
4 SYSTEM WILL AGAIN RANDOMLY ACTIVATE WHILE TRAVELING AT A
5 HIGHER SPEED AND CAUSE AN ACCIDENT RESULTING IN SERIOUS
6 PROPERTY DAMAGE AND INJURIES!

54. Consumers have logged similar complaints regarding the 2018 Nissan Sentra:

5 • **Jul 31, 2018 - Cedar Park, TX - Forward Collision Avoidance**

6 THE FRONT SENSOR KEEP SHOWING THE "FRONT SENSOR UNAVAILABLE"
7 FOLLOWED BY THE CRASH ICON AT ALL TIMES OF THE DAY, AND ALL
8 SPEEDS INCLUDING IN THE STOPPED POSITION. THE SENSOR GOES OUT
9 REGARDLESS OF WHETHER OR NOT THERE ARE OTHER VEHICLES NEAR THE
10 CAR.

55. Consumers have logged similar complaints regarding the 2017 Nissan Pathfinder:

11 • **September 21, 2018 – Sarasota, FL – Forward Collision Avoidance**

12 MY EMERGENCY BRAKING KEEPS SENDING ME ALERTS WHEN THERE IS
13 NOTHING IN FRONT OF ME. I'M GETTING MESSAGES THAT THE SYSTEM IS
14 DISABLE BECAUSE OF AN OBSTRUCTION. THIS HAPPENS A LOT OF TIMES
15 WHEN IT'S RAINING OUT. I HAVE OPEN A COMPLAINT WITH NISSAN CASE
16 NUMBER 32896677. THE DEALER TELLS ME RAIN CAN EFFECT THE SYSTEM.
17 WHEN THE WEATHER IS BAD IS WHEN YOU NEED THE SYSTEM THE MOST.

56. Consumers have logged similar complaints regarding the 2018 Nissan Pathfinder:

18 • **July 25, 2018 – Fort Meade, FL – Vehicle Speed Control**

19 THE INTELLIGENT CRUISE CONTROL SYSTEM WORK INTERMINTENTLY.
20 WHEN THIS HAPPENS THE SAFETY BRAKING SYSTEM DOES NOT WORK.

57. The above complaints represent only a sampling of otherwise voluminous
21 complaints regarding the FEB Defect that members of the Classes have reported to Nissan
22 directly and through its dealers.

58. Nissan also made partial representations while suppressing a material fact.
23 Specifically, the owner's manuals of many of the Class Vehicles said, "[t]he FEB system can
24 assist the driver when there is a risk of a forward collision with the vehicle ahead in the traveling
25 lane," and that "[t]he FEB system uses a radar sensor ... located behind the front bumper to
26 measure the distance to the vehicle ahead in the same lane." Although the manual discloses that
27 the "FEB system does not function in all driving, traffic, weather and road conditions," the
28 manual does not disclose that the FEB system has a defect that can cause sudden deceleration or
stops even if there is not another vehicle ahead in the traffic lane. Nor does the manual disclose

1 that the defect can cause the FEB system to deactivate regardless of “driving, traffic, weather and
2 road conditions.” The owner’s manuals of other Class Vehicles said the same thing, except that it
3 used the term “AEB system” instead of the “FEB system.”

4 59. Although Nissan was aware of the widespread nature of the FEB Defect in the
5 Class Vehicles, and that it posed grave safety risks, Nissan has failed to take adequate steps to
6 notify all Class Vehicle owners of the FEB Defect and provide relief.

7 60. Defendants have not recalled the Class Vehicles to repair the FEB Defect, have not
8 initiated a customer service campaign to address the FEB Defect, have not offered Class
9 members a suitable repair or replacement of parts related to the FEB Defect free of charge, and
10 have not reimbursed all Class members who incurred costs for repairs related to the FEB Defect.

11 61. Plaintiff and Class members have not received the value for which they bargained
12 when they purchased or leased the Class Vehicles.

13 62. Defendants have deprived Plaintiff and Class members of the benefit of their
14 bargain, exposed them all to a dangerous safety defect without any notice, and failed to repair or
15 otherwise remedy the FEB Defect contained in the Class Vehicles. As a result of the FEB
16 Defect, the value of the Class Vehicles has diminished, including without limitation, the resale
17 value of the Class Vehicles. Reasonable consumers, like Plaintiff, expect and assume that a
18 vehicle’s FEB system and the related components are not defective and will not malfunction
19 while operating the vehicle as it is intended to be operated and thus did not receive the benefit of
20 their bargain, i.e., the price premium they paid attributable to the FEB system.

21 63. Plaintiff and Class members further expect and assume that Nissan will not sell or
22 lease vehicles with known safety defects, such as the FEB Defect, and will fully disclose any
23 such defect to consumers prior to purchase, or offer a suitable, non-defective, repair.

24 **CLASS ALLEGATIONS**

25 64. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(a) and
26 23(b)(1), (b)(2) and/or (b)(3) on behalf of the following Class and Subclasses:
27
28

1 All persons or entities in the United States that purchased, lease,
2 leased, own or owned a 2015-present Nissan vehicle equipped with
3 Automatic Emergency Braking or Forward Emergency Braking
(the “Nationwide Class” or “Class”); and

4 All persons or entities in New York that purchased, lease, leased,
5 own or owned a 2015-present Nissan vehicle equipped with
6 Automatic Emergency Braking or Forward Emergency Braking
(the “New York Subclass”) (collectively, the “Classes”).

7 65. Subject to additional information obtained through further investigation and
8 discovery, the foregoing definition of the Classes may be expanded or narrowed by amendment
9 or amended complaint, or narrowed at class certification.

10 66. Specifically excluded from the Classes are Defendants, Defendants’ officers,
11 directors, agents, trustees, parents, children, corporations, trusts, representatives, employees,
12 principals, servants, partners, joint ventures, or entities controlled by Defendants, and their heirs,
13 successors, assigns, or other persons or entities related to or affiliated with Defendants and/or
14 Defendants’ officers and/or directors, the judge assigned to this action, and any member of the
15 judge’s immediate family.

16 67. **Numerosity.** The members of the proposed Classes are geographically dispersed
17 throughout the United States and are so numerous that individual joinder is impracticable. Upon
18 information and belief, Plaintiff reasonably estimates that there are hundreds of thousands of
19 individuals that are members of the proposed Classes. Although the precise number of proposed
20 members is unknown to Plaintiff, the true number of members of each of the Classes is known by
21 Defendants. More specifically, Nissan and its network of authorized dealers maintains databases
22 that contain the following information: (i) the name of each Class member that leased or
23 purchased a vehicle; and (ii) the address of each Class member. Thus, members of the proposed
24 Classes may be identified and notified of the pendency of this action by first class mail, electronic
25 mail, and/or published notice, as is customarily done in consumer class actions.

26 68. **Typicality.** The claims of the representative Plaintiff are typical of the claims of
27 the Class in that the representative Plaintiff, like all members of the Classes, paid for a Class
28

1 Vehicle designed, manufactured, and distributed by Defendants which is afflicted by the FEB
2 Defect. The representative Plaintiff, like all members of the Classes, has been damaged by
3 Defendants' misconduct in that she has incurred or will incur the cost of repairing or replacing his
4 malfunctioning FEB system and related parts as a result of the FEB Defect. Further, the factual
5 bases of Defendants' misconduct are common to all members of the Classes and represent a
6 common thread of fraudulent, deliberate, and/or grossly negligent misconduct resulting in injury
7 to all members of the Classes.

8 **69. Existence and predominance of common questions of law and fact.** Common
9 questions of law and fact exist as to all members of the Classes and predominate over any
10 questions affecting only individual members of the Classes. These common legal and factual
11 questions include, but are not limited to, the following:

- 12 (a) Whether the Class Vehicles suffer from the FEB Defect;
- 13 (b) Whether the Class Vehicles contain a design defect and/or a defect in material,
14 manufacturing and/or workmanship;
- 15 (c) Whether the FEB Defect constitutes an unreasonable safety hazard;
- 16 (d) Whether Defendants knew or should have known about the FEB Defect and, if so,
17 how long Defendants have known of the FEB Defect;
- 18 (e) Whether Defendants had a duty to disclose that the Class Vehicles suffer from the
19 FEB Defect;
- 20 (f) Whether Defendants breached their duty to disclose that the Class Vehicles suffer
21 from the FEB Defect;
- 22 (g) Whether Defendants intentionally and knowingly falsely misrepresented, concealed,
23 suppressed and/or omitted material facts including the fact that the Class Vehicles
24 suffered from the FEB Defect;
- 25 (h) Whether Defendants negligently and falsely misrepresented or omitted material
26 facts including the fact that the Class Vehicles suffered from the FEB Defect;
- 27 (i) Whether Defendants made material misrepresentations and/or omissions concerning
28 the standard, quality or grade of the Class Vehicles and the FEB Defect;
- (j) Whether members of the Classes would have paid less for the Class Vehicles if
 Defendants, at the time of purchase or lease, disclosed that the vehicles suffered
 from the FEB Defect;

- 1 (k) Whether Defendants are liable to Plaintiff and the Classes for breaching their
2 express and/or implied warranties;
- 3 (l) Whether Defendants are liable to Plaintiff and the Classes for violation of The
4 Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* and/or any other
5 statutory duties under state laws;
- 6 (m) Whether Defendants violated the California Consumers Legal Remedies Act,
7 California Civil Code §§ 1750, *et seq.* and the California Unfair Competition Law,
8 Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
- 9 (n) Whether Defendants violated the New York General Business Law § 349;
- 10 (o) Whether Defendants have been unjustly enrichment; and
- 11 (p) Whether Plaintiff and the Classes are entitled to damages, restitution, equitable,
12 injunctive, compulsory, or other relief.

13 70. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the
14 interests of the Classes. Plaintiff has retained counsel that is highly experienced in complex
15 consumer class action litigation, and Plaintiff intends to vigorously prosecute this action on
16 behalf of the Classes. Furthermore, Plaintiff has no interests that are antagonistic to those of the
17 Classes.

18 71. **Superiority.** A class action is superior to all other available means for the fair and
19 efficient adjudication of this controversy. The damages or other financial detriment suffered by
20 members of the Classes is relatively small compared to the burden and expense of individual
21 litigation of their claims against Defendants. It would, thus, be virtually impossible for members
22 of the Classes, on an individual basis, to obtain effective redress for the wrongs committed
23 against them. Furthermore, even if members of the Classes could afford such individualized
24 litigation, the court system could not. Individualized litigation would create the danger of
25 inconsistent or contradictory judgments arising from the same set of facts. Individualized
26 litigation would also increase the delay and expense to all parties and the court system from the
27 issues raised by this action. By contrast, the class action device provides the benefits of
28 adjudication of these issues in a single proceeding, economies of scale, and comprehensive

1 supervision by a single court, and presents no unusual management difficulties under the
2 circumstances.

3 72. In the alternative, the Class may also be certified because:

4 (a) the prosecution of separate actions by individual members of the
5 Classes would create a risk of inconsistent or varying adjudication with
6 respect to individual Class members that would establish incompatible
standards of conduct for the Defendants;

7 (b) the prosecution of separate actions by individual Class members
8 would create a risk of adjudications with respect to them that would, as a
9 practical matter, be dispositive of the interests of other members of the
10 Classes not parties to the adjudications, or substantially impair or impede
their ability to protect their interests; and/or

11 (c) Defendants have acted or refused to act on grounds generally
12 applicable to the Class and Subclasses as a whole, thereby making
appropriate final declaratory and/or injunctive relief with respect to the
13 members of the Classes as a whole.

14 **CLAIMS FOR RELIEF**

15 **COUNT I**
16 **Fraud**

17 73. Plaintiff incorporates and realleges each of the preceding paragraphs as though fully
18 set forth herein.

19 74. Plaintiff brings this count on behalf of herself and the members of the Class and
20 Subclass.

21 75. Defendants intentionally and knowingly falsely misrepresented, concealed,
22 suppressed, and/or omitted material facts including the standard, quality or grade of the Class
23 Vehicles and the fact that the FEB system in the Class Vehicles is defective, exposing drivers,
24 occupants and members of the public to safety risks with the intent that Plaintiff and members of
25 the Classes rely on Defendants' misrepresentations and omissions. As a direct result of
26 Defendants' fraudulent conduct, members of the Classes have suffered actual damages.

27 76. As a result of Defendants' failure to disclose to members of the Classes the material
28 fact that the FEB system in the Class Vehicles is defective, owners and lessors of the Class

1 Vehicles are required to spend thousands of dollars to repair or replace the FEB Defect or sell
2 their vehicles at a substantial loss. The fact that the FEB system in the Class Vehicles is defective
3 is material because no reasonable consumer expects that she or she will have to spend thousands
4 of dollars for diagnosis, repair or replacement of the FEB Defect, and because Plaintiff and
5 members of the Classes had a reasonable expectation that the vehicles would not suffer from the
6 FEB Defect.

7 77. The fact that the FEB system installed in the Class Vehicles is defective is also
8 material because it presents a safety risk and places the driver and occupants at risk of serious
9 injury or death. Because of the FEB Defect, the Class Vehicles may suddenly brake
10 automatically while driving in traffic. Drivers and occupants of the Class Vehicles are at risk for
11 rear-end collisions and other accidents caused by the FEB Defect, and the general public is also at
12 risk for being involved in an accident with a Class Vehicle. Plaintiff and members of the Classes
13 would not have purchased the Class Vehicles but for Defendants' omissions and concealment of
14 material facts regarding the nature and quality of the Class Vehicles and existence of the FEB
15 Defect, or would have paid less for the Class Vehicles.

16 78. Defendants knew their false misrepresentation, concealment and suppression of
17 material facts was false and misleading and knew the effect of concealing those material facts.
18 Defendants knew their concealment and suppression of the FEB Defect would sell more Class
19 Vehicles.

20 79. Despite notice of the FEB Defect from, among other things, pre-production testing,
21 numerous consumer complaints, warranty data, and dealership repair orders, Defendants have not
22 recalled the Class Vehicles to repair the Defect, have not offered its customers a suitable repair or
23 replacement free of charge, and have not offered to reimburse all Class members the costs they
24 incurred relating to diagnosing and repairing the FEB Defect or for the premium price that they
25 paid for the FEB feature.

26 80. At minimum, Defendants knew about the FEB Defect by way of customer
27 complaints filed with affiliated dealerships and through the NHTSA, as extensively documented
28

1 above. As such, Defendants acted with malice, oppression and fraud. Plaintiff and members of
2 the Classes reasonably relied upon Defendants' knowing, affirmative and active false
3 representations, concealment and omissions. As a direct and proximate result of Defendants'
4 false representations, omissions and active concealment of material facts regarding the FEB
5 Defect, Plaintiff and members of the Classes have suffered actual damages in an amount to be
6 determined at trial.

7
8 **COUNT II**
Negligent Misrepresentation

9 81. Plaintiff incorporates and realleges each preceding paragraph as though fully set
10 forth herein.

11 82. Plaintiff brings this count on behalf of herself and the members of the Class and
12 Subclass.

13 83. Defendants owed a duty to disclose the FEB Defect and its corresponding safety
14 risk to Plaintiff and members of the Classes because Defendants possessed superior and exclusive
15 knowledge regarding the defect and the risks associated therewith.

16 84. Despite notice of the FEB Defect from, among other things, pre-production testing,
17 numerous consumer complaints, warranty data, and dealership repair orders, Defendants have not
18 recalled the Class Vehicles to repair the Defect, have not offered its customers a suitable repair or
19 replacement free of charge, and have not offered to reimburse all Class Vehicle owners and
20 leaseholders the costs they incurred relating to diagnosing and repairing the FEB Defect or for the
21 price premium attributable to the FEB system.

22 85. At minimum, Defendants knew about the FEB Defect by way of customer
23 complaints filed with affiliated dealerships and through the NHTSA, as extensively documented
24 above. Nissan also issued a TSB to dealers regarding this issue on or around November 2016.
25 Despite repeated complaints from customers, Nissan has failed to issue a recall with regard to the
26 FEB Defect or offer its customers any meaningful relief.

27 86. Defendants marketed the Class Vehicles as safe, built to last, and reliable vehicles.
28

1 87. Defendants negligently misrepresented and omitted material facts including the
2 standard, quality or grade of the Class Vehicles and the fact that the FEB system installed in the
3 Class Vehicles is defective, exposing drivers, occupants and members of the public to safety
4 risks. As a direct result of Defendants' negligent conduct, members of the Classes have suffered
5 actual damages.

6 88. As a result of Defendants' failure to disclose, in owners' manuals, maintenance
7 schedules or elsewhere, to members of the Classes the material fact that the FEB system in the
8 Class Vehicles is defective, owners and lessors of the Class Vehicles are required to spend
9 thousands of dollars to repair or replace the Class Vehicles, or sell their vehicles at a substantial
10 loss. The fact that the Class Vehicles suffer from the FEB Defect is material because no
11 reasonable consumer expects that she or she will have to spend thousands on a purported safety
12 feature – like the FEB system – that is actually a safety hazard.

13 89. The fact that the FEB system installed in the Class Vehicles is defective is also
14 material because it presents a safety risk and places the driver and occupants at risk of serious
15 injury or death. Because of the FEB Defect, Drivers and occupants of the Class Vehicles are at
16 risk for rear-end collisions or other accidents caused by the false engagement or disengagement
17 of the FEB system. The general public is also at risk for being involved in an accident with a
18 Class Vehicle that is unable to accelerate to or maintain an appropriate speed. Plaintiff and
19 members of the Classes would not have purchased the Class Vehicles but for Defendants'
20 negligent false representations and omissions of material facts regarding the nature and quality of
21 the Class Vehicles and existence of the FEB Defect, or would have paid less for the Class
22 Vehicles.

23 90. Plaintiff and members of the Classes justifiably relied upon Defendants' negligent
24 false representations and omissions of material facts. As a direct and proximate result of
25 Defendants' negligent false representations and omissions of material facts regarding the
26 standard, quality or grade of the Class Vehicles and/or the FEB Defect, Plaintiff and members of
27
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1 the Nationwide Class have suffered an ascertainable loss and actual damages in an amount to be
2 determined at trial.

3 **COUNT III**
4 **Breach Of Express Warranty**

5 91. Plaintiff incorporates and realleges each preceding paragraph as though fully set
6 forth herein.

7 92. Plaintiff brings this count on behalf of herself and the Nationwide Class and
8 Subclass.

9 93. Defendants marketed the Class Vehicles as safe, built to last, and reliable vehicles.
10 Such representations formed the basis of the bargain in Plaintiff's and Class members' decisions
11 to purchase or lease the Class Vehicles.

12 94. Defendants are and were at all relevant times merchants and sellers of motor
13 vehicles as defined under the Uniform Commercial Code.

14 95. With respect to leases, Defendants are and were at all relevant times lessors of
15 motor vehicles as defined under the Uniform Commercial Code.

16 96. The Class Vehicles are and were at all relevant times goods within the meaning of
17 the Uniform Commercial Code.

18 97. In connection with the purchase or lease of each of the Class Vehicles, Defendants
19 provide warranty coverage for the Class Vehicles under one or more manufacturer's warranties.
20 For illustrative purposes, NNA offers a 36-month or 36,000-mile Basic Warranty that "covers any
21 repairs needed to correct defects in materials or workmanship of all parts and components of each
22 new Nissan vehicle supplied by Nissan." Under warranties provided to Plaintiff and members of
23 the Classes, Defendants promised to repair or replace defective FEB components arising out of
24 defects in materials and/or workmanship, such as the FEB Defect, at no cost to owners or lessors
25 of the Class Vehicles.

26 98. Defendants' warranties formed a basis of the bargain that was reached when
27 Plaintiff and members of the Classes purchased or leased their Class Vehicles.
28

1 99. Despite the existence of the warranties, Defendants failed to inform Plaintiff and
2 members of the Classes that the Class Vehicles contained the FEB Defect, and, thus, wrongfully
3 transferred the costs of repair or replacement of the FEB Defect to Plaintiff and members of the
4 Classes.

5 100. Defendants have failed to provide Plaintiff or members of the Classes with a
6 meaningful remedy for the FEB Defect, in clear breach of the express warranty described above,
7 promising to repair and correct a manufacturing defect or defect in materials or workmanship of
8 any parts they supplied.

9 101. As described at length above, Defendants were on notice of the FEB Defect, and as
10 such have been afforded a reasonable opportunity to cure their breach of written warranties. Any
11 additional time to do so would be unnecessary and futile because Defendants have known of and
12 concealed the FEB Defect and, on information and belief, have refused to repair or replace the
13 FEB Defect free of charge despite the FEB Defect's existence at the time of sale or lease of the
14 Class Vehicles.

15 102. As a direct and proximate result of Defendants' breach of express warranties,
16 Plaintiff and the members of the Classes have been damaged in an amount to be determined at
17 trial.

18 103. Finally, because of Defendants' breach of express warranty as set forth herein,
19 Plaintiff and the members of the Classes assert, as additional and/or alternative remedies, the
20 revocation of acceptance of the goods and the return to Plaintiff and members of the Classes of
21 the purchase or lease price of all Class Vehicles currently owned or leased, and for such other
22 incidental and consequential damages as allowed.

23 104. On November 26, 2018, prior to filing this action, Defendants were served with a
24 pre-suit notice letter that complied in all respects with U.C.C. §§ 2-313, 2-607. Plaintiff's
25 counsel sent Defendants a letter advising them that they breached an express warranty and
26 demanded that they cease and desist from such breaches and make full restitution by refunding
27 the monies received therefrom.
28

COUNT IV
Breach Of Implied Warranty

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2 105. Plaintiff incorporates and realleges each preceding paragraph as though fully set
3 forth herein.

4 106. Plaintiff brings this count on behalf of herself and members of the Classes.

5 107. Plaintiff and members of the Classes purchased or leased the Class Vehicles from
6 Defendants by and through their authorized agents for retail sales, or were otherwise expected to
7 be the eventual purchasers of the Class Vehicles when bought from a third party. At all relevant
8 times, Defendants were the manufacturers, distributors, warrantors, and/or sellers of Class
9 Vehicles. Defendants knew or had reason to know of the specific use for which the Class
10 Vehicles were purchased or leased.

11 108. Defendants are and were at all relevant times merchants and sellers of motor
12 vehicles as defined under the Uniform Commercial Code.

13 109. With respect to leases, Defendants are and were at all relevant times lessors of
14 motor vehicles as defined under the Uniform Commercial Code.

15 110. The Class Vehicles are and were at all relevant times goods within the meaning of
16 the Uniform Commercial Code.

17 111. Defendants impliedly warranted that the Class Vehicles were in merchantable
18 condition and fit for the ordinary purpose for which vehicles are used.

19 112. The Class Vehicles, when sold or leased and at all times thereafter, were not in
20 merchantable condition and are not fit for the ordinary purpose of providing safe and reliable
21 transportation. The Class Vehicles contain the FEB Defect and present an undisclosed safety risk
22 to drivers and occupants. Thus, Defendants breached their implied warranty of merchantability.

23 113. As a direct and proximate result of Defendants' breach of the implied warranty of
24 merchantability, Plaintiff and members of the Classes have been damaged in an amount to be
25 proven at trial.

COUNT V
Violation Of The Magnuson-Moss Warranty Act ("MMWA")

26
27 114. Plaintiff incorporates and realleges each preceding paragraph as though fully set
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1 forth herein.

2 115. Plaintiff brings this count on behalf of herself and the members of the Classes.

3 116. Plaintiff satisfies the MMWA jurisdictional requirement because she alleges
4 diversity jurisdiction under CAFA, 28 U.S.C. § 1332(d)(2).

5 117. Plaintiff and members of the Classes are “consumers” within the meaning of the
6 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

7 118. Defendants are “supplier[s]” and “warrantor[s]” within the meaning of the
8 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

9 119. The Class Vehicles are “consumer products” within the meaning of the Magnuson-
10 Moss Warranty Act, 15 U.S.C. § 2301(1).

11 120. The MMWA provides a cause of action for any consumer who is damaged by the
12 failure of a warrantor to comply with a written or implied warranty. *See* 15 U.S.C. § 2310(d)(1).

13 121. Defendants provided Plaintiff and members of the Classes with one or more express
14 warranties, which are covered under 15 U.S.C. § 2301(6). For illustrative purposes, NNA offers
15 a 36-month or 36,000-mile Basic Warranty that “covers any repairs needed to correct defects in
16 materials or workmanship of all parts and components of each new Nissan vehicle supplied by
17 Nissan.”

18 122. Under warranties provided to members of the Classes, Defendants promised to
19 repair or replace defective FEB components arising out of defects in materials and/or
20 workmanship, such as the FEB Defect, at no cost to owners or lessors of the Class Vehicles.
21 However, Defendants have failed to provide owners with a remedy to the FEB Defect.

22 123. The Class Vehicles’ implied warranties are covered under 15 U.S.C. § 2301(7).

23 124. Defendants breached these warranties by misrepresenting the standard, quality or
24 grade of the Class Vehicles and failing to disclose and fraudulently concealing the existence of
25 the FEB Defect. Without limitation, the Class Vehicles share a common defect in design,
26 material, manufacturing and/or workmanship. Through their issuance of TSBs to their authorized
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1 dealers, Defendants have acknowledged that the Class Vehicles are not of the standard, quality or
2 grade that Defendants represented at the time of purchase or lease and contain the FEB Defect.

3 125. Plaintiff and members of the Classes have had sufficient direct dealings with
4 Defendants or their agents (dealerships) to establish privity of contract between Defendants, on
5 the one hand, and Plaintiff and members of the Classes, on the other hand. Nonetheless, privity is
6 not required here because Plaintiff and each member of the Classes are intended third-party
7 beneficiaries of contracts between Defendants and their dealers, and specifically, of their implied
8 warranties. The dealers were not intended to be the ultimate users of the Class Vehicles and have
9 no rights under the warranty agreements provided with the Class Vehicles; the warranty
10 agreements were designed for and intended to benefit purchasers and lessors of the Class
11 Vehicles only.

12 126. Affording Defendants a reasonable opportunity to cure their breach of written
13 warranties would be unnecessary and futile. At the time of sale or lease of each Class Vehicle
14 and all relevant times thereafter, Defendants knew of the material misrepresentations and
15 omissions concerning the standard, quality or grade of the Class Vehicles and the existence of the
16 FEB Defect, but failed to remediate the same. Likewise, Defendants failed to disclose the FEB
17 Defect. Under the circumstances, the remedies available under any informal settlement
18 procedure would be inadequate and any requirement that Plaintiff resort to an informal dispute
19 resolution procedure and/or afford Defendants a reasonable opportunity to cure their breach of
20 warranties is excused and thereby deemed satisfied.

21 127. The amount in controversy of Plaintiff's individual claims meets or exceeds the
22 sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of
23 interest and costs, computed on the basis of all claims to be determined in this lawsuit.

24 128. Plaintiff, individually and on behalf of members of the Classes, seeks all damages
25 permitted by law, including diminution in the value of the Class Vehicles, in an amount to be
26 proven at trial.

COUNT VI
Unjust Enrichment

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2 129. Plaintiff incorporates and realleges each preceding paragraph as though fully set
3 forth herein.

4 130. Plaintiff brings this count on behalf of herself and the members of the Classes.

5 131. Plaintiff and members of the Classes conferred a benefit on Defendants by leasing
6 or purchasing the Class Vehicles. Defendants were and should have been reasonably expected to
7 provide Class Vehicles free from the FEB Defect.

8 132. Defendants unjustly profited from the lease and sale of the Class Vehicles at
9 inflated prices as a result of their false representations, omissions and concealment of the FEB
10 Defect in the Class Vehicles.

11 133. As a proximate result of Defendants' false representations, omissions and
12 concealment of the FEB Defect in the Class Vehicles, and as a result of Defendants' ill-gotten
13 gains, benefits and profits, Defendants have been unjustly enriched at the expense of Plaintiff and
14 members of the Classes. It would be inequitable for Defendants to retain their ill-gotten profits
15 without paying the value thereof to Plaintiff and members of the Classes.

16 134. Plaintiff and members of the Classes are entitled to restitution of the amount of
17 Defendants' ill-gotten gains, benefits and profits, including interest, resulting from their unlawful,
18 unjust and inequitable conduct.

19 135. Plaintiff and members of the Classes seek an order requiring Defendants' to
20 disgorge their gains and profits to Plaintiff and members of the Classes, together with interest, in
21 a manner to be determined by the Court.

COUNT VII
Violation Of California's Consumer Legal Remedies Act, California Civil Code § 1750 *et*
***seq.* ("CLRA") (Injunctive Relief Only)**

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23
24 136. Plaintiff incorporates and realleges each preceding paragraph as though fully set
25 forth herein.

26 137. Plaintiff brings this claim on behalf of herself and members of the Class against
27 Defendants.
28

1 138. NNA is a “person” as defined by California Civil Code § 1761(c). NMC is a
2 “person” as defined by California Civil Code § 1761(c).

3 139. Plaintiff and the other Class Members are “consumers” within the meaning of
4 California Civil Code § 1761(d).

5 140. By failing to disclose and concealing the defective nature of the Class Vehicles’
6 FEBs from Plaintiff and members of the Class, Defendants violated California Civil Code §
7 1770(a), as they represented that the Class Vehicles had characteristics and benefits that they do
8 not have, represented that the Class Vehicles were of a particular standard, quality, or grade when
9 they were of another, and advertised the Class Vehicles with the intent not to sell them as
10 advertised. *See* Cal. Civ. Code §§ 1770(a)(5), (7) & (9).

11 141. Defendants’ unfair and deceptive acts or practices occurred repeatedly in
12 Defendants’ trade or business, were capable of deceiving a substantial portion of the purchasing
13 public, and imposed a serious safety risk on the public.

14 142. Defendants knew that the Class Vehicles’ FEB systems suffered from an inherent
15 defect, were defectively designed or manufactured, would fail prematurely, and were not suitable
16 for their intended use.

17 143. Defendants were under a duty to Plaintiff and members of the Class to disclose the
18 defective nature of the Class Vehicles’ FEB systems and/or the associated repair costs because: a)
19 Defendants were in a superior position to know the true state of facts about the safety defect
20 contained in the Class Vehicles’ FEBs; b) Plaintiff and members of the Class could not
21 reasonably have been expected to learn or discover that their FEBs have a dangerous safety defect
22 until after they purchased the Class Vehicles; and c) Defendants knew that Plaintiff and members
23 of the Class could not reasonably have been expected to learn about or discover the FEB Defect.

24 144. By failing to disclose the FEB Defect, Defendants knowingly and intentionally
25 concealed material facts and breached their duty not to do so.

26 145. The facts concealed or not disclosed by Defendants to Plaintiff and members of the
27 Class are material because a reasonable consumer would have considered them to be important in
28

1 deciding whether or not to purchase the Class Vehicles, or to pay less for them. Had Plaintiff and
2 members of the Class known that the Class Vehicles' FEBs were defective, they would not have
3 purchased the Class Vehicles or would have paid less for them.

4 146. Plaintiff and members of the Class are reasonable consumers who do not expect
5 that their vehicles will suffer from a FEB Defect. That is the reasonable and objective consumer
6 expectation for vehicles and their FEB systems.

7 147. As a result of Defendants' misconduct, Plaintiff and members of the Class have
8 been harmed and have suffered actual damages in that the Class Vehicles and their FEB systems
9 are defective and require repairs or replacement.

10 148. As a direct and proximate result of Defendants' unfair or deceptive acts or
11 practices, Plaintiff and members of the Class have suffered and will continue to suffer actual
12 damages.

13 149. By a letter dated November 26, 2018, and sent via certified mail, Plaintiff provided
14 Defendants with notice of its alleged violations of the CLRA pursuant to California Civil Code
15 Section 1782(a) and demanded that Defendants rectify the problems associated with the behavior
16 detailed above. As of the filing of this Complaint, Defendants have failed to respond to
17 Plaintiff's demands and have failed to give notice to all affected consumers, as required by
18 California Civil Code Section 1782.

19 150. A declaration establishing venue is attached hereto.

20 151. Wherefore, Plaintiff seeks injunctive relief only for this violation of the CLRA. If
21 Defendant's fail to respond to Plaintiff's CLRA notice within 30 days, Plaintiff may amend her
22 Complaint to seek all available damages under the CLRA for all violations complained of herein,
23 including, but not limited to, statutory damages, punitive damages, attorneys' fees and cost and
24 any other relief that the Court deems proper.

25 152. Accordingly, Plaintiff and members of the Class seek an order enjoining the acts
26 and practices described above.
27
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COUNT VIII

Violation Of California’s Unfair Competition Law (“UCL”)

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2 153. Plaintiff hereby incorporates by reference the allegations contained in the preceding
3 paragraphs of this Complaint.

4 154. Plaintiff brings this cause of action on behalf of herself and members of the Class
5 against Defendants.

6 155. California Business & Professions Code Section 17200 prohibits acts of “unfair
7 competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair,
8 deceptive, untrue or misleading advertising.”

9 156. Defendants knew that the Class Vehicles’ FEB systems suffered from an inherent
10 defect, were defectively designed and/or manufactured, would fail prematurely, and were not
11 suitable for their intended use.

12 157. In failing to disclose the FEB Defect, Defendants knowingly and intentionally
13 concealed material facts and breached their duty not to do so, thereby engaging in a fraudulent
14 business act or practice within the meaning of the UCL.

15 158. Defendants were under a duty to Plaintiff and members of the Class to disclose the
16 defective nature of the Class Vehicles’ FEB systems because: a) Defendants were in a superior
17 position to know the true state of facts about the safety defect in the Class Vehicles’ FEB
18 systems; b) Defendants made partial disclosures about the quality of the Class Vehicles without
19 revealing the defective nature of the Class Vehicles’ FEB systems; and c) Defendants actively
20 concealed the defective nature of the Class Vehicles’ FEB systems from Plaintiff and Class
21 Members at the time of sale and thereafter.

22 159. The facts concealed or not disclosed by Defendants to Plaintiff and members of the
23 Class are material because a reasonable person would have considered them to be important in
24 deciding whether or not to purchase or lease Defendants’ Class Vehicles, or to pay less for them.
25 Had Plaintiff and members of the Class known that the Class Vehicles suffered from the FEB
26 Defect described herein, they would not have purchased or leased the Class Vehicles or would
27 have paid less for them.
28

1 169. By the acts and conduct alleged herein, Defendant committed unfair or deceptive
2 acts and practices by making misrepresentations concerning the FEB Defect.

3 170. The foregoing deceptive acts and practices were directed at consumers.

4 171. The foregoing deceptive acts and practices are misleading in a material way
5 because, in the course of Defendants' business, they willfully failed to disclose and actively
6 concealed the FEB Defect as described above. Further, Defendants misrepresented the true
7 nature of the Class Vehicles. Accordingly, Defendants made untrue, deceptive or misleading
8 representations of material facts and omitted and/or concealed material facts.

9 172. Defendants engaged in deceptive acts or practices when it failed to disclose material
10 information concerning the Class Vehicles which was known to Defendants at the time of the
11 sale. Defendants deliberately withheld the information about the FEB defect in order to postpone
12 or prevent its warranty obligations and to induce the consumer to enter into a transaction.

13 173. The reliability of the Class Vehicles, and the FEB systems, were material to
14 Plaintiff and the Class. Had Plaintiff and the Class known that their Class Vehicles had the FEB
15 Defect, they would not have purchased the Class Vehicles, or would have done so on materially
16 different terms.

17 174. Because Defendants' deception takes place in the context of automobile safety, that
18 deception affects the public interest.

19 175. Defendants' unlawful conduct constitutes unfair acts or practices that have the
20 capacity to and that do deceive consumers and have a broad impact on consumers at large.

21 176. Plaintiff and the Class suffered injury caused by Defendants' failure to disclose
22 material information. Plaintiff and the Class overpaid for their vehicles and did not receive the
23 benefit of their bargain. The defective Class Vehicles do not operate reliably and pose a grave
24 safety threat. The value of the Class Vehicles has diminished now that the FEB system defect has
25 to light, and Plaintiff and the Class own vehicles that are not safe. Further, Plaintiff and Class
26 members did not receive the benefit of their bargain in that they paid a price premium for a safety
27 feature that was in reality a safety hazard.
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Attorneys for Plaintiff

CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, Joel D. Smith, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and a member of the bar of this Court. I am a partner at Bursor & Fisher, P.A., counsel of record for Plaintiff Cathy Bashaw in this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. The Complaint filed in this action is filed in the proper place for trial under California Civil Code Section 1780(d) because Defendant Nissan North America, Inc. is subject to personal jurisdiction in this District by virtue of its status as a California corporation with a principal place of business outside California. Venue properly lies in this District pursuant to 28 U.S.C. 1391(c)(3) with respect to Nissan Motor Co., Ltd. because, as a non-resident of the United States, Nissan Motor Co., Ltd. “may be sued in any judicial district.”

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on November 30, 2018 at San Francisco, California.



Joel D. Smith

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
CATHY BASHAW, on behalf of herself and all others similarly situated
(b) County of Residence of First Listed Plaintiff Clinton
(c) Attorneys (Firm Name, Address, and Telephone Number)
Joel D. Smith (244902)
Bursor & Fisher, P.A.
1990 N. California Blvd., Suite 940
Walnut Creek, CA 94596 Tel: (925) 300-4455

DEFENDANTS
NISSAN NORTH AMERICA, INC. and NISSAN MOTOR CO., LTD.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment Of Veteran's Benefits, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice
PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC § 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC § 158, 423 Withdrawal 28 USC § 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS-Third Party 26 USC § 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC § 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC section 1332(d).
Brief description of cause: False or misleading advertising, fraud.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only)
SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: 11/30/2018 SIGNATURE OF ATTORNEY OF RECORD: /s/ Joel D. Smith