

Court file no. 500-06-000796-165 – *Albert Hadida v. Nissan Canada Inc., Nissan North America Inc. and Nissan Motor Co. Ltd.*

SETTLEMENT AGREEMENT

Made as of February 17, 2021

Between:

Albert Hadida

(Plaintiff)

-and-

NISSAN CANADA INC.

(Defendant)

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RECITALS

- A. WHEREAS the Plaintiff Albert Hadida (the “**Plaintiff**”) commenced a proposed class action in the Quebec Superior Court on June 27, 2016, bearing Court file no. 500-06-000796-165 as against the Defendants and the Authorization Judgment was rendered on January 24, 2019 (the “**Class Action**”);
- B. WHEREAS the Class Action asserts claims against the Defendants on behalf of the Class in relation to the model year 2007-2012 Nissan Versa vehicles (“**Vehicle(s)**”) manufactured and sold by the Defendants;
- C. WHEREAS the Plaintiff maintains that the claims in the Class Action are valid; the Defendants deny all of the allegations asserted by the Plaintiff in the Class Action, and maintain that they have good and valid defences to the claims asserted therein;
- D. WHEREAS the Parties estimate that a further two years or more could be required to litigate this matter through trial (excluding appeals);
- E. WHEREAS the Parties have agreed to enter into this Settlement Agreement in order to achieve an early full and final resolution of the Class Action and to avoid further expense, inconvenience and burdens of protracted litigation, the whole subject to approval by the Superior Court of Québec;
- F. WHEREAS the Parties and their respective counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their respective analyses of the facts and law applicable to the Plaintiff’s claims asserted in the Class Action, and having regard to the burdens and expense of prosecuting the Class Action, including, in particular, the risks and uncertainties associated with trials and appeals, and taking into account the maximum recovery for the Class weighed against those costs, risks, uncertainties and delays, the Parties and their respective counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interest of the Class;
- G. WHEREAS the Plaintiff and Class Counsel agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Defendants, or evidence of the truth of any of the Plaintiff’s allegations against the Defendants, and the Defendants and Defense Counsel agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Plaintiff or the Class, or evidence of the truth or validity of any of the Defendants’ defences or arguments against the Plaintiff’s claims; and

- H. WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Class Action and all Released Claims, as defined below, subject to the approval of this Settlement Agreement by the Superior Court of Québec.

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Class Action shall be settled on the following terms and conditions:

ARTICLE I - DEFINITIONS

1.1 Definitions

The following terms, as used in this Agreement, including the Recitals, mean:

- (a) **Account** means an interest-bearing trust account, if reasonably possible, with a Canadian financial institution under the control of the Claims Administrator.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred by, payable by, or chargeable by the Claims Administrator, for the approval, implementation and operation of this Settlement Agreement including the costs of notices and claims administration, and the costs of translating the relevant Settlement documents, but excluding: (i) internal fees, costs or expenses of the Defendants to provide information to the Claims Administrator in order to provide notices to the Class as provided in the Notice Plan; (ii) fees, costs and disbursements payable to Defence Counsel; and (iii) Class Counsel Fees and Disbursements.
- (c) **Available Claims Amount** means the amount available to satisfy Class Member claims under the Distribution Protocol (in the form of **Schedule D** hereto) after Administration Expenses and Class Counsel Fees and Disbursements have been paid from the Total Settlement Maximum. This represents the maximum available funds for the Consumer Cash Payments and the Consumer Credit Payments combined (as these terms are defined below).
- (d) **Claims Administrator** means the entity appointed by the Court to administer this Settlement Agreement, and any employees of such entity.
- (e) **Claims Deadline** is the date that is sixty (60) days from the date that Notice of Court Order is first published.
- (f) **Claims Period** means the period beginning on the date that Notice of Court Order is first published, and ending on the Claims Deadline.

- (g) **Class** means the members of the class as defined in the Authorization Judgment dated January 24, 2019, and **Class Member** means any one thereof, namely “All consumers in Quebec, who, any time between May 8, 2006 to November 30, 2015 (the “Class Period”), purchased and/or leased one or more of the Nissan Versa model years 2007-2012 recalled under Transport Canada Recall No. 2015402 (the “Defective Vehicles”) manufactured, distributed, supplied, wholesaled and/or imported by Nissan.”
- (h) **Class Action** means the class proceeding commenced by the Plaintiff Albert Hadida in the Quebec Superior Court of Justice bearing Court File No. 500-06-000796-165 which was authorized by the Authorization Judgment rendered on January 24, 2019.
- (i) **Class Counsel** means LPC Avocat Inc.
- (j) **Class Counsel Fees and Disbursements** means the amount payable to Class Counsel for its extrajudicial fees, and is inclusive of all fees, disbursements, costs, interest, and other applicable taxes or charges of Class Counsel in respect of the prosecution of the Class Action, subject to Court approval.
- (k) **Consumer Cash Payment** means the payments of up to \$70, in the form of e-transfer or cheque, issued to Class Members pursuant to the terms of the Distribution Protocol, in the form of **Schedule D** hereto.
- (l) **Consumer Credit Payment** means the credit payments of up to \$115 in the form of gift card letters, to be used in any Nissan dealership in Quebec, issued to Class Members pursuant to the terms of the Distribution Protocol (which will expire 5 years from the date of issuance), in the form of **Schedule D** hereto.
- (m) **Court** means the Superior Court of Québec.
- (n) **Defence Counsel** means McCarthy Tétrault LLP.
- (o) **Defendants** means Nissan Canada Inc., Nissan North America Inc. and Nissan Motor Co. Ltd., and **Defendant** means any one thereof.
- (p) **Distribution Protocol** means the plan for distributing the Available Claims Amount to the Class as approved by the Court, in the form of **Schedule D** hereto.
- (q) **Effective Date** means (i) the date upon which the ability to appeal from the last-rendered anticipated Second Order expires; or (ii) if any appeal is taken from the Second Order, then the Effective Date shall be the date upon which any such appeal is concluded by way of a Final order.

- (r) **Final** when used in relation to a Court order means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order.
- (s) **First Order** means the proposed order of the Court: (1) setting the Opt-Out Procedure and Opt-Out Deadline; (2) the Court's approval of the Notice of Hearing and Opt-Out; and (3) the appointment of the Claims Administrator, which will be substantially in the form of **Schedule A** hereto or as modified by the Court.
- (t) **Fonds d'aide** means the *Fonds d'aide aux actions collective* created pursuant to the *Act respecting the Fonds d'aide aux actions collectives* (CQLR c F-3.2.0.1.1).
- (u) **Nissan** refers to Nissan Canada Inc..
- (v) **Notice of Hearing and Opt-Out** means (as applicable) the French and English short and long form notices of the hearing for settlement approval, approved by the Court, to inform the Class of *inter alia*: (1) the authorization of the Class Action; (2) the Opt-Out Procedure and Opt-Out Deadline; (3) the date of the hearing to approve this Settlement Agreement; and (4) the key terms of this Settlement Agreement, which will be substantially in the form of **Schedule B** hereto, or as modified by the Court.
- (w) **Notice of Court Order** means (as applicable) the various iterations of the notices of the order approving the settlement and Class Counsel Fees and Disbursements, as approved by the Court, to inform the Class Members of *inter alia*: (1) the approval of this Settlement Agreement and (2) the process by which the Class Members can make claims, which shall be agreed upon by the Parties and submitted to the Court in draft form.
- (x) **Opt-Out Deadline** means the date which is thirty (30) days from the date that Notice of Hearing and Opt-Out is first published.
- (y) **Opt-Out Procedure** means the procedure to be fixed by Order of the Court by which any Class Member(s) who wish(es) to do so may opt out of the Class Action.
- (z) **Parties**, when capitalized, means the Plaintiff and Nissan, and **Party** means any one thereof.
- (aa) **Released Claims** means any and all manner of claims, complaints, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, damages of any kind whenever incurred, declaratory relief, liabilities of any nature whatsoever, including assigned claims, claims for injunction, contribution, indemnity, interest, costs, expenses, class administration expenses (including Administration Expenses), and lawyers'

fees (excluding Class Counsel Fees and Disbursements, which are addressed at Article 11.1 of the present Settlement Agreement), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasors, or any of them, whether directly or indirectly, ever had, could have had, or now have relating to the Vehicles manufactured and sold by the Defendants that were the subject matter of allegations in the Class Action or that could have been the subject matter of allegations by or on behalf of the Releasors, or any of them, in the Class Action.

- (bb) **Releasees** means the Defendants and each of their respective predecessors, successors, parents, subsidiaries, affiliates, divisions, partners, insurers and each of their past and current officers, directors, employees, agents, shareholders and beneficiaries of any kind.
- (cc) **Releasors** means, individually and collectively, the Plaintiff and the Class Members, and their respective successors, heirs, executors, administrators, trustees, assigns, devisees or representatives of any kind (excluding Class Counsel, whose release is addressed at Article 11.1 of the present Settlement Agreement).
- (dd) **Second Order** means the anticipated order of the Court approving the terms of this Settlement Agreement and approving Class Counsel Fees and Disbursements, which shall be agreed upon by the Parties and submitted to the Court in draft form.
- (ee) **Settlement** means the settlement provided for in this Settlement Agreement.
- (ff) **Settlement Agreement** means this agreement, including the recitals and Schedules.
- (gg) **Total Settlement Maximum** means the maximum all-inclusive amount of one million eight hundred thousand Canadian Dollars (CAD \$1,800,000), from which the Class Counsel Fees and Disbursements, the Administration Expenses and all Consumer Cash Payments and Consumer Credit Payments will be paid pursuant to the Distribution Protocol (**Schedule D**). The Total Settlement Maximum represents the maximum amount that Nissan would pay (including Class Counsel Fees and Disbursements and Administration Expenses) if all Class Members came forward and made claims.
- (hh) **Vehicles** means the model year 2007-2012 Nissan Versa vehicles manufactured and sold or leased by the Defendants to consumers in Quebec that were recalled under Transport Canada Recall No. 2015402, and **Vehicle** means any one thereof.

ARTICLE II - BEST EFFORTS TO SECURE COURT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to effectuate this Settlement Agreement and shall cooperate to seek and obtain the Court's approval of this Settlement Agreement and all other matters addressed herein.

If Nissan intends to seek a sealing order in respect of commercially-sensitive information to be included in the materials submitted on any of the applications contemplated under this Settlement Agreement, they will notify Class Counsel in advance. The Plaintiff will consent to any such Application for a sealing order.

Nissan will cooperate to provide information to Class Counsel and the Court that is reasonable and necessary to obtain Court approval of this Settlement Agreement, including the total number of Vehicles included in the Class.

2.2 Court Approval Required for Enforceable Agreement

With the exception of those Articles expressly stated to survive termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless approved by the Court.

ARTICLE III – OPT-OUT PROCEDURE

3.1 Court Approval of Opt-Out Process and Deadlines

- (a) Class Counsel shall seek the Court's approval of the following opt-out procedure as part of the Applications for Approval of Notice of Hearing and Opt-Out outlined in Article 4.1 below:

 - (i) Class Members seeking to opt out of the Class Action must do so within thirty (30) days from the date that Notice of Hearing and Opt-Out is first published, by sending a complete and validly executed written election to opt out to the Claims Administrator at the email address to be provided in the Notice of Hearing and Opt-Out, received on or before the Opt-Out Deadline. The written election of opt out must be sent by the Class Member or the Class Member's designee and must include the following information:

 - The Court docket number of the Class Action (500-06-000796-165);
 - The Class Member's full name, current address, email address and telephone number; and
 - A statement to the effect that the Class Member wishes to be excluded from the Class Action.

- (b) Class Members who opt out of the Class Action shall not be members of the Settlement Class, and shall have no further right to participate in the Class Action or to share in the distribution of funds as a result of the Settlement Agreement; and
- (c) Upon expiry of the Opt-Out Deadline, the Claims Administrator shall provide a report to the Class Counsel and Nissan containing the names of each person who has validly and timely opted out of the Class Action.
- (d) The Defendants shall not be required to pay any part of the Available Claims Amount or the Total Settlement Maximum in respect of any Class Member who validly opted out of the Class Action.
- (e) Under article 580 of the Code of Civil Procedure of Québec, a Class Member eligible to opt out pursuant to this section who does not discontinue an originating application having the same subject matter as the Class Action before the Opt-Out Deadline has expired, is deemed to have opted out.

ARTICLE IV - SETTLEMENT APPROVAL

Subject to the discretion of the Court regarding the approval process, the Parties propose to seek the orders contemplated in this Settlement Agreement as follows. The Parties agree that the applications contemplated in this article may be conducted by videoconference, or by teleconference, as directed by the Court, in consideration *inter alia* of the COVID-19 pandemic.

4.1 Applications for Approval of Notice of Hearing and Opt-Out

- (a) As soon as practicable after this Settlement Agreement is executed, Plaintiff shall bring an application for the Court's approval of an order substantially in the form of the draft First Order at **Schedule A** (being the draft order setting out the Opt-Out Procedure and Opt-Out Deadline and approving the Notice of Hearing and Opt-Out and the appointment of Claims Administrator). Nissan will consent to this application.
- (b) Until the application for the Court's approval of an order substantially in the form of the draft First Order at **Schedule A** is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without prior written consent of the Parties, except as required for the purposes of financial reporting, communications with insurers and auditors, and/or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms or as otherwise required by law.

4.2 Application for Approval of Settlement Agreement and Class Counsel Fees and Disbursements

- (a) As soon as practicable after an order substantially in the form of the First Order is made, and the Notice of Hearing and Opt-Out published as detailed in the Notice Plan (**Schedule C**), the Plaintiff shall bring an application for the Court's issuance of the Second Order. Nissan will consent to this application, and the Fonds d'aide will be served with the application. Nissan will take no position on the aspects of such application that concern Class Counsel Fees and Disbursements. The Parties waive any rights of appeal if the Second Order is granted by the Court.
- (b) Nissan will review and approve all application materials before they are filed.
- (c) If the Plaintiff, Class Counsel, the Defendants, or Defence Counsel become aware that a Class Member or other person intends to object to those applications, they will advise the Parties in writing as soon as practicable and in any event no later than two (2) business days before the hearing of the application in Article 4.2 (a).

ARTICLE V - SETTLEMENT CLAIMS

5.1 Composition of the Total Settlement Maximum

- (a) This Settlement Agreement provides for a claims process for Class Members to make claims for compensation from Nissan either in the form of Consumer Cash Payments or Consumer Credit Payments. Nissan's obligation hereunder is to make or fund the Consumer Cash Payments and the Consumer Credit Payments, along with the Administration Expenses and the Class Counsel Fees and Disbursements. However, in no event shall the total value of the Consumer Cash Payments, the Consumer Credit Payments, the Administration Expenses, and Class Counsel Fees and Disbursements payable by Nissan exceed CAD \$1,800,000.
- (b) Within ten (10) business days of the execution of this Settlement Agreement, Nissan shall place CAD \$545,000 plus GST & QST, representing Class Counsel Fees and Disbursements, in trust with Defence Counsel. Within five (5) business days of such deposit, Defence Counsel will confirm to Class Counsel that it is holding this amount in trust.
- (c) Within ten (10) business days of the Effective Date, Defence Counsel shall transfer to Class Counsel payment in the amount of the Class Counsel Fees and Disbursements approved by the Court, in full satisfaction of any claims for fees, costs and disbursements related to the Class Action (as described more fully at Article 11.1 of the present Settlement Agreement).

- (d) The Claims Administrator will issue quarterly invoices to Nissan (copies of which to be sent to Class Counsel) for payment of the Administration Expenses beginning after the appointment of the Claims Administrator by the Court.
- (e) Within twenty-one (21) days of the Claims Deadline, the Claims Administrator will issue an invoice to Nissan (with a copy of which to be sent to Class Counsel) detailing the total amounts owed to Class Members in Consumer Cash Payments and Consumer Credit Payments, as per the Distribution Protocol at **Schedule D**.
- (f) Within thirty (30) days following receipt of the invoice from the Claims Administrator mentioned at Article 5.1(e), Nissan will:
 - (i) Issue a cheque to the Claims Administrator corresponding to the total amount owed to Class Members in Consumer Cash Payments; and
 - (ii) Send to the Claims Administrator the gift card letters reflecting the total amount owed to Class Members in Consumer Credit Payments.
- (g) The Available Claims Amount will be used to pay Class Members pursuant to the Distribution Protocol (**Schedule D**).
- (h) Nissan's payment of the Available Claims Amount will be in full satisfaction of the Released Claims against the Releasees, subject to approval of the Court.
- (i) Nissan shall not have any obligation to pay to the Plaintiff or to the Class any amount in addition to the amounts mentioned in the Claims Administrator's invoice mentioned at Article 5.1(e), unless otherwise expressly provided for in this Agreement.
- (j) Nissan shall not have any obligation to pay to the Claims Administrator any amount in addition to or exceeding the Administration Expenses, unless otherwise expressly provided for in this Agreement.

5.2 Taxes and Interest

- (a) The Parties agree that the Plaintiff, Defendants, Class Counsel, and Defense Counsel are in no way liable for any taxes any Class Members may be required to pay as a result of receiving any benefits under this Settlement Agreement. No opinion concerning the tax consequences of this Settlement Agreement to any Class Member is given or will be given by the Parties or their respective counsel, nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of this Settlement Agreement as to any Class Member. Each Class Member is responsible for their tax reporting and other obligations respecting this Settlement Agreement, if any.

ARTICLE VI - DISTRIBUTION OF FUNDS

6.1 Distribution Protocol

The Distribution Protocol is part of this Settlement Agreement and will be subject to approval by the Court, as part of the application seeking Court approval of this Settlement Agreement (the Second Order). The Distribution Protocol is set out at **Schedule D** hereto.

6.2 No responsibility for External Administration Fees

Nissan acknowledge that it may incur internal costs to provide information to the Claims Administrator in order to provide notices to Class Members pursuant to the Notice Plan. However, Nissan will not be required to incur any external administration fees (separate from the Administration Expenses) in connection with the Distribution Protocol.

6.3 Fonds d'aide aux actions collectives ("Fonds d'aide")

The Parties agree that the Settlement Agreement is subject to the *Act respecting the Fonds d'aide aux actions collectives*, C.Q.L.R., c. F-3.2.0.1.1, the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, C.Q.L.R., c. F-3.2.0.1.1.r.2 and the *Code of Civil Procedure*, C.Q.L.R., c. C-25.01.

ARTICLE VII - TERMINATION OF SETTLEMENT AGREEMENT

7.1 Right of Termination

- (a) Nissan shall have the option to terminate this Settlement Agreement in the event that:
 - (i) The Plaintiff or Class Counsel breach any material term of this Settlement Agreement;
 - (ii) The Court declines to issue an order substantially in the form of the Second Order, or to approve any material part of the Settlement Agreement (excluding Class Counsel Fees and Disbursements), or requires a material change to the Settlement Agreement as a pre-condition to approval; or
 - (iii) The Court issues an order substantially in the form of the Second Order, but it does not become Final or is materially altered on appeal.
- (b) The Plaintiff and Class Counsel, collectively but not separately, shall have the option to terminate the Settlement Agreement in the event that:
 - (i) Nissan or Defence Counsel breach any payment terms of this Settlement Agreement;

- (ii) The Court declines to issue an order substantially in the form of the Second Order, or to approve of any material part of the Settlement Agreement (excluding Class Counsel Fees) or requires a material change to the Settlement Agreement as a pre-condition to approval; or
 - (iii) The Court issues an order substantially in the form of the Second Order, but it does not become Final or is materially altered on appeal.
- (c) If Nissan elects to terminate the Settlement Agreement pursuant to Article 7.1(a), or the Plaintiff together with Class Counsel elect to terminate the Settlement Agreement pursuant to Article 7.1(b), a written notice of termination shall be provided by the terminating Party(s) to the other Party(s) forthwith, and, in any event, no later than ten (10) business days after the event upon which the terminating Party relies. Upon delivery of such written notice, this Settlement Agreement shall be terminated and, except as provided for in Article 7.2, and the related Definitions in Article I, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any Released Claims, including but not limited to any trial on the merits, except with the written consent of all Parties or as otherwise required by a Court.
- (d) Any order, ruling or determination made by the Court with respect to the Class Counsel Fees and Disbursements shall not be a material modification of this Settlement Agreement and shall not constitute a basis for the termination of this Settlement Agreement.

7.2 If Settlement Agreement is Terminated

If this Settlement Agreement is terminated:

- (a) The Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided for herein;
- (b) Any step taken by Nissan or the Plaintiff in relation to this Settlement Agreement shall be without prejudice to any position that the Parties may later take in respect of any procedural or substantive issues in the Class Action;
- (c) Any order or judgment rendered by the Court pursuant to this Settlement Agreement shall be set aside or vacated. The Parties consent and will cooperate in seeking to have all prior orders or judgments sought from and rendered by the Court, in accordance with this Settlement Agreement, set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise; and

- (d) All documents and information exchanged by the Parties during the settlement process are subject to settlement privilege, except to the extent that the documents or information were, are or become publicly available. Within thirty (30) days of such termination having occurred, Class Counsel shall destroy all documents and other materials provided by Nissan or containing or reflecting information derived from such documents for the purposes of implementing this Settlement. Class Counsel shall provide Defence Counsel with a written certification by Class Counsel of such destruction.

ARTICLE VIII - RELEASES AND DISMISSALS

8.1 Release of Releasees

Except in the case of the termination of this Settlement Agreement, and conditional upon the approval of this Settlement Agreement by the Court, upon transfer by Nissan of the Consumer Cash Payments and the Consumer Credit Payments to the Claims Administrator, the Releasors shall immediately, forever and absolutely release the Releasees from the Released Claims. The Plaintiff acknowledges that he may thereafter discover facts in addition to, or different from, the facts which they know or believe to be true regarding the Released Claims, and it is his intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release by all of the Releasors shall be and shall remain in effect notwithstanding the discovery or existence of new or different facts.

8.2 No Further Claims

The Releasors shall not now, nor hereafter institute, continue, maintain, or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any Released Claim against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim.

ARTICLE IX - EFFECT OF SETTLEMENT

9.1 No Admission of Liability

Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any fault, wrongdoing or liability by any of the Releasees, or of the truth of any claims or allegations contained in the Class Action or any other allegation made by the Plaintiff or the Class in any forum or context. The Releasees deny any liability and deny the truth of the allegations made against them. If the Settlement Agreement is not approved, they will defend the Class Action at trial.

The Defendants reserve their rights and defences with respect to anyone who will validly opt out of the Class Action, and no term of this Settlement Agreement shall be tendered as evidence in any subsequent litigation by any such person against the Defendants.

9.2 This Agreement Not Evidence

The Parties agree that, whether or not it is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action or other proceeding, in this or any other jurisdiction, except in a proceeding to approve or enforce this Settlement Agreement or in connection with the other applications contemplated in this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law, or with the written consent of all Parties.

ARTICLE X - NOTICE TO CLASS

10.1 Notice Required

The Class shall be given the following notices, subject to approval by the Court:

- (a) Notices of Hearing and Opt-Out (**Schedule B**);
- (b) Notices of Court Order, in a form to be agreed upon by the parties and approved by the Court;
- (c) Notice of termination of this Settlement Agreement if it is terminated pursuant to this Settlement Agreement, or as otherwise ordered by a Court, in a form to be agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notice of termination of the Settlement Agreement, then in the form ordered by the Court.

10.2 Costs of Disseminating Notice

The costs of disseminating each Notice shall be paid by Nissan from the Total Settlement Maximum, regardless of whether the Settlement is approved by the Court or the Settlement Agreement is terminated. The Plaintiff, the Class and the Class Counsel are not liable to pay for such costs.

10.3 Method of Disseminating Notices

The Notices required under Article 10.1 shall be disseminated pursuant to the Notice Plan attached as **Schedule C** as approved by the Court or in a manner otherwise ordered by the Court.

In addition and out of an abundance of caution, the parties agree that the Notices of Court Order should also be sent by mail to Class Members, using the mailing addresses provided by Nissan pursuant to Court order.

ARTICLE XI- CLASS COUNSEL AND ADMINISTRATION FEES

11.1 Class Counsel Fees and Disbursements and Release

- (a) As part of the application for approval detailed at Article 4.2(a), Class Counsel will seek the Court's approval of Class Counsel Fees and Disbursements in the amount of \$540,000 in fees plus \$5,000 in disbursements, plus GST & QST, and an order that the Class Counsel Fees and Disbursements shall be paid as outlined in Articles 5.1(b) and (c). The Defendants will take no position on this request, other than that they have agreed to pay this amount.
- (b) Upon full payment to Class Counsel of the Class Counsel Fees and Disbursements approved by the Court pursuant to the order to be rendered by the Court, Class Counsel forever releases the Releasees of and from any and all claims or demands for fees, costs, expenses and/or disbursements, known or unknown, that Class Counsel ever had, could have had, or now has, whether directly or indirectly related to the Class Action.

ARTICLE XII - MISCELLANEOUS

12.1 Applications for Directions

- (a) The Plaintiff, Defendants, or the Claims Administrator may bring applications to the Court for directions in respect of the implementation and administration of this Settlement Agreement at any time.
- (b) All applications contemplated by this Settlement Agreement shall be on reasonable notice to the Parties.

12.2 Headings, etc.

In this Settlement Agreement:

- (a) The division of the Settlement Agreement into articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) The terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular article or other portion of this Settlement Agreement.

12.3 Computation of Time

In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) Only in the case where the time for doing an act expires on a holiday or a weekend, the act may be done on the next day that is a business day.

12.4 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Québec and Canada.

12.5 Entire Agreement

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding or agreement in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

12.6 Amendments

This Settlement Agreement may not be modified or amended except in writing and on consent of the Plaintiff and Nissan, subject approval by the Court where required.

12.7 No Waiver

No waiver of any provision of this Settlement Agreement will be binding unless consented to in writing by the Parties. No waiver of any provision of this Settlement Agreement will constitute a waiver of any other provision.

12.8 Binding Effect

This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Class Members, the Defendants, the Releasors, and the Releasees once it is approved by a Final order of the Court, except that the Parties are required to perform their obligations under this Settlement Agreement prior to the application for approval of this Settlement Agreement. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors, once it is approved by Final order of the Court.

12.9 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

12.10 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

12.11 Language

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention de règlement et tous les documents connexes soient rédigés en anglais*. Nevertheless, a French translation of this Settlement Agreement, the Distribution Protocol and the Notices shall be prepared, the cost of which shall be paid from the Total Settlement Maximum, as part of the Administration Expenses.

12.12 Transaction

The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*.

12.13 Recitals

The Recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

12.14 Schedules

The Schedules annexed hereto form part of this Settlement Agreement and are:

- (a) **Schedule A** – Draft First Order (the draft order approving the Notice of Hearing and Opt-Out, and appointing the Claims Administrator).
- (b) **Schedule B** – Notice of Hearing and Opt-Out.
- (c) **Schedule C** - Notice Plan.

(d) Schedule D – Distribution Protocol.

12.15 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a)** He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b)** The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her or its counsel;
- (c)** He, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d)** No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

12.16 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

12.17 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

LPC Avocat Inc.

276 Saint-Jacques Street, Suite 801
Montreal, QC, H2Y 1N3

Joey Zukran

Telephone: 514-379-1572
Fax: 514-221-4441
Email: jzukran@lpclex.com

For the Defendants and Defence Counsel:

McCarthy Tétrault LLP

1000 Gauchetière Street West, suite 2500
Montreal, QC H3B 0A2

J.R. Kristian Brabander

Telephone: 514-397-4273

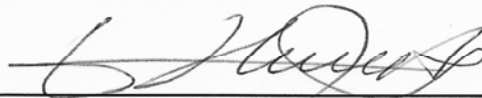
Facsimile: 514-875-6246

Email: kbrabander@mccarthy.ca

Date of Execution

The Parties have executed this Settlement Agreement effective as of the date on the cover page.

Dated at Montreal, Quebec, Canada, this 17 day of February, 2021



ALBERT HADIDA

1
Plaintiff

Dated at Montreal, Quebec, Canada, this 17 day of February, 2021



LPC AVOCAT INC.

Per: Joey Zukran

Lawyers for the Plaintiff and the Class

Dated at Mississauga, Ontario, Canada, this 18th day of February 18, 2021

DocuSigned by:

Andrew Harkness

504D98C0D753496

NISSAN CANADA INC.

Per: Andrew Harkness

Director, Aftersales, Nissan Canada Inc. (Defendant)

DocuSigned by:

SB

612B043C5E124C3

Sean Bhagwandin

General Counsel, Nissan Canada Inc.

**SCHEDULE A
DRAFT FIRST ORDER**

Superior Court
(Class Action Division)

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO.: 500-06-000796-165

DATE: , 2021

PRESENT: THE HONORABLE GARY D.D. MORRISON, J.S.C.

ALBERT HADIDA

Representative Plaintiff

v.

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

Defendants

**JUDGMENT APPROVING NOTICES OF A SETTLEMENT APPROVAL HEARING
AND APPOINTING A CLAIMS ADMINISTRATOR**

- [1] **CONSIDERING** the *Application for Approval of Notice to Class Members of a Settlement Approval Hearing and to Appoint a Claims Administrator* dated February 15, 2021 (the “**Application**”);
- [2] **CONSIDERING** the proposed Settlement between the Parties filed as Exhibit N-1 in support of the Application (the “**Settlement**”);
- [3] **CONSIDERING** that, pursuant to the Application, the Representative Plaintiff is asking the Court to:

- a) approve notices informing the Class members that the Settlement will be submitted to the Court for approval, including the deadlines for Class Members to object and to opt-out, as well as the dissemination plan thereof; and
 - b) name Velvet Payments Inc. as the Claims Administrator;
- [4] **CONSIDERING** the proposed French and English versions of the Pre-Approval Notice filed as Exhibit N-2 in support of the Application;
- [5] **CONSIDERING** the submissions of counsel for the Representative Plaintiff and counsel for the Defendants who consent to the Application;
- [6] **CONSIDERING** articles 25, 49, 579, 580, 581 and 590 of the *Code of Civil Procedure*;

PAR CES MOTIFS, LE TRIBUNAL :	FOR THESE REASONS, THE COURT:
[7] APPROUVE la forme et le contenu de l'avis de pré-approbation aux membres du groupe, dans sa version française et anglaise (pièce N-2);	APPROVES the form and content of the pre-approval notice to Class Members in its French and English version (Exhibit N-2);
[8] DÉSIGNE Velvet Payments Inc. à titre d'Administrateur des réclamations afin de s'acquitter des tâches qui lui incombent en vertu de la Transaction;	APPOINTS Velvet Payments Inc. as the Claims Administrator for the purposes of accomplishing the tasks that devolve to it pursuant to the Settlement;
[9] ORDONNE aux parties et l'Administrateur des réclamations de diffuser les avis de pré-approbation conformément au plan de publication prévu au plan de publication des avis (pièce N-3), dans les 5 jours suivant le jugement qui sera rendu par les présentes;	ORDERS the parties and the Claims Administrator to disseminate the pre-approval notices pursuant to the publication plan provided for in the Notice Plan (Exhibit N-3), within 5 days of the judgment to be rendered herein;
[10] ORDONNE que les défenderesses divulguent à l'Administrateur des réclamations les noms, courriels, adresses postales et toutes les informations d'identification nécessaires des membres du groupe que les défenderesses détiennent, ainsi que les numéros d'identification des véhicules inclus dans le groupe, afin de : (a) faciliter la distribution des avis approuvés par le Tribunal aux membres du groupe les informant du présent jugement ainsi que de la	ORDERS that the Defendants disclose to the Claims Administrator the names, emails, mailing addresses and all necessary identifying information of Class Members that the Defendants hold, as well as the VIN numbers of the Vehicles included in the Class, in order to: (a) facilitate the distribution of Court-approved notices to Class Members advising them of this Judgment and the date and information relating to the Application for Settlement Approval; and

date et des informations relatives à la demande d'approbation du règlement; et (b) faciliter le processus d'administration éventuelle des réclamations découlant de tout jugement ultérieur approuvant le règlement.	(b) facilitate the process for the eventual administration of claims arising from any later judgment approving the Settlement Agreement.
[11] ORDONNE à l'Administrateur des réclamations de maintenir la confidentialité des informations fournies conformément au présent jugement et ne les partage pas avec toute autre personne, sauf si cela est strictement nécessaire pour exécuter le plan de notification et/ou faciliter le processus d'administration des réclamations conformément au règlement;	ORDERS that the Claims Administrator shall maintain confidentiality over and shall not share the information provided pursuant to this judgment with any other person, unless doing so is strictly necessary for executing the Notice Plan and/or facilitating the claims administration process in accordance with the Settlement Agreement;
[12] ORDONNE que l'Administrateur des réclamations utilisera les informations qui lui sont fournies en vertu du présent jugement dans le seul but d'exécuter le plan de notification et de faciliter le processus d'administration des réclamations conformément au règlement, et à aucune autre fin;	ORDERS that the Claims Administrator shall use the information provided to it pursuant to this judgment for the sole purpose of executing the Notice Plan and facilitating the claims administration process in accordance with the Settlement Agreement, and for no other purpose;
[13] ORDONNE ET DÉCLARE que le présent jugement constitue un jugement contraignant la production des informations par les défenderesses au sens des lois applicables en matière de vie privée, et que ce jugement satisfait aux exigences de toutes les lois applicables en matière de la protection de la vie privée;	ORDERS AND DECLARES that this judgment constitutes a judgment compelling the production of the information by the Defendants within the meaning of applicable privacy laws, and that this judgment satisfies the requirements of all applicable privacy laws;
[14] DÉGAGE les défenderesses de toute obligation en vertu des lois et règlements applicables en matière de protection de la vie privée en ce qui concerne la communication de toute information personnelle et/ou privée à l'Administrateur des réclamations;	RELEASES the Defendants from any and all obligations pursuant to applicable privacy laws and regulations in relation to the communication of any personal and/or private information to the Claims Administrator;
[15] DÉCLARE que les membres du groupe qui souhaitent s'opposer à l'approbation par le tribunal de la Transaction doivent le faire de la manière prévue dans l'avis de pré-approbation (pièce N-2), au plus tard le 24 mars 2021;	DECLARES that Class Members who wish to object to Court approval of the Settlement must do so in the manner provided for in the pre-approval notice (Exhibit N-2) by March 24, 2021;

[16] DÉCLARE que les membres du groupe qui souhaitent s'exclure de l'action collective et de son règlement peuvent le faire en remettant un avis écrit confirmant leur intention de s'exclure de la présente action collective, de la manière prévue dans l'avis de pré-approbation (pièce N-2), au plus tard le 24 mars 2021;	DECLARES that Class Members who wish to opt out from the class action and the settlement thereof may do so by delivering a written notice confirming their intention to opt-out of this class action, in the manner provided for in the pre-approval notice (Exhibit N-2) by March 24, 2021;
[17] DÉCLARE que tous les membres du groupe qui n'ont pas demandé leur exclusion seront liés par tout jugement à rendre sur l'action collective de la manière prévue par la loi;	DECLARES that all Class members that have not requested their exclusion be bound by any judgement to be rendered on the class action in the manner provided for by the law;
[18] FIXE la date d'audience pour l'approbation de la Transaction déposée comme pièce N-1 au 25 mars 2021 à 9h15 via TEAMS ou dans une salle à déterminer du palais de justice de Montréal;	SCHEDULES the hearing date for approval of the Settlement filed as Exhibit N-1 on March 25, 2021, at 9:15 a.m., via TEAMS or in a room to be determined of the Montreal courthouse;
[19] ORDONNE que la date et l'heure pour la tenue de l'audience d'approbation de la Transaction puissent être reportées par le Tribunal sans autre avis aux Membres du Groupe autre que l'avis qui sera affiché sur le site web des procureurs du groupe https://lpclex.com/fr/nissan/ et le site web du règlement www.springcoilsettlement.ca/fr/ ;	ORDERS that the date and time of the settlement approval hearing may be subject to adjournment by the Court without further publication notice to the Class Members, other than such notice which will be posted on Class Counsel's website https://lpclex.com/nissan/ and the Settlement website www.springcoilsettlement.ca ;
[20] LE TOUT , sans frais de justice.	THE WHOLE , without legal costs.

Gary D.D. Morrison, J.S.C.

Mtre. Joey Zukran
LPC Avocat Inc.
Attorney for the Representative Plaintiff

Mtre. Kristian Brabander
Mtre. Catherine Martin
McCarthy Tétrault
Attorneys for the Defendants

SCHEDULE B

QUEBEC CLASS ACTION SETTLEMENT

NOTICE OF HEARING FOR SETTLEMENT APPROVAL AND OPT-OUT

NISSAN CANADA INC. CLASS ACTION N° 500-06-000796-165

This notice is to all consumers in Quebec who, between May 8, 2006 and November 30, 2015, purchased or leased a Nissan Versa model year 2007-2012 recalled under Transport Canada Recall No. 2015402

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.

THIS CLASS ACTION HAS BEEN SETTLED, SUBJECT TO COURT APPROVAL.

AUTHORIZATION OF THE CLASS ACTION

On June 27, 2016, a class action was commenced in Quebec against Nissan Canada Inc., Nissan North America Inc. and Nissan Motor Co. Ltd. (referred to together as “**Nissan**”) alleging that 2007-2012 Nissan Versa cars (the “**Vehicles**”) suffer from a defect affecting their coil springs. The Representative Plaintiff was asking the Court to determine whether the Vehicles suffered from a defect, whether Nissan made false or misleading representations to consumers and whether Nissan committed a fault in carrying out the recall program for the Vehicles.

On January 24, 2019, the Honourable Justice Morrison of the Superior Court of Québec authorized the bringing of this class action against the Defendants on behalf of the following class:

All consumers in Quebec, who, any time between May 8, 2006 to November 30, 2015 (the “Class Period”), purchased and/or leased one or more of the Nissan Versa model years 2007-2012 recalled under Transport Canada Recall No. 2015402 (the “Defective Vehicles”) manufactured, distributed, supplied, wholesaled and/or imported by Nissan.

(the “**Class**” or “**Class Members**”).

As a Class Member, you have the right to intervene in the present Class Action, in the manner provided for by law. No Class Member other than the representative plaintiff or an intervenor may be required to pay legal costs arising from the class action.

PROPOSED SETTLEMENT OF THE CLASS ACTION

The parties to this class action have reached a proposed settlement (the “**Settlement Agreement**”), subject to obtaining the approval of the Superior Court of Quebec. The Settlement Agreement has a total settlement maximum of \$1,800,000.00, which includes the payment of

administration expenses, and the payment of Class Counsel fees and disbursements of \$545,000.00 plus taxes.

The Settlement Agreement, if approved by the Court, requires Nissan to compensate affected Class Members. It is not an admission of liability, wrongdoing or fault. If approved, Class Members may claim settlement funds in the following amounts:

- a) Up to \$70 via e-transfer or cheque; or
- b) Up to \$115 in credit to be used in any Nissan dealership in Quebec (in the form of a Nissan gift card letter, which expires after 5 years).

In order to make a valid claim, Class Member claimants must submit a valid and timely online claim form attesting that they purchased or leased a Vehicle between May 8, 2006 and November 30, 2015 and further attesting either:

- a) That they did not receive the first or second letter from Nissan regarding Transport Canada's Recall No. 2015402 (where applicable); or
- b) That they were required to wait **more than two (2) months** from the date of the first letter mentioned above to have the repairs performed by Nissan on the coil springs of their Vehicle, pursuant to Transport Canada's Recall No. 2015402.

The Class Member claimants must also provide (in the claim form) the VIN associated with the Vehicle for which they are making a claim, or other sufficient proof of ownership of their Vehicle, to be accepted by the Claims Administrator (at its discretion). Only one claim can be accepted per Vehicle.

SETTLEMENT APPROVAL HEARING

A hearing before the Superior Court of Québec will be held on **March 25, 2021 at 9:15 a.m.**, at the Montreal courthouse located at 1, Notre-Dame East Street, Montreal, Quebec, in room 2.08, or via a TEAMS link. This date may be subject to adjournment by the Court without further publication notice to the Class Members, other than such notice which will be posted on Class Counsel's website <https://www.lpclex.com/nissan> or on the claim's administrator's website: www.springcoilsettlement.com.

If you wish to be included in the Class Action, you have nothing to do.

If you do not wish to participate in this class action:

If you wish to exclude yourself from the Class Action, you will not be entitled to participate further in the Class Action, or to share in the distribution of funds received as a result of the Settlement Agreement. To exclude yourself, you must send a notice no later than **March 24, 2021**, by email to Class Counsel at the following address: jzukran@lpclex.com. You must state that you wish to exclude yourself from the class action *Hadida v. Nissan Canada Inc. et al.* (case number 500-06-000796-165).

If you wish to object to the terms of the proposed Settlement Agreement:

If you disagree with the Settlement Agreement, but you do not wish to opt out of the class action, you can object to the Settlement Agreement by delivering a written submission on or before **March 24, 2021**, filed with the Court or Class Counsel in accordance with the proposed Settlement Agreement and containing the following information:

- A heading referring to this proceeding (*Hadida v. Nissan Canada Inc. et al.*, case no. 500-06-000796-165).
- Your name, current address, and telephone number and, if represented by counsel, the name of your counsel.
- A statement that you purchased or leased a Nissan Versa (models 2007-2012) any time between May 8, 2006 to November 30, 2015.
- A statement whether you intend to appear at the settlement approval hearing, either in person or through counsel.
- A statement of the objection and the grounds supporting the objection.
- Copies of any papers, briefs, or other documents upon which the objection is based.
- Your signature.

You must send your letter by registered mail, with a copy by email to Class Counsel, at the following address:

Clerk of the Superior Court of Québec
File: 500-06-000796-165
Montreal Courthouse
1, Notre-Dame East Street, Suite 1.120, Montréal (Québec), H2Y 1B6

Please note that the Court cannot change the terms of the Settlement Agreement. Any objections will be used by the Court to consider whether to approve the Settlement Agreement or not.

Class Members who do not oppose the proposed Settlement Agreement do not need to appear at any hearing or take any other action to indicate their desire to support the proposed Settlement Agreement.

If the Settlement Agreement is approved, another notice to Class Members will be sent explaining the method of distributing the settlement funds.

For further information or details about the proposed Settlement Agreement, you may contact class counsel identified below. Your name and any information provided will be kept confidential. Please do not contact Nissan, or the judges of the Superior Court.

Mtre Joey Zukran
LPC Avocat Inc.
276 rue Saint-Jacques, Suite 801
Montréal, Québec, H2Y 1N3
Email: jzukran@lpclex.com
Website : www.lpclex.com

You may also visit the Settlement Website at www.springcoilsettlement.com or contact the Claims Administrator:

[Claims Administrator name]

[Insert address]

[Insert phone number]

**THE PUBLICATION OF THIS NOTICE TO CLASS MEMBERS
HAS BEEN APPROVED AND ORDERED BY THE SUPERIOR COURT OF QUEBEC.**

SCHEDULE C

NOTICE PLAN

A. NOTICE OF HEARING FOR SETTLEMENT APPROVAL AND OPT-OUT (“NOTICE OF HEARING AND OPT-OUT”)

(1) For the purposes of this Notice Plan, the definitions found in the Settlement Agreement apply.

(2) Reference is made in this Notice Plan to the *Notice of Hearing for Settlement Approval and Opt-Out* in English and in French (the “**Notice of Hearing and Opt-Out**”, **Schedule B** to the Settlement Agreement).

(3) The Notice of Hearing and Opt-Out shall be disseminated as follows:

(a) Nissan will provide the Claims Administrator with a list of Class Member email addresses, or postal address when none is on file.

(b) The Claims Administrator will send the Notice of Hearing and Opt-Out (**Schedule B**) to Class Members by email wherever email addresses are available, using the email addresses for Class Members provided by Nissan, except where Class Counsel has provided the Claims Administrator with updated email addresses, in which case the Claims Administrator shall use the updated email address. The Notice of Hearing and Opt-Out sent to Class Members will contain a hyperlink to the Claims Administrator’s website for this class action.

(4) Once the settlement is made public by the filing of material before the Court in connection therewith, Class Counsel will have the option, at their expense, to post the

Notice of Hearing and Opt-Out (**Schedule B**), the Settlement Agreement with its schedules and any relevant proceedings and judgments on their firm website.

(5) Class Counsel will also have the option, at their expense, to send the Notice of Hearing and Opt-Out (**Schedule B**) by email to Class Members having previously contacted Class Counsel in this file.

(6) Class Counsel will also have the option, at their expense, to issue a press release substantially in a form to be agreed upon by the Parties.

(7) Class Counsel and the Claims Administrator may also provide a copy of the Notice of Hearing and Opt-Out (**Schedule B**) by email to any person who has contacted them and requested a copy of said notice in respect of this class action.

(8) Within 5 days of the First Order, the Claims Administrator will set up a website regarding the proposed settlement (and regarding the eventual distribution of Class Members' entitlements if the settlement is approved by the Court) (the "**Settlement Website**"). The Settlement Website will include:

- (a) A brief description of this class action;
- (b) The copies of the Settlement Agreement with its schedules, and relevant proceedings and judgments in this class action;
- (c) The copies of the Notice of Hearing and Opt-Out (**Schedule B**), in English and French;
- (d) The Claims Administrator's contact information and the Class Counsel's contact information.

SCHEDULE D
DISTRIBUTION PROTOCOL
PART I – DEFINITIONS

1. For the purposes of this Distribution Protocol, the definitions found in the Settlement Agreement apply, in addition to the following definitions:

(a) ***Claim*** means the request made by Class Members or their representatives for Consumer Cash Payments or Consumer Credit Payments as provided for in this Protocol.

(b) ***Claim Form*** means the documents agreed to by the Parties which must be submitted to the Claims Administrator by Class Members in order to claim either a Consumer Cash Payment or a Consumer Credit Payment.

(c) ***Recall Letter*** means a letter from Nissan to Class Members regarding Transport Canada's Recall No. 2015402.

(d) ***Repair*** means the repair performed by Nissan of the coil springs on a Vehicle, pursuant to Transport Canada's Recall No. 2015402.

(e) ***VIN*** means Vehicle Identification Number.

PART II – GENERAL PRINCIPLES OF DISTRIBUTION

2. This Distribution Protocol is intended to govern the distribution of the Available Claims Amount pursuant to (and as defined in) the Settlement Agreement.

3. All amounts expressed in this Distribution Protocol are in Canadian Dollars (CAD).

PART III – ADMINISTRATION AND NOTIFICATION COSTS AND ORDER OF DISTRIBUTION

4. The intention of the Parties is that the Total Settlement Maximum of \$1,800,000.00 will first be used to pay for the Administration Expenses (as defined in the Settlement Agreement).
5. The Administration Expenses will be paid from the Total Settlement Maximum.
6. The Claims Administrator will issue quarterly invoices to Nissan (copies of which to be sent to Class Counsel) for payment of the Administration Expenses beginning after the appointment of the Claims Administrator by the Court.
7. Once the Administration Expenses and the Court-approved Class Counsel Fees and Disbursements have been paid pursuant to the Settlement Agreement, the remaining Available Claims Amount will be used to pay the Consumer Cash Payments or the Consumer Credit Payments to Class Members whose claims have been accepted as valid, as provided for below. Such Consumer Cash Payments or Consumer Credit Payments owed to the Class Members will be paid *pro rata* should the Available Claims Amount be depleted.

PART IV – CLAIMS ADMINISTRATOR WEBSITE

8. Within ten (10) days of the First Order, the Claims Administrator will set up and post a website to inform Class Members about the Settlement and for the distribution of the Available Claims Amount if the Settlement is approved by the Court (“**Settlement Website**”). The Settlement Website will include:
 - (a) A brief description of the Class Action;
 - (b) The copies of the Settlement Agreement with its schedules and of the First Order;
 - (c) The copies of the Notice of Hearing and Opt-Out, in English and French;

- (d) The Claims Administrator's contact information and the Class Counsel's contact information;
9. In addition to this, within ten (10) days of the Effective Date, the Claims Administrator will add the following to the Settlement Website:
- (a) The Claim Form;
 - (b) The copies of the eventual Notice of Court Order, in English and French; and
 - (c) The copy of the Second Order;
10. The Settlement Website will allow Class Members to provide and update their personal information but will not display any Class Member's personal information.

PART V – INFORMATION ABOUT CLASS MEMBERS

11. Within three (3) business days following the First Order, Nissan will provide a list of VINs belonging to the Vehicles to the Claims Administrator. This list will also include, for each VIN (if known):
- (a) The model year and trim, colour and any other available descriptors for each Vehicle associated with each VIN;
 - (b) The full name of any individuals associated with each VIN according to Nissan's records;
 - (c) Any email addresses for such individuals;
 - (d) Any mailing addresses for such individuals.
12. The Claims Administrator will cross-reference the above list with the Class Member information that Class Counsel will provide directly to the Claims Administrator, including the information of potential Class Members that "signed up" on Class Counsel's website

dedicated to this class action. The Claims Administrator will update the information found in this list accordingly and on an ongoing basis as required.

**PART VI – DISTRIBUTION OF THE CONSUMER CASH PAYMENTS AND
CONSUMER CREDIT PAYMENTS TO CLASS MEMBERS**

13. The following describes the distribution of the Consumer Cash Payments and the Consumer Credit Payments to Class Members whose Claims are accepted by the Claims Administrator.

14. In order to receive a Consumer Cash Payment or a Consumer Credit Payment, Class Members must submit a valid and timely Claim (as described below) through an on-line Claim Form (available on the Settlement Website) to the Claims Administrator. The Claims Administrator will provide a paper copy of the Claim Form upon request of Class Members who cannot complete the on-line Claim Form. No Claim Forms will be accepted by the Claims Administrator past the Claims Deadline.

15. Following the Notice of Court Order, Class Member claimants will submit a Claim to the Claims Administrator.

16. The Class Member claimants must include their full name and email or mailing address in the Claim Form.

17. The Claim Form will require the Class Member claimants to attest that they purchased or leased a Vehicle between May 8, 2006 and November 30, 2015 and that they either:

(a) Did not receive the first or second Recall Letter (where applicable); or

(b) Were required to wait more than two (2) months from the date of the first Recall Letter to have the Repair carried out.

18. The Class Member claimant will attest to the above by checking the relevant box in the Claim Form so indicating. Failure to do so will render the Claim deficient.

19. The Class Member claimants must also provide in the Claim Form the VIN associated with the Vehicle for which they are making a Claim, or other sufficient proof to be accepted by the Claims Administrator (at its discretion). The VIN, or other sufficient proof to be accepted by the Claims Administrator (at its discretion) must be included in or attached to the Claim Form for a Claim to be deemed valid by the Claims Administrator.

20. Only one Claim may be deemed valid per VIN. In the event that more than one Claim is made for a single VIN, the Claims Administrator will determine which of these Claims shall be deemed valid.

21. In the Claim Form, Class Member claimants must choose one of the following forms of payment:

(a) \$70 in Consumer Cash Payments; or

(b) \$115 in Consumer Credit Payments.

22. The Claim Form will state that the Consumer Cash Payments will be transferred electronically by Interac e-transfer to the email address provided in the Claim Form, where the Claim is accepted by the Claims Administrator. A security question and answer will have to be provided by the Class Member claimant in the Claim Form, for the electronic transfer of funds. The security question and answer must comply with any requirements imposed by Interac in this regard.

23. The Claim Form will alternatively allow Class Member claimants to indicate their preference to receive the Consumer Cash Payment by a mailed cheque. Claimants will be required to enter their preferred mailing address to receive the cheque.

24. The Claim Form will also state that the Consumer Credit Payments will be sent in the form of gift card letters by email to Class Members who provide an email address and, if none is provided, by regular mail to the mailing address provided in the Claim Form, where the Claim is accepted by the Claims Administrator.

25. The Claim Form must be submitted to the Claims Administrator during the Claims Period for the Claim to be valid.

26. Within twenty-one (21) days of the Claims Deadline, the Claims Administrator will review the Claims filed and determine the total amount to be paid in Consumer Cash Payments and in Consumer Credit Payments. These amounts will be calculated as follows:

(a) Number of accepted Consumer Cash Payment claims x \$70 = Total Consumer Cash Payments;

(b) Number of accepted Consumer Credit Payment claims x \$115 = Total Consumer Credit Payments.

27. The Total Consumer Cash Payments and the Total Consumer Credit Payments combined cannot exceed the Available Claims Amount. In the event that the Total Consumer Cash Payments and the Total Consumer Credit Payments combined surpass the Available Claims Amount, the Class Members whose Claims were approved (including both Consumer Cash Payments and Consumer Credit Payments) will be paid on a *pro rata* basis.

28. The Claims Administrator will issue an invoice to Nissan (a copy of which to be sent to Class Counsel) detailing the Total Consumer Cash Payments and Total Consumer Credit Payments owed to Class Members.

29. Within thirty (30) days following receipt of said invoice from the Claims Administrator, Nissan will:

(a) Issue a cheque to the Claims Administrator corresponding to Total Consumer Cash Payments; and

(b) Send to the Claims Administrator the gift card letters reflecting the Total Consumer Credit Payments.

30. Within thirty (30) days of receipt from Nissan of the cheque corresponding to the Total Consumer Cash Payments and the gift card letters reflecting the Total Consumer Credit Payments, the Claims Administrator will:

(a) Issue an electronic Interac e-transfer by email, or a cheque in the mail based on the Class Member's preference, to each Class Member whose Claim was accepted and who chose the Consumer Cash Payment option; and

(b) Send a gift card letter (corresponding to a Consumer Credit Payment) by email or, when none is provided, by mail to each Class Member whose Claim was accepted and who chose the Consumer Credit Payment option.

31. In order to issue the above Consumer Cash Payments and/or the Consumer Credit Payments to the Class Members whose Claims were approved, the Claims Administrator will use the identifying information and email or mailing address provided in the Claim Form.

32. The Available Claims Amount will be used to pay Class Members whose Claims are approved by the Claims Administrator. In the event that the total amount of approved Claims surpasses the Available Claims Amount, the Class Members whose Claims were approved will be paid on a *pro rata* basis, following the same distribution procedure described above.

PART VII – REMAINING FUNDS

33. During the Claims Period, the Claims Administrator will provide periodic updates to Class Counsel and Defence Counsel, every week or sooner in the event of material developments in the distribution process.

34. Any electronic Interac e-transfers issued to Class Member claimants under the Settlement will remain valid for 30 days. If a Class Member wishes to obtain funds by electronic fund transfer after such time, the Class Member in question will be responsible to contact the Claims Administrator and for any applicable fees required by Interac. This will be mentioned in the Notice of Court Order and on the Settlement Website. The amounts of any such cancelled electronic Interac e-transfers will be subject to the Fonds d'aide levy and the remaining balance will be paid to a charity to be agreed upon by the Parties and approved by the Court.

35. Any cheques issued to Class Member claimants under the Settlement will remain valid for six (6) months from their issuance. No cheques can be cashed after that time. This will be mentioned in the Notice of Court Order and on the Settlement Website. The amounts of any such unredeemed cheques will be subject to the Fonds d'aide levy and the remaining balance will be paid to a charity to be agreed upon by the Parties and approved by the Court.

PART VIII – RESOLUTION OF DISPUTES

36. The Claims Administrator's determinations regarding Claims received and the distribution of the Consumer Cash Payments and the Consumer Credit Payments are final and non-appealable. Prior to making a determination, the Claims Administrator may consult with Class Counsel and Defense Counsel to resolve any questions or uncertainties relating to such determinations.

PART IX – CONFIDENTIALITY

37. All information received from Nissan or the Class Members is collected, used, and retained by the Claims Administrator and/or Class Counsel pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 for the purposes of administering their Claims.

38. All such information is also to be treated confidentially in accordance with any Confidentiality Order rendered by the Court.