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10 NISSAN MOTOR CO., LTD.

11  
12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 WESTERN DIVISION

15 KOBE FALCO, JOEL SEGUIN,  
16 ALFREDO PADILLA, and ROBERTO  
17 GALVAN, individually, and on behalf  
18 of other members of the general public  
19 similarly situated,

19 Plaintiffs,

20 v.

21 NISSAN NORTH AMERICA, INC., a  
22 California corporation, and NISSAN  
23 JIDOSHA KABUSHIKI KAISHA d/b/a  
24 NISSAN MOTOR CO., LTD.,  
25 a publicly traded company in Japan,

25 Defendants.

Case No. 2:13-cv-00686-DDP-MANx

**DEFENDANT NISSAN MOTOR CO.,  
LTD.'S ANSWER TO PLAINTIFFS'  
SECOND AMENDED CLASS  
ACTION COMPLAINT**

Judge: Dean D. Pregerson  
Ctmm: 3 - 2nd Floor, Spring St., L.A.

1 Defendant Nissan Motor Co., Ltd. (“NML”) files this Answer<sup>1</sup> to Plaintiffs’  
2 Second Amended Class Action Complaint (“SAC”) as follows:

3 1. Paragraph 1 of Plaintiffs’ SAC does not contain any factual  
4 allegations and does not require a response. NML denies that certification of the  
5 classes and vehicles as stated in this paragraph would be proper.

6 2. NML denies the allegations in Paragraph 2 of Plaintiffs’ SAC.

7 3. NML denies the allegations in Paragraph 3 of Plaintiffs’ SAC.

8 4. NML denies the allegations in Paragraph 4 of Plaintiffs’ SAC.

9 **INTRODUCTION**

10 5. NML denies the allegations in Paragraph 5 of Plaintiffs’ SAC.

11 6. NML denies the allegations in Paragraph 6 of Plaintiffs’ SAC.

12 7. NML denies the allegations in Paragraph 7 of Plaintiffs’ SAC.

13 8. NML denies the allegations in Paragraph 8 of Plaintiffs’ SAC.

14 9. NML denies the allegations in Paragraph 9 of Plaintiffs’ SAC.

15 10. NML denies the allegations in Paragraph 10 of Plaintiffs’ SAC.

16 11. NML denies the allegations in Paragraph 11 of Plaintiffs’ SAC.

17 12. NML denies the allegations in Paragraph 12 of Plaintiffs’ SAC.

18 13. NML denies the allegations in Paragraph 13 of Plaintiffs’ SAC.

19 **JURISDICTION AND VENUE**

20 14. NML denies that it is subject to personal jurisdiction. As to other  
21 parties, NML lacks knowledge or information sufficient to form a belief about the  
22 truth of Plaintiffs’ claims regarding federal jurisdiction under 28 U.S.C. §  
23 1332(d)(2), as amended by Public Law 109.2, 119 Stat. 4 (2005). NML lacks  
24 knowledge or information sufficient to form a belief about the truth of Plaintiffs’  
25 allegations as to whether the amount in controversy exceeds \$5,000,000, exclusive

26  
27 <sup>1</sup> By filing this answer after its motion to dismiss under Rule 12(b)(2) was denied,  
28 NML does not waive its position that it is not subject to personal jurisdiction in this  
action.

1 of interest and costs. NML lacks knowledge or information sufficient to form a  
2 belief about the truth of Plaintiffs’ allegations regarding citizenship and whether  
3 the citizens Plaintiffs seek to represent are citizens of states different than that of  
4 one or more defendants. NML lacks knowledge or information sufficient to form a  
5 belief about the truth of Plaintiffs’ jurisdictional claims of supplemental  
6 jurisdiction over Plaintiffs’ state law claims. NML lacks knowledge or  
7 information sufficient to form a belief about whether the exercise of supplemental  
8 jurisdiction would be appropriate if Plaintiffs’ class claims are dismissed.

9 15. NML denies that it is subject to personal jurisdiction and therefore  
10 denies that venue is proper as to NML.

11 **PARTIES**

12 16. NML lacks knowledge or information sufficient to form a belief about  
13 the truth of Plaintiffs’ allegations with respect to Plaintiff Kobe Falco’s citizenship  
14 or residency.

15 17. NML lacks knowledge or information sufficient to form a belief about  
16 the truth of Plaintiffs’ allegations with respect to Plaintiff Joel Seguin’s citizenship  
17 or residency.

18 18. NML lacks knowledge or information sufficient to form a belief about  
19 the truth of Plaintiffs’ allegations with respect to Plaintiff Alfredo Padilla’s  
20 citizenship or residency.

21 19. NML lacks knowledge or information sufficient to form a belief about  
22 the truth of Plaintiffs’ allegations with respect to Plaintiff Roberto Galvan’s  
23 citizenship or residency.

24 20. NML admits that Nissan North America, Inc. (NNA) is a California  
25 corporation with its principal place of business at One Nissan Way, Franklin,  
26 Tennessee, 37067, and doing business in California.

27 21. NML admits that Nissan North America, Inc. is a subsidiary of NML,  
28

1 and that NML is publicly traded in Japan.

2 22. NML denies that it imported, marketed, distributed and sold the 2004  
3 – 2008 model year Nissan Maxima, 2004 – 2009 model year Nissan Quest, 2004 –  
4 2006 model year Nissan Altima, and 2005 – 2007 model year Nissan Pathfinder,  
5 Xterra and Frontier.

6 23. NML denies the allegations against it as phrased in Paragraph 23 of  
7 Plaintiffs’ SAC.

8 24. Paragraph 24 of Plaintiffs’ SAC does not contain any factual  
9 allegations and does not require a response.

10 **FACTUAL BACKGROUND**

11 25. NML admits that it manufactures motor vehicles, and that it sells  
12 motor vehicles and related products under Nissan and Infiniti brands. NML denies  
13 that it is the manufacturer of the vehicles involved in this lawsuit. NML lacks  
14 knowledge or information sufficient to form a belief about the truth of the  
15 remaining allegations in Paragraph 25 of Plaintiffs’ SAC.

16 26. NML admits that Nissan Motor Corporation was incorporated in  
17 California in September 1960 and that company later changed its name to Nissan  
18 North America, Inc. NML lacks knowledge or information sufficient to form a  
19 belief about the truth of the remaining allegations in Paragraph 26 of Plaintiffs’  
20 SAC.

21 27. NML denies the allegations in Paragraph 27 of Plaintiffs’ SAC as  
22 phrased.

23 28. NML denies the allegations in Paragraph 28 of Plaintiffs’ SAC.

24 29. NML admits that the allegations in Paragraph 29 of Plaintiffs’ SAC  
25 generally describe the operation of a timing chain system. If anything further is  
26 intended by these allegations, then they are denied.

27 30. NML admits that the illustration in Paragraph 30 of Plaintiffs’ SAC is  
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1 consistent with an illustration of a Nissan timing chain system in a service manual  
2 for the vehicles that Plaintiffs call “Subject Nissan Vehicles” although the specific  
3 components and system could vary from model to model. If anything further is  
4 intended by these allegations, then they are denied.

5 31. NML denies the allegations of Paragraph 31 of Plaintiffs’ SAC.

6 32. NML lacks knowledge or information sufficient to form a belief about  
7 the truth of the allegations in Paragraph 32 of Plaintiffs’ SAC.

8 33. NML denies the allegations in Paragraph 33 of Plaintiffs’ SAC.

9 34. NML denies the allegations in Paragraph 34 of Plaintiffs’ SAC.

10 35. NML denies the allegations in Paragraph 35 of Plaintiffs’ SAC.

11 36. NML denies the allegation in Paragraph 36 of Plaintiffs’ SAC.

12 37. NML denies the allegations in Paragraph 37 of Plaintiffs’ SAC.

13 38. NML admits that in May 2003, Sherri Defever (“Defever”) with  
14 Nissan Technical Center North America, Inc. (“NTCNA”) in Michigan  
15 communicated with Masatoshi Kusaba (“Kusaba”) with NML about design issues  
16 and meetings between NML and BorgWarner, who designed the timing chain  
17 system components. If anything further is intended by this paragraph, it is denied.

18 39. NML denies the allegations in Paragraph 39 of Plaintiffs’ SAC as  
19 phrased.

20 40. NML admits that on June 5, 2003, Defever emailed Masayuki Tamura  
21 (“Tamura”) with NML about many things including observations during certain  
22 tests at engine manufacturing plant in Tennessee and ongoing evaluations to study  
23 the issues. If anything further is intended by this paragraph, it is denied.

24 41. NML denies the allegations in Paragraph 41 of Plaintiffs’ SAC as  
25 phrased.

26 42. NML denies the allegations in Paragraph 42 of Plaintiffs’ SAC.

27 43. NML denies the allegations in Paragraph 43 of Plaintiffs’ SAC.

1 44. NML admits that on September 10, 2003, Defever communicated  
2 with Tamura and Kusaba about BorgWarner's proposed countermeasure for a  
3 timing chain system component. If anything further is intended by this paragraph,  
4 it is denied.

5 45. NML denies the allegations in Paragraph 45 of Plaintiffs' SAC.

6 46. NML denies the allegations in Paragraph 46 of Plaintiffs' SAC.

7 47. NML denies the allegations in Paragraph 47 of Plaintiffs' SAC.

8 48. NML admits Paragraph 48 of Plaintiffs' SAC accurately quotes an  
9 excerpt from an email from Jay Boyte, plant manager with NML Decherd, to  
10 Defever dated September 22, 2003. If anything further is intended by this  
11 paragraph, it is denied.

12 49. NML admits that this paragraph accurately quotes an excerpt from an  
13 email between Defever and Tamura dated September 25, 2003. NML denies the  
14 remaining allegations in Paragraph 49 of Plaintiffs' SAC.

15 50. NML denies the allegations in Paragraph 50 of Plaintiffs' SAC as  
16 phrased.

17 51. NML admits that Paragraph 51 of Plaintiffs' SAC accurately quotes  
18 an excerpt from an email from Jay Boyte to Defever dated October 8, 2003. NML  
19 denies the remaining allegations in this paragraph.

20 52. NML denies the allegations in Paragraph 52 of Plaintiffs' SAC as  
21 phrased.

22 53. NML admits that Paragraph 53 of Plaintiffs' SAC accurately quotes  
23 two excerpts from an email from Tamura to Defever dated October 22, 2003.  
24 NML denies the remaining allegations in this paragraph.

25 54. NML denies the allegations in Paragraph 54 of Plaintiffs' SAC against  
26 NML.

27 55. NML lacks knowledge or information sufficient to form a belief  
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1 about the truth of the allegations in Paragraph 55 of Plaintiffs’ SAC.

2 56. NML denies the allegations in Paragraph 56 of Plaintiffs’ SAC.

3 57. NML denies the allegations in Paragraph 57 of Plaintiffs’ SAC.

4 58. NML lacks knowledge or information sufficient to form a belief  
5 about the truth of the allegations in Paragraph 58 of Plaintiffs’ SAC.

6 59. NML denies the allegations in Paragraph 59 of Plaintiffs’ SAC.

7 60. NML admits that the first three sentences of Paragraph 60 of  
8 Plaintiffs’ SAC generally describe part of how a primary timing chain system  
9 functions. If anything further is intended by these allegations, then they are  
10 denied. NML denies the allegations in the last sentence of Paragraph 60 of  
11 Plaintiffs’ SAC.

12 61. NML denies the allegations in the last sentence of Paragraph 61 of  
13 Plaintiffs’ SAC. NML lacks knowledge or information sufficient to form a belief  
14 about the truth of the remaining allegations in this paragraph.

15 62. NML lacks knowledge or information sufficient to form a belief  
16 about the truth of the remaining allegations in this paragraph.

17 63. NML lacks knowledge or information sufficient to form a belief about  
18 the truth of the allegations in Paragraph 63 of Plaintiffs’ SAC.

19 64. NML denies the allegations in Paragraph 64 of Plaintiffs’ SAC.

20 65. NML admits that NNA issued Technical Service Bulletin (“TSB”)  
21 Reference No. NTB07-042, on or about July 17, 2007. NML denies the remaining  
22 allegations in Paragraph 65 of Plaintiffs’ SAC.

23 66. NML admits that NNA issued TSB07-042a on or about April 17,  
24 2009. NML denies the remaining allegations in Paragraph 66 of Plaintiffs’ SAC.

25 67. NML admits that NNA issued TSB Reference No. NTSB07-042c on  
26 or about December 14, 2009. NML denies the remaining allegations in Paragraph  
27 67 of Plaintiffs’ SAC.

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1 68. NML denies the allegations in Paragraph 68 of Plaintiffs’ SAC.

2 69. NML admits that Paragraph 69 of Plaintiffs’ SAC accurately quotes  
3 an excerpt from an article located at [http://nissannews.com/en-](http://nissannews.com/en-US/nissan/usa/channels/us-united-states-nissan-models-xterra/presskits/2009-nissan-xterra-press-kit-3)  
4 [US/nissan/usa/channels/us-united-states-nissan-models-xterra/presskits/2009-](http://nissannews.com/en-US/nissan/usa/channels/us-united-states-nissan-models-xterra/presskits/2009-nissan-xterra-press-kit-3)  
5 [nissan-xterra-press-kit-3](http://nissannews.com/en-US/nissan/usa/channels/us-united-states-nissan-models-xterra/presskits/2009-nissan-xterra-press-kit-3) (last accessed April 16, 2015). NML denies the  
6 remaining allegations in this paragraph.

7 70. NML denies the allegations in Paragraph 70 of Plaintiffs’ SAC.

8 71. NML denies the allegations in Paragraph 71 of Plaintiffs’ SAC.

9 72. NML denies any allegations of premature failure or defect of the  
10 timing chain tensioning system in Paragraph 72 of Plaintiffs’ SAC. NML lacks  
11 knowledge or information sufficient to form a belief about the truth of the  
12 remaining allegations in this paragraph.

13 73. NML denies the allegations in Paragraph 73 of Plaintiffs’ SAC.

14 74. NML lacks knowledge or information sufficient to form a belief about  
15 the truth of Plaintiffs’ allegations in Paragraph 74 of Plaintiffs’ SAC.

16 75. NML lacks knowledge or information sufficient to form a belief about  
17 the truth of Plaintiffs’ allegations in Paragraph 75 of Plaintiffs’ SAC.

18 76. NML admits Paragraph 76 of Plaintiffs’ SAC contains quotes from a  
19 memorandum dated October 31, 2007 from BorgWarner addressed to Bryant  
20 Campbell and Phillip Thurmond with parts Quality Engineering (“PQE”) discussing BorgWarner’s position on the secondary tensioner face wear warranty  
21 issue, however, NML denies the allegations in this paragraph as stated.

22  
23 77. NML admits that Paragraph 77 of Plaintiffs’ SAC accurately quotes  
24 an excerpt from an email from Defever to Bryant Campbell, Phillip Thurmond and  
25 Larry Worsham with PQE dated December 18, 2007. NML denies the remaining  
26 allegations in this paragraph.

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**PLAINTIFFS' CLAIMS**

**Plaintiff Kobe Falco**

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3 78. NML lacks knowledge or information sufficient to form a belief about  
4 the truth of the allegations with respect to Plaintiff Falco's citizenship, residency,  
5 or purchase of his vehicle.

6 79. NML lacks knowledge or information sufficient to form a belief  
7 about what advertising was seen by Plaintiff. NML denies the remaining  
8 allegations in Paragraph 79 of Plaintiffs' SAC.

9 80. NML denies the allegations contained in Paragraph 80 of Plaintiffs'  
10 SAC.

11 81. NML lacks knowledge or information sufficient to form a belief about  
12 the truth of the allegations in Paragraph 81 of Plaintiffs' SAC.

13 82. NML lacks knowledge or information sufficient to form a belief  
14 about the truth of the allegations in Paragraph 82 of Plaintiffs' SAC.

**Plaintiff Joel Seguin**

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16 83. NML lacks knowledge or information sufficient to form a belief about  
17 the truth of the allegations with respect to Plaintiff Seguin's citizenship or  
18 residency.

19 84. NML lacks knowledge or information sufficient to form a belief about  
20 the truth of the allegations with respect to Plaintiff Seguin's purchase of his  
21 vehicle.

22 85. NML denies the allegations in Paragraph 85 of Plaintiffs' SAC.

23 86. NML lacks knowledge or information sufficient to form a belief about  
24 what advertising was seen by Plaintiff. NML denies the remaining allegations in  
25 Paragraph 86 of Plaintiffs' SAC.

26 87. NML denies the allegations contained in Paragraph 87 of Plaintiffs'  
27 SAC.

1 88. NML lacks knowledge or information sufficient to form a belief about  
2 the truth of the allegations with respect to the dates and reasons of Plaintiff  
3 Seguin's visit to Nissan dealers for repairs. NML denies the remaining allegations  
4 contained in Paragraph 88 of Plaintiffs' SAC.

5 89. NML denies the allegations contained in Paragraph 89 of Plaintiffs'  
6 SAC.

7 90. NML lacks knowledge or information sufficient to form a belief about  
8 the truth of the allegations contained in Paragraph 90 of Plaintiffs' SAC.

9 91. NML denies the allegations in Paragraph 91 of Plaintiffs' SAC.

10 **Plaintiff Alfredo Padilla**

11 92. NML lacks knowledge or information sufficient to form a belief about  
12 the truth of the allegations with respect to Plaintiff Padilla's citizenship or  
13 residency.

14 93. NML lacks knowledge or information sufficient to form a belief about  
15 the truth of the allegations with respect to Plaintiff Padilla's purchase of his  
16 vehicle.

17 94. NML denies the allegations in Paragraph 94 of Plaintiffs' SAC.

18 95. NML lacks knowledge or information sufficient to form a belief about  
19 what advertising was seen by Plaintiff. NML denies the remaining allegations  
20 contained in Paragraph 95 of Plaintiffs' SAC.

21 96. NML denies the allegations contained in Paragraph 96 of Plaintiffs'  
22 SAC.

23 97. NML lacks knowledge or information sufficient to form a belief about  
24 the truth of the allegations in Paragraph 97 of Plaintiffs' SAC.

25 98. NML lacks knowledge or information to form a belief about the truth  
26 of the allegations in Paragraph 98 of Plaintiffs' SAC.

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**Plaintiff Roberto Galvan**

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2 99. NML lacks knowledge or information sufficient to form a belief about  
3 the truth of the allegations with respect to Plaintiff Galvan’s citizenship or  
4 residency.

5 100. NML lacks knowledge or information sufficient to form a belief about  
6 the truth of the allegations with respect to Plaintiff Galvan’s purchase of his  
7 vehicle.

8 101. NML denies the allegations in Paragraph 101 of Plaintiffs’ SAC.

9 102. NML lacks knowledge or information sufficient to form a belief about  
10 what advertising was seen by Plaintiff. NML denies the remaining allegations in  
11 Paragraph 102 of Plaintiffs’ SAC.

12 103. NML denies the allegations contained in Paragraph 103 of Plaintiffs’  
13 SAC.

14 104. NML lacks knowledge or information sufficient to form a belief about  
15 the truth of the allegations contained in Paragraph 104 of Plaintiffs’ SAC.

16 105. NML lacks knowledge or information sufficient to form a belief about  
17 the truth of the allegations contained in Paragraph 105 of Plaintiffs’ SAC.

18 **STATUTE OF LIMITATIONS**

19 106. NML denies the allegations in Paragraph 106 of Plaintiffs’ SAC.

20 107. NML denies the allegations in Paragraph 107 of Plaintiffs’ SAC.

21 108. NML denies the allegations in Paragraph 108 of Plaintiffs’ SAC.

22 **CLASS ACTION ALLEGATIONS**

23 109. Paragraph 109 of Plaintiffs’ SAC does not contain any factual  
24 allegations and does not require a response. NML denies that certification of the  
25 class as stated in this paragraph would be appropriate.

26 110. Paragraph 110 of Plaintiffs’ SAC does not contain any factual  
27 allegations and does not require a response. NML denies that certification of the  
28

1 class as stated in this paragraph would be appropriate.

2 111. Paragraph 111 of Plaintiffs' SAC does not contain any factual  
3 allegations and does not require a response. NML denies that certification of the  
4 class as stated this in paragraph would be appropriate.

5 112. Paragraph 112 of Plaintiffs' SAC does not contain any factual  
6 allegations and does not require a response. NML denies that certification of the  
7 class as stated in this paragraph would be appropriate.

8 113. NML denies the allegations in Paragraph 113 of Plaintiffs' SAC with  
9 respect to this action being properly maintained as a class action pursuant to  
10 Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1), (b)(2) or (b)(3) or that  
11 this action satisfies the requirements thereof.

12 114. Paragraph 114 of Plaintiffs' SAC does not contain any factual  
13 allegations and does not require a response. NML denies that certification of the  
14 class as stated in this paragraph would be appropriate.

15 115. NML denies that it sold or leased the referenced vehicles and denies  
16 the remaining allegations in Paragraph 115 of Plaintiffs' SAC.

17 116. NML denies the allegations in Paragraph 116 of Plaintiffs' SAC.

18 117. NML denies the allegations in Paragraph 117 of Plaintiffs' SAC.

19 118. NML denies the allegations in Paragraph 118 of Plaintiffs' SAC.

20 119. NML denies the allegations in Paragraph 119 of Plaintiffs' SAC.

21 120. NML denies the allegations in Paragraph 120 of Plaintiffs' SAC.

22 121. NML denies the allegations in Paragraph 121 of Plaintiffs' SAC.

23 122. NML denies the allegations in Paragraph 122 of Plaintiffs' SAC.

24 123. NML denies the allegations in Paragraph 123 of Plaintiffs' SAC.

25 124. Paragraph 124 of Plaintiffs' SAC does not contain any factual  
26 allegations and does not require a response.

**FIRST CAUSE OF ACTION**  
**Violation of the Consumer Legal Remedies Act**  
**(Cal. Civil Code § 1750 *et seq.*)**

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3           125. Paragraph 125 of Plaintiffs’ SAC does not contain any factual  
4 allegations and does not require a response.

5           126. Paragraph 126 of Plaintiffs’ SAC does not contain any factual  
6 allegations and does not require a response.

7           127. The allegations in Paragraph 127 are legal conclusions to which no  
8 response is required.

9           128. Plaintiffs’ claim that NML violated California Civil Code section  
10 1770(a)(9) has been dismissed. Subject to and without waiving NML’s right to  
11 rely on dismissal, NML denies the allegations contained in Paragraph 128 of  
12 Plaintiffs’ SAC.

13           129. NML denies the allegations in Paragraph 129 of Plaintiffs’ SAC.

14           130. NML denies the allegations in Paragraph 130 of Plaintiffs’ SAC.

15           131. NML denies the allegations in Paragraph 131 of Plaintiffs’ SAC.

16           132. NML denies the allegations in Paragraph 132 of Plaintiffs’ SAC.

17           133. NML denies the allegations in Paragraph 133 of Plaintiffs’ SAC.

18           134. NML admits that it received a letter from Plaintiffs’ counsel purporting  
19 to notify NML of a Consumer Legal Remedies Act (“CLRA”) violation. NML  
20 denies the remaining allegations in Paragraph 134 of Plaintiffs’ SAC.

21           135. NML denies the allegations in Paragraph 135 of Plaintiffs’ SAC.

22           136. NML denies that Plaintiffs and the putative class members are entitled  
23 to restitution of property, injunctive relief, or any other relief Plaintiffs are seeking.

24           137. NML denies the allegations in Paragraph 137 of Plaintiffs’ SAC.  
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**SECOND CAUSE OF ACTION**  
**Violation of Unfair Competition Law**  
**(California Business & Professions Code §§ 17200 *et seq.*)**

138. Paragraph 138 of Plaintiffs' SAC does not contain any factual allegations and does not require a response.

139. Paragraph 139 of Plaintiffs' SAC does not contain any factual allegations and does not require a response.

140. The first sentence of Paragraph 140 of Plaintiffs' SAC contains legal conclusions to which no response is required. NML denies the second sentence in this Paragraph.

141. NML denies the allegations in Paragraph 141 of Plaintiffs' SAC.

142. NML denies the allegations in Paragraph 142 of Plaintiffs' SAC.

143. NML denies the allegations in Paragraph 143 of Plaintiffs' SAC.

144. The allegations in Paragraph 144 of Plaintiffs' SAC are legal conclusions to which no response is required.

145. NML denies the allegations in Paragraph 145 of Plaintiffs' SAC.

146. NML denies the allegations in Paragraph 146 of Plaintiffs' SAC.

147. NML denies the allegations in Paragraph 147 of Plaintiffs' SAC.

148. NML denies the allegations in Paragraph 148 of Plaintiffs' SAC.

149. NML denies the allegations in Paragraph 149 of Plaintiffs' SAC.

150. NML denies the allegations in Paragraph 150 of Plaintiffs' SAC.

151. NML denies the allegations in Paragraph 151 of Plaintiffs' SAC.

152. NML denies the allegations in Paragraph 152 of Plaintiffs' SAC.

**THIRD CAUSE OF ACTION**  
**Brought on behalf of the Washington Subclass**  
**Violation of Washington Consumer Protection Act**  
**(RCW 19.86 *et seq.*)**

153. Paragraph 153 of Plaintiffs' SAC does not contain any factual

1 allegations and does not require a response.

2 154. Paragraph 154 of Plaintiffs' SAC does not contain any factual  
3 allegations and does not require a response.

4 155. NML denies the allegations in Paragraph 155 of Plaintiffs' SAC.

5 156. NML denies the allegations in Paragraph 156 of Plaintiffs' SAC.

6 157. NML denies the allegations in Paragraph 157 of Plaintiffs' SAC.

7 158. NML denies the allegations in Paragraph 158 of Plaintiffs' SAC.

8 159. NML denies the allegations in Paragraph 159 of Plaintiffs' SAC.

9 **FOURTH CAUSE OF ACTION**

10 **Breach of Implied Warranty Under the**  
11 **Song-Beverly Consumer Warranty Act**  
**(California Civil Code §§ 1792 and 1791.1 et seq.)**

12 160. Paragraph 160 of Plaintiffs' SAC does not contain any factual  
13 allegations and does not require a response.

14 161. Paragraph 161 of Plaintiffs' SAC does not contain any factual  
15 allegations and does not require a response.

16 162. NML denies the allegations in Paragraph 162 of Plaintiffs' SAC.

17 163. NML denies the allegations in Paragraph 163 of Plaintiffs' SAC.

18 164. NML denies the allegations in Paragraph 164 of Plaintiffs' SAC.

19 165. NML denies the allegations in Paragraph 165 of Plaintiffs' SAC.

20 166. NML denies the allegations in Paragraph 166 of Plaintiffs' SAC.

21 **FIFTH CAUSE OF ACTION**

22 **Fraud**

23 167. This claim has been dismissed as to NML.

24 168. This claim has been dismissed as to NML.

25 169. This claim has been dismissed against NML.

26 170. This claim has been dismissed against NML.

27 171. This claim has been dismissed against NML.

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1 172. This claim has been dismissed against NML.

2 173. This claim has been dismissed against NML.

3 174. This claim has been dismissed against NML.

4 175. This claim has been dismissed against NML.

5 176. This claim has been dismissed against NML.

6 **SIXTH CAUSE OF ACTION**

7 **Unjust Enrichment**

8 177. The Court dismissed this claim.

9 178. The Court dismissed this claim.

10 179. The Court dismissed this claim.

11 180. The Court dismissed this claim.

12 181. The Court dismissed this claim.

13 182. The Court dismissed this claim.

14 183. The Court dismissed this claim.

15 **PRAYER FOR RELIEF**

16 184. NML denies Plaintiffs or members of the proposed classes are entitled  
17 to recover pursuant to Plaintiffs' prayer for relief.

18 185. As separate and additional and affirmative defenses to the SAC and  
19 the purported causes of action therein, but without assuming the burden of proof  
20 with regard to these defenses, NML alleges as follows:

21 **FIRST DEFENSE**

22 186. The factual allegations in Plaintiffs' SAC do not state a claim upon  
23 which relief can be granted under the statutes of any state or any common law legal  
24 or equitable theory.

25 **SECOND DEFENSE**

26 187. Plaintiffs and the putative class members seek to impose  
27 overwhelming and disproportionate liability in violation of NML's substantive and  
28



1 procedural due process rights.

2 **THIRD DEFENSE**

3 188. The aggregate or mass litigation of punitive damages necessarily  
4 violates NML's due process rights.

5 **FOURTH DEFENSE**

6 189. If some members of the putative class sustained damages, which  
7 damages are denied, Plaintiffs and some or all members of the putative class have  
8 failed to act reasonably to mitigate or minimize any loss or harm that Plaintiffs and  
9 some or all members of the putative class suffered and could have avoided such  
10 harm by making reasonable efforts or expenditures.

11 **FIFTH DEFENSE**

12 190. Plaintiffs' representational claims and those of the putative class are  
13 barred because Plaintiffs' fraud claims were dismissed by the Court and the  
14 representations or omissions alleged in Plaintiffs' SAC were not made by NML,  
15 were not false, untrue, or misleading, and NML had no relationship with Plaintiffs  
16 giving rise to a duty to disclose.

17 **SIXTH DEFENSE**

18 191. Plaintiffs' representational claims and those of the putative class are  
19 barred because Plaintiffs' fraud claims were dismissed by the Court and Plaintiffs  
20 and the putative class members did not rely on any representation by NML.

21 **SEVENTH DEFENSE**

22 192. NML does not possess money that in equity and good conscience  
23 should be returned to Plaintiffs or any putative class member.

24 **EIGHTH DEFENSE**

25 193. The damages, if any, of Plaintiffs and some or all putative class  
26 members have been caused by modification of the vehicles or its components or  
27 other factors beyond the control of NML.

1 **NINTH DEFENSE**

2 194. The legal and statutory claims of Plaintiffs and at least some putative  
3 class members are barred by the applicable statute of limitations.

4 **TENTH DEFENSE**

5 195. The equitable claims of Plaintiffs and some or all putative class  
6 members are barred by the doctrine of laches.

7 **ELEVENTH DEFENSE**

8 196. The equitable claims of Plaintiffs and some or all putative class  
9 members are barred by the doctrine of unclean hands.

10 **TWELFTH DEFENSE**

11 197. No threat of immediate harm exists to support a request for injunctive  
12 relief.

13 **THIRTEENTH DEFENSE**

14 198. Plaintiffs' claims and those of the putative class for equitable relief  
15 are barred because an adequate remedy at law exists.

16 **FOURTEENTH DEFENSE**

17 199. Any award of exemplary damages would constitute the imposition of  
18 a criminal penalty without the safeguards guaranteed by the Fifth Amendment of  
19 the Constitution of the United States. Any claims made by Plaintiffs for exemplary  
20 damages should be stricken as unconstitutional and any award for exemplary  
21 damages should be set aside for the reasons stated above.

22 **FIFTEENTH DEFENSE**

23 200. The claims of Plaintiffs and putative class members are barred, in  
24 whole or in part, under the doctrines of waiver and/or estoppel.

25 **SIXTEENTH DEFENSE**

26 201. The asserted claims are barred to the extent any injury sustained by  
27 Plaintiffs or putative class members were caused by their own negligent conduct.  
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**RESERVATION OF AFFIRMATIVE DEFENSES**

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202. NML respectfully reserves the right to amend its answer at a later date to assert such additional defenses, cross-claims or third-party complaints as may be appropriate when further information is obtained through investigation and formal discovery.

WHEREFORE, having fully answered, Defendant Nissan Motor Co., Ltd. prays that the claims in Plaintiffs’ Second Amended Class Action Complaint be dismissed; that Defendant Nissan Motor Co., Ltd. recover its costs; and for any and all necessary and proper relief to which Defendant Nissan Motor Co., Ltd. may show itself justly entitled.

DATED: April 20, 2015                      SEDGWICK LLP

By: /s/ Paul Riehle  
Paul Riehle  
Attorney for Defendant  
NISSAN MOTOR CO., LTD.