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6 Attorneys for Defendants
 7 NISSAN NORTH AMERICA, INC. and NISSAN
 8 MOTOR CO., LTD.

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION
 12

13 KOBE FALCO, JOEL SEGUIN,
 14 ALFREDO PADILLA, and ROBERTO
 15 GALVAN, individually, and on behalf
 of other members of the general public
 similarly situated,

16 Plaintiffs,

17 v.

18 NISSAN NORTH AMERICA, INC., a
 19 California corporation, and NISSAN
 20 JIDOSHA KABUSHIKI KAISHA d/b/a
 21 NISSAN MOTOR CO., LTD.,
 a publicly traded company in Japan,

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

**DEFENDANT NISSAN NORTH
 AMERICA, INC.'S ANSWER TO
 PLAINTIFFS' SECOND AMENDED
 CLASS ACTION COMPLAINT**

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

1 Defendant Nissan North America, Inc. (“NNA”) files this Answer to
2 Plaintiffs’ 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. NNA denies that certification of the
5 classes and vehicles as stated in this paragraph would be proper.

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

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

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

9 **INTRODUCTION**

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

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

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

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

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

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

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

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

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

19 **JURISDICTION AND VENUE**

20 14. NNA lacks knowledge or information sufficient to form a belief about
21 the truth of Plaintiffs’ jurisdictional claims under 28 U.S.C. § 1332(d)(2), as
22 amended by Public Law 109.2, 119 Stat. 4 (2005). NNA lacks knowledge or
23 information sufficient to form a belief about the truth of Plaintiffs’ allegations as to
24 whether the amount in controversy exceeds \$5,000,000, exclusive of interest and
25 costs. NNA lacks knowledge or information sufficient to form a belief about the
26 truth of Plaintiffs’ allegations regarding citizenship and whether the citizens
27 Plaintiffs seek to represent are citizens of states different than that of one or more
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1 defendants. NNA lacks knowledge or information sufficient to form a belief about
2 the truth of Plaintiffs’ jurisdictional claims of supplemental jurisdiction over
3 Plaintiffs’ state law claims. NNA denies that the exercise of supplemental
4 jurisdiction would be appropriate if Plaintiffs’ class claims are dismissed.

5 15. NNA is not contesting venue.

6 **PARTIES**

7 16. NNA lacks knowledge or information sufficient to form a belief about
8 the truth of Plaintiffs’ allegations with respect to Plaintiff Kobe Falco’s citizenship
9 or residency.

10 17. NNA lacks knowledge or information sufficient to form a belief about
11 the truth of Plaintiffs’ allegations with respect to Plaintiff Joel Seguin’s citizenship
12 or residency.

13 18. NNA lacks knowledge or information sufficient to form a belief about
14 the truth of Plaintiffs’ allegations with respect to Plaintiff Alfredo Padilla’s
15 citizenship or residency.

16 19. NNA lacks knowledge or information sufficient to form a belief about
17 the truth of Plaintiffs’ allegations with respect to Plaintiff Roberto Galvan’s
18 citizenship or residency.

19 20. NNA admits that it is a California corporation with its principal place
20 of business at One Nissan Way, Franklin, Tennessee, 37067, and doing business in
21 California.

22 21. NNA admits that Nissan Motor Co., Ltd. (“NML”) is the parent
23 company of Nissan North America, Inc. and that NML is publicly traded in Japan.

24 22. NNA admits that it marketed and distributed the 2004 – 2008 model
25 year Nissan Maxima, 2004 – 2009 model year Nissan Quest, 2004 – 2006 model
26 year Nissan Altima, and 2005 – 2007 model year Nissan Pathfinder, Xterra and
27 Frontier.

1 23. NNA denies the allegations against NNA as phrased.

2 24. Paragraph 24 of Plaintiffs' SAC does not contain any factual
3 allegations and does not require a response.

4 **FACTUAL BACKGROUND**

5 25. NNA lacks knowledge or information sufficient to form a belief about
6 the truth of the allegations in Paragraph 25 of Plaintiffs' SAC.

7 26. NNA admits that Nissan Motor Corporation in U.S.A. was
8 incorporated in California in September 1960 and that company later changed its
9 name to Nissan North America, Inc. NNA lacks knowledge or information
10 sufficient to form a belief about the truth of the remaining allegations in the first,
11 second and third sentences of Paragraph 26 of Plaintiffs' SAC.

12 27. NNA admits that it manufactured, distributed and marketed the
13 vehicles the Plaintiffs call "Subject Nissan Vehicles" in the United States. NNA
14 denies the remaining allegations in Paragraph 27 of Plaintiffs' SAC.

15 28. NNA denies the allegations in Paragraph 28 of Plaintiffs' SAC.

16 29. NNA admits that the allegations in Paragraph 29 of Plaintiffs' SAC
17 generally describe the operation of a timing chain system. If anything further is
18 intended by these allegations, then they are denied.

19 30. NNA admits that the illustration in Paragraph 30 of Plaintiffs' SAC is
20 consistent with an illustration of a Nissan timing chain system in a service manual
21 for the vehicles that Plaintiffs call "Subject Nissan Vehicles" although the specific
22 components and system could vary from model to model. If anything further is
23 intended by these allegations, then they are denied.

24 31. NNA denies the allegations of Paragraph 31 of Plaintiffs' SAC.

25 32. NNA lacks knowledge or information sufficient to form a belief about
26 the truth of the allegations in Paragraph 32 of Plaintiffs' SAC.

27 33. NNA denies the allegations in Paragraph 33 of Plaintiffs' SAC.

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1 34. NNA denies the allegations in Paragraph 34 of Plaintiffs’ SAC.

2 35. NNA denies the allegations in Paragraph 35 of Plaintiffs’ SAC.

3 36. NNA denies the allegation in Paragraph 36 of Plaintiffs’ SAC.

4 37. NNA denies the allegations in Paragraph 37 of Plaintiffs’ SAC.

5 38. NNA admits that in May 2003, Sherri Defever (“Defever”) with
6 Nissan Technical Center North America, Inc. (“NTCNA”) in Michigan
7 communicated with Masatoshi Kusaba (“Kusaba”) with Nissan Motor Co., Ltd.
8 (“NML”) in Japan about design issues and meetings between NML and
9 BorgWarner, who designed the timing chain system components. If anything
10 further is intended by this paragraph, it is denied.

11 39. NNA denies the allegations in Paragraph 39 of Plaintiffs’ SAC as
12 phrased.

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

17 41. NNA denies the allegations in Paragraph 41 of Plaintiffs’ SAC as
18 phrased.

19 42. NNA denies the allegations in Paragraph 42 of Plaintiffs’ SAC.

20 43. NNA denies the allegations in Paragraph 43 of Plaintiffs’ SAC.

21 44. NNA admits that on September 10, 2003, Defever communicated with
22 Tamura and Kusaba about BorgWarner’s proposed countermeasure for a timing
23 chain system component. If anything further is intended by this paragraph, it is
24 denied.

25 45. NNA denies the allegations in Paragraph 45 of Plaintiffs’ SAC.

26 46. NNA denies the allegations in Paragraph 46 of Plaintiffs’ SAC.

27 47. NNA denies the allegations in Paragraph 47 of Plaintiffs’ SAC.

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1 48. NNA admits Paragraph 48 of Plaintiffs' SAC accurately quotes an
2 excerpt from an email from Jay Boyte, plant manager with NNA Decherd, to
3 Defever dated September 22, 2003. If anything further is intended by this
4 paragraph, it is denied.

5 49. NNA admits that this paragraph accurately quotes an excerpt from an
6 email between Defever and Tamura dated September 25, 2003. NNA denies the
7 remaining allegations in Paragraph 49 of Plaintiffs' SAC.

8 50. NNA denies the allegations in Paragraph 50 of Plaintiffs' SAC as
9 phrased.

10 51. NNA admits that Paragraph 51 of Plaintiffs' SAC accurately quotes
11 an excerpt from an email from Jay Boyte to Defever dated October 8, 2003. NNA
12 denies the remaining allegations in this paragraph.

13 52. NNA denies the allegations in Paragraph 52 of Plaintiffs' SAC as
14 phrased.

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

18 54. NNA denies the allegations in Paragraph 54 of Plaintiffs' SAC against
19 NNA.

20 55. NNA denies the allegations in Paragraph 55 of Plaintiffs' SAC.

21 56. NNA denies the allegations in Paragraph 56 of Plaintiffs' SAC.

22 57. NNA denies the allegations in Paragraph 57 of Plaintiffs' SAC.

23 58. NNA denies the allegations in Paragraph 58 of Plaintiffs' SAC as
24 phrased.

25 59. NNA denies the allegations in Paragraph 59 of Plaintiffs' SAC.

26 60. NNA admits that the first three sentences of Paragraph 60 of
27 Plaintiffs' SAC generally describe part of how a primary timing chain system
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1 functions. If anything further is intended by these allegations, then they are
2 denied. NNA denies the allegations in the last sentence of Paragraph 60 of
3 Plaintiffs' SAC.

4 61. NNA denies the allegations in the last sentence of Paragraph 61 of
5 Plaintiffs' SAC. NNA lacks knowledge or information sufficient to form a belief
6 about the truth of the remaining allegations in this paragraph.

7 62. NNA denies the allegations in Paragraph 62 of Plaintiffs' SAC.

8 63. NNA lacks knowledge or information sufficient to form a belief about
9 the truth of the allegations in Paragraph 63 of Plaintiffs' SAC.

10 64. NNA denies the allegations in Paragraph 64 of Plaintiffs' SAC.

11 65. NNA admits that Technical Service Bulletin ("TSB") Reference No.
12 NTB07-042, issued on or about July 17, 2007. NNA denies the remaining
13 allegations in Paragraph 65 of Plaintiffs' SAC.

14 66. NNA admits it issued TSB07-042a on or about April 17, 2009. NNA
15 denies the remaining allegations in Paragraph 66 of Plaintiffs' SAC.

16 67. NNA admits it issued TSB Reference No. NTSB07-042c on or about
17 December 14, 2009. NNA denies the remaining allegations in Paragraph 67 of
18 Plaintiffs' SAC.

19 68. NNA denies the allegations in Paragraph 68 of Plaintiffs' SAC.

20 69. NNA admits that Paragraph 69 of Plaintiffs' SAC accurately quotes
21 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)
22 [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)
23 [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 October 29, 2013). NNA denies the
24 remaining allegations in this paragraph.

25 70. NNA denies the allegations in Paragraph 70 of Plaintiffs' SAC.

26 71. NNA denies the allegations in Paragraph 71 of Plaintiffs' SAC.

27 72. NNA denies any allegations of premature failure or defect of the
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1 timing chain tensioning system in Paragraph 72 of Plaintiffs’ SAC. NNA lacks
2 knowledge or information sufficient to form a belief about the truth of the
3 remaining allegations in this paragraph.

4 73. NNA denies the allegations in Paragraph 73 of Plaintiffs’ SAC.

5 74. NNA lacks knowledge or information sufficient to form a belief about
6 the truth of Plaintiffs’ allegations in Paragraph 74 of Plaintiffs’ SAC.

7 75. NNA lacks knowledge or information sufficient to form a belief about
8 the truth of Plaintiffs’ allegations in Paragraph 75 of Plaintiffs’ SAC.

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

14 77. NNA admits that Paragraph 77 of Plaintiffs’ SAC accurately quotes
15 an excerpt from an email from Defever to Bryant Campbell, Phillip Thurmond and
16 Larry Worsham with PQE dated December 18, 2007. NNA denies the remaining
17 allegations in this paragraph.

18 **PLAINTIFFS’ CLAIMS**

19 **Plaintiff Kobe Falco**

20 78. NNA lacks knowledge or information sufficient to form a belief about
21 the truth of the allegations with respect to Plaintiff Falco’s citizenship, residency,
22 or purchase of his vehicle.

23 79. NNA lacks knowledge or information sufficient to form a belief
24 about what advertising was seen by Plaintiff. NNA denies the remaining
25 allegations in Paragraph 79 of Plaintiffs’ SAC.

26 80. NNA denies the allegations contained in Paragraph 80 of Plaintiffs’
27 SAC.

1 81. NNA lacks knowledge or information sufficient to form a belief about
2 the truth of the allegations in Paragraph 81 of Plaintiffs' SAC.

3 82. NNA lacks knowledge or information sufficient to form a belief
4 about the truth of the allegations in Paragraph 82 of Plaintiffs' SAC.

5 **Plaintiff Joel Seguin**

6 83. NNA lacks knowledge or information sufficient to form a belief about
7 the truth of the allegations with respect to Plaintiff Seguin's citizenship or
8 residency.

9 84. NNA lacks knowledge or information sufficient to form a belief about
10 the truth of the allegations with respect to Plaintiff Seguin's purchase of his
11 vehicle.

12 85. NNA denies the allegations in Paragraph 85 of Plaintiffs' SAC.

13 86. NNA lacks knowledge or information sufficient to form a belief about
14 what advertising was seen by Plaintiff. NNA denies the remaining allegations in
15 Paragraph 86 of Plaintiffs' SAC.

16 87. NNA denies the allegations contained in Paragraph 87 of Plaintiffs'
17 SAC.

18 88. NNA lacks knowledge or information sufficient to form a belief about
19 the truth of the allegations with respect to the dates and reasons of Plaintiff
20 Seguin's visit to Nissan dealers for repairs. NNA denies the remaining allegations
21 contained in Paragraph 88 of Plaintiffs' SAC.

22 89. NNA denies the allegations contained in Paragraph 89 of Plaintiffs'
23 SAC.

24 90. NNA lacks knowledge or information sufficient to form a belief about
25 the truth of the allegations contained in Paragraph 90 of Plaintiffs' SAC.

26 91. NNA denies the allegations in Paragraph 91 of Plaintiffs' SAC.

Plaintiff Alfredo Padilla

92. NNA lacks knowledge or information sufficient to form a belief about the truth of the allegations with respect to Plaintiff Padilla’s citizenship or residency.

93. NNA lacks knowledge or information sufficient to form a belief about the truth of the allegations with respect to Plaintiff Padilla’s purchase of his vehicle.

94. NNA denies the allegations in Paragraph 94 of Plaintiffs’ SAC.

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

96. NNA denies the allegations contained in Paragraph 96 of Plaintiffs’ SAC.

97. NNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 97 of Plaintiffs’ SAC.

98. NNA lacks knowledge or information to form a belief about the truth of the allegations in Paragraph 98 of Plaintiffs’ SAC.

Plaintiff Roberto Galvan

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

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

101. NNA denies the allegations in Paragraph 101 of Plaintiffs’ SAC.

102. NNA lacks knowledge or information sufficient to form a belief about what advertising was seen by Plaintiff. NNA denies the remaining allegations in

1 Paragraph 102 of Plaintiffs’ SAC.

2 103. NNA denies the allegations contained in Paragraph 103 of Plaintiffs’
3 SAC.

4 104. NNA lacks knowledge or information sufficient to form a belief about
5 the truth of the allegations contained in Paragraph 104 of Plaintiffs’ SAC.

6 105. NNA lacks knowledge or information sufficient to form a belief about
7 the truth of the allegations contained in Paragraph 105 of Plaintiffs’ SAC.

8 **STATUTE OF LIMITATIONS**

9 106. NNA denies the allegations in Paragraph 106 of Plaintiffs’ SAC.

10 107. NNA denies the allegations in Paragraph 107 of Plaintiffs’ SAC.

11 108. NNA denies the allegations in Paragraph 108 of Plaintiffs’ SAC.

12 **CLASS ACTION ALLEGATIONS**

13 109. Paragraph 109 of Plaintiffs’ SAC does not contain any factual
14 allegations and does not require a response. NNA denies that certification of the
15 class as stated in this paragraph would be appropriate.

16 110. Paragraph 110 of Plaintiffs’ SAC does not contain any factual
17 allegations and does not require a response. NNA denies that certification of the
18 class as stated in this paragraph would be appropriate.

19 111. Paragraph 111 of Plaintiffs’ SAC does not contain any factual
20 allegations and does not require a response. NNA denies that certification of the
21 class as stated this in paragraph would be appropriate.

22 112. Paragraph 112 of Plaintiffs’ SAC does not contain any factual
23 allegations and does not require a response. NNA denies that certification of the
24 class as stated in this paragraph would be appropriate.

25 113. NNA denies the allegations in Paragraph 113 of Plaintiffs’ SAC with
26 respect to this action being properly maintained as a class action pursuant to
27 Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1), (b)(2) or (b)(3) or that
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1 this action satisfies the requirements thereof.

2 114. Paragraph 114 of Plaintiffs’ SAC does not contain any factual
3 allegations and does not require a response. NNA denies that certification of the
4 class as stated in this paragraph would be appropriate.

5 115. NNA admits that more than tens of thousands of Nissan Maxima,
6 Nissan Quest, Nissan Altima, Nissan Pathfinder, Nissan Xterra, and Nissan
7 Frontier have been sold and leased. NNA denies the remaining allegations in
8 Paragraph 115 of Plaintiffs’ SAC.

9 116. NNA denies the allegations in Paragraph 116 of Plaintiffs’ SAC.

10 117. NNA denies the allegations in Paragraph 117 of Plaintiffs’ SAC.

11 118. NNA denies the allegations in Paragraph 118 of Plaintiffs’ SAC.

12 119. NNA denies the allegations in Paragraph 119 of Plaintiffs’ SAC.

13 120. NNA denies the allegations in Paragraph 120 of Plaintiffs’ SAC.

14 121. NNA denies the allegations in Paragraph 121 of Plaintiffs’ SAC.

15 122. NNA denies the allegations in Paragraph 122 of Plaintiffs’ SAC.

16 123. NNA denies the allegations in Paragraph 123 of Plaintiffs’ SAC.

17 124. Paragraph 124 of Plaintiffs’ SAC does not contain any factual
18 allegations and does not require a response.

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

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

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

26 127. The allegations in Paragraph 127 are legal conclusions to which no
27 response is required.

28 128. Plaintiffs’ claim that NNA violated California Civil Code section

1 1770(a)(9) has been dismissed. Subject to and without waiving NNA’s right to
2 rely on dismissal, NNA denies the allegations contained in Paragraph 128 of
3 Plaintiffs’ SAC.

4 129. NNA denies the allegations in Paragraph 129 of Plaintiffs’ SAC.

5 130. NNA denies the allegations in Paragraph 130 of Plaintiffs’ SAC.

6 131. NNA denies the allegations in Paragraph 131 of Plaintiffs’ SAC.

7 132. NNA denies the allegations in Paragraph 132 of Plaintiffs’ SAC.

8 133. NNA denies the allegations in Paragraph 133 of Plaintiffs’ SAC.

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

12 135. NNA denies the allegations in Paragraph 135 of Plaintiffs’ SAC.

13 136. NNA denies that Plaintiffs and the putative classed members are
14 entitled to restitution of property, injunctive relief, or any other relief Plaintiffs are
15 seeking.

16 137. NNA denies the allegations in Paragraph 137 of Plaintiffs’ SAC.

17 **SECOND CAUSE OF ACTION**
18 **Violation of Unfair Competition Law**
19 **(California Business & Professions Code §§ 17200 *et seq.*)**

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

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

24 140. The first sentence of Paragraph 140 of Plaintiffs’ SAC contains legal
25 conclusions to which no response is required. NNA denies the second sentence in
26 this Paragraph.

27 141. NNA denies the allegations in Paragraph 141 of Plaintiffs’ SAC.

- 1 142. NNA denies the allegations in Paragraph 142 of Plaintiffs’ SAC.
- 2 143. NNA denies the allegations in Paragraph 143 of Plaintiffs’ SAC.
- 3 144. The allegations in Paragraph 144 of Plaintiffs’ SAC are legal
- 4 conclusions to which no response is required.
- 5 145. NNA denies the allegations in Paragraph 145 of Plaintiffs’ SAC.
- 6 146. NNA denies the allegations in Paragraph 146 of Plaintiffs’ SAC.
- 7 147. NNA denies the allegations in Paragraph 147 of Plaintiffs’ SAC.
- 8 148. NNA denies the allegations in Paragraph 148 of Plaintiffs’ SAC.
- 9 149. NNA denies the allegations in Paragraph 149 of Plaintiffs’ SAC.
- 10 150. NNA denies the allegations in Paragraph 150 of Plaintiffs’ SAC.
- 11 151. NNA denies the allegations in Paragraph 151 of Plaintiffs’ SAC.
- 12 152. NNA 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.*)**

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16 153. Paragraph 153 of Plaintiffs’ SAC does not contain any factual
17 allegations and does not require a response.

18 154. Paragraph 154 of Plaintiffs’ SAC does not contain any factual
19 allegations and does not require a response.

- 20 155. NNA denies the allegations in Paragraph 155 of Plaintiffs’ SAC.
- 21 156. NNA denies the allegations in Paragraph 156 of Plaintiffs’ SAC.
- 22 157. NNA denies the allegations in Paragraph 157 of Plaintiffs’ SAC.
- 23 158. NNA denies the allegations in Paragraph 158 of Plaintiffs’ SAC.
- 24 159. NNA denies the allegations in Paragraph 159 of Plaintiffs’ SAC.

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

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

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

162. NNA admits that it manufactured, distributed and provided a New Vehicle Limited Warranty for the vehicles Plaintiffs call “Subject Nissan Vehicles” sold in the United States. NNA denies the remaining allegations in Paragraph 162 of Plaintiffs’ SAC.

163. NNA denies the allegations in Paragraph 163 of Plaintiffs’ SAC.

164. NNA denies the allegations in Paragraph 164 of Plaintiffs’ SAC.

165. NNA denies the allegations in Paragraph 165 of Plaintiffs’ SAC.

166. NNA denies the allegations in Paragraph 166 of Plaintiffs’ SAC.

FIFTH CAUSE OF ACTION

Fraud

167. Paragraph 167 of Plaintiffs’ SAC does not contain any factual allegations and does not require a response.

168. Paragraph 168 of Plaintiffs’ SAC does not contain any factual allegations and does not require a response.

169. NNA denies the allegations in Paragraph 169 of Plaintiffs’ SAC.

170. NNA denies the allegations in Paragraph 170 of Plaintiffs’ SAC.

171. NNA denies the allegations in Paragraph 171 of Plaintiffs’ SAC.

172. NNA denies the allegations in Paragraph 172 of Plaintiffs’ SAC.

173. NNA denies the allegations in Paragraph 173 of Plaintiffs’ SAC.

174. NNA denies the allegations in Paragraph 174 of Plaintiffs’ SAC.

1 175. NNA denies the allegations in Paragraph 175 of Plaintiffs’ SAC.

2 176. NNA denies the allegations in Paragraph 176 of Plaintiffs’ SAC

3 **SIXTH CAUSE OF ACTION**

4 **Unjust Enrichment**

5 177. Paragraph 177 of Plaintiffs’ SAC does not contain any factual
6 allegations and does not require a response.

7 178. Paragraph 178 of Plaintiffs’ SAC does not contain any factual
8 allegations and does not require a response.

9 179. This claim has been dismissed. Subject to and without waiving
10 NNA’s right to rely on the dismissal, NNA denies the allegations in Paragraph 179
11 of Plaintiffs’ SAC.

12 180. This claim has been dismissed. Subject to and without waiving
13 NNA’s right to rely on the dismissal, NNA denies the allegations in Paragraph 180
14 of Plaintiffs’ SAC.

15 181. This claim has been dismissed. Subject to and without waiving
16 NNA’s right to rely on the dismissal, NNA denies the allegations in Paragraph 181
17 of Plaintiffs’ SAC.

18 182. This claim has been dismissed. Subject to and without waiving
19 NNA’s right to rely on the dismissal, NNA denies the allegations in Paragraph 182
20 of Plaintiffs’ SAC.

21 183. This claim has been dismissed. Subject to and without waiving
22 NNA’s right to rely on the dismissal, NNA denies the allegations in Paragraph 183
23 of Plaintiffs’ SAC.

24 **PRAYER FOR RELIEF**

25 184. NNA denies Plaintiffs or members of the proposed classes are entitled
26 to recover pursuant to Plaintiffs’ prayer for relief.

27 185. As separate and additional and affirmative defenses to the SAC and
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1 the purported causes of action therein, but without assuming the burden of proof
2 with regard to these defenses, NNA alleges as follows:

3 **FIRST DEFENSE**

4 186. The factual allegations in Plaintiffs’ SAC do not state a claim upon
5 which relief can be granted under the statutes of any state or any common law legal
6 or equitable theory.

7 **SECOND DEFENSE**

8 187. Plaintiffs and the putative class members seek to impose
9 overwhelming and disproportionate liability in violation of NNA’s substantive and
10 procedural due process rights conferred in the Constitutions of the United States
11 and the States of California and Washington and by the substantive and due
12 process rights conferred in any other Constitutions the Court may deem applicable.

13 **THIRD DEFENSE**

14 188. The aggregate or mass litigation of punitive damages necessarily
15 violates the Due Process Clause of the Constitutions of the United States and the
16 States of California and Washington.

17 **FOURTH DEFENSE**

18 189. If some members of the putative class sustained damages, which
19 damages are denied, some members of the putative class have failed to act
20 reasonably to mitigate or minimize any loss or harm that some members of the
21 putative class suffered and could have avoided such harm by making reasonable
22 efforts or expenditures.

23 **FIFTH DEFENSE**

24 190. Plaintiffs’ representational claims and those of the putative class are
25 barred because the representations or omissions alleged in Plaintiffs’ SAC were not
26 false, untrue, or misleading.

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SIXTH DEFENSE

191. Plaintiffs and the putative class members did not rely on any representation by NNA.

SEVENTH DEFENSE

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

EIGHTH DEFENSE

193. The damages, if any, of at least some putative class members have been caused by modification of the vehicles or its components or other factors beyond the control of NNA.

NINTH DEFENSE

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

TENTH DEFENSE

195. The equitable claims of at least some putative class members are barred by the doctrine of laches.

ELEVENTH DEFENSE

196. The equitable claims of at least some putative class members are barred by the doctrine of unclean hands.

TWELFTH DEFENSE

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

THIRTEENTH DEFENSE

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

FOURTEENTH DEFENSE

199. Any award of exemplary damages would constitute the imposition of

1 a criminal penalty without the safeguards guaranteed by the Fifth Amendment of
2 the Constitution of the United States. Any claims made by Plaintiffs for exemplary
3 damages should be stricken as unconstitutional and any award for exemplary
4 damages should be set aside for the reasons stated above.

5 **FIFTEENTH DEFENSE**

6 200. The claims of plaintiffs and putative class members are barred, in
7 whole or in part, under the doctrines of waiver and/or estoppel.

8 **SIXTEENTH DEFENSE**

9 201. The asserted claims are barred to the extent any injury sustained by
10 plaintiffs or putative class members were caused by their own negligent conduct.

11 **RESERVATION OF AFFIRMATIVE DEFENSES**

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

16 WHEREFORE, having fully answered, Defendant Nissan North America,
17 Inc. prays that the claims in Plaintiffs' Second Amended Class Action Complaint
18 be dismissed; that Defendant Nissan North America, Inc. recover its costs; and for
19 any and all necessary and proper relief to which Defendant Nissan North America,
20 Inc. may show itself justly entitled.

21 DATED: December 8, 2014 SEDGWICK LLP

22
23 By: /s/ Paul Riehle
24 Paul Riehle
25 Attorneys for Defendant
26 NISSAN NORTH AMERICA, INC.
27
28

Sedgwick^{LLP}