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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

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

Plaintiff,

v.

NISSAN NORTH AMERICA, INC., a  
California corporation, and NISSAN  
JIDOSHA KABUSHIKI KAISHA  
d/b/a NISSAN MOTOR CO., LTD., a  
Japanese company,

Defendants.

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

**ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

[303]

**ORDER**

WHEREAS, a class action lawsuit is pending before this Court entitled *Falco, et al. v. Nissan North America, et al.*, Case No. 2:13-cv-00686 DDP (MANx) (the “Lawsuit”);

WHEREAS, on or about October 9, 2017, Plaintiffs Kobe Falco, Joel Seguin, Alfredo Padilla, and Roberto Galvan (“Plaintiffs”), suing individually and as the representatives of a class, executed a Confidential Settlement Term Sheet with Defendants Nissan North America, Inc. and Nissan Motor Co., Ltd. (collectively “Nissan”) (collectively, the “Parties”) concerning claims asserted in the Lawsuit;

WHEREAS, in November 2017, the Parties entered into a Settlement Agreement (the “Settlement Agreement”) concerning the claims in the Lawsuit; and

WHEREAS, the Court has read and considered the Settlement Agreement and its attached exhibits, and has considered the arguments of counsel for the Parties in this matter and, good cause appearing,

**IT IS HEREBY ORDERED** that the Motion for Preliminary Approval of Class Action Settlement is **GRANTED, AND IT IS FURTHER ORDERED AS FOLLOWS:**

**PRELIMINARY CLASS SETTLEMENT APPROVAL  
AND SETTLEMENT HEARING**

1. The Court preliminarily certifies the Settlement Class,<sup>1</sup> for settlement purposes only, consisting of: all current and former owners and lessees of Class Vehicles<sup>2</sup>

<sup>1</sup> This Order incorporates by reference the definitions in the Settlement Agreement, and all terms herein shall have the same meaning as set forth in the Settlement Agreement.

1 who purchased or leased a Class Vehicle in Washington or California. Excluded from the  
2 Settlement Class are: (1) Nissan, its officers, directors, employees and outside counsel; its  
3 affiliates and affiliates' officers, directors and employees; its distributors and distributor's  
4 officers and directors; and Nissan's Dealers and their officers, directors, and employees;  
5 (b) Plaintiffs' counsel, and their employees; (c) judicial officers and their immediate  
6 family members and associated court staff assigned to this case, or the Ninth Circuit Court  
7 of Appeals; and (d) persons or entities who or which timely and properly exclude  
8 themselves from the Settlement Class.  
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12 2. The Court preliminarily certifies that, for settlement purposes only, the  
13 requirements of FED. R. CIV. P. 23(a) and 23(b)(3) have been satisfied with regard to the  
14 Settlement Class, and finds that the class action settlement set forth in the Settlement  
15 Agreement entered into among the Parties and their counsel appears to be proper; is  
16 within the range of reasonableness for a class settlement; is the product of arm's length  
17 and informed negotiations; treats all Class Members fairly, and is presumptively valid,  
18 subject to any objections that may be raised at the Fairness Hearing. The Court further  
19 finds that the Parties conducted sufficient investigation and research, and their attorneys  
20 were able to reasonably evaluate their respective positions. The terms of the Settlement  
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25 <sup>2</sup> The Class Vehicles are the 2004-2008 model year Nissan Maxima, 2004-2009 model  
26 year Nissan Quest, 2004-2006 model year Nissan Altima equipped with a VQ35 engine,  
27 2005-2007 model year Nissan Pathfinder, 2005-2007 model year Nissan Xterra, and 2005-  
28 2007 model year Nissan Frontier equipped with a VQ40 engine.

1 Agreement are, therefore, preliminarily approved, subject to further consideration at the  
2 Fairness Hearing.

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4 3. During the Final Approval and Fairness Hearing, which shall be held before  
5 this Court on Monday, July 16, 2018, at 10 a.m. in Courtroom 9C of the United States  
6 District Court for the Central District of California, Western Division, 350 W 1st Street,  
7 Los Angeles, California, 90012, the Court will determine whether the proposed Settlement  
8 Agreement is fair and reasonable, whether final approval shall be given to it, and whether  
9 Plaintiffs' Counsel's application for an award of Attorneys' Fees and Expenses should be  
10 granted.  
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13 **NOTICE OF SETTLEMENT**

14 4. The Claims Administrator shall prepare and provide the notices pursuant to  
15 the Class Action Fairness Act of 2005, Pub. L. 109-2 (2005), including, but not limited to,  
16 the notices to the United States Department of Justice and to the Attorneys General of all  
17 states in which Settlement Class Members reside, as specified in 28 U.S.C. § 1715, after  
18 the Court approves the Notice.  
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21 5. The Parties shall cause Notice of the proposed Settlement and the Fairness  
22 Hearing to Settlement Class Members as follows:

23 a. The Parties have agreed to designate Epiq Class Action & Claims  
24 Solutions, Inc. to serve as the independent third-party Claims Administrator (the "Claims  
25 Administrator") to assist in the Notice and Settlement claims administration process.  
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1           b.     No later than sixty (60) days from the entry of this Order, the Claims  
2 Administrator shall commence the mailing of the Notice substantially in the forms attached  
3 to the Settlement Agreement as Exhibits which shall be mailed, postage prepaid, via the  
4 United States Postal Service, at the expense of Nissan, to the Settlement Class for whom  
5 there is a last-known valid address and for whom addresses are obtained from a third-party,  
6 such as IHS Automotive or Experian, which maintains databases related to the automobile  
7 industry and which specializes in obtaining such information from, inter alia, the  
8 Department of Motor vehicle for the state of Washington and California. The Claims  
9 Administrator will review the address data provided by Nissan and/or any third-party  
10 vendor, check addresses for validity, eliminate duplications and process the addresses  
11 through the National Change of Address database for the purpose of updating the  
12 addresses.  
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16           c.     The Claims Administrator will file with the Court and serve upon  
17 Plaintiffs' Counsel and Nissan's Counsel no later than twenty-eight (28) court days before  
18 the Fairness Hearing a declaration stating that Notice was disseminated in a manner  
19 consistent with the terms of the Settlement Agreement and this Preliminary Approval  
20 Order.  
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24           6.     The Court approves the form of Notice. The Court finds that these  
25 procedures established for mailing and distribution of such Notice as set forth in this  
26 Order satisfy the requirements of the Rule 23 of the Federal Rules of Civil Procedure and  
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1 due process. The Court further finds that these procedures are the best notice practicable  
2 under the circumstances and shall constitute due and sufficient notice to all persons and  
3 entities entitled thereto.  
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5 7. The Claims Administrator shall be responsible for receipt of all written  
6 communications from the Settlement Class and shall preserve same and all other written  
7 communications from Settlement Class Members or any other person in response to the  
8 Notice.  
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10 **CLASS REPRESENTATIVES AND CLASS COUNSEL**

11 8. The named Plaintiffs are suitable class representatives and are appointed  
12 Class Representatives for the Settlement Class.  
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14 9. The Court appoints Baron & Budd, PC, Capstone Law APC, and Strategic  
15 Legal Practices as Class Counsel. The Court finds that the attorneys at these three law  
16 firms have demonstrable experience litigating, certifying, and settling class actions, and  
17 will serve as adequate counsel for the Settlement Class.  
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19 **REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASS**

20 10. A Settlement Class Member wishing to exclude himself/herself from the  
21 Settlement must send to the Claims Administrator a signed letter including (a) his/her  
22 name, (b) address, (c) telephone number, (d) model and year of vehicle, (e) mileage at the  
23 time of Notice, and (f) providing a clear statement communicating that he/she elects to be  
24 excluded from the Settlement Class. Any request for exclusion must be postmarked on or  
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1 before the exclusion deadline provided in the Notice. The date of the postmark on the  
2 return mailing envelope shall be the exclusive means used to determine whether a request  
3 for exclusion has been timely submitted. Settlement Class Members who fail to submit a  
4 valid and timely request for exclusion on or before the date specified in the Notice, shall  
5 be bound by all terms of the Settlement Agreement and the Final Order and Judgment.  
6 The request must be personally signed by or on behalf of the Settlement Class Member  
7 requesting exclusion, and shall not be effective unless it is made in the manner and within  
8 the time set forth in this paragraph. No Settlement Class Member, or any person acting on  
9 behalf or in concert or participation with that Settlement Class Member, may request the  
10 exclusion of any other Settlement Class Member from the Settlement Class.  
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14 11. Copies of requests for exclusion shall be provided by the Settlement  
15 Administrator to Plaintiffs' Counsel and Nissan's Counsel not later than three (3) business  
16 days after the deadline for submission of requests for exclusion. The original requests for  
17 exclusion will be filed with the Court by the Settlement Administrator not later than  
18 Monday, July 9, 2018, seven (7) days prior to the Fairness Hearing Date.  
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21 12. All Settlement Class Members who have not submitted a timely and valid  
22 written request for exclusion from the Settlement Class will be bound by the Released  
23 Claims and other terms and conditions set forth herein and all proceedings, orders and  
24 judgments in the Lawsuit, even if those persons have previously initiated or subsequently  
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1 initiated litigation or other proceedings against NNA, NML, or their subsidiaries, relating  
2 to the claims released pursuant to or covered by the terms of this Settlement.

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4 **OBJECTIONS BY SETTLEMENT CLASS MEMBERS**

5 13. In accordance with the Settlement Agreement, any Settlement Class Member  
6 who has not requested exclusion from the Settlement Class and follows the procedure set  
7 forth in paragraph 14 below may appear at the Fairness Hearing to show cause as to why  
8 any terms of the proposed Settlement should not be approved as fair or reasonable, or why  
9 a judgment should not be entered thereon.  
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11 14. In order to contest the approval of the Settlement Agreement, a Settlement  
12 Class Member must serve Plaintiffs' Counsel and Nissan's counsel by mail at the  
13 addresses listed below and must file the Objection with the Court, which Objection must  
14 be filed and copies postmarked no later than thirty-five (35) days prior to the Fairness  
15 Hearing date specified in the Notice. To state valid Objections to the Settlement, a  
16 Settlement Class Member making Objections must provide the following information in  
17 his or her written Objections: (a) the Settlement Class Member's full name and current  
18 address; (b) the model year and make of his or her vehicle(s) and approximate date(s) of  
19 purchase; (c) whether the Settlement Class Member still owns the vehicle(s); (d) the VIN  
20 number of the vehicle(s); (e) current odometer mileage of the vehicle(s) currently owned;  
21 (f) a specific and clear statement of the Settlement Class Member's reasons for objecting  
22 to the Settlement, including the grounds for his or her position; (g) a detailed list of any  
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1 other objections to any class action settlements submitted to any court, whether State,  
2 Federal, or otherwise, in the United States in the previous five (5) years; (h) whether the  
3 Settlement Class Member intends to appear at the Fairness Hearing and whether the  
4 Settlement Class Member will be represented by separate counsel; and (i) the Settlement  
5 Class Member's signature. Settlement Class Members may so object either on their own  
6 or through an attorney hired at their own expense.  
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9 15. Objections must be served:

10 Upon Nissan's Counsel at:

11 E. Paul Cauley, Jr.  
12 DRINKER BIDDLE & REATH LLP  
13 1717 Main Street, Suite 5400  
14 Dallas, Texas 75201

15 Upon Class Counsel at:

16 Roland Tellis, Esq.  
17 BARON & BUDD, PC  
18 15910 Ventura Boulevard, Suite 1600  
19 Encino, California 91436

20 Upon the Claims Administrator at:

21 Epiq Class Action & Claims Solutions, Inc.  
22 10300 SW Allen Blvd.  
23 Beaverton, OR 97005

24 16. Any Settlement Class Member who does not make an Objection in the  
25 manner provided above shall be deemed to have waived such Objection and shall forever  
26 be foreclosed from making any Objection to the fairness or reasonableness of the  
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1 proposed Settlement or the Final Order and Judgment to be entered approving the  
2 Settlement. Any Settlement Class Member who wishes to speak at the fairness hearing  
3 must follow the procedures outlined in the Notice that the Settlement Class Member  
4 receives.  
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6 17. Papers by counsel in connection with the Settlement shall be filed as follows:  
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8 No later than twenty-eight (28) court days before the date set by the Court for the Fairness  
9 Hearing, Plaintiffs’ Counsel will file a motion requesting that the Court enter the Final  
10 Approval Order and Final Judgment, which will, among other things, dismiss the Lawsuit,  
11 with prejudice, subject to the continuing jurisdiction of the Court, approve the Settlement  
12 Agreement, certify the Settlement Class and render an award of Attorneys’ Fees and  
13 Expenses. Nissan may, at its discretion, submit such briefing as it deems necessary to  
14 support the motion for final approval, clarify its positions, and otherwise protect its  
15 interests. Such briefing by Nissan will be due no later than fourteen (14) court days  
16 before the date set by the Court for the Fairness Hearing. Class Counsel and Nissan’s  
17 Counsel shall also be entitled to file responses to any Objections which may have been  
18 filed, which responses shall be filed fourteen (14) court days prior to the Fairness Hearing.  
19 Class Counsel may submit reply papers to any briefs filed by Nissan no later than five (5)  
20 court days prior to the date set by the Court for the Fairness Hearing.  
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25 **TERMINATION**

1           18.     If the Court declines to enter a Final Approval Order and Final Judgment in  
2 accordance with all of the material terms of the Settlement Agreement, or the Final  
3 Approval Order and Final Judgment does not for any reason become Final, the Parties to  
4 the Lawsuit will be returned to the same position as existed on October 9, 2017, and as if  
5 the Settlement Agreement had not been negotiated, made or filed with the Court. Should  
6 this occur, (a) the Parties to the Lawsuit shall move the Court to vacate any and all orders  
7 entered by the Court pursuant to the provisions of the Settlement Agreement; and (b)  
8 neither the Settlement Agreement, nor any documents filed, submitted, or published  
9 pursuant to the Settlement Agreement may be used in any litigation (except to enforce the  
10 provisions of the Settlement Agreement) and nothing contained in the Settlement  
11 Agreement nor any documents filed, submitted, or published pursuant to the Settlement  
12 Agreement shall impact any legal proceedings.

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17           19.     Except as to paragraph 18 and this paragraph 19, this Order shall be of no  
18 force or effect if the Settlement does not become final, and shall not be construed or used  
19 as an admission, concession or declaration by or against the Parties or members of the  
20 Settlement Class of the validity of any claim or counterclaim or any actual or potential  
21 fault, wrongdoing or liability whatsoever, or by or against the Parties or members of the  
22 Settlement Class, that their claims or counterclaims lack merit or that the relief requested  
23 in the Complaint or any counterclaims are inappropriate, improper, or unavailable, or as a  
24 waiver by any Party of any defense or claims it or they may have.  
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**POWERS AND JURISDICTION OF THE COURT**

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20. The Court expressly reserves its right to adjourn or continue the Fairness Hearing or any further adjournment or continuance thereof, and to approve the Settlement Agreement, including any modifications thereto which are acceptable to the Parties, without further notice to Settlement Class Members.

21. Pending Final Approval of the Settlement, the Parties to the Settlement Agreement are directed to carry out their obligations under the terms thereof.

**IT IS SO ORDERED.**

Dated: February 1, 2018



Honorable Dean D. Pregerson  
United States District Court Judge