

## **SETTLEMENT AGREEMENT AND RELEASE**

Plaintiffs Adrian Fox, William McMullen, Jr., and Scott Winkler (“Plaintiffs”) and Defendant Nissan North America, Inc. (“NNA”) (collectively, NNA and Plaintiffs shall be referred to as the “Parties”), by and through their counsel of record, enter into this Settlement Agreement, providing for settlement of all claims asserted against NNA, pursuant to the terms and conditions set forth below, and subject to the approval of the Court in the Lawsuit, as defined herein.

WHEREAS, on July 15, 2009, Plaintiff Fox filed a lawsuit, on behalf of himself and all current and former California residents who purchased or leased 2001-2005 model year Pathfinder, Altima and Sentra vehicles, against NNA, alleging that the engines in the vehicles were assembled with “power valve screws that are not secure, are prone to loosen and detach, and often result in complete engine failure and/or loss of control of the Vehicle” (herein referred to as the “Lawsuit”);

WHEREAS, on January 21, 2010, Plaintiff Fox, along with Plaintiffs McMullen and Winkler, filed a Second Amended Complaint in the Lawsuit and, after the Court sustained NNA’s demurrer with leave to amend, filed a Third Amended Complaint on May 17, 2010;

WHEREAS, NNA filed another demurrer on June 25, 2010 and the Court sustained NNA’s demurer as to all causes of action in Plaintiffs’ Third Amended Complaint without leave to amend and entered judgment for NNA;

WHEREAS, Plaintiffs appealed on the ground that they had adequately pled “an omission of material fact,” and the judgment for NNA was reversed in July 2012 on the ground that Plaintiffs had sufficiently alleged a risk to personal safety as a result of the claimed defect, which could trigger a duty to disclose a “material” fact. *Fox v. Nissan N. Am.*, A130209, 2012 WL 2782588, at \*4 (Cal. Ct. App. July 10, 2012);

WHEREAS, Plaintiffs later filed a Fourth Amended Complaint in June 2015 which is the latest statement of claims in the case;

WHEREAS, NNA has strongly denied and continues to strongly deny all of the Plaintiffs' claims about the claimed issue of detached power valve screws providing any risk to personal safety, denies all allegations of wrongdoing, fault, liability or damage of any kind to Plaintiffs or the Settlement Class (as defined below), and believes that this litigation is without merit;

WHEREAS, the Parties to this Settlement Agreement completed extensive investigation and discovery into the claims and defenses in this case;

WHEREAS, while Plaintiffs and their counsel believe that the claims asserted in the Lawsuit have merit, and that such claims could have been successful at trial, they recognize the costs and risks of prosecuting this litigation and believe that it is in the interest of all members of the Settlement Class to resolve finally and completely the pending and potential claims of the Plaintiffs and the Settlement Class against NNA on the terms as agreed;

WHEREAS, although NNA believes the Lawsuit has no merit, it has concluded that settlement is desirable as a further commitment to its customers, to ensure the satisfaction of its customers, to preserve and enhance goodwill with its customers, including the Plaintiffs, and to end further litigation in the Lawsuit which could be protracted, burdensome and expensive for both Plaintiffs and NNA;

WHEREAS, Plaintiffs' counsel and NNA's Counsel have conducted arm's length settlement negotiations via multiple and extended settlement conferences with a Court-appointed Settlement Judge and, as a result, this Settlement Agreement has been reached, subject to Court approval;

WHEREAS, the undersigned Parties believe that this Settlement offers significant benefits to the Settlement Class and is fair, reasonable, adequate and in the best interest of all members of the Settlement Class Members; and

WHEREAS, NNA has agreed to class treatment of the claims alleged in the Lawsuit solely for the purpose of effectuating a compromise and settlement of those claims on a class basis, as set forth herein, and denies that the Lawsuit properly could proceed on a class basis for purposes of litigation or for trial.

NOW, THEREFORE, the undersigned Parties stipulate and agree, subject to the approval of the Court, that all claims of Plaintiffs and Settlement Class Members against NNA shall be finally settled, discharged and resolved on the terms and conditions as set forth below.

### **DEFINITIONS**

As used in this Settlement Agreement, the following terms shall have the defined meanings set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

1. “Appropriate Contemporaneous Documentation” means written documentation created by an NNA Dealer or other non-NNA automotive repair facility at or near the time of the repair and as part of the same transaction, establishing that a Class Vehicle had Repaired Engine Damage, as defined herein, on a specific date or at a specific mileage.

2. “Attorneys’ Fees and Expenses” means the amounts approved by the Court for payment to Class Counsel, including attorneys’ fees, costs, and litigation expenses including fees and expenses of experts or other consultants.

3. “Authorized Reimbursement Claimant” means any Settlement Class Member who has satisfied the Criteria for Reimbursement, as defined herein, and is thus eligible to receive a Reimbursement, as described in Paragraph 25 of this Settlement Agreement.

4. “Claim Form” means the claim and release form, substantially in the form set forth in Exhibit “B” to this Settlement Agreement, which must be timely and fully completed and submitted

by any Settlement Class Member in order to meet, in part, the Criteria for Reimbursement, as further defined herein, under the terms of this Settlement Agreement.

5. “Claims Administrator” means Kurtzman Carson Consultants LLC, or such other third party administrator to which the parties shall mutually agree, to handle the notice program and claims administration process.

6. “Claims Period” means the time during which any Settlement Class Member may submit a Claim Form, which will be a period of one hundred eighty (180) days commencing on the date the Claims Administrator mails the Notice.

7. “Class Vehicle(s)” means the following vehicles purchased or leased in the State of California: (a) 2001-2004 model year Nissan Pathfinder equipped with a VQ35 engine, (b) 2002-2005 model year Nissan Altima equipped with a QR25 engine that were not included in Nissan’s Voluntary Service Campaign, and (c) 2002-2005 model year Nissan Sentra equipped with a QR25 engine that were not included in Nissan’s Voluntary Service Campaign.

8. “Court” means the Superior Court of the State of California, City and County of San Francisco, in which the Lawsuit is pending.

9. “Criteria for Reimbursement” means the criteria that a Settlement Class Member must satisfy in order to be eligible to receive Reimbursement pursuant to the terms of this Settlement Agreement. The criteria are (1) timely submission to the Claims Administrator of a valid Claim Form with a proper VIN within the Claims Period; (2) an attestation under penalty of perjury that the Settlement Class Member (a) is either a former or current owner or lessee of the Class Vehicle identified on the Claim Form and (b) is not seeking reimbursement for repairs to the extent previously paid for by NNA; and (3) submission of Appropriate Contemporaneous Documentation

that establishes (a) Repaired Engine Damage at a time when (b) the vehicle's mileage was less than twelve (12) years or 120,000 miles, whichever occurs first.

10. "Effective Date of Settlement" means sixty-one (61) business days after the date when the Final Order and Judgment in the Lawsuit is entered, or if there is an appeal, (a) all such appeals have been dismissed; or (b) the appropriate Court of Appeal has entered a final judgment affirming the Final Order and Judgment of the Court, which (i) is no longer subject to any further appellate challenge, or (ii) has been affirmed by the California Supreme Court, whichever is earlier.

11. "Event of Termination" means any event terminating the Settlement Agreement, including but not limited to: (1) mutual written agreement of the parties to terminate the Settlement Agreement; (2) the Court denying any motion for preliminary or final approval of the Settlement; (3) any reviewing Court reversing the Court's orders approving preliminary or final approval of the Settlement; or (4) any other event set forth in this Settlement Agreement according to which the Settlement Agreement would be terminated. Upon an Event of Termination, the parties shall return to the status quo ante as it existed on the date this Settlement Agreement was signed.

12. "Fairness Hearing" means the final approval hearing(s) scheduled by the Court in the Lawsuit to determine whether to approve this Settlement, finally certify the Settlement Class, and to render an award of Attorneys' Fees and Expenses.

13. "Final Order and Judgment" means the order and final judgment of the Court dismissing the Lawsuit with prejudice and approving this Settlement, substantially in the form of Exhibit "D" to this Settlement Agreement.

14. "Full Engine Replacement" means that the engine in the Class Vehicle was removed and replaced with a different engine (engine block serial number is different), whether the replacement engine is new or remanufactured. If the engine in the Class Vehicle is repaired but is

not replaced with a different engine (engine block serial number is the same as original), then it is considered a Repair. Unless engine remanufacturing of the original engine is clear from the Appropriate Contemporaneous Documentation, it will be deemed a Repair.

15. “Lawsuit” means the proceeding captioned *Adrian Fox, William McMullen, Jr., and Scott Winkler, on behalf of themselves and all others similarly situated v. Nissan North America, Inc.*, No. CGC-09-490470, pending in the Superior Court of the State of California, City and County of San Francisco.

16. “NNA’s Counsel” means:

E. Paul Cauley, Jr., Esq.  
SEDGWICK LLP  
1717 Main Street, Suite 5400  
Dallas, Texas 75201

Paul Riehle, Esq.  
SEDGWICK LLP  
333 Bush Street, 30th Floor  
San Francisco, California 94104

17. “NNA” means Nissan North America, Inc.

18. “NNA Dealer” means any Authorized Nissan Dealer.

19. “Notice” means the Court-approved form of notice of this Settlement to the Settlement Class, consisting of a notice to be sent to the Settlement Class, substantially in the form of Exhibit “A” to the Settlement Agreement.

20. “Notice and Claims Administration Expenses” means all reasonable costs and expenses incurred in connection with preparing, printing, and mailing the Notice, the Claim Forms, and processing and payment of claims.

21. “Parties” means Plaintiffs and NNA.

22. “Plaintiffs” means Adrian Fox, William McMullen, Jr., and Scott Winkler.

23. “Plaintiffs’ Counsel” or “Class Counsel” means:

Jennie Lee Anderson, Esq.  
Lori E. Andrus, Esq.  
Leland Belew, Esq.  
ANDRUS ANDERSON, LLP  
155 Montgomery Street, Suite 900  
San Francisco, California 94104

Jeffrey B. Cereghino, Esq.  
Michael F. Ram, Esq.  
Matt J. Malone, Esq.  
RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP  
101 Montgomery Street, Suite 1800  
San Francisco, California 94104

24. “Preliminary Approval Order” means the order of the Court, substantially in the form of Exhibit “C,” preliminarily approving the Settlement, as described in Paragraph 31, below.

25. “Reimbursement” means NNA has agreed to reimburse any Settlement Class Member who meets the Criteria for Reimbursement and who has paid for Repair Engine Damage subject to the caps described below.

26. “Related Parties” means NNA and all of its past and present officers, directors, agents, designees, servants, sureties, attorneys, employees, parents, associates, shareholders, general or limited partners or partnerships, subsidiaries, divisions, affiliates, insurers, franchises, dealers and all their predecessors or successors in interest, assigns, or legal representatives, as well as any other person, company or entity in the chain of distribution of a Class Vehicle.

27. “Released Claims” means and includes any and all claims, demands, rights, damages, obligations, suits, debts, liens, contracts, agreements and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including those unknown, both at law and in equity, which were or could have been brought against NNA and the Related Parties, or any of them, based upon or related in any way to alleged

defects with power valve screws or any means of attachment of plates in the intake manifold, and any resulting damage to the engine or any other component system, including but not limited to all claims related to a power valve screw(s) becoming loose or dislodging asserted or that could have been asserted in the Lawsuit, whether sounding in tort, contract, breach of warranty, violation of any state or federal statute or regulation, fraud, unjust enrichment, money had and received, restitution, equitable relief, punitive or exemplary damages or any other claims whatsoever under federal law or the law of any state. The “Released Claims” shall explicitly extend to and include any claim for attorneys’ fees, expenses, costs, and catalyst fees under any state’s law or under federal law. The “Released” Claims exclude claims for personal injury.

28. “Released Parties” means NNA and all Related Parties.

29. “Repair” means any Repaired Engine Damage that is not a Full Engine Replacement.

30. “Repaired Engine Damage” means repairs to engines in 2001-2004 model year Nissan Pathfinder with a VQ35 engine, a 2002-2005 model year Nissan Altima equipped with a QR25 engine, or a 2002-2005 model year Nissan Sentra equipped with a QR25 engine, necessitated or caused by a loose or detached power valve screw (which could be referred to as a “butterfly plate/screw,” “intake manifold screw,” “manifold plate/screw,” “throttle plate/screw,” intake flap screw,” or “shutter plate/screw”).

31. “Settlement” means the agreement between the Parties, as embodied in the Settlement Agreement, including all exhibits attached to the Settlement Agreement.

32. “Settlement Class” means all California residents and entities who are former or current owners or lessees of Class Vehicles. Excluded from the Settlement Class are: (1) NNA, any entity or division in which NNA has a controlling interest, its/their legal representatives, officers, directors, assigns and successors; (2) any judge to whom this case is assigned and the judge’s clerks

and any member of the judge's immediate family; (3) anyone with a claim for personal injury based on a loose or detached power valve screw in a Class Vehicle, and (4) current or former owners or lessees of Class Vehicles who have Appropriate Contemporaneous Documentation establishing that, on the date on which Notice is given under the Preliminary Approval Order, they had paid for Repaired Engine Damage after the vehicle had reached 12 years in service or 120,000 miles, whichever occurred first.

33. "Settlement Class Members" means all persons who are members of the Settlement Class, except those who validly request exclusion from the Settlement Class as provided in the Notice.

34. "Settling Parties" includes all Settlement Class Members and NNA.

35. "Voluntary Service Campaign" means the Voluntary Service Campaign that Nissan instituted on August 5, 2005 to repair the power valve screw in a limited number of Nissan Altima and Sentra vehicles to prevent the power valve screw located in the intake manifold from possibly becoming loose. None of the Class Vehicles were included in the Voluntary Service Campaign.

### **REQUIRED EVENTS**

Promptly after the execution of this Settlement Agreement by all of the undersigned:

36. The Parties agree to stay all trial court litigation in the Lawsuit upon the signing of this Settlement Agreement other than proceedings necessary to carry out or enforce the terms and conditions of this Settlement Agreement, and to secure the Preliminary Approval Order and Final Order and Judgment. The parties further specifically agree and hereby stipulate pursuant to California Code of Civil Procedure Section 583.330(a), that the period in which Plaintiffs must bring the case to trial, which currently ends on January 30, 2017, pursuant to stipulation by the parties as stated on the record in open court on March 22, 2016, shall be stayed from May 9, 2016 (the date

upon which the parties entered into a Memorandum of Understanding regarding the settlement) and not reinitiated until the occurrence of any Event of Termination.

37. Class Counsel shall take all necessary steps to obtain preliminary approval of the Settlement and, having done so, shall take all necessary steps consistent with this Settlement Agreement to obtain final approval of the Settlement and the Final Order and Judgment dismissing with prejudice the Lawsuit.

38. Promptly after the Parties execute the Settlement Agreement, Plaintiffs shall file a Motion for Preliminary Approval of Proposed Settlement and Conditional Certification of the Settlement Class (“Motion for Preliminary Approval”). At least three (3) days prior to the filing of the Motion for Preliminary Approval, Class Counsel will give NNA an opportunity to review and comment on the draft Motion for Preliminary Approval. NNA will not oppose the preliminary certification of the Settlement Class, but NNA may, at its discretion, submit such briefing as it deems necessary to support the Motion for Preliminary Approval, clarify its positions, and otherwise protect its interests. In their Motion for Preliminary Approval, Plaintiffs will submit the Settlement Agreement to the Court for Preliminary Approval and shall move for one or more orders in substantially the same form as Exhibit “C” (the Preliminary Approval Order), which by their terms shall;

- a. Preliminarily approve the terms of the Settlement Agreement;
- b. Temporarily and conditionally certify the Settlement Class for Settlement purposes only;
- c. Approve the Notice to be given to the Settlement Class advising them of the Settlement and of the Fairness Hearing to be held to determine the fairness, reasonableness and adequacy of the Settlement;
- d. Approve the Claim Form; and

- e. Schedule a hearing to review objections, if any, comments, and other issues regarding the Settlement and to consider the fairness, reasonableness and adequacy of the Settlement and the application for an award of Attorneys' Fees and Expenses, and to consider whether the Court should issue a Final Order and Judgment (in substantially the form attached as Exhibit "D") approving the Settlement, dismissing the Lawsuit with prejudice as to NNA and ruling upon the fairness and reasonableness of the Attorneys' Fees and Expenses.

39. The Parties agree that certification will be sought on an opt-out basis.

40. No later than sixteen (16) court days before the date set by the Court for the Fairness Hearing, Class Counsel will file a motion for Final Approval of the Settlement and Certification of the Settlement Class (the "Motion for Final Approval"), requesting that the Court enter a Final Order and Judgment, in substantially the same form attached to this Settlement Agreement as Exhibit "D," which will, among other things, dismiss the Lawsuit with prejudice as to NNA, subject to the continuing jurisdiction of the Court as set forth in Paragraph 82 below, approve the Settlement, certify the Settlement Class and render an award of Attorneys' Fees and Expenses. At least seven (7) days prior to the filing of the Motion for Final Approval, Class Counsel will give NNA an opportunity to review and comment on the draft Motion for Final Approval. NNA will not oppose the certification of the Settlement Class, but NNA may, at its discretion, submit such briefing as it deems necessary to support the Motion for Final Approval, clarify its positions, and otherwise protect its interests. Such briefing by NNA will be due no later than nine (9) court days before the date set by the Court for the Fairness Hearing, and NNA shall, at least three (3) days prior the filing of any such brief, give Class Counsel the opportunity to review and comment on the draft brief. Class Counsel and NNA's Counsel shall also be entitled to file responses to any Objections which may have been filed, which responses shall be filed sixteen (16) court days prior to the date set by the Court for the Fairness Hearing. Class Counsel may submit reply papers to any briefs filed by NNA no later than five (5) court days prior to the date set by the Court for the Fairness Hearing.

41. Class Counsel and NNA will cooperate to undertake reasonable actions, consistent with this Settlement Agreement, to promptly obtain the Preliminary Approval Order and Final Order and Judgment. In the event that the Court fails to grant Preliminary Approval or fails to issue a Final Order and Judgment, Class Counsel and NNA's Counsel agree to use all reasonable efforts, consistent with this Settlement Agreement, to address and resolve any concerns identified by the Court.

42. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

**SETTLEMENT TERMS**  
**RELIEF TO SETTLEMENT CLASS MEMBERS AND PLAINTIFF McMULLEN**

43. NNA agrees to reimburse any Settlement Class Member who meets the Criteria for Reimbursement for Repaired Engine Damage in Class Vehicles between: (a) 5 years or 60,000 miles, whichever occurs first, and (b) 12 years or 120,000 miles, whichever occurs first, subject to the caps described below:

- a) For Repairs less than Full Engine Replacement on Class Vehicles that exceed five (5) years or 60,000 miles, whichever occurs first, but fewer than eight (8) years or 80,000 miles, whichever occurs first, the caps on Reimbursement are:

Sentra/Altima	Pathfinder
\$1000	\$1500

- b) For Repairs less than Full Engine Replacement on Class Vehicles that exceed eight (8) years or 80,000 miles, whichever occurs first, but fewer than ten (10) years or 100,000 miles, whichever occurs first, the caps on Reimbursement are:

Sentra/Altima	Pathfinder
\$750	\$1250

- c) For Repairs less than Full Engine Replacement on Class Vehicles that exceed ten (10) years or 100,000 miles, whichever occurs first, but fewer than twelve (12) years or 120,000 miles, whichever occurs first, the caps on Reimbursement are:

Sentra/Altima	Pathfinder
\$500	\$1000

- d) For Full Engine Replacements on Class Vehicles that exceed five (5) years or 60,000 miles, whichever occurs first, but fewer than eight (8) years or 80,000 miles, whichever occurs first, the caps on Reimbursement are:

Sentra/Altima	Pathfinder
\$2000	\$3000

- e) For Full Engine Replacements on Class Vehicles that exceed eight (8) years or 80,000 miles, whichever occurs first, but fewer than ten (10) years or 100,000 miles, whichever occurs first, the caps on Reimbursement are:

Sentra/Altima	Pathfinder
\$1750	\$2750

- f) For Full Engine Replacements on Class Vehicles that exceed ten (10) years or 100,000 miles, whichever occurs first, but fewer than twelve (12) years or 120,000 miles, whichever occurs first, the caps on reimburse are:

Sentra/Altima	Pathfinder
\$1500	\$2500

The mileage or years on the Class Vehicle as they relate to eligibility shall be determined as of the earliest of either the date of the failure or Repair, as reflected in the Appropriate Contemporaneous Documentation.

44. In exchange for a complete release of all claims against the Released Parties by Plaintiff McMullen who is not a Settlement Class Member under Paragraphs 79-80, NNA agrees to pay Plaintiff William McMullen, Jr. \$5,500.

**NOTICE TO THE SETTLEMENT CLASS**

45. The Claims Administrator shall be responsible for implementing the Notice to the Settlement Class.

46. Dissemination of Notice to the Settlement Class shall be accomplished as described in Paragraphs 48-52, below. The Claims Administrator shall be responsible for: (i) mailing of the Notice, (ii) responding to requests for the Notice; and (iii) administration of claims, as set forth below. All Notice and Claims Administration Expenses shall be paid by NNA.

47. The Claims Administrator shall sign a confidentiality agreement in a form agreed to by Class Counsel and NNA's Counsel, which shall provide that the names, addresses and other information about specific Settlement Class Members provided by either Class Counsel, NNA or by individual Settlement Class Members, shall all be treated as confidential and shall be used by the Claims Administrator only as required by this Settlement Agreement.

48. NNA will provide the Claims Administrator with Vehicle Identification Number pattern used for vehicles with the specific engine for each model. Using this Vehicle Identification Number information, the Claims Administrator will obtain address data for the Settlement Class from a qualified third-party, such as R.L. Polk, that maintains databases related to the automobile industry and which specializes in obtaining such information from, inter alia, the Department of Motor Vehicle for the State of California. The Claims Administrator will review the address data provided by the third-party vendor, check addresses for validity, eliminate duplications and process

the addresses through the National Change of Address database for the purpose of updating the addresses.

49. Information concerning the claims for reimbursement made pursuant to Paragraph 43 above may be provided by the Claims Administrator to Class Counsel or NNA's Counsel to the extent it is necessary and as provided in Paragraphs 64-65, below.

50. The Claims Administrator shall only mail a single, direct mail Notice, postage prepaid, via the United States Postal Service to the Settlement Class. The Notice shall be substantially in the same form as the exemplar submitted as Exhibit "A" to this Settlement Agreement.

51. The Claims Administrator will include a Claim Form, substantially in the form set forth in Exhibit "B" to this Settlement Agreement, in the mailed Notice to the Settlement Class.

52. The Claims Administrator shall attempt to secure updated addresses for any Settlement Class Member whose Notice is returned as undeliverable and resend the Notice to the updated address.

53. The Claims Administrator shall have the responsibility to prepare and provide the notices pursuant to California Rule of Court, Rule 3.766(d). Class Counsel and NNA's Counsel shall cooperate in the drafting of such notices, and Class Counsel shall provide to NNA's Counsel any and all information in its possession necessary for the preparation of these notices.

54. The Claims Administrator shall establish an independent website and maintain a toll free number and an e-mail address for Settlement Class Members to seek answers to questions about the Settlement, Notice, and Claim Form.

55. The Claims Administrator shall provide declarations to the Court, with a copy to Class Counsel and NNA's Counsel, attesting to the measures undertaken to provide Claim Forms to

the Settlement Class. Upon request, the Claims Administrator shall provide to Class Counsel and NNA's Counsel information and data concerning the claims made, the amount of each claim and related claims information to enable Class Counsel and NNA's Counsel to monitor the claims process. Any vendor other than the Claims Administrator which distributes the Notice shall provide declarations to the Court, with a copy to Class Counsel and NNA's Counsel attesting to the measures undertaken to provide the Notice to the Settlement Class. At the end of the administration process, the Claims Administrator shall render a final report to Class Counsel and NNA's counsel which provides (i) the number of claims submitted; (ii) the number of claims approved; (iii) the number of claims denied and the number of claims still pending determination; (v) the number of claims appealed after denial; (vi) the total dollar amount of claims submitted; and (vii) the total dollar amount of claims paid or to be paid.

56. No later than twenty-three (23) court days prior to the Fairness Hearing, the Claims Administrator shall provide a declaration to the Court, with a copy to Class Counsel and NNA's Counsel, attesting that Notice was disseminated in a manner consistent with the terms of this Settlement Agreement, or those otherwise required by the Court.

57. The Notice described in Paragraph 19 and website(s) contemplated by this Settlement Agreement will be the only type of notice of the terms of this Settlement to the public or Settlement Class Members, and neither side may advertise or publicize the settlement by any other means, with the exception that Plaintiffs' counsel will be permitted to put notification on their firms' websites (a) advising of the settlement and (b) directing potential class members to the settlement website. Counsel for the Parties will be permitted to respond to inquiries from reporters regarding the Settlement of this Lawsuit with a jointly prepared statement or response, which the Parties shall jointly prepare prior to the date that the Preliminary Approval Order is entered, but counsel for the

Parties shall not initiate communication with reporters, or any form of print, digital, social or broadcast media directly or through representatives concerning the specific terms of this Settlement beyond information that may be included on the firms' websites as described above. Nothing herein shall prevent (1) NNA from communicating with its customers or responding to inquiries in the ordinary course of its business or (2) Class Counsel from responding to inquiries or comments from Settlement Class Members after preliminary approval of the Settlement.

58. NNA shall pay all Notice and Claims Administration Expenses, subject to the terms of this Settlement Agreement.

#### **CLAIMS ADMINISTRATION AND CLAIMS PROCEDURE**

59. Settlement Class Members who believe they are eligible to receive reimbursement will be directed to fill out and send to the Claims Administrator the Claim Form, in substantially the form attached to this Settlement Agreement as Exhibit "B." The Claim Form may be sent to the Claims Administrator via mail, as provided below in Paragraph 61, or via the settlement website. Upon receiving a Claim Form from a potential claimant, the Claims Administrator will review the documentation and confirm or deny the member's eligibility for reimbursement pursuant to Paragraphs 9 and 43, above.

60. The Claim Form, in substantially the form attached to this Settlement Agreement as Exhibit "B," will be presented to the Court for preliminary approval.

61. All Claim Forms must be submitted within the Claims Period. Any Settlement Class Member who fails to submit a Claim Form by the end of the Claims Period shall be forever barred from receiving any payment pursuant to this Settlement Agreement, and shall in all other respects be bound by the terms of this Settlement Agreement and by the Final Order and Judgment entered in the Lawsuit. If a Claim Form is transmitted online, it shall be deemed to have been submitted on the

date it was transmitted. If a Claim Form is mailed first-class, postage prepaid, and addressed in accordance with the instructions contained in this Settlement Agreement and received with a postmark indicated on the envelope, the Claim Form shall be deemed to have been submitted on the date of the postmark. In all other cases, the Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator or its designee.

62. The Claims Administrator will contact a Settlement Class Member to obtain additional information or supporting documentation if a claim is incomplete. If after such contact a Claim Form still does not meet the requirements set forth in this Settlement Agreement and in the Claim Form instructions, or fails to include all required supporting documentation, such Claim shall be rejected. Where a good faith basis exists, the Claims Administrator may reject a Settlement Class Member's Claim Form for, among other reasons, the following: (a) the Settlement Class Member seeks payment for repairs that are not covered by the terms of this Settlement Agreement; (b) failure to provide Appropriate Contemporaneous Documentation of Repaired Engine Damage; (c) the Claim Form is duplicative of another Claim Form; (d) the person submitting the Claim Form is not a Settlement Class Member; (e) failure to submit a Claim Form by the end of the Claims Period; and (f) the Claim Form otherwise does not meet the requirements of this Settlement Agreement.

63. The Claims Administrator shall determine whether a Claim Form meets the requirements set forth in this Settlement Agreement. Each Claim Form shall be submitted to and reviewed by the Claims Administrator, who shall determine in accordance with the terms and conditions of this Settlement Agreement the extent, if any, to which each claim shall be allowed. The Claims Administrator shall use all reasonable efforts and means to identify and reject duplicate and/or fraudulent claims, including, without limitation, maintaining a record of each and every payment made to a Settlement Class Member.

64. Claim Forms that do not meet the terms and conditions of this Settlement Agreement, absent submission of additional information by the Settlement Class Member as described in Paragraph 62, above, shall be rejected by the Claims Administrator. The Claims Administrator shall notify the Settlement Class Member by U.S. Mail. Class Counsel and Defense Counsel shall be provided with copies of all such notifications to Settlement Class Members.

65. If any person whose Claim Form has been rejected, in whole or in part, desires to contest such rejection, the person must, within twenty (20) calendar days after the date of mailing of the notice of the rejection described in Paragraph 64, above, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation and requesting review. The Claims Administrator shall provide to NNA's Counsel and Class Counsel a copy of any claimant's notice and statement of reasons for contesting the rejection within seven (7) days of the Claims Administrator's receipt of same. If the dispute concerning a claim cannot otherwise be resolved by NNA's Counsel, Class Counsel and the Claims Administrator, within forty-five (45) calendar days of the request for review, the dispute shall be submitted to the Court for final decision.

66. No person shall have any claim against NNA or any of the Related Parties, NNA's Counsel, the Plaintiffs, the Settlement Class, Class Counsel, or the Claims Administrator based on any eligibility determinations, distributions or payments made in accordance with this Settlement Agreement. This provision does not affect or limit in any way the right of review by the Court of any disputed Claim Forms or determinations regarding the amount of any monetary benefits, to the extent provided above.

67. Within one-hundred twenty (120) days of the Effective Date of Settlement, NNA or the Claims Administrator will issue and mail to each Authorized Reimbursement Claimant a check

for reimbursement of the costs of repair for which the Authorized Reimbursement Claimant has submitted Appropriate Contemporaneous Documentation, as set forth in Paragraph 1, above, and as determined by the Claims Administrator.

68. If this Settlement Agreement is not approved or for any reason the Effective Date of Settlement does not occur, no benefits or distributions of any kind shall be made pursuant to this Settlement Agreement, except for the cost of Notice and Claims Administration Expenses incurred and the value of any reimbursements paid pursuant to Paragraph 43, if already provided to a Settlement Class Member. In such event, any funds deposited by NNA into any account opened for the purpose of this Settlement shall revert to NNA, together with all interest on the deposited funds.

#### **OBJECTIONS AND REQUESTS FOR EXCLUSION BY SETTLEMENT CLASS MEMBERS**

69. Any Settlement Class Member who intends to object to the fairness, reasonableness and adequacy of the Settlement (an “Objection”) must file a written Objection with the Court, and mail a copy to NNA’s Counsel and Class Counsel at the addresses set forth below. The Notice will provide a specific date by which the Objection must be filed and copies postmarked, which date will be twenty-three (23) court days prior to the Fairness Hearing date specified in the Notice.

70. To state valid Objections to the Settlement, a Settlement Class Member making Objections must provide the following information in his or her written Objections: (i) the Settlement Class Member’s full name and current address; (ii) the model year and make of his or her vehicle(s) and approximate date(s) of purchase; (iii) whether the Settlement Class Member still owns the vehicle(s); (iv) the VIN number of the vehicle(s); (v) current odometer mileage of the vehicle(s) currently owned; (vi) whether the Settlement Class Member has obtained repairs to his or her vehicle necessitated by a loosened and/or detached power valve screw and, if so, the odometer mileage and date at the time of the repair or replacement; (vii) a specific and clear statement of the Settlement

Class Member's reasons for objecting to the Settlement, including the factual and legal grounds for his or her position; (viii) a detailed list of any other objections to any class action settlements submitted to any court, whether State, Federal, or otherwise, in the United States in the previous five (5) years; (ix) whether the Settlement Class Member intends to appear at the Fairness Hearing and whether the Settlement Class Member will be represented by separate counsel; and (x) the Settlement Class Member's signature.

71. No Settlement Class Member shall be entitled to be heard at the Fairness Hearing (whether individually or through separate counsel) or to object to the Settlement Agreement, and no written Objections or brief submitted by any Settlement Class Member shall be received or considered by the Court at the Fairness Hearing, unless written notice of the Settlement Class Member's intention to appear at the Fairness Hearing and copies of any written Objections or briefs have been filed with the Court and served on Class Counsel and NNA's Counsel on or before the date specified in the Preliminary Approval Order and Notice. Settlement Class Members who fail to timely file and serve written Objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any Objection (whether by appeal or otherwise) to the Settlement Agreement.

72. Objections must be served:

Upon NNA's Counsel at:

Paul Riehle, Esq.  
SEDGWICK LLP  
333 Bush Street, 30th Floor  
San Francisco, California 94104

Upon Class Counsel at:

Jennie Lee Anderson, Esq.

ANDRUS ANDERSON, LLP

155 Montgomery Street, Suite 900  
San Francisco, California 94104

73. Settlement Class Members may elect to exclude themselves from this Settlement Agreement, relinquishing their rights to benefits under this Settlement Agreement. A Settlement Class Member wishing to exclude himself/herself from the Settlement must send to the Claims Administrator a signed letter including (1) his/her name, (2) address, (3) telephone number, (4) model and year of vehicle, (5) mileage at the time of Notice, and (6) providing a clear statement communicating that he/she elects to be excluded from the Settlement Class, does not wish to be a Settlement Class Member and elects to be excluded from any judgment entered pursuant to this Settlement Agreement. Any request for exclusion must be postmarked on or before the exclusion deadline provided in the Court's Preliminary Approval Order and the Notice, or on such other date set by the Court. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the date specified in the Preliminary Approval Order and Notice, shall be bound by all terms of the Settlement Agreement and the Final Order and Judgment, regardless of whether they have requested exclusion from the Settlement.

74. Any Settlement Class Member who submits a timely request for exclusion may not file an Objection to the Settlement and shall be deemed to have waived any rights or benefits under the Settlement.

75. Not later than three (3) business days after the deadline for submission of requests for exclusion, the Claims Administrator shall provide to Class Counsel and NNA's Counsel a complete exclusion list together with copies of the exclusion requests. Notwithstanding any other provision of this Settlement Agreement, if the number of Settlement Class Members who exclude themselves

from the Settlement is in excess of seventy-five (75), not including those whose vehicle had more than 12 years or 120,000 miles, whichever occurs first, as of the date of the Notice, NNA, in its sole discretion, may rescind and revoke the entire Settlement and this Settlement Agreement, thus rendering the Settlement void in its entirety, by sending written notice that NNA revokes the Settlement pursuant to this Paragraph to Class Counsel within fourteen (14) days following the date the Claims Administrator informs NNA of the number of Settlement Class Members who have requested exclusion from the Settlement pursuant to the provisions set forth above.

76. Upon expiration of the deadlines for filing objections and requests for exclusion from the Settlement as set forth in the Preliminary Approval Order and Notice, and on the date set forth in the Preliminary Approval Order and Notice, the Fairness Hearing shall be conducted to determine final approval of the Settlement, along with the amount properly payable for Attorneys' Fees and Expenses. Upon final approval of the Settlement by the Court at or after the Fairness Hearing, the Parties shall present the Final Order and Judgment, substantially in the form attached to this Settlement Agreement as Exhibit "D," to the Court for approval and entry.

#### **RELEASES, DISMISSAL OF CONSOLIDATED LAWSUIT AND JURISDICTION OF COURT**

77. It is agreed that upon the Effective Date of Settlement, all Settlement Class Members and their heirs, executors, estates, predecessors, successors, assigns, agents and representatives shall be deemed to have jointly and severally released and forever discharged NNA and the Related Parties from any and all Released Claims, whether known or unknown, and shall be fully and forever barred and enjoined from instituting or prosecuting in any court or tribunal, either directly or indirectly, individually or representatively, any and all Released Claims against NNA or the Related Parties.

78. Settlement Class Members who have timely requested exclusion from the settlement by the date set by the Court do not release their claims, will not, and cannot, obtain any of the benefits of the Settlement.

79. It is further agreed that, upon the Effective Date of Settlement, Plaintiff McMullen and his heirs, executors, estates, predecessors, successors, assigns, agents and representatives shall be deemed to have jointly and severally released and forever discharged NNA and the Related Parties from any and all Released Claims, whether known or unknown, and shall be fully and forever barred and enjoined from instituting or prosecuting in any court or tribunal, either directly or indirectly, individually or representatively, any and all Released Claims against NNA or the Related Parties.

80. The claims released, settled and compromised by this Settlement Agreement include known and unknown claims relating to the claims in this lawsuit, and this Settlement Agreement is expressly intended to cover and include all such injuries or damages relating to the claims in this lawsuit, including all rights of action thereunder. Settlement Class Members and Plaintiffs, including McMullen, expressly, knowingly and voluntarily waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her Settlement with the debtor.

Settlement Class Members and Plaintiffs, including McMullen, expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory which is similar, comparable or equivalent to Section 1542, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such

waiver and relinquishment, the Settlement Class Members and Plaintiffs including McMullen acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is their intention to fully, finally and forever settle and release all of the Released Claims known or unknown, suspected or unsuspected, which they have against NNA or Related Parties. In furtherance of such intention, the release herein given by the Settlement Class Members and Plaintiffs, including McMullen, to NNA and Related Parties shall be and remain in effect as a full and complete general release of the Released Claims notwithstanding the discovery or existence of any such additional different claims or facts.

81. Upon the Effective Date of Settlement, Plaintiffs' Fourth Amended Class Action Complaint in the Lawsuit shall be dismissed with prejudice.

82. Notwithstanding the dismissal of the Lawsuit pursuant to Paragraph 81 above, the Court shall retain jurisdiction over the Parties to the Settlement Agreement with respect to the future performance of the terms of the Settlement Agreement.

83. Upon the Effective Date of Settlement: (a) the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of Settlement Class Members; (b) the Released Parties shall not be subject to liability or expense of any kind other than obligations under this Settlement Agreement to any Settlement Class Members; and (3) Settlement Class Members shall be permanently barred and enjoined from initiating, asserting, or prosecuting against the Released Parties in any federal or state court or tribunal any and all Released Claims.

#### **EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

84. In the event that (a) the Court does not enter the Preliminary Approval Order specified in this Settlement Agreement; (b) the Court does not finally approve the Settlement as

provided in this Settlement Agreement; (c) the Court does not enter the Final Order and Judgment as provided in any material respects in this Settlement Agreement; or (d) the Settlement does not become final for any other reason, and the Parties, in their sole and unfettered discretion following reasonable efforts, do not agree in writing to modify this Settlement Agreement and the Settlement is not consummated, this Settlement Agreement shall be null and void, and any order or judgment entered by the Court in furtherance of this Settlement shall be vacated.

85. If the event or events outlined in Paragraph 84 above occur(s), the Parties shall proceed in all respects as if this Settlement Agreement had not been executed and the Parties shall in no way be prejudiced in prosecuting or defending the Lawsuit. If the Settlement Class has been certified by the Court for the purpose of the Settlement, then that class certification will be null and void, and NNA shall have the right to object to certification of the Settlement Class or any other class at any future time. In the event an appeal is filed from the Court's Final Order and Judgment, or any other appellate review is sought prior to the Effective Date of Settlement, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

#### **SETTLEMENT NOT EVIDENCE AGAINST PARTIES**

86. The Released Parties deny any and all charges alleged in the Lawsuit and deny all wrongdoing whatsoever. This Settlement Agreement is not a concession or admission and shall not be used against any of the Released Parties as an admission or indication with respect to any claim of any fault, concession or omission by any of the Released Parties. Whether or not the Settlement Agreement is finally approved, neither the Settlement Agreement, nor any document, statement, proceeding or conduct related to this Settlement Agreement, nor any reports or accounts thereof, shall in any event be: (a) construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose, including, but not limited to, evidence of a presumption, concession,

indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (b) disclosed or referred to for any purpose, or offered or received in evidence, in any further proceeding in the Lawsuit, or any other civil, criminal or administrative action or proceeding against any of the Released Parties except for purposes of settling the Lawsuit pursuant to this Settlement Agreement. The limitations set forth in this paragraph do not apply to use and/or disclosure by any of the Released Parties against Settlement Class Members or third parties, including, without limitation, for purposes of supporting a defense or counterclaim of res judicata, collateral estoppel, release, good faith settlement, judgment bar, offset or reduction or any other theory or claim of issue preclusion or similar defense or counterclaim.

87. Whether or not this Settlement Agreement is finally approved by the Court, the Parties agree that the Settlement Agreement shall not constitute evidence of the propriety of class certification for the purpose of litigation or for trial in the Lawsuit or any other case.

#### **ATTORNEYS' FEES AND EXPENSES**

88. Class Counsel shall be entitled to apply to the Court for an award of reasonable Attorneys' Fees and Expenses in a total amount up to, but not to exceed, \$1,421,000.00 (one million, four hundred twenty one thousand dollars). Class Counsel may also apply to the Court for an award to Class Plaintiffs Adrian Fox and Scott Winkler of an incentive payment of \$5,000 per Class Plaintiff. The award of Attorneys' Fees and Expenses will include all fees, expenses and costs for Class Counsel in the Lawsuit. Class Counsel shall not be permitted to petition the Court for any additional payments for fees (including catalyst fees), costs, expenses or incentive awards, and the award shall be for all claims for Attorneys' Fees and Expenses and incentive awards past, present and future incurred in the Lawsuit. The actual amount of any award of Attorneys' Fees and Expenses will be determined by the Court. The Parties negotiated and agreed to the amount of

Attorneys' Fees and Expenses for which Class Counsel could apply only after reaching agreement upon all other material terms of this Settlement Agreement.

89. NNA and its attorneys agree not to oppose any applications for Attorneys' Fees and Expenses of \$1,421,000.00 (one million, four hundred twenty one thousand dollars) or less by Class Counsel and the Plaintiff incentive payments of \$5,000 to Plaintiffs Fox and Winkler each, so long as such applications are consistent with the provisions of this Settlement Agreement, and further agree to pay any amount awarded by the Court for Attorneys' Fees and Expenses that does not exceed \$1,421,000.00 (one million, four hundred twenty one thousand dollars).

90. Any Attorneys' Fees and Expenses awarded by the Court to Class Counsel and incentive awards awarded by the Court to Plaintiffs shall be paid by NNA through direct wire transfer to an escrow account maintained by ANDRUS ANDERSON, LLP, within twenty-one (21) days after the Effective Date of Settlement. In the event of an appeal of the approval of the Settlement or of the Court's award of Attorneys' Fees and Expenses, the awarded amount of Attorneys' Fees and Expenses shall, within twenty-one (21) days after a Notice of Appeal is filed, be deposited in an interest bearing account at an institution approved by both NNA's Counsel and Class Counsel. Within twenty-one (21) days after the final resolution of any appellate proceedings and related Court proceedings with regard to the approval of the Settlement or award of Attorneys' Fees and Expenses, assuming such court approval has been upheld and affirmed, the amount of Attorneys' Fees and Expenses awarded by the Court in Attorneys' Fees and Expenses shall be paid to Class Counsel, together with all accrued interest on the said amount. Such a deposit shall have the effect of superseding any judgment or order pertaining to awarding Class Counsel attorneys' fees, expenses, costs, and catalyst fees under any state's law or under federal law pending the resolution of the appeal. NNA shall have no liability or other responsibility for the allocation of the Attorneys' Fees

and Expenses among and between Class Counsel or for the allocation of the incentive payments among and between Plaintiffs. In the event any dispute arises relating to the allocation of the Attorneys' Fees and Expenses, Class Counsel agree to hold NNA harmless from any and all liabilities, costs and expenses relating to such dispute. Class Counsel shall distribute the Attorneys' Fees and Expenses amount awarded among all of the Plaintiffs' Counsel, in their sole discretion.

91. NNA's payment of the Attorneys' Fees and Expenses, as described in this Settlement Agreement, shall constitute full satisfaction of NNA's obligation to pay any person, attorney or law firm for attorneys' fees, costs and expenses incurred on behalf of the Plaintiffs and the Settlement Class, and shall relieve NNA and the Related Parties from any other claims or liability to any other attorney or law firm or person for any attorneys' fees, expenses and costs to which any of them may claim to be entitled on behalf of Plaintiffs and the Settlement Class that are in any way related to the Released Claims.

92. In the event that Class Counsel seek, request, or apply in any forum, in connection with this Settlement or the claims asserted in the Lawsuit, for an award of Attorneys' Fees and Expenses in excess of \$1,421,000.00 (one million, four hundred twenty one thousand dollars), as described in Paragraph 88, above, NNA shall have the right, in its sole discretion, to terminate, cancel and/or set aside this Settlement Agreement, in which event the Settlement would become null and void. Plaintiffs and Class Counsel agree that no application for an award for Attorneys' Fees and Expenses in connection with the Lawsuit shall be submitted, filed or pursued in any other court or forum. If NNA opposes Class Counsel's request for Attorneys' Fees and Expenses of \$1,421,000.00 (one million, four hundred twenty one thousand dollars) or less or seeks a judgment awarding less than \$1,421,000.00 (one million, four hundred twenty one thousand dollars), Plaintiffs

shall have the right to terminate, cancel or set aside this Settlement Agreement in which event the Settlement shall become null and void.

93. In the event that this Settlement Agreement is not finally approved by the Court, the Parties agree that Class Counsel shall not be entitled to and shall not seek any Attorneys' Fees and Expenses in connection with any benefits received by any Settlement Class Members related to the proposed Settlement under this Settlement Agreement.

#### **CONFIDENTIAL DISCOVERY MATERIALS**

94. Within fourteen (14) days of the Effective Date of Settlement, Class Counsel shall comply with the return of documents provision under the terms and conditions of the Agreed Protective Order entered between the Parties in the Lawsuit.

#### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

95. Class Counsel who are signatories to this Settlement Agreement represent and warrant that they have the authority, on behalf of all Plaintiffs, to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated by this Settlement Agreement. Class Counsel further warrant and represent that they have authority to seek the dismissal with prejudice of the Lawsuit, as contemplated above. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel, individually and on behalf of Plaintiffs, and constitutes their legal valid and binding obligation.

96. NNA represents and warrants that NNA has the authority to execute, deliver and perform this Settlement Agreement and to consummate the transactions contemplated by this Settlement Agreement. The execution, delivery and performance by NNA of this Settlement Agreement and the consummation by NNA of the actions contemplated by this Settlement Agreement have been duly authorized by all necessary corporate action on the part of NNA. This

Settlement Agreement has been duly and validly executed and delivered by NNA, by and through NNA's Counsel, and constitutes NNA's legal, valid and binding obligation.

### **MISCELLANEOUS PROVISIONS**

97. This Settlement Agreement (whether or not the Settlement Agreement receives final approval), all exhibits, documents or instruments delivered pursuant to this Settlement Agreement and all statements, transactions or proceedings in connection with the negotiation, execution or implementation of this Settlement Agreement are not intended to be and shall not be construed as or deemed to be evidence of any admission or concession by NNA or the Related Parties of any liability or wrongdoing or of the truth of any allegations in any complaint, and none of them shall be admissible in evidence for any such purpose in this or any other proceeding.

98. The headings in this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

99. This Settlement Agreement, including all appendices and exhibits attached to this Settlement Agreement, may not be modified or amended except in writing signed by all Parties to this Settlement Agreement

100. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

101. The terms of this Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of California, without giving effect to any of its conflict of laws provisions.

102. Except as specifically provided in this Settlement Agreement, the Parties shall each bear its own costs and attorneys' fees including taxable Court costs.

103. All of the exhibits to this Settlement Agreement are material and integral parts of this Settlement Agreement and are fully incorporated into this Settlement Agreement by this reference. This Settlement Agreement and the Exhibits to this Settlement Agreement constitute the entire, fully integrated agreement among the Parties and void, cancel and supersede all prior written and unwritten agreements and understandings pertaining to the Settlement. The Parties each covenant and warrant that they have not relied upon any promise, representation or undertaking not set forth in writing herein to enter into this Settlement Agreement.

104. If any provision, paragraph, article, or other portion of this Settlement Agreement is found to be void, all of the remaining portions of this Settlement Agreement shall remain in effect and be binding upon mutual agreement of the Parties.

105. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

106. Any notice, request or instruction or other document to be given by any Party to this Settlement Agreement to any other Party to this Settlement Agreement (other than the Notice to the Settlement Class and accompanying Claim Form) shall be in writing and delivered via e-mail and sent by registered or certified mail, postage prepaid:

Upon NNA at:

E. Paul Cauley, Jr., Esq.  
SEDGWICK LLP  
1717 Main Street, Suite 5400  
Dallas, Texas 75201  
Email: paul.cauley@sedgwicklaw.com

Paul Riehle, Esq.  
SEDGWICK LLP  
333 Bush Street, 30th Floor  
San Francisco, California 94104

Email: paul.riehle@sedgwicklaw.com

Upon Class Counsel at:

Jennie Lee Anderson, Esq.  
Lori E. Andrus, Esq.  
Leland Belew, Esq.  
ANDRUS ANDERSON, LLP  
155 Montgomery Street, Suite 900  
San Francisco, California 94104  
Email: jennie@andrusanderson.com  
Email: lori.andrus@andrusanderson.com  
Email: leland.belew@andrusanderson.com

Michael F. Ram, Esq.  
Jeffrey B. Cereghino, Esq.  
Matt J. Malone, Esq.  
RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP  
101 Montgomery Street, Suite 1800  
San Francisco, California 94104  
Email: mram@rocklawcal.com  
Email: jbc@rocklawcal.com  
Email: mjm@rocklawcal.com

107. All applications for Court approval or Court orders required or permitted under this Settlement Agreement shall be made with reasonable prior notice to all Parties.

108. The determination of the terms of, and the drafting of, this Settlement Agreement including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Because this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of Settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement.

109. The Parties agree to hold all proceedings in the Lawsuit, except such proceedings as may be necessary to implement and complete the Settlement Agreement, in abeyance pending the Fairness Hearing to be conducted by the Court.

110. The Parties believe that this Settlement Agreement is a fair, adequate and reasonable settlement of the Lawsuit and have arrived at this Settlement in arm's length negotiations, taking into account all relevant factors, present and potential.

**THE PARTIES:**

**PLAINTIFFS**

By: \_\_\_\_\_  
Adrian Fox

By: \_\_\_\_\_  
William McMullen, Jr.

By: \_\_\_\_\_  
Scott Winkler

**ANDRUS ANDERSON, LLP**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2016  
Jennie Lee Anderson  
Lori E. Andrus, Esq.  
Leland Belew, Esq.  
ANDRUS ANDERSON, LLP  
155 Montgomery Street, Suite 900  
San Francisco, California 94104

**RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2016

Jeffrey B. Cereghino, Esq.  
Michael F. Ram, Esq.  
Matt J. Malone, Esq.  
RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP  
101 Montgomery Street, Suite 1800  
San Francisco, California 94104

*Counsel for Plaintiffs and, upon approval by the Court, for the Settlement Class*

**DEFENDANT**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2016

On Behalf of Nissan North America, Inc.

**SEDGWICK LLP**

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2016

Paul Riehle  
Sedgwick LLP  
333 Bush Street, 30<sup>th</sup> Floor  
San Francisco, California 94194

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2016

E. Paul Cauley, Jr.  
Sedgwick LLP  
1717 Main Street, Suite 5400  
Dallas, Texas 75201

*Counsel for Defendant Nissan North America, Inc.*

# **EXHIBIT A**

## **NOTICE OF PROPOSED SETTLEMENT**

IF YOU BOUGHT OR LEASED A 2001-2004 MODEL YEAR NISSAN PATHFINDER OR 2002-2005 MODEL YEAR NISSAN ALTIMA OR SENTRA VEHICLE YOU MAY QUALIFY FOR BENEFITS FROM A CLASS ACTION SETTLEMENT

**You should read this Notice carefully because it may affect your legal rights.**

*A State Superior Court ordered this Notice. It is not from a lawyer, and you are not being sued.*

- This settlement resolves a lawsuit about Nissan’s obligations, if any, to disclose an alleged risk of and/or pay for repairs for engine damage relating to loosened or detached power valve screws in certain Nissan Pathfinders, Sentras and Altimas, which, if occurring, the Malfunction Indicator Lamp (MIL) may illuminate and unstable engine idling or power loss may occur.
- The settlement will provide reimbursement for past repairs to specific class members.
- Your legal rights are affected whether or not you act. ***Please read this Notice carefully.***

### **Your Rights and Choices:**

<b>You may:</b>	<b>Summary:</b>	<b>Read more:</b>	<b>Deadline:</b>
<b>Do Nothing</b>	You are included in the class and may submit a claim for reimbursement of costs for repairs necessitated by loosened or detached power valve screws. However, you give up your right to sue for any other damages related in any way to power valve screws in the engine.	Page ____	
<b>Submit a Claim Form</b>	If you qualify for a reimbursement benefit, this is the <u>only</u> way to get a <u>reimbursement</u> benefit. <b>Read this Notice carefully for information on deadlines.</b>	Page ____	<b>Postmarked by:</b>
<b>Stay in the class and hire your own attorney</b>	If you want your own attorney to represent you, you must pay for him or her yourself. Your	Page ____	<b>Filed by:</b>

	attorney must file a Notice of Appearance.		
<b>Opt out of the settlement</b>	Ask to get out of the settlement. You get no settlement benefits, but keep your right to file your own lawsuit, if you want.	Page ____	<b>Received by Settlement Administrator by:</b>
<b>Object</b>	Remain a Settlement Class Member and tell the Court what you do not like about the settlement.	Page ____	<b>Filed by:</b>

*No settlement benefits will be distributed unless the Court approves the settlement and it becomes final.*

For Answers to Frequently Asked Questions, visit [\[redacted\]](#) or call [\[redacted\]](#)

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## **Basic Information**

### ***1. What is this lawsuit about?***

A lawsuit called *Fox, et al. v. Nissan North America, Inc.*, Case No. CGC-09-490470, was filed against Nissan North America, Inc. (“Nissan”) by three individuals on behalf of themselves and all current and former California residents who purchased or leased 2001-2004 model year Nissan Pathfinder vehicles equipped with a VQ35 engine and 2002-2005 model year Nissan Altima and Sentra vehicles equipped with a QR25 engine (“Class Vehicles”). The people who sued are called the Plaintiffs. The company they sued, Nissan, is called the Defendant.

Plaintiffs allege that the engines in the Class Vehicles were assembled with power valve screws that are not secure, are prone to loosen and detach, may cause the Malfunction Indicator Lamp to illuminate and may cause unstable engine idling or power loss. They also allege detachment of the screw can result in engine failure and is a risk to personal safety. The Plaintiffs brought claims against Nissan for breach of express warranty, breach of implied warranty, unjust enrichment, fraudulent concealment and violation of the California Consumer Legal Remedies Act and Unfair Competition Law. They sought various injunctive remedies and damages.

Nissan has and continues to strongly deny all of Plaintiffs’ claims including the asserting that detached power valve screws provide any risk to personal safety, denies all allegations of wrongdoing, fault, liability or damage of any kind to Plaintiffs of the Settlement Class (as defined below), and believes that this litigation is without merit.

### ***2. Why is the Lawsuit a Class Action?***

In a “class action lawsuit,” one or more people called “Class Representatives” sue on behalf of people who might have similar claims. The people together are a “Class” or “Class Members.” The Court preliminarily has decided that this lawsuit can be a class action for settlement purposes. This means that, if the settlement does not receive final approval by the Court, then Settlement Class Members will not get benefits under this settlement, and Plaintiffs will need to go back to Court to prove their case through trial.

### ***3. Why is there a Settlement?***

While the Plaintiffs believe that their case is meritorious, they have agreed to this settlement because, if it is approved, it provides benefits to the class, while avoiding significant the risks associated with a trial.

Nissan believes the lawsuit has no merit, but nevertheless is willing to enter into this settlement as a further commitment to its customers, to provide extra peace of mind to its customers, and to end further litigation, which could be protracted, burdensome and expensive.

The Court has not decided who is right or wrong in this lawsuit. This proposed settlement is not, and should not be considered as evidence of Nissan's admission or concession of any fault, wrongdoing or liability whatsoever.

## Who is in the Settlement

### *4. How do I know if I am part of the settlement?*

You are a Settlement Class Member and part of the settlement if you are a California resident or entity who is either a current or former owner or lessee of a 2001-2004 model year Nissan Pathfinder with VQ35 engine or a 2002-2005 model year Nissan Altima or Sentra with QR25 engine.

Excluded from the Settlement Class are: (1) Nissan, any entity or division in which Nissan has a controlling interest, its/their legal representatives, officers, directors, assigns and successors; (2) any judge to whom this case is assigned and the judge's clerks and any member of the judge's immediate family; (3) anyone with a claim for personal injury based on a loose or detached power valve screw in a Class Vehicle; and (4) current or former owners or lessees of Class Vehicles who paid out-of-pocket for Repaired Engine Damage after the vehicle had reached 12 years in service or 120,000 miles, whichever occurred first.

## The Settlement Benefits — What You Will Get

### *5. What are the possible benefits of this settlement?*

If you (a) paid for engine repairs necessitated by a loose or detached power valve screw between (i) 5 years or 60,000 miles, whichever occurs first, and (ii) 12 years or 120,000 miles, whichever occurs first; (b) such repairs were not paid for by Nissan; (c) have documentation created at or near the time of the repair and as part of the same transaction, which sets forth the issue and repair, date of diagnosis and repair, and mileage at the time of diagnosis and repair from either an authorized Nissan dealer or non-Nissan automotive repair facility you are entitled to reimbursement under the settlement. To obtain reimbursement, you must either complete and return the attached Claim Form with the required documentation to the Claim Administrator postmarked prior to [DATE] or submit a claim on or before [DATE] electronically at [REDACTED].

Nissan will then reimburse you for the cost paid to repair the engine subject to the caps described below:

- a) For Repairs less than Full Engine Replacement<sup>1</sup> on Class Vehicles that exceed five (5) years or 60,000 miles, whichever occurs first, but fewer than eight (8) years or 80,000 miles, whichever occurs first, the caps on Reimbursement are:

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<sup>1</sup> Full Engine Replacement means that the engine in the Class Vehicle was removed and replaced with a different engine, (engine block serial number is different), whether the replacement engine is new or remanufactured. If the engine in the Class Vehicle is repaired but is not replaced with a different engine (engine block serial number is the same as original), then it is considered a repair. Unless engine remanufacturing of the original engine is clear from the appropriate contemporaneous documentation, it will be deemed a repair.

Sentra/Altima	Pathfinder
\$1,000	\$1,500

- b) For engine Repairs less than Full Engine Replacement on Class Vehicles that exceed eight (8) years or 80,000 miles, whichever occurs first, but fewer than ten (10) years or 100,000 miles, whichever occurs first, the caps on Reimbursement are:

Sentra/Altima	Pathfinder
\$750	\$1,250

- c) For engine Repairs less than Full Engine Replacement on Class Vehicles that exceed ten (10) years or 100,000 miles, whichever occurs first, but fewer than twelve (12) years or 120,000 miles, whichever occurs first, the caps on Reimbursement are:

Sentra/Altima	Pathfinder
\$500	\$1,000

- d) For Full Engine Replacements on Class Vehicles that exceed five (5) years or 60,000 miles, whichever occurs first, but fewer than eight (8) years or 80,000 miles, whichever occurs first, the caps on Reimbursement are:

Sentra/Altima	Pathfinder
\$2,000	\$3,000

- e) For Full Engine Replacements on Class Vehicles that exceed eight (8) years or 80,000 miles, whichever occurs first, but fewer than ten (10) years or 100,000 miles, whichever occurs first, the caps on Reimbursement are:

Sentra/Altima	Pathfinder
\$1,750	\$2,750

- f) For Full Engine Replacements on Class Vehicles that exceed ten (10) years or 100,000 miles, whichever occurs first, but fewer than twelve (12) years or 120,000 miles, whichever occurs first, the caps on reimburse are:

Sentra/Altima	Pathfinder
\$1,500	\$2,500

You must sign and return the Claim Form, along with the required documentation, to the Claims Administrator by **[DATE]** (180 days after the date of this Notice) to be eligible for reimbursement. The mileage or years on the Class Vehicle as they relate to eligibility for reimbursement will be determined as of the date of the failure or repair as reflected in the appropriate contemporaneous documentation.

## **6. Am I giving anything up in return for my benefit?**

Unless you get out of the Settlement (which is called “excluding yourself” or “opting out”), you are part of the Settlement Class. By staying part of the Settlement Class, Court orders will apply to you and you will give the Defendant and the selling or leasing dealer a “release.” A release means you cannot sue or be part of any other lawsuit against the Defendant or the selling or leasing dealer about the claims or issues in *this* lawsuit ever again.

## **How to Get a Benefit – Submitting a Claim Form**

### **7. What do I need to do to get the benefits of this settlement?**

To remain a Settlement Class Member you do not have to do anything now but **TO GET A REIMBURSEMENT UNDER THE SETTLEMENT YOU MUST COMPLETE AND SUBMIT A CLAIM FORM BEFORE [DATE] AS EXPLAINED BELOW.**

Included in this Notice is a Claim Form. **To obtain a reimbursement benefit, you must mail the completed Claim Form, with necessary documentation, to the Claims Administrator within [REDACTED] from the date of this Notice. Claim Forms submitted more than [REDACTED] from the date of this Notice will not be considered. You may also submit a Claim Form and documentation electronically by visiting the settlement website at [REDACTED].**

Claim Forms that do not meet the requirements of the Settlement Agreement and the Claim Form instructions will be rejected. However, before the Claim Form is rejected, the Claims Administrator will notify you to provide you an opportunity to remedy the deficiencies in the Claim Form or supporting documentation. If the deficiencies are not corrected, the Claims administrator will notify you in writing.

Reimbursement checks may not be mailed until 120 days after (a) the Settlement is finally approved by the Court after the Fairness Hearing and a Final Order and Judgment has been entered by the Court or, (b) if an appeal is filed, until (i) all such appeals have been dismissed; or (ii) the appropriate Court of Appeals has entered a final judgment affirming the Final Order and Judgment of the Court which is no longer subject to any further appellate challenge or has been affirmed by the California Supreme Court.

## **Your Rights — Getting Out of the Settlement**

### **8. Can I get out of the settlement?**

You can get out of the settlement and the class. This is called “excluding yourself” or “opting out.” If you exclude yourself from the settlement, you will not be entitled to receive the settlement benefits. However, you will not be bound by any judgment or settlement of this class action lawsuit and will keep your right to sue Defendant independently, if you want.

### **9. How can I exclude myself from the settlement?**

To exclude yourself from the settlement, you must mail the Settlement Administrator a Request for Exclusion that contains the following information:

- (1) The name of the lawsuit: “*Fox, et al. v. Nissan North America, Inc.*, Case No. CGC-09-490470.”

- (2) Your full name, current address and telephone number;
- (3) Your vehicle year and model;
- (4) Your vehicle's Vehicle Identification Number (VIN) and, if you still own your vehicle, your mileage as of the date of this Notice;
- (5) A specific statement of your intent to exclude yourself from the lawsuit (for example, "Please exclude me from the Settlement Class in the "Nissan Power Valve Screw Litigation.");
- (6) A specific statement that you do not wish to be a Settlement Class Member and choose to be excluded from any judgment entered pursuant to the Settlement (for example, "I do not wish to be a Settlement Class Member and want to be excluded from the Settlement."); and
- (7) Your signature and the date you signed it.

You must send your Request for Exclusion by first-class United States Mail, postmarked no later than [REDACTED] to the Settlement Administrator at the address below:

Nissan Power Valve Screw Settlement Administrator  
P.O. Box [REDACTED]

If you do not follow these procedures and deadlines to exclude yourself from the Settlement, you will remain a Settlement Class Member and lose any opportunity to exclude yourself from the Settlement. This means that your rights will be determined in this lawsuit by the Settlement Agreement if it receives final approval from the court.

## **Your Rights — Objecting to the Settlement**

### ***10. Can I tell the Court I do not like the settlement?***

If you do not exclude yourself, you can tell the Court you do not like the settlement or some part of it by filing an objection to the settlement. Your objection could be any aspect of the settlement, payment of attorneys' fees and costs, or any other reason. If you object to the settlement but do not exclude yourself, you remain a Settlement Class Member.

### ***11. How can I object to the settlement?***

If you did not exclude yourself from the Settlement Class, you may object to any aspect of the settlement. In order to object, you or your attorney must (1) file with the Court, (2) send to Class Counsel, and (3) send to Nissan's counsel, a written objection and supporting papers that contain:

- (1) The name of the lawsuit: "Fox, et al. v. Nissan North America, Inc., Case No. CGC-09-490470."
- (2) Your full name, current address and telephone number;

- (3) Whether, as of the date of the written objection, you currently own or lease or whether you previously owned or leased a 2001-2004 model year Nissan Pathfinder with a VQ35 engine or a 2002-2005 Nissan Altima or Sentra with a QR25 engine, the specific model year(s) and the approximate date(s) of purchase or lease (for example, "I currently own a 2001 model year Nissan Pathfinder that I purchased in January 2001);
- (4) The Vehicle Identification Number (VIN) of your vehicle(s);
- (5) Current odometer mileage of the vehicle(s) currently owned or leased;
- (6) Each specific reason for your objection, including the factual and legal grounds for your position;
- (7) A detailed list of any other objections to any class action settlements you have submitted to any court, whether State, Federal, or otherwise, in the United States in the previous five (5) years;
- (8) All evidence and supporting papers (for example, briefs, written evidence, and declarations) that you want the Court to consider in support of your objections;
- (9) Whether you intend to appear at the Fairness Hearing, also known as a Final Approval Hearing, and whether you will be represented by separate counsel;
- (10) A list of all persons, if any, who will be called to testify in support of the objection; and
- (11) Your signature and the date of your signature.

If you, or your separate counsel, wish to appear and be heard orally at the Final Approval Hearing, you must state your desire to appear personally or by your separate counsel in your written objection. However, Settlement Class Members who object to the Settlement are not required to attend the Final Approval Hearing. You must file your objection with the Court and serve separate copies on Class Counsel and Nissan's counsel by first-class United States Mail, no later than [REDACTED].

Your objection must be filed with the Court at the following address:

**Superior Court of the State of California, in and for the County of San Francisco**  
[REDACTED]

The copies to be served on Class Counsel and Nissan's counsel must be mailed by first-class United States Mail to the following addresses:

**Class Counsel:**

Jennie Lee Anderson, Esq.

Andrus Anderson, LLP  
155 Montgomery Street, Suite 900  
San Francisco, California 94104

**Counsel for Nissan:**

Paul Riehle, Esq.  
Sedgwick LLP

333 Bush Street, 30th Floor  
San Francisco, California 94104

If you do not comply with these procedures or deadline for objection, you will lose your opportunity to have your objections considered at the Final Approval Hearing or otherwise contest the approval of the Settlement or to appeal from any order or judgment entered by the Court in connection with the Settlement.

**12. What is the difference between excluding and objecting? Can I do both?**

Excluding yourself means getting out of the settlement altogether – you would not be entitled to receive any benefits pursuant to the settlement or be bound by the terms of the settlement. Objecting means remaining in the settlement, but complaining about some part of it you do not like. You cannot do both.

**Your Rights — Appearing at the Hearing**

**13. Can I appear at the settlement hearing?**

As long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in this lawsuit and Settlement. This is called making an appearance. You can also have your own lawyer speak for you, but you will have to pay for the lawyer yourself.

If you want to appear, or if you want your own lawyer instead of Class Counsel to participate or speak for you in this lawsuit, you must give written notice in your objection to the settlement filed with the Court and mailed to the attorneys listed above in Section 11. You must state in that paper, “I intend to appear at the hearing.”

**The Lawyers Representing You**

**14. Do I need to hire my own attorney?**

You do not need to hire an attorney, but can if you want to. You, and the entire class, are already represented by a group of attorneys listed below, who are known as Class Counsel. You do not have to pay for Class Counsel’s services. You may contact Class Counsel if you have any questions about this Notice or settlement, **but please do not contact the Court.**

Class Counsel:

Jennie Lee Anderson, Esq.  
Lori E. Andrus, Esq.  
Leland Belew, Esq.  
Andrus Anderson, LLP  
155 Montgomery Street, Suite 900  
San Francisco, California 94104

Michael F. Ram, Esq.  
Jeffrey B. Cereghino, Esq.  
Matt J. Malone, Esq.

Ram, Olson, Cereghino & Kopczynski LLP  
101 Montgomery Street, Suite 1800  
San Francisco, California 94104

If you decide to hire your own attorney, you will have to pay for his or her services. Your attorney must file an appearance no later than [REDACTED] with the Clerk of the Court, and must send a copy by first-class United States Mail, to Class Counsel and Nissan's counsel at the addresses provided above in Section 11, postmarked no later than [REDACTED].

**15. How much is Class Counsel being paid?**

Class Counsel will apply to the Court for reasonable attorneys' fees and expenses in an amount up to \$1,421,000. Any award of attorneys' fees and costs will be paid by Nissan separately from and in addition to any relief provided to the Settlement Class. Additionally, Class Counsel will apply to the Court for payments of \$5,000 each to the Class Representatives for their service to the Class. Any award of payments to the Class Representatives will be paid by Nissan separately from and in addition to any relief provided to the Settlement Class.

**Final Approval of the Settlement**

**16. When will the settlement become final?**

The Court has preliminarily approved the Settlement provided for in the Settlement Agreement. The Settlement will not take effect unless and until: (1) the Court approves the Settlement after the Final Approval Hearing and (a) a Final Order and Judgment has been entered by the Court and the applicable period for the appeal of the Final Order and Judgment has expired without any appeals having been filed, or (b) all such appeals have been dismissed; or (2) the appropriate Court of Appeal has entered a final judgment affirming the Final Order and Judgment of the Court, which (a) is no longer subject to any further appellate challenge, or (b) has been affirmed by the California Supreme Court.

The Court has scheduled a final approval hearing, or Final Approval Hearing, to be held on [REDACTED] at [REDACTED] Pacific Time, to decide whether certification of the Settlement Class is proper; whether the Settlement is fair, adequate, and reasonable; and whether the Settlement should be finally approved. In addition, the Court will consider Class Counsel's application for an award of attorneys' fees and reimbursement of expenses. The Court is located at the Superior Court of the State of California, in and for the county of San Francisco, [REDACTED]. The Final Approval Hearing may be rescheduled to a later time without further notice. You may, but do not have to, attend the Final Approval Hearing(s). After the Court rules on the final approval and the time to appeal has expired, the settlement will become final.

**17. What happens if the settlement is not approved?**

If the Court does not approve the settlement, Settlement Class Members will not be entitled to receive the settlement benefits described in this Notice. It will be as if no settlement had been reached and no class had been established.

**If You Do Nothing**

**18. What if I do not do anything?**

If you do nothing, including choosing not to submit a Claim Form, you will still be a Settlement Class Member. If, however, you seek reimbursement from Nissan for a repair you previously paid, and you do not timely submit a Claim Form with the required documentation, you will not receive any reimbursement benefits from this Settlement, but you will still be a

Settlement Class Member. You will be bound by the terms of the Settlement, which means you cannot bring a lawsuit against Defendants for the same claims at issue in this lawsuit.

## More Information

### *19. Where can I get more information?*

If you have additional questions regarding this Notice or the Settlement, or if you did not receive this Notice in the mail and believe that you may be a member of the Settlement Class, you should contact the Settlement Administrator's dedicated website for this case by visiting [www.](http://www.) or calling for more information, or you may communicate directly with Class Counsel by contacting:

Jennie Lee Anderson, Esq.  
Lori E. Andrus, Esq.  
Leland Belew, Esq.  
ANDRUS ANDERSON, LLP  
155 Montgomery Street, Suite 900  
San Francisco, California 94104  
Email: [jennie.anderson@andrusanderson.com](mailto:jennie.anderson@andrusanderson.com)  
Email: [leland.belew@andrusanderson.com](mailto:leland.belew@andrusanderson.com)  
Email: [lori.andrus@andrusanderson.com](mailto:lori.andrus@andrusanderson.com)

Michael F. Ram, Esq.  
Jeffrey B. Cereghino, Esq.  
Matt J. Malone, Esq.  
RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP  
101 Montgomery Street, Suite 1800  
San Francisco, California 94104  
Email: [mram@rocklawcal.com](mailto:mram@rocklawcal.com)  
Email: [jbc@rocklawcal.com](mailto:jbc@rocklawcal.com)  
Email: [mjm@rocklawcal.com](mailto:mjm@rocklawcal.com)

This Notice, which has been approved by the Court, is only a summary. If you wish to obtain more detailed information, you may review the Settlement Agreement, which contains the complete terms of the Settlement. The Settlement Agreement, along with the pleadings, records and other papers regarding the Lawsuits, are available on the Settlement Administrator's dedicated website for this case ([www.](http://www.)) and are on file with the Court and available to be inspected at any time during regular business hours at the Clerk's Office. The Clerk of the Court is located at:

**Superior Court of the State of California, in and for the County of San Francisco**

**Please do not contact the Court.**

**Date of Notice:** [www.](http://www.)

# **EXHIBIT B**

# Claim Form

For Official Use Only

**Fox, et al., v. Nissan North America, Inc.** Case No. CGC-09-490470

Please return by regular mail to:

Nissan Power Valve Screw Reimbursement Claims Headquarters

P.O. Box \_\_\_\_\_

ALL CLAIMS MUST BE POSTMARKED BY \_\_\_\_\_.

You may also submit a claim electronically at [settlement website]. Claims must be submitted by \_\_\_\_\_.

## I. Claimant Contact Information

Claimant Name \_\_\_\_\_

Mailing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Daytime Telephone Number (\_\_\_\_) \_\_\_\_\_ -- \_\_\_\_\_ Email \_\_\_\_\_

Evening Telephone Number (\_\_\_\_) \_\_\_\_\_ -- \_\_\_\_\_

## II. Claimant Verification Information

- |  | Yes                      | No                       |
|--|--------------------------|--------------------------|
| 1. Are you a California resident?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Did you purchase or lease a 2001-2004 Nissan Pathfinder or 2002-2005 Nissan Altima or Sentra? | <input type="checkbox"/> | <input type="checkbox"/> |

If so, please provide the following information:

Year \_\_\_\_\_ Model \_\_\_\_\_

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Vehicle Identification Number

- |   | Yes                      | No                       |
|---|--------------------------|--------------------------|
| 3. Did you pay out of your own pocket for repairs to your vehicle necessitated by damage to the engine caused by a loose or detached power valve screw? | <input type="checkbox"/> | <input type="checkbox"/> |

If you answered "NO" to questions 1, 2 OR 3, you are not eligible to submit a claim.

If you answered "YES" to questions 1 through 3:

(a) How much did you pay for parts and labor in connection with the repair? \$ \_\_\_\_\_

(b) What was your odometer mileage at the time of repair? 

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 miles

	<u>Yes</u>	<u>No</u>
(c) Do you have documentation showing that the repair was necessitated by damage to the engine?	<input type="checkbox"/>	<input type="checkbox"/>

*If yes, you must include contemporaneous documentation (including, among any other documents, your repair order) with your claim form*

	<u>Yes</u>	<u>No</u>
(d) Do you have documentation of the amount you paid for the repair?	<input type="checkbox"/>	<input type="checkbox"/>

*If yes, you must include contemporaneous documentation (including, among any other documents, your repair order) with your claim form.*

### III. Acknowledgement of Claimant(s)

By signing below, Claimants acknowledge that they have read and agree to the following (mandatory):

**SUBMISSION TO JURISDICTION OF THE COURT.** I (we) agree to submit to the exclusive jurisdiction of the Superior Court of the State of California, in and for the County of San Francisco, for all purposes associated with this Claim.

**VERIFICATION OF CLAIM AND WARRANTY.** I (we) represent and warrant that the information, enclosures and supporting documentation submitted herewith are true, correct and accurate. I (we) specifically warrant that I (we) am the rightful and only owner(s) or assignee(s) of the Claim submitted and have not otherwise transferred or encumbered any right or interest in this Claim and/or entitlement arising from the Settlement to any person.

**RELEASE.** In consideration of the benefits provided by the Settlement, I (we) understand I (we) will be bound by all of the provisions in the Settlement, including granting to Nissan North America, Inc. a full and complete release of all Released Claims as defined and set forth in the Settlement and in any Final Order of the Court which may be entered pursuant to the Settlement.

### IV. Certification of Accuracy and Release of Claim

All the information that I (we) supplied in this Claim Form is true and correct to the best of my (our) knowledge and belief and this document is signed under penalty of perjury. I (we) additionally certify under penalty of perjury that the repairs for which I (we) seek reimbursement were not previously paid for, in part or in whole, by Nissan.

*If more than one Owner/Lessee at the time the repair costs were incurred, this Claim Form must be signed by all Owners/Lessees.*

	<table border="0"> <tr> <td style="text-align: center;">____ / ____ / ____</td> </tr> <tr> <td style="text-align: center;">Date of Signature</td> </tr> </table>	____ / ____ / ____	Date of Signature
____ / ____ / ____			
Date of Signature			
Signature of Claimant			

	<table border="0"> <tr> <td style="text-align: center;">____ / ____ / ____</td> </tr> <tr> <td style="text-align: center;">Date of Signature</td> </tr> </table>	____ / ____ / ____	Date of Signature
____ / ____ / ____			
Date of Signature			
Signature of Claimant			

**Claim Form**  
**If you have questions about this Claim Form, call [redacted]**  
**or visit [www.\[redacted\]](http://www.[redacted])**

# **EXHIBIT C**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO

ADRIAN FOX, WILLIAM MCMULLEN,  
Jr., and SCOTT WINKLER On Behalf of  
Themselves and All Others Similarly  
Situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA, INC.,

Defendant.

CASE NO. CGC-09-490470

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: August 11, 2016

Time: 1:30 p.m.

Judge: Hon. A. James Robertson, II

Dept.: 502

Complaint Filed: July 15, 2009

1 **ORDER**

2 WHEREAS, a class action lawsuit is pending before this Court entitled *Adrian Fox, et al.*  
3 *v. Nissan North America, Inc.*, Case No. CGC-09-490470 (the “Lawsuit”);

4 WHEREAS, on or about May 9, 2016, Plaintiffs Adrian Fox, William McMullen, Jr., and  
5 Scott Winkler (“Plaintiffs”), suing individually and as the representatives of a class, executed into  
6 a Memorandum of Understanding with Defendant Nissan North America, Inc. (“NNA”)  
7 (collectively, the “Parties”) concerning the claims asserted in the Lawsuit;

8 WHEREAS, on July [REDACTED], 2016, the Parties entered into a Settlement Agreement (the  
9 “Settlement Agreement”) concerning the claims in the Lawsuit; and

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

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

15 **PRELIMINARY CLASS SETTLEMENT APPROVAL AND SETTLEMENT HEARING**

16 1. The Court preliminarily certifies the Settlement Class,<sup>1</sup> for settlement purposes  
17 only, consisting of: all California residents and entities who are former or current owners or  
18 lessees of Class Vehicles. Excluded from the Settlement Class are: (1) NNA, any entity or  
19 division in which NNA has a controlling interest, its/their legal representatives, officers, directors,  
20 assigns and successors; (2) any judge to whom this case is assigned and the judge’s clerks and any  
21 member of the judge’s immediate family; (3) anyone with a claim for personal injury based on a  
22 loose or detached power valve screw in a Class Vehicle, and (4) current or former owners or  
23 lessees of Class Vehicles who have Appropriate Contemporaneous Documentation establishing  
24 that, on the date on which Notice is given under the Preliminary Approval Order, they had paid for  
25 Repaired Engine Damage after the vehicle had reached 12 years in service or 120,000 miles,  
26 whichever occurred first.

27 \_\_\_\_\_

28 <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 address and for whom addresses are obtained from a third-party, such as IHS Automotive, which  
2 maintains databases related to the automobile industry and which specializes in obtaining such  
3 information from, inter alia, the Department of Motor Vehicle for the State of California. The  
4 Claims Administrator will review the address data provided by NNA and/or any third-party  
5 vendor, check addresses for validity, eliminate duplications and process the addresses through the  
6 National Change of Address database for the purpose of updating the addresses.

7 c. The Claims Administrator will file with the Court and serve upon Plaintiffs'  
8 Counsel and NNA's Counsel no later than twenty-three (23) court days before the Fairness  
9 Hearing a declaration stating that Notice was disseminated in a manner consistent with the terms  
10 of the Settlement Agreement and this Preliminary Approval Order.

11 6. The Court approves the form of Notice. The Court finds that these procedures  
12 established for mailing and distribution of such Notice as set forth in this Order satisfy the  
13 requirements of the California Rules of Court and due process. The Court further finds that these  
14 procedures are the best notice practicable under the circumstances and shall constitute due and  
15 sufficient notice to all persons and entities entitled thereto.

16 7. The Claims Administrator shall be responsible for receipt of all written  
17 communications from the Settlement Class and shall preserve same and all other written  
18 communications from Settlement Class Members or any other person in response to the Notice.

19 **CLASS REPRESENTATIVES AND CLASS COUNSEL**

20 8. The named Plaintiffs are suitable class representatives and are appointed Class  
21 Representatives for the Settlement Class.

22 9. The Court appoints Andrus Anderson LLP and Ram, Olson, Cereghino &  
23 Kopczynski LLP as Class Counsel. The Court finds that the attorneys at both law firms have  
24 demonstrable experience litigating, certifying, and settling class actions, and will serve as  
25 adequate counsel for the Settlement Class.

26 **REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASS**

27 10. A Settlement Class Member wishing to exclude himself/herself from the Settlement  
28 must send to the Claims Administrator a signed letter including (1) his/her name, (2) address, (3)

1 telephone number, (4) model and year of vehicle, (5) mileage at the time of Notice, and (6)  
2 providing a clear statement communicating that he/she elects to be excluded from the Settlement  
3 Class, does not wish to be a Settlement Class Member and elects to be excluded from any  
4 judgment entered pursuant to this Settlement Agreement. Any request for exclusion must be  
5 postmarked on or before the exclusion deadline provided in the Notice. The date of the postmark  
6 on the return mailing envelope shall be the exclusive means used to determine whether a request  
7 for exclusion has been timely submitted. Settlement Class Members who fail to submit a valid  
8 and timely request for exclusion on or before the date specified in the Notice, shall be bound by all  
9 terms of the Settlement Agreement and the Final Order and Judgment, regardless of whether they  
10 have requested exclusion from the Settlement. The request must be personally signed by or on  
11 behalf of the Settlement Class Member requesting exclusion, and shall not be effective unless it is  
12 made in the manner and within the time set forth in this paragraph. No Settlement Class Member,  
13 or any person acting on behalf or in concert or participation with that Settlement Class Member,  
14 may request the exclusion of any other Settlement Class Member from the Settlement Class.

15 11. Copies of requests for exclusion shall be provided by the Settlement Administrator  
16 to Plaintiffs' Counsel and NNA's Counsel not later than three (3) business days after the deadline  
17 for submission of requests for exclusion. The original requests for exclusion will be filed with the  
18 Court by the Settlement Administrator not later than sixteen (16) court days prior to the Fairness  
19 Hearing Date.

20 12. All Settlement Class Members that have not submitted a timely and valid written  
21 request for exclusion from the Settlement Class will be bound by the Released Claims and other  
22 terms and conditions set forth herein and all proceedings, orders and judgments in the Lawsuit,  
23 even if those persons have previously initiated or subsequently initiated litigation or other  
24 proceedings against NNA, its subsidiaries, NNA's parent or its parents' subsidiaries relating to the  
25 claims released pursuant to or covered by the terms of this Settlement.

26 **OBJECTIONS BY SETTLEMENT CLASS MEMBERS**

27 13. Any Settlement Class Member that has not requested exclusion from the Settlement  
28 Class may appear at the Fairness Hearing to show cause as to why any terms of the proposed

1 Settlement should not be approved as fair or reasonable, or why a judgment should not be entered  
2 thereon. In accordance with the Settlement Agreement, any Settlement Class Member may so  
3 object either on his or her own or through an attorney hired at his or her own expense.

4 14. In order to contest the approval of the Settlement Agreement, a Settlement Class  
5 Member must serve Plaintiffs' Counsel and NNA's counsel by mail at the addresses listed below  
6 and must file the Objection with the Court, which Objection must be filed and copies postmarked  
7 no later than twenty-three (23) court days prior to the Fairness Hearing date specified in the  
8 Notice. To state valid Objections to the Settlement, a Settlement Class Member making  
9 Objections must provide the following information in his or her written Objections: (i) the  
10 Settlement Class Member's full name and current address; (ii) the model year and make of his or  
11 her vehicle(s) and approximate date(s) of purchase; (iii) whether the Settlement Class Member still  
12 owns the vehicle(s); (iv) the VIN number of the vehicle(s); (v) current odometer mileage of the  
13 vehicle(s) currently owned; (vi) whether the Settlement Class Member has obtained repairs to his  
14 or her vehicle necessitated by a loosened and/or detached power valve screw and, if so, the  
15 odometer mileage and date at the time of the repair or replacement; (vii) a specific and clear  
16 statement of the Settlement Class Member's reasons for objecting to the Settlement, including the  
17 factual and legal grounds for his or her position; (viii) a detailed list of any other objections to any  
18 class action settlements submitted to any court, whether State, Federal, or otherwise, in the United  
19 States in the previous five (5) years; (ix) whether the Settlement Class Member intends to appear  
20 at the Fairness Hearing and whether the Settlement Class Member will be represented by separate  
21 counsel; and (x) the Settlement Class Member's signature.

22 15. Objections must be served:

23 Upon NNA's Counsel at:

24 Paul Riehle, Esq.

25 SEDGWICK LLP  
26 333 Bush Street, 30th Floor  
27 San Francisco, California 94104

28 Upon Class Counsel at:

1 Jennie Lee Anderson, Esq.

2 ANDRUS ANDERSON, LLP  
3 155 Montgomery Street, Suite 900  
4 San Francisco, California 94104

5 16. Any Settlement Class Member that does not make an Objection in the manner  
6 provided above shall be deemed to have waived such Objection and shall forever be foreclosed  
7 from making any Objection to the fairness or reasonableness of the proposed Settlement or the  
8 Final Order and Judgment to be entered approving the Settlement. Any Settlement Class Member  
9 who wishes to speak at the fairness hearing must follow the procedures outlined in the Notice that  
10 the Settlement Class Member receives.

11 17. Papers by counsel in connection with the Settlement shall be filed as follows: No  
12 later than sixteen (16) court days before the date set by the Court for the Fairness Hearing,  
13 Plaintiffs' Counsel will file a motion requesting that the Court enter the Final Order and Judgment,  
14 which will, among other things, dismiss the Lawsuit, with prejudice, subject to the continuing  
15 jurisdiction of the Court, approve the Settlement Agreement, certify the Settlement Class and  
16 render an award of Attorneys' Fees and Expenses. NNA may, at its discretion, submit such  
17 briefing as it deems necessary to support the motion for final approval, clarify its positions, and  
18 otherwise protect its interests. Such briefing by NNA will be due no later than nine (9) court days  
19 before the date set by the Court for the Fairness Hearing. Plaintiffs' Counsel and NNA's Counsel  
20 shall also be entitled to file responses to any Objections which may have been filed, which  
21 responses shall be filed sixteen (16) court days prior to the Fairness Hearing. Class Counsel may  
22 submit reply papers to any briefs filed by NNA no later than five (5) court days prior to the date  
23 set by the Court for the Fairness Hearing.

### 24 **TERMINATION**

25 18. If the Court declines to enter a Final Order and Judgment in accordance with all of  
26 the material terms of the Settlement Agreement, or the Final Order and Judgment does not for any  
27 reason become Final, the Parties to the Lawsuit will be returned to the same position as existed on  
28 May 9, 2016, and as if the Settlement Agreement had not been negotiated, made or filed with the  
Court. Should this occur, (a) the Parties to the Lawsuit shall move the Court to vacate any and all

1 orders entered by the Court pursuant to the provisions of the Settlement Agreement; and (b)  
2 neither the Settlement Agreement, nor any documents filed, submitted, or published pursuant to  
3 the Settlement Agreement may be used in any litigation (except to enforce the provisions of the  
4 Settlement Agreement) and nothing contained in any documents shall impact any legal  
5 proceedings.

6 19. This Order shall be of no force or effect if the Settlement does not become final,  
7 and shall not be construed or used as an admission, concession or declaration by or against the  
8 Parties or members of the Settlement Class of the validity of any claim or counterclaim or any  
9 actual or potential fault, wrongdoing or liability whatsoever, or by or against the Parties or  
10 members of the Settlement Class, that their claims or counterclaims lack merit or that the relief  
11 requested in the Complaint or any counterclaims are inappropriate, improper, or unavailable, or as  
12 a waiver by any Party of any defense or claims it or they may have.

13 **POWERS AND JURISDICTION OF THE COURT**

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

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

19 **IT IS SO ORDERED.**

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Dated: \_\_\_\_\_  
Hon. A. James Robertson, II  
San Francisco Superior Court Judge

# **EXHIBIT D**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO

ADRIAN FOX, WILLIAM MCMULLEN,  
Jr., and SCOTT WINKLER On Behalf of  
Themselves and All Others Similarly  
Situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA, INC.,

Defendant.

CASE NO. CGC-09-490470

**[PROPOSED] ORDER AND JUDGMENT  
GRANTING FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
ATTORNEYS' FEES AND EXPENSES**

Date: [REDACTED], 2016

Time: [REDACTED]

Judge: Hon. A. James Robertson, II

Dept.: 502

Complaint Filed: July 15, 2009

1 **ORDER**

2 Having considered the Plaintiffs’ Motion for Final Approval of the Class Action  
3 Settlement between the Plaintiffs Adrian Fox, William McMullen, Jr., and Scott Winkler  
4 (“Plaintiffs”) and Defendant Nissan North America, Inc. (“NNA”); having considered the  
5 Plaintiffs’ Motion for Attorneys’ Fees and Expenses; having considered that, by order dated [REDACTED],  
6 2016, this Court granted preliminary approval of the proposed class action settlement in this case  
7 and certified a Settlement Class<sup>1</sup> pursuant to California Code of Civil Procedure Section 382 and  
8 California Rules of Court, Rule 3.769; and having held a Fairness Hearing on [REDACTED], 2016 and  
9 having considered all of the submissions and arguments with respect to the Motion for Final  
10 Approval; the Court finds and orders as follows:

11 WHEREAS, the Court finds that the Settlement of the Lawsuit satisfies the applicable  
12 prerequisites for class action treatment under California Code of Civil Procedure Section 382 and  
13 California Rules of Court, Rule 3.769. The Settlement Class is so numerous that joinder of all  
14 members is not practicable, questions of law and fact are common to the Settlement Class, the  
15 claims of the Plaintiffs are typical of the claims of the Settlement Class, the Plaintiffs will fairly  
16 and adequately protect the interests of the Settlement Class, and questions of law and fact common  
17 to the members of the Settlement Class predominate, for settlement purposes, over any questions  
18 affecting only individual members;

19 WHEREAS, notice of the original Settlement was provided to the Settlement Class as  
20 required by California Rules of Court, Rule 3.766(d), and such Notice by first-class mail was  
21 given in an adequate and sufficient manner, constitutes the best notice practicable under the  
22 circumstances, and satisfies all requirements of the California Rules of Court and due process;

23 WHEREAS, the Settlement was a result of arm’s-length negotiation by experienced  
24 counsel with an understanding of the strengths and weaknesses of their respective cases. Among  
25 the factors that they considered are those set forth in the Motion for Final Approval of the Class  
26 Action Settlement. The Parties have agreed to the Settlement without any admission of

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28 <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 wrongdoing and to avoid further expense, uncertainty, inconvenience, and interference with their  
2 ongoing business. As part of the Lawsuit, Plaintiffs' Counsel has conducted a detailed  
3 investigation of the facts and analyzed the relevant legal issues. Although the Plaintiffs and  
4 Plaintiffs' Counsel believe that the claims asserted in the Complaint have merit, they also have  
5 examined the benefits to be obtained under the Settlement compared to the costs, risks, and delays  
6 associated with the continued litigation of these claims;

7 WHEREAS, the Court finds that the Settlement is fair, reasonable, and adequate in light of  
8 the complexity, expense, and duration of litigation and the risks involved in establishing liability,  
9 damages, and in maintaining the class action through trial and appeal;

10 WHEREAS, the benefits to the Settlement Class constitute fair value given in exchange for  
11 the release of the claims of the Settlement Class. The Court finds that the consideration to be  
12 provided under the Settlement is reasonable considering the facts and circumstances of this case,  
13 the types of claims and defenses asserted in the Lawsuit, and the risks associated with the  
14 continued litigation of these claims;

15 WHEREAS, the Parties and Settlement Class Members have irrevocably submitted to the  
16 exclusive jurisdiction of this Court for any suit, action, proceeding or dispute arising out of  
17 Settlement; and

18 WHEREAS, it is in the best interests of the Parties and the Settlement Class Members and  
19 consistent with principles of judicial economy that any dispute between any Settlement Class  
20 Member (including any dispute as to whether any person is a Settlement Class Member) and any  
21 Released Party which in any way relates to the applicability or scope of the Settlement, or this  
22 Final Judgment and Order of Dismissal should be presented exclusively to this Court for  
23 resolution by this Court,

24 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

25 1. The Court certifies a Settlement Class, for settlement purposes only, consisting of  
26 the following: all California residents and entities who are former or current owners or lessees of  
27 Class Vehicles. Excluded from the Settlement Class are: (1) NNA, any entity or division in which  
28 NNA has a controlling interest, its/their legal representatives, officers, directors, assigns and

1 successors; (2) any judge to whom this case is assigned and the judge's clerks and any member of  
2 the judge's immediate family; (3) anyone with a claim for personal injury based on a loose or  
3 detached power valve screw in a Class Vehicle, (4) current or former owners or lessees of Class  
4 Vehicles who have Appropriate Contemporaneous Documentation establishing that, on the date on  
5 which Notice is given under the Preliminary Approval Order, they had paid for Repaired Engine  
6 Damage after the vehicle had reached 12 years in service or 120,000 miles, whichever occurred  
7 first, and (5) those persons or entities that validly and timely elected exclusion from the Settlement  
8 Class, attached hereto as Exhibit     .

9           2.       The Settlement submitted by the Parties is finally approved pursuant to California  
10 Code of Civil Procedure Section 382 and California Rules of Court, Rule 3.769 as fair, reasonable,  
11 adequate, and in the best interests of the Settlement Class. The Parties are directed to perform all  
12 obligations under the Settlement in accordance with its terms. The Parties and each person within  
13 the definition of the Settlement Class are hereby bound by the terms and conditions of the  
14 Settlement, except for those who have duly excluded themselves.

15           3.       The Lawsuit is hereby dismissed with prejudice and without costs. This Judgment  
16 has been entered without any admission by any Party as to the merits of any allegation by any  
17 Party in the Lawsuit and shall not constitute a finding of either fact or law as to the merits of any  
18 claim or defense asserted in the Lawsuit.

19           4.       The Released Claims as defined in the Settlement are hereby finally compromised,  
20 settled, released, discharged, and dismissed with prejudice against the Released Parties by virtue  
21 of the proceedings herein and this Final Judgment and Order of Dismissal.

22           5.       Members of the Settlement Class and their successors and assigns are hereby  
23 permanently barred and enjoined from asserting, commencing, prosecuting or continuing to  
24 prosecute, either directly or indirectly, any Released Claim against any one of the Released Parties  
25 in any forum, with the exception of any Settlement Class Members who have duly excluded  
26 themselves.

27           6.       The named Plaintiffs are suitable class representatives and are hereby appointed  
28 representatives for the Settlement Class. The Court approves an award of \$5,000 to each of

1 Plaintiffs Adrian Fox and Scott Winkler as a reasonable payment for his efforts, expenses and risk  
2 as Plaintiffs in bringing the Lawsuit, which shall be paid by NNA as provided in the Settlement.

3 7. Based upon the evidence submitted, the Court finds that the attorneys at Andrus  
4 Anderson LLP and Ram, Olson, Cereghino & Kopczynski LLP have the requisite knowledge,  
5 experience, and skill to advance the interests of the Settlement Class. The Court hereby appoints  
6 both law firms as counsel for the Settlement Class. The Court approves an award of  
7 \$ \_\_\_\_\_ to Plaintiffs' Counsel as reasonable payment for Attorneys' Fees and  
8 Expenses, which shall be paid by NNA as provided in the Settlement.

9 8. Without affecting the finality of this judgment, the Court's retained jurisdiction of  
10 this Settlement also includes the administration and consummation of the Settlement. In addition,  
11 without affecting the finality of this judgment, the Court retains exclusive jurisdiction of, and the  
12 Parties and all Settlement Class Members are hereby deemed to have submitted irrevocably to the  
13 exclusive jurisdiction of this Court for, any suit, action, proceeding or dispute arising out of or  
14 relating to this Order and the Settlement Agreement, or the applicability of the Settlement  
15 Agreement. Without limiting the generality of the foregoing, any dispute concerning the  
16 Settlement Agreement, including, but not limited to, any suit, action, arbitration or other  
17 proceeding by a Settlement Class Member in which the provisions of the Settlement Agreement  
18 are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as  
19 an objection, shall constitute a suit, action or proceeding arising out of or relating to this Order.  
20 Solely for purposes of such suit, action or proceeding, to the fullest extent possible under  
21 applicable law, the Parties hereto and all persons within the definition of the Settlement Class are  
22 hereby deemed to have irrevocably waived and agreed not to assert, by way of motion, as a  
23 defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this  
24 Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

25 9. All Objections filed are hereby overruled and denied.

26 10. The Court finds that no just reason exists for delay in entering this Final Judgment  
27 and Order of Dismissal. Accordingly, the Clerk is hereby directed to enter final judgment.

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1 **IT IS SO ORDERED.**

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3 Dated: \_\_\_\_\_

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Hon. A. James Robertson, II  
San Francisco Superior Court Judge

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