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

10 *Additional Counsel Listed Below*

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

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

19
20 Plaintiffs,

21 vs.

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

26 Defendants.

Case Number: 2:13-cv-00686-DDP-MAN
**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Violation of the Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*)
- (2) Violation of Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq.*);
- (3) Violation of Washington Consumer Protection Act (RCW 19.86 *et seq.*);
- (4) Breach of Implied Warranty pursuant to Song-Beverly Consumer Warranty Act;
- (5) Fraud; and
- (6) Unjust Enrichment

Jury Trial Demanded

27 **PUBLIC VERSION – CONTAINS REDACTIONS**
28

1 Plaintiffs KOBE FALCO, JOEL SEGUIN, ALFREDO PADILLA, and
2 ROBERTO GALVAN (“Plaintiffs”), individually and on behalf of all other members of
3 the public similarly situated, alleges as follows:

4 1. This is a consumer class action concerning a breach of warranty and an
5 intentional failure to disclose material facts and a safety concern to consumers.

6 2. The timing chain tensioning system, including the primary timing chain
7 tensioner, primary timing chain guide, secondary timing chain tensioners, and secondary
8 timing chain tensioner shoes (the “Timing Chain Tensioning System”) installed in
9 2004 –2008 Nissan Maxima vehicles, 2004 – 2009 Nissan Quest vehicles, 2004 – 2006
10 Nissan Altima vehicles (with the VQ35 engine), 2005 – 2007 Nissan Pathfinder
11 vehicles, 2005 – 2007 Nissan Xterra vehicles, and 2005 – 2007 Nissan Frontier vehicles
12 (with the VQ40 engine) (collectively, the “Subject Nissan Vehicles”) is prone to
13 premature failure and cannot be reasonably repaired.

14 3. The Subject Nissan Vehicles and the Timing Chain Tensioning System
15 were designed, manufactured, imported, distributed, marketed, and maintained, by, or at
16 the direction of, Nissan North America, Inc. (“Nissan USA” or “NNA”) and Nissan
17 Jidosha Kabushiki Kaisha d/b/a Nissan Motor Co., Ltd. (“Nissan Japan” or “NML”) (collectively, “Nissan” or “Defendants”).

18 4. Nissan’s breach of warranty and failure to disclose material facts to
19 consumers who purchased or leased the Subject Nissan Vehicles presents a safety
20 concern for drivers and occupants of the vehicles, and it has caused consumers to suffer
21 significant monetary damages.
22

23 INTRODUCTION

24 5. The Timing Chain Tensioning System installed in the Subject Nissan
25 Vehicles is prone to premature failure, before the end of the useful life of the vehicles,
26 and well before consumers reasonably expect any such failure to occur. Plaintiffs are
27 informed and believe, and based thereon, allege that a vehicle’s Timing Chain
28 Tensioning System is intended and reasonably expected to last for at least ten years, if

1 not more, without the need for repair or replacement.

2 6. Plaintiffs are informed and believe, and based thereon, allege that since
3 2003, Nissan has been aware that the Timing Chain Tensioning System installed in the
4 Subject Nissan Vehicles is prone to premature failure, yet Nissan continued to install the
5 defective Timing Chain Tensioning System in the Subject Nissan Vehicles knowing that
6 it is prone to premature failure. Moreover, Nissan not only refused to disclose the
7 problem to consumers since 2003, but it also actively concealed, and continues to
8 conceal, its knowledge concerning the defective Timing Chain Tensioning System.

9 7. Nissan undertook affirmative efforts to conceal the failures through, among
10 other things, Technical Service Bulletins ("TSBs") issued to repair facilities, and by
11 giving "goodwill" adjustments to reduce the costs of repairs for some customers who
12 complained, but failing to do so for other customers who did not complain. Although
13 Nissan was sufficiently aware of the problem as a result of pre-production testing,
14 design failure mode analysis, and customer complaints made to dealers, all of this
15 knowledge and information was exclusively in the possession of Nissan and its network
16 of dealers and therefore, it was unavailable to consumers.

17 8. Additionally, notwithstanding its knowledge of the potential safety
18 concerns associated with Timing Chain Tensioning System defects, Nissan chose to
19 issue multiple TSBs to Nissan dealerships, informing them that it was necessary to
20 replace certain elements of the Timing Chain Tensioning System, but Nissan did not
21 inform consumers about the TSBs. Furthermore, Nissan's TSBs failed to provide a
22 permanent solution to remedy all of the Timing Chain Tensioning System defects.
23 Instead, Nissan concealed its knowledge of the issues and failed to develop a permanent
24 solution so that the warranty period on the Subject Nissan Vehicles would expire before
25 owners become aware of the problem. Through this practice, Nissan unlawfully
26 transfers the cost of replacement from itself to the owners of the Subject Nissan
27 Vehicles.
28

1 9. As a result of Nissan's failure to disclose the fact that the Timing Chain
2 Tensioning System installed in the Subject Nissan Vehicles is prone to unavoidable
3 premature failure, consumers are required to spend thousands of dollars to repair the
4 Timing Chain Tensioning System, or sell their vehicles without repair at a substantial
5 loss. The fact that the Timing Chain Tensioning System is prone to premature failure is
6 material because no reasonable consumer expects to spend thousands of dollars to repair
7 or replace essential components of the Subject Nissan Vehicles' engines in the early
8 years of vehicle ownership.

9 10. Furthermore, the fact that the Timing Chain Tensioning System is prone to
10 sudden premature failure is material to consumers because it presents a serious safety
11 issue and places the driver and passengers at a risk of harm. The Timing Chain
12 Tensioning System is an integral component of the Subject Nissan Vehicles' engines.
13 When the Timing Chain Tensioning System fails, it can cause a variety of problems for
14 the Subject Nissan Vehicles, including the inability accelerate and maintain speed, as
15 well as catastrophic engine failure, among other issues. When any of these occur while
16 the vehicles are in motion, occupants of the vehicles are exposed to rear end collisions
17 and other accidents caused by the driver's inability to maintain an appropriate speed on
18 the road.

19 11. The fact that the Timing Chain Tensioning System is prone to premature
20 failure is also material to consumers because there is no safe alternative way for owners
21 of the Subject Nissan Vehicles to avoid the risk of potential harm. As a result of its
22 failure to disclose the material fact that the Timing Chain Tensioning System installed in
23 the Subject Nissan Vehicles is prone to premature failure, Nissan has recklessly placed
24 the safety of owners and occupants of the vehicles at risk.

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12. Plaintiffs and members of the Class (as defined below) would not have bought the Subject Nissan Vehicles had they known that the Timing Chain Tensioning System installed is prone to unavoidably dangerous and premature failure. When Plaintiffs and members of the Class purchased the Subject Nissan Vehicles, they relied on their reasonable expectations that the Subject Nissan Vehicles would not pose an unavoidable safety risk.

13. Furthermore, had Nissan disclosed to consumers the material fact that the Timing Chain Tensioning System is prone to premature failure and required replacement, Nissan Vehicle owners would have required Nissan to replace the Timing Chain Tensioning System before the five-year warranty periods expired. Nevertheless, notwithstanding Nissan's awareness of the safety defect, Nissan never disclosed these material facts to consumers at the time of purchase, before the warranty expired, nor anytime thereafter.

JURISDICTION AND VENUE

14. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which members of the Class (as defined below) are citizens of states different from Defendant. Further, greater than two-thirds of the members of the Class reside in states other than the states in which Defendant is a citizen. In addition, under 28 U.S.C. § 1367, this Court may exercise supplemental jurisdiction over the state law claims because all of the claims are derived from a common nucleus of operative facts and are such that plaintiffs would ordinarily expect to try them in one judicial proceeding.

15. Venue lies within this judicial district under 28 U.S.C. § 1391(a) and (c) because Nissan has sufficient contacts with this District to subject it to personal jurisdiction in this District, and a substantial part of the events and omissions giving rise to the claims asserted in this Complaint occurred within this District.

PARTIES

16. Plaintiff Kobe Falco is Citizen of California and a resident of Irvine, California, in Orange County, California

17. Plaintiff Joel Seguin is Citizen of California and a resident of Northridge, California, in Los Angeles County, California.

18. Plaintiff Alfredo Padilla is Citizen of California and a resident of South San Francisco, in San Mateo County, California.

19. Plaintiff Roberto Galvan is Citizen of California and a resident of Riverside, California, in Riverside County, California

20. Defendant Nissan North America, Inc. is a California corporation with its principal place of business located at One Nissan Way, Franklin, Tennessee, 37067, and doing business in California.

21. Defendant Nissan Jidosha Kabushiki Kaisha d/b/a Nissan Motor Co., Ltd. is the parent company of Nissan North America, Inc. Nissan Motor Co., Ltd. is publicly traded in Japan.

22. Defendants are responsible for the importation, distribution, marketing and sale of the Subject Nissan Vehicles.

23. Plaintiffs are informed and believe, and based thereon, allege that Defendant Nissan North America communicates with Defendant Nissan Motor Co., Ltd. concerning virtually all aspects of the Subject Nissan Vehicles sold in the United States, and such communications targeted the Timing Chain Tensioning System. Defendant Nissan North America, Inc. regularly and routinely provided feedback to Nissan Motor Co., Ltd. regarding the distribution, sale, lease, servicing, and warranting of the Subject Nissan Vehicles, including the Timing Chain Tensioning System issues, and regularly and routinely provided information and approval concerning the testing of the Timing Chain Tensioning System, the implementation of design changes and the implementation of countermeasures.

24. Whenever, in this Complaint, reference is made to any act, deed or conduct

1 of Nissan, the allegation means that Nissan engaged in the act, deed, or conduct by or
2 through one or more of its officers, directors, agents, employees or representatives who
3 was actively engaged in the management, direction, control or transaction of the
4 ordinary business and affairs of Nissan.

5 **FACTUAL BACKGROUND**

6 25. Nissan is known throughout the United States and internationally as a major
7 manufacturer of automobiles and related products, which are sold under the Nissan and
8 Infiniti brands.

9 26. Doing business as Jidosha Seizo Co., Ltd., Nissan first established
10 operations in 1933, and began production of motor vehicles shortly thereafter.
11 Exportation of passenger cars to the United States began in 1958. The cars were then
12 sold under the Datsun brand. In or about September 1960, Nissan Motor Corporation,
13 now Nissan North America, Inc., opened for business in the United States.

14 27. Nissan designed, manufactured, imported, distributed and marketed the
15 Subject Nissan Vehicles in the United States, including California. Nissan also provides
16 maintenance services for the Subject Nissan Vehicles through its nationwide network of
17 authorized dealers and service providers.

18 28. The Subject Nissan Vehicles are equipped with a defective Timing Chain
19 Tensioning System that fails prematurely, before the end of the useful life of the Subject
20 Nissan Vehicles. Plaintiffs are informed and believe, and on that basis allege that a
21 vehicle's Timing Chain Tensioning System is intended and reasonably expected to last
22 at least ten years, if not more, without the need for repair and replacement.

23 29. The timing chain system, which includes the Timing Chain Tensioning
24 System, is an integral component of a functioning internal combustion engine. It is
25 responsible for connecting the engine's camshaft to the crankshaft, which in turn control
26 the opening and closing of the engine's valves. These activities must occur at certain,
27 specific time intervals. In particular, proper engine functioning requires that the valves
28 open and close in a precise, synchronized manner, which is coordinated with the up and

The diagram illustrates the timing chain mechanism with the following labels:

- Camshaft sprocket (INT)
- Mating mark (copper color link)
- Mating mark (punched)
- Mating mark (punched)
- Mating mark (copper color link)
- Timing chain (secondary)
- Camshaft sprocket (EXH)
- Timing chain tensioner (primary)
- Slack guide
- Internal chain guide
- Mating mark (back side)
- Mating mark (copper color link)
- Timing chain tensioner (secondary)
- Crankshaft key
- Timing chain (primary)
- Mating mark (notched)
- Camshaft sprocket (INT)
- Mating mark (copper color link)
- Mating mark (punched)
- Timing chain tensioner (secondary)
- Mating mark (punched)
- Mating mark (copper color link)
- Timing chain (secondary)
- Camshaft sprocket (EXH)
- Tension guide
- Water pump
- Crankshaft sprocket
- Mating mark (gold link)

31. When, as a result of the Timing Chain Tensioning System defects, the Subject Nissan Vehicles' Timing Chain Tensioning System fails, it sets off a chain reaction, causing extensive damage to the Subject Nissan Vehicles and, ultimately, complete destruction of the engine. A malfunction in the Timing Chain Tensioning System can cause the Subject Nissan Vehicles' pistons and valves in the Subject Nissan Vehicles to smash into one another. This, in turn, leads to catastrophic engine failure in the Subject Nissan Vehicles. Timing Chain Tensioning System failure also causes increased vehicle emissions and worsening fuel economy, as well as the inability of the Subject Nissan Vehicles to accelerate, maintain speed, and idle smoothly.

1 32. Consequently, owners of the Subject Nissan Vehicles are required to incur
2 substantial costs to replace the defective Timing Chain Tensioning System, or to repair
3 or replace the Subject Nissan Vehicles' damaged or irreparably destroyed engines.
4 Depending on the extent of damage to the Subject Nissan Vehicles' engines, owners
5 suffer monetary damages in the thousands of dollars. At times, the cost of repair or
6 replacement is greater than the value of the Subject Nissan Vehicles at the time of the
7 premature failure.

8 33. Additionally, because the Timing Chain Tensioning System can fail without
9 warning, leaving drivers unable to accelerate and maintain speed, or potentially with a
10 completely destroyed and inoperable engine, this defect poses a serious safety concern
11 that is not reasonably avoidable. Occupants, thus, are placed at risk of being struck by
12 other vehicles in traffic.

13 ///

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34. Images of the defective Timing Chain Tensioning System installed in the Subject Nissan Vehicles appear as follows:

Figure 2:
(primary timing chain guide, slack side, properly seated)

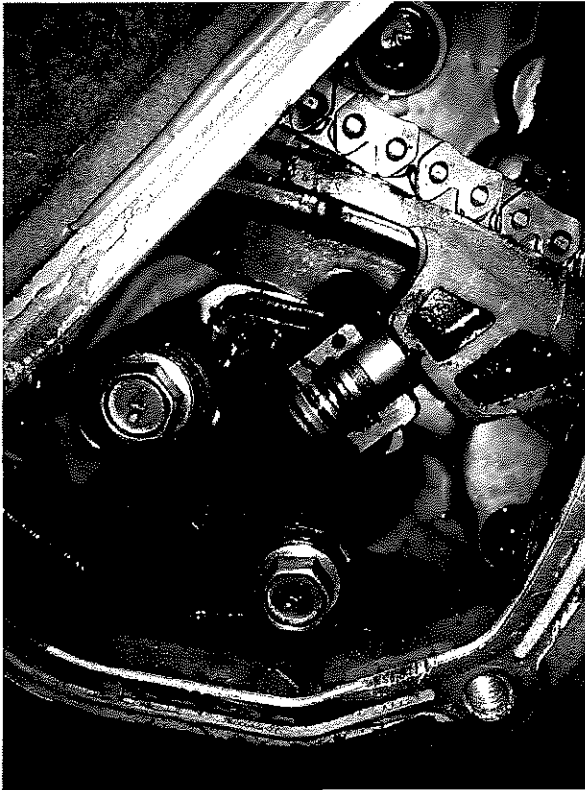


Figure 3:
(clip on the top of the primary timing chain guide breaks, and the part of guide that is in contact with the chain slides out of position)

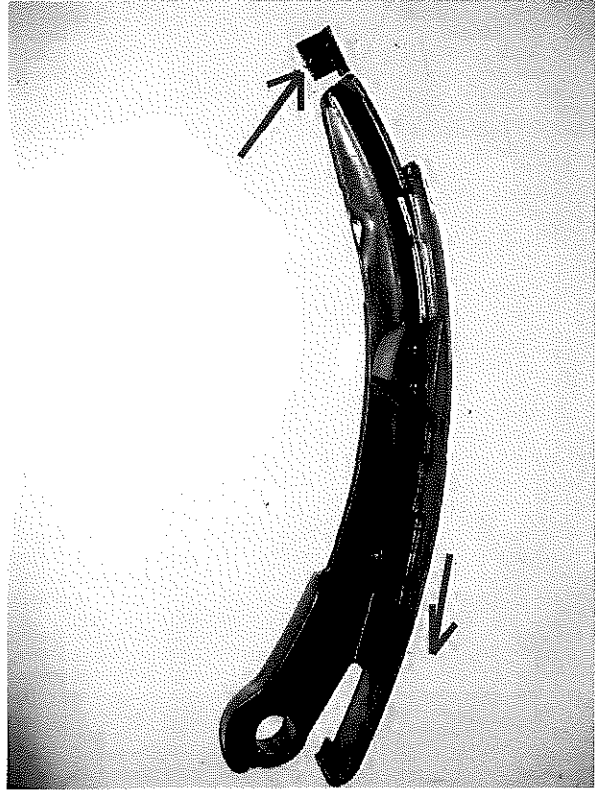


Figure 4:

(after the primary timing chain guide slips out of position, the primary timing chain guide becomes unseated from the tensioner arm)



Figure 5:

(with the primary timing chain guide unseated, the plunger for the primary timing chain tensioner begins to press into bare metal, and damage leading to engine failure begins to occur)

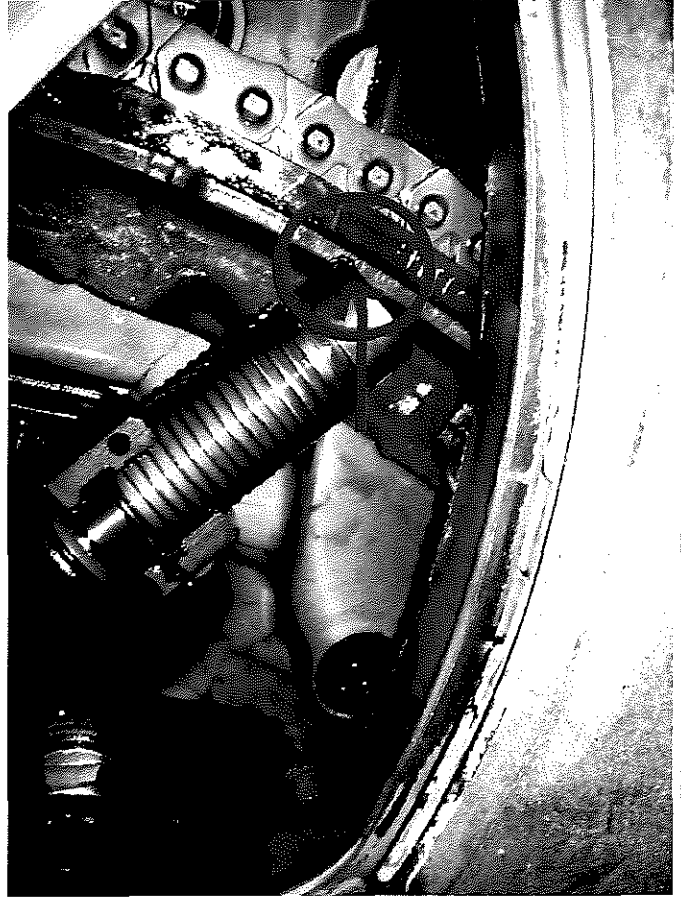
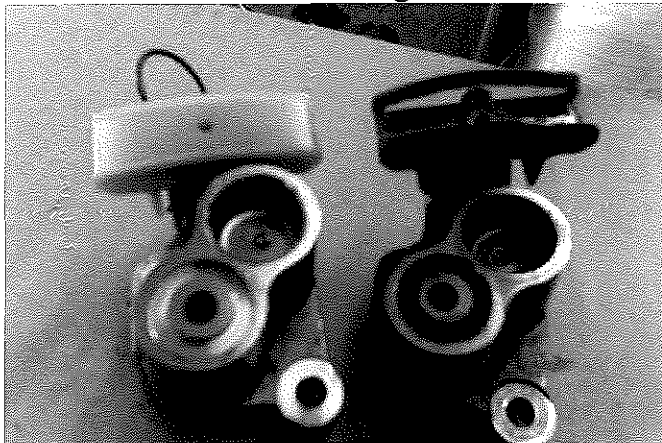


Figure 6:

(premature failures of the Timing Chain Tensioning System installed in the Subject Nissan Vehicles also stem from worn secondary timing chain tensioners, which are made from an inferior design and substandard materials)



1 35. Plaintiffs are informed and believe, and based thereon, allege that
2 reasonable alternative designs exist for Timing Chain Tensioning System, and that
3 Nissan was aware of these reasonable alternatives at the time of installation.

4 **Nissan's Knowledge of the**
5 **Timing Chain Tensioning System Defects**

6 36. Nissan had superior and exclusive knowledge of the Timing Chain
7 Tensioning System defects, and knew, or should have known, that the defects were not
8 known or reasonably discoverable by Plaintiffs and members of the Class (defined
9 below) before they purchased or leased the Subject Nissan Vehicles, or before the
10 warranty on their vehicles expired.

11 37. Plaintiffs are informed and believe, and based thereon, allege that since as
12 early as 2003, Nissan acquired its exclusive knowledge of the Timing Chain Tensioning
13 System defect through sources not available to Plaintiffs and members of the Class
14 including, but not limited to, pre-production testing, pre-production design failure mode
15 and analysis data, production design failure mode and analysis data, early consumer
16 complaints made exclusively to Nissan's network of dealers and directly to Nissan,
17 aggregate warranty data compiled from Nissan's network of dealers, testing conducted
18 by Nissan in response to consumer complaints, and repair order and parts data received
19 by Nissan from Nissan's network of dealers.

20 38. [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 39. [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 40. [REDACTED]

28 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

42. [REDACTED]

[REDACTED]

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[REDACTED]

43. [REDACTED]

[REDACTED]

[REDACTED]

44. [REDACTED]

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[REDACTED]

45. [REDACTED]

[REDACTED]

[REDACTED]

46. [REDACTED]

[REDACTED]

[REDACTED]

47. [REDACTED]

[REDACTED]

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16 51. [REDACTED]
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26 53. [REDACTED]
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3 54. [REDACTED]
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6 55. [REDACTED]
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8 [REDACTED]
9 56. [REDACTED]
10 [REDACTED]

11 57. Notwithstanding the above, although Nissan was well aware of significant
12 numbers of defective Timing Chain Tensioning Systems, Nissan kept it a secret and
13 failed to disclose the problem to consumers at the time of purchase or lease, and
14 thereafter, even as it continued to sell vehicles manufactured with a defective Timing
15 Chain Tensioning System that were prone to premature and unsafe failures. Indeed, to
16 this day, Nissan refuses to offer an adequate remedy, or even publicly acknowledge the
17 problem. Instead, rather than disclose its knowledge of this material information
18 regarding the Timing Chain Tensioning System defects, Nissan actively conceals its
19 knowledge from consumers.

20 58. Commencing in late 2005 and continuing into 2006, NNA issued a series of
21 Engineering Reports addressing the various defects plaguing the Timing Chain
22 Tensioning System. The Engineering Reports detailed NNA's receipt of numerous
23 "field incidents" concerning defects associated with the Timing Chain Tensioning
24 System, and the results of its own internal testing. In particular, such Engineering
25 Reports detailed the need for "design improvements," to the slack guide, the concerns
26 associated with the "loss of part function," and "damage to/from surrounding parts."
27 Such reports also noted that "[c]hange should be implemented as soon as possible to
28 prevent additional field issues with the current design."

1 59. Plaintiffs are informed and believe, and based thereon, allege that as a result
2 of Nissan's extensive internal knowledge, as set forth above, Nissan was well aware of
3 the Timing Chain Tensioning System defects, and consequently, in or around 2006 and
4 2007, Nissan analyzed and ultimately, redesigned one of the defective Timing Chain
5 Tensioning System components, the primary timing chain guide, slack side.

6 60. As illustrated in Figure 1 above, the primary timing chain guide is attached
7 to a fixed pivot. A tensioner is located on the opposite end of the fixed pivot. The
8 tensioner applies pressure to the chain guide, and the guide swivels from the pivot point
9 to apply pressure to the timing chain. The pressure from the guide takes up the slack in
10 the chain and keeps the chain taught so that it does not jump teeth or move out of place.
11 Failure of the chain guide leads to catastrophic engine failure.

12 61. The primary timing chain guide was initially identified as part number
13 13091-7Y000. In or around 2006 and 2007, Part number 13091-7Y000, however, was
14 analyzed, redesigned, and superseded by part number 13091-ZK00A. To conceal its
15 knowledge of the Timing Chain Tensioning System defects, Nissan has not disclosed the
16 fact that it redesigned the chain guide to the public.

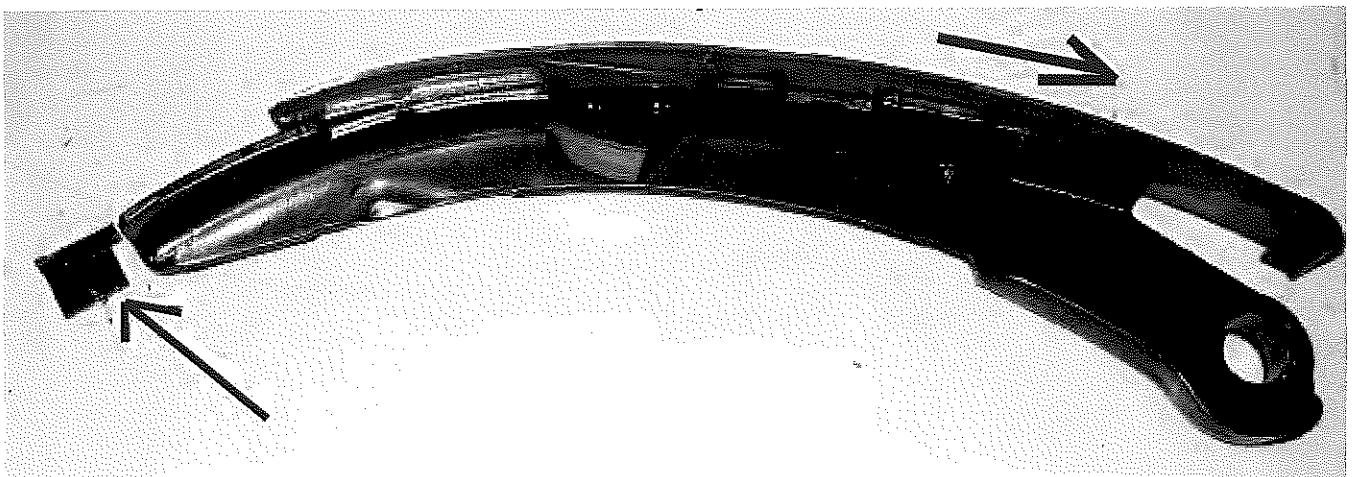
17 62. The redesigned primary chain guide (13091-ZK00A) is made with a thicker
18 plastic material, and it has a more durable "hook" shape at the top so that, unlike the
19 original design (13091-7Y000), it will not break, slide down the arm, and become
20 unseated from the tensioner.

63. The redesigned and original primary timing chain guide appear as follows:

Figure 7:
(Redesigned primary timing chain guide, Nissan Part Number 13091-ZK00A)

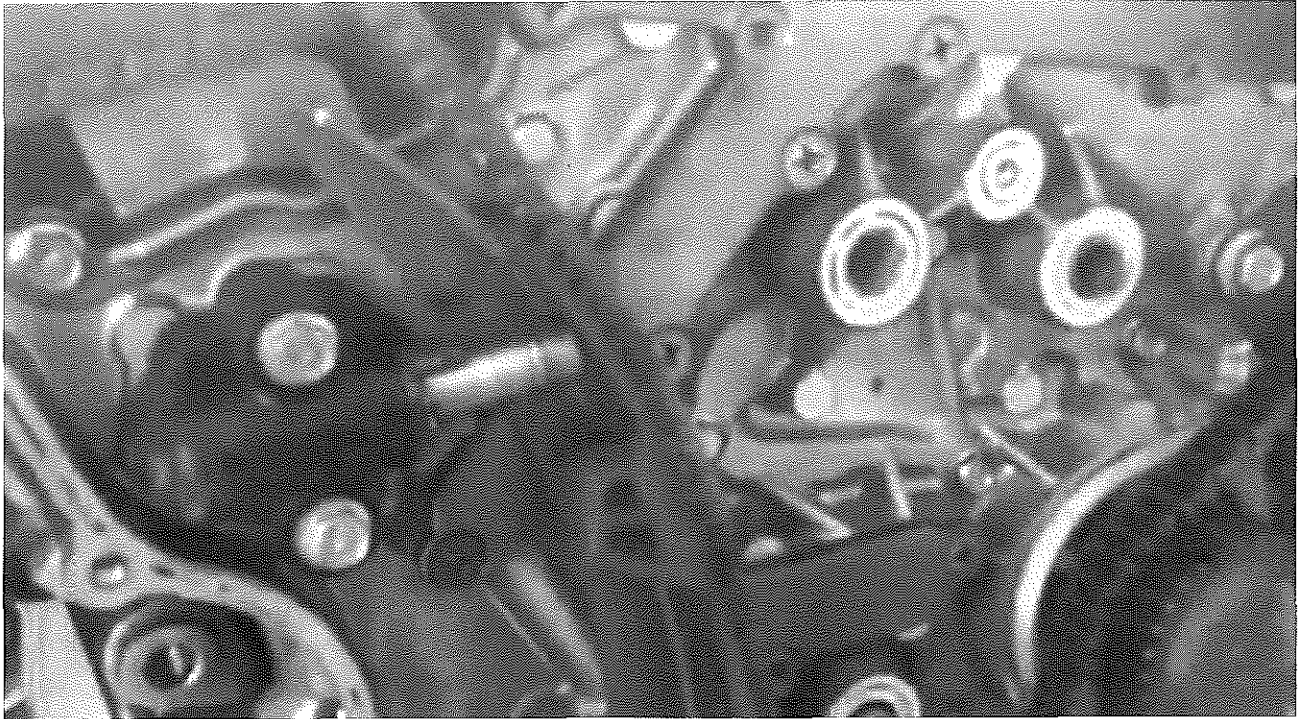


Figure 8:
(Original primary timing chain guide, Nissan Part Number 13091-7Y000)



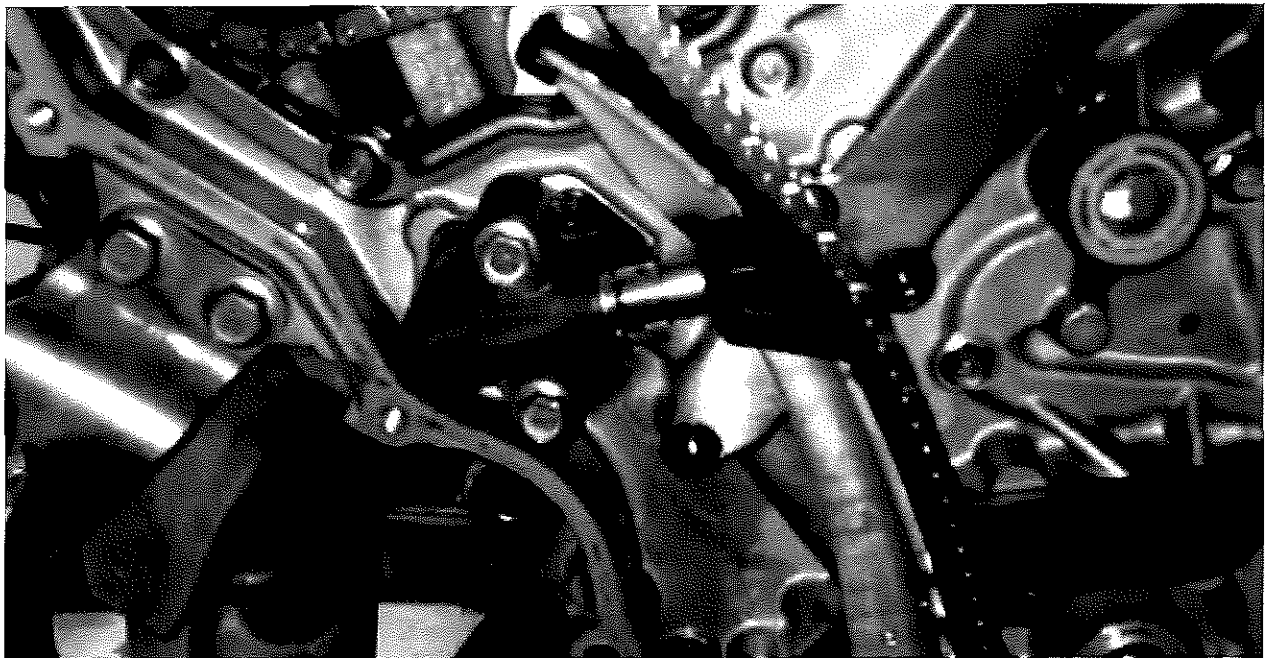
1
2 **Figure 9:**

3 (Original primary timing chain guide, slack side, 13091-7Y000, as installed in a Subject
4 Nissan Vehicle, broken at the top and unseated from the tensioner.)



15 **Figure 10:**

16 (Redesigned primary timing chain guide, slack side, 13091-ZK00A, as installed in a
17 Subject Nissan Vehicle, made of a thicker black plastic material and featuring a curved
18 "hook" shape at the top to keep the guide in position.)



Technical Service Bulletins

64. In addition to the above, and as a result of Nissan's internal knowledge regarding the Timing Chain Tensioning System defect, Nissan issued multiple Technical Service Bulletins ("TSBs") to its dealerships beginning on or around July 2007. Indeed, in the TSBs, Nissan demonstrated its knowledge that components of the Timing Chain Tensioning System were so defective that they were beyond repair -- they needed to be replaced entirely.

65. Plaintiffs are informed and believe that the first TSB (Reference No. NTB07-042), issued on or around July 17, 2007, entitled "**VQ ENGINE; BUZZING / WHINING NOISE FROM TIMING CHAIN AREA**" instructed technicians to "[r]eplace **both** secondary timing chains and **both** secondary timing chain tensioners" (emphasis in original). This TSB applied to 2004 – 2007 Nissan Maxima vehicles, 2004 – 2007 Nissan Quest vehicles, 2004 – 2006 Nissan Altima vehicles (with VQ35 engines), 2005 – 2007 Nissan Pathfinder vehicles, 2005 – 2007 Nissan Xterra vehicles, and 2005 – 2007 Nissan Frontier vehicles (with VQ40 engines). Despite this serious safety issue that affected six models of the Subject Nissan Vehicles, Plaintiffs are informed and believe, and on that basis, allege that rather than disclose the problem to the public and offer an adequate solution, Nissan attempted to conceal it.

66. Nissan issued another on April 17, 2009 (Reference No. NTSB07-042a), informed technicians that a buzzing or whining noise, coming from the secondary timing chain or camshaft sprocket areas, indicated that the secondary timing chains and secondary timing tensioners were faulty and needed to be replaced. This TSB applied to 2004 – 2007 Nissan Maxima vehicles, 2004 – 2007 Nissan Quest vehicles, 2004 – 2006 Nissan Altima vehicles (with VQ35 engines), 2005 – 2007 Nissan Pathfinder vehicles, 2005 – 2007 Nissan Xterra vehicles, and 2005 – 2007 Nissan Frontier vehicles (with VQ40 engines).

67. Nissan issued another TSB on December 14, 2009 (Reference No. NTSB07-042c) regarding defective Timing Chain Tensioning System. This TSB applied to 2004 – 2008 Nissan Maxima vehicles, 2004 – 2006 Nissan Altima vehicles (with VQ35 engines), and 2004-2009 Nissan Quest vehicles. This TSB informed technicians that a high frequency buzzing or whining noise coming from the secondary timing chain system, which increased in frequency with engine speed, indicated that the secondary timing chains and the secondary timing chain tensioner “shoes” were faulty and needed to be replaced.

68. Despite issuing multiple TSBs regarding this safety defect, Nissan still refused to disclose the problem to consumers. Nissan concealed this material information from owners of the Subject Nissan Vehicles, making it less likely that they would have defective components of their Timing Chain Tensioning System replaced prior to the expiration of their warranties. Instead, Nissan unlawfully transferred the cost of replacement of the Timing Chain Tensioning System to owners of the Subject Nissan Vehicles.

69. Moreover, in 2009, Nissan issued a press release representing that the Subject Nissan Vehicles featured a “silent timing chain,” not the “whining” and “buzzing” one that it knew consumers were actually experiencing in their vehicles. Specifically, the press release¹ stated:

Like others in the VQ family, the 4.0-liter version includes such advanced design features as lightweight aluminum block and cylinder heads, Continuous Valve Timing Control (CVTCS), Nissan variable Induction Control System (NICS), silent timing chain and microfinished camshaft and crankshaft surfaces.

¹ See <http://nissannews.com/en-US/nissan/usa/channels/us-united-states-nissan-models-terra/presskits/2009-nissan-xterra-press-kit-3> (last visited Jan. 3, 2013).

National Highway Traffic Safety Administration Complaints

70. Notwithstanding the TSBs and other evidence concerning Nissan's exclusive, internal knowledge of the Timing Chain Tensioning System defects, Nissan's awareness of the fact that the Timing Chain Tensioning System in the Subject Nissan Vehicles is defective and prone to premature failure is evidenced by the numerous complaints concerning the issue that have been made to the National Highway Traffic Safety Administration ("NHTSA"). Nissan monitored NHTSA databases as part of its ongoing obligation to identify potential defects in its vehicles.

71. But, even in the face of these complaints, Nissan continues to refuse to disclose to consumers that there is a problem with the Timing Chain Tensioning System, and it continues to put owners of the Subject Nissan Vehicles and their occupants at risk.

72. A small sampling of some of the complaints regarding the premature failure of the Timing Chain Tensioning System reported to the NHTSA is as follows:

Date Complaint Filed: 10/31/2006

Component(s): POWER TRAIN

Date of Incident: 08/21/2006

NHTSA ID Number: 10172303

Vehicle Make NISSAN

Model QUEST

Model Year(s) 2004

Crash: No

Fire: No

Number of Injuries: 0

Number of Deaths: 0

Manufacturer: Nissan North America, Inc.

Vehicle Identification No. (VIN): Not Available

SUMMARY:

A LOUD TICKING SOUND WHEN STARTING UP COLD FOR ABOUT 5 MINUTES BEFORE IT WARMS UP. WE REPORTED THIS A FEW MONTHS AGO AND WERE TOLD THAT IT WAS THE VARIABLE TIMING CHAIN, THEN WERE TOLD NO IT'S NORMAL, THEN IT'S THE VTC, NO THE ENGINEER SAYS IT'S NORMAL. THEY ARE REFUSING TO REPAIR. IT IS NOT A NORMAL SOUND.

*NM

1 Date Complaint Filed: 01/31/2007
2 Component(s): ENGINE AND ENGINE COOLING
3 Date of Incident: 11/17/2006
4 NHTSA ID Number: 10181206
5 Vehicle Make NISSAN
6 Model QUEST
7 Model Year(s) 2005

8 Crash:No
9 Fire:No
10 Number of Injuries:0
11 Number of Deaths:0
12 Manufacturer: Nissan North America, Inc.
13 Vehicle Identification No. (VIN): Not Available

14 SUMMARY:

15 TL *- THE CONTACT CALLED REGARDING A 2005 NISSAN QUEST. THE
16 CONTAC (sic) HAD MAJOR REPAIRS DONE IN DECEMBER 2007 (sic). THE
17 NISSAN DEALER TOOK THE ENGINE APART TO REPLACE THE TIMING
18 BELT. SINCE THEN WHEN THE HEATER WAS ON AND THE VEHICLE
19 STOPPED THE HEATER FAN WILL STOP WORKING, AND HE HEARD A
20 HUMMING NOISE. ONCE HE RESUMED DRIVING HE HEARD A CLICKING
21 SOUND ON THE DRIVER'S SIDE AND THEN ON THE PASSENGER SIDE, THEN
22 THE HEAT WILL START WORKING AGAIN. THE CONTACT STATED THAT
23 HAD NOT HAPPENED BEFORE THE REPAIR SERVICE. THE CONTACT
24 STATED THAT A MECHANIC AT NISSAN LOOKED AT THE VEHICLE AND
25 SAID THAT IT WAS SUPPOSE TO DO THAT. *AK
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27
28

1 Date Complaint Filed: 04/07/2008
2 Component(s): ENGINE AND ENGINE COOLING , POWER TRAIN
3 Date of Incident: 07/25/2007
4 NHTSA ID Number: 10223562

5 Vehicle Make NISSAN
6 Model MAXIMA
7 Model Year(s) 2004

8 Crash:No
9 Fire:No
10 Number of Injuries:0
11 Number of Deaths:0
12 Manufacturer: Nissan North America, Inc.
13 Vehicle Identification No. (VIN): 1N4BA41E04C...

14 SUMMARY:
15 NISSAN TRANSMISSION AND TIMING CHAIN ISSUES. PLEASE SEE
16 ATTACHED COMMENTS WHICH DEMONSTRATE EXTENT OF PROBLEM.
17 NISSAN AND THEIR DEALERSHIP SHOULD ASSUME RESPONSIBILITY FOR
18 THIS OBVIOUS DEFECT.
19 [HTTP://WWW.CARSURVEY.ORG/VIEWCOMMENTS_REVIEW_61092.HTML](http://www.carsurvey.org/viewcomments_review_61092.html). *TR
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1 Date Complaint Filed: 07/22/2008

2 Component(s): POWER TRAIN

3 Date of Incident: 07/10/2008

4 NHTSA ID Number: 10235248

5 Vehicle Make NISSAN

6 Model PATHFINDER

7 Model Year(s) 2005

8 Crash:No

9 Fire:No

10 Number of Injuries:0

11 Number of Deaths:0

12 Manufacturer: Nissan North America, Inc.

13 Vehicle Identification No. (VIN): 5N1AR18W85C...

14 SUMMARY:

15 THE DEALER POINTED OUT THAT THERE WAS A BUZZING / WHINING
16 NOISE COMING FROM ONE OR BOTH SECONDARY TIMING CHAINS AND
17 CAMSHAFT SPROCKET AREAS. I HAD TO REPLACE BOTH SECONDARY
18 TIMING CHAINS AND BOTH SECONDARY TIMING CHAIN TENSIONERS AT
19 61,000 MILES. COST: \$2,148.00. PLEASE SEE NISSAN TECHNICAL SERVICE
20 BULLETIN: CLASSIFICATION: EM07-001 NTB07-042. REFERENCE: DATE:
21 JULY 17, 2007. I BELIEVE THIS ITEM SHOULD BE A RECALL. THIS IS
22 OBVIOUSLY A MISTAKE ON NISSAN'S BEHALF WHEN THEY USED
23 INAPPROPRIATE AND UNSAFE PARTS. I ASKED NISSAN TO COVER THIS
24 ITEM UNDER WARRANTY, WHICH THEY QUICKLY REFUSED. I WAS 1,000
25 MILES PAST MY DRIVE TRAIN WARRANTY BUT THIS HAD BEGUN WAY
26 BEFORE THAT POINT. I FIND IT BOTH AMUSING AND CONVENIENT THAT
27 NISSAN NEVER MENTIONED THIS PROBLEM TO ITS CUSTOMERS, AND ME
28 SPECIFICALLY UNTIL I WAS OUT OF WARRANTY; THE SERVICE REPORT IS
DATED JULY 17, 2007, EXACTLY ONE YEAR PRIOR TO MY VEHICLE
NEEDING REPAIR. I BELIEVE THIS IS A CLEAR ADMITTANCE OF GUILT ON
BEHALF OF NISSAN. *TR

1 Date Complaint Filed: 08/08/2008
2 Component(s): ENGINE AND ENGINE COOLING
3 Date of Incident: 01/01/2008
4 NHTSA ID Number: 10237496
5 Vehicle Make NISSAN
6 Model MAXIMA
7 Model Year(s) 2004

8 Crash:No
9 Fire:No
10 Number of Injuries:0
11 Number of Deaths:0
12 Manufacturer: Nissan North America, Inc.
13 Vehicle Identification No. (VIN): Not Available

14 SUMMARY:

15 2004 NISSAN MAXIMA SE. FRONT RIGHT TICKING SOUND. DEALER
16 EVALUATED THE CAR AND SAID IT WAS A PRIMARY AND SECONDARY
17 TIMING CHAIN PROBLEM. SAID I NEEDED A REPLACEMENT. I'M TOLD BY
18 ANOTHER NON-NISSAN DEALER THAT THIS IS SO COMMON IT SHOULD BE
19 LISTED AS A RECALL. *TR

20 Date Complaint Filed: 09/12/2010
21 Component(s): ENGINE AND ENGINE COOLING
22 Date of Incident: 09/11/2010
23 NHTSA ID Number: 10355115

24 Vehicle Make NISSAN
25 Model FRONTIER
26 Model Year(s) 2006

27 Crash:No
28 Fire:No
Number of Injuries:0
Number of Deaths:0
Manufacturer: Nissan North America, Inc.
Vehicle Identification No. (VIN): 1N6AD06U76C...

29 SUMMARY:

30 THE TIMING CHAIN BROKE IN HALF WHILE DRIVING DOWN THE HIGHWAY.
31 THIS PROBLEM CAUSED THE VEHICLE TO SHUT DOWN IN THE MIDDLE OF A
32 HIGHWAY LANE ALMOST CAUSING A WRECK. THE VEHICLE NEEDS A NEW
33 TIMING CHAIN AND GUIDES BUT NO REPAIRS HAVE BEEN MADE. *TR

Safety Concerns

73. In connection with its failure to disclose the fact that the Timing Chain Tensioning System is prone to premature failure, Nissan also risks the safety of occupants of the Subject Nissan Vehicles. When the Subject Nissan Vehicles' Timing Chain Tensioning System fails, drivers of the Subject Nissan Vehicles can experience an inability to accelerate, an inability to maintain speed, and even catastrophic engine failure, potentially rendering the vehicle inoperable while it is moving. As a result, drivers are unable to keep up with the normal flow of traffic, and are at an increased risk of a collision. The reasonable expectation that the Subject Nissan Vehicles are safe to drive and ride in was, and is, material to Plaintiffs and members of the Class.

74. Indeed, in addition to the above, numerous drivers of the Subject Nissan Vehicles have reported their safety concerns to the NHTSA. Some of those reports include the following (emphasis added):

Make : Model : Year : 2007
NISSAN QUEST

Manufacturer : Nissan North America, Inc.

Crash : Fire : Number of Injuries: 0
No No

ODI ID Number : Number of Deaths: 0
10448556

Date Complaint
Filed: February Date of Incident: December 15, 2011
20, 2012

VIN :
5N1BV28U47N...

Component: ENGINE AND ENGINE COOLING

Summary:

LOUD SQUEALING NOISE FROM SECONDARY TIMING CHAIN TENSIONERS IN ENGINE. WAS TOLD IF TENSIONERS BREAK, **TIMING CHAIN WOULD RELEASE INTO ENGINE AND CAUSE A HAZARD.** DEALERSHIP FIXED IT- \$1700 AND THE SECONDARY TENSIONERS ARE WORN AND CHEAP. THE NEW ONES ARE MUCH DIFFERENT. IF I HAD NOT HAD THE SQUEALING NOISE, THE TIMING CHAIN WOULD HAVE BEEN RELEASED INSIDE THE ENGINE. *TR

1 Make : Model : Year : 2004
NISSAN QUEST

2 Manufacturer : Nissan North America, Inc.

3 Crash : Fire : Number of Injuries: 0
4 No No

5 ODI ID Number : Number of Deaths: 0
10478369

6 Date Complaint
7 Filed: October 2, Date of Incident: September 5, 2012
2012

8 VIN :
5N1BV28U64N...

9 Component: ENGINE

10 Summary:

11 MY NISSAN QUEST HAS BEEN MAKING A RATTLING NOISE THAT IS PROGRESSIVELY
12 GETTING WORSE. I TOOK IT IN TODAY AND WAS TOLD THAT I HAD PROBLEMS WITH
13 THE TIMING CHAIN AND THAT I SHOULD TAKE IT TO A DEALER OR ENGINE SHOP THAT
14 IS EQUIPPED TO FIX SUCH AN ISSUE. ONE OF THE REASONS I FAVORED BUYING THIS
15 CAR WAS BECAUSE OF THE FACT THAT NISSAN USES A TIMING CHAIN RATHER THAN A
16 TIMING BELT. THUS, I WOULDN'T HAVE THE EXPENSE OF REPLACING A TIMING BELT IN
17 THE FUTURE. I WAS LEAD TO BELIEVE THAT TIMING CHAINS WOULD NOT BE
18 SOMETHING THAT I WOULD NEED TO FIX. BECAUSE THIS PROBLEM IS PREVALENT
19 AMONG QUEST OWNERS, I BELIEVE THAT NISSAN SHOULD RECALL THEIR VEHICLES
20 THAT SUFFER FROM THE SAME DESIGN FLAW. **IF NISSAN DOESN'T ADDRESS THIS**
21 **ISSUE, SOMEONE IS GOING TO GET INJURED OR KILLED AS A RESULT OF ONE OF**
22 **THEIR FAULTY TIMING BELTS BREAKING WHILE ONE OF THEIR FAULTY CARS IS**
23 **BEING DRIVEN. *TR**

24 75.

25 76.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 77. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 **PLAINTIFFS' CLAIMS AGAINST NISSAN**

15 **Plaintiff Kobe Falco**

16 78. Plaintiff Kobe Falco is a citizen of California and a resident of Irvine,
17 California, in Orange County, California. Plaintiff Falco purchased, for personal, family
18 or household purposes, a new 2005 Nissan Pathfinder from a Nissan dealership in
19 Bellevue, Washington.

20 79. Plaintiff Falco was exposed to Nissan's advertising campaign, including
21 television and radio commercials that generally depicted Nissan vehicles to be of good
22 quality. Had Nissan disclosed its knowledge of the Timing Chain Tensioning System
23 defects when Plaintiff Falco purchased his 2005 Nissan Pathfinder, Plaintiff Falco would
24 have seen such disclosures and been aware of them. Indeed, Nissan's omissions were
25 material to Plaintiff Falco. Like all members of the Class, he would not have purchased
26 his 2005 Nissan Pathfinder, or he would not have paid the purchase price charged by
27 Nissan, had he known that the Timing Chain Tensioning System was prone to
28 unavoidably dangerous and premature failure, or that he likely would have to either

1 spend hundreds to thousands of dollars to repair the Timing Chain Tensioning System in
2 the early years of vehicle operation and ownership, or sell the vehicle at a loss.

3 80. Additionally, Plaintiff Falco's 2005 Nissan Pathfinder suffered from the
4 Timing Chain Tensioning System defects while it was under warranty, but because
5 Nissan failed to disclose its knowledge of the problem to consumers like Plaintiff,
6 although Plaintiff Falco's 2005 Nissan Pathfinder was making a "whining" and "ticking"
7 noises that are symptomatic of the Timing Chain Tensioning System defects, Plaintiff
8 was not aware of the precise nature and extent of the problem. Had Nissan disclosed its
9 knowledge of the Timing Chain Tensioning System defects prior to the expiration of his
10 warranty, Plaintiff would have seen such disclosures and been aware of them, and he
11 would have demanded that Nissan repair his 2005 Nissan Pathfinder while it was under
12 warranty.

13 81. Plaintiff Falco drove his 2005 Nissan Pathfinder in a reasonably foreseeable
14 manner, as it was intended to be used. Nevertheless, on or about November 9, 2011,
15 with approximately 40,663 miles on the odometer of his 2005 Nissan Pathfinder,
16 Plaintiff took the vehicle to an authorized Nissan dealer for repairs concerning the
17 Timing Chain Tensioning System.

18 82. The repair order for Plaintiff Falco's November 9, 2011 service visit
19 explains that there was a "metalick (sic) rattle noise comming (sic) from the engine area
20 on start up," and that the vehicle was experiencing "timing chain whining." The Nissan
21 dealer told Plaintiff Falco that the "timing chain whining" notation on the repair order
22 meant that the secondary timing chains and tensioner shoes on Plaintiff Falco's vehicle
23 had to be replaced. Plaintiff Falco paid \$510.60 to replace the secondary timing chains
24 and secondary timing chain tensioner shoes.

25 **Plaintiff Joel Seguin**

26 83. Plaintiff Joel Seguin is a citizen of California and a resident of Northridge,
27 California, in Los Angeles County, California.

28 84. Plaintiff Joel Seguin purchased, for personal, family or household purposes,

1 a new 2007 Nissan Quest from Simi Valley Nissan in Simi Valley, California.

2 85. When Plaintiff Seguin purchased his 2007 Nissan Quest from Nissan, he
3 relied on a reasonable expectation that the vehicle's Timing Chain Tensioning System
4 was designed to last beyond the warranty period without need for repair or replacement.
5 And when Plaintiff Seguin purchased his 2007 Nissan Quest, he also relied on a
6 reasonable expectation that the vehicle's Timing Chain Tensioning System did not pose
7 an unavoidable safety risk.

8 86. Plaintiff Seguin reviewed Nissan's promotional materials and other
9 information, and had Nissan disclosed its knowledge of the Timing Chain Tensioning
10 System defects when Plaintiff Seguin purchased his 2007 Nissan Quest, Plaintiff would
11 have seen such disclosures and been aware of them. Indeed, Nissan's omissions were
12 material to Plaintiff Seguin. Like all members of the Class, he would not have
13 purchased his 2007 Nissan Quest, or he would not have paid the purchase price charged
14 by Nissan, had he known that the Timing Chain Tensioning System was prone to
15 unavoidably dangerous and premature failure, or that he likely would have to either
16 spend hundreds or thousands of dollars to repair the Timing Chain Tensioning System in
17 the early years of vehicle operation and ownership, or sell the vehicle at a loss.

18 87. Additionally, Plaintiff Seguin's 2007 Nissan Quest suffered from the
19 Timing Chain Tensioning System defects while it was under warranty, but because
20 Nissan failed to disclose its knowledge of the problem to consumers like Plaintiffs,
21 although Plaintiff Seguin's 2007 Nissan Quest was making the "whining" and "rattling"
22 or "ticking" noises that are symptomatic of the Timing Chain Tensioning System
23 defects, Plaintiff was not aware of the precise nature and extent of the problem. Had
24 Nissan disclosed its knowledge of the Timing Chain Tensioning System defects prior to
25 the expiration of his warranty, Plaintiff would have seen such disclosures and been
26 aware of them, and he would have demanded that Nissan repair his 2007 Nissan Quest
27 while it was under warranty.

28 88. Indeed, Plaintiff Seguin brought his car in to a Nissan dealer for other

1 repairs on many occasions while it was under warranty, including on February 26, 2009,
2 and on May 8, 2009, but despite the fact that Plaintiff Seguin heard “whining” and
3 “rattling” from his engine at the time, Nissan failed to disclose its knowledge of the
4 Timing Chain Tensioning System defects and therefore, Plaintiff Seguin did not have his
5 Timing Chain Tensioning System repaired while his vehicle was still under warranty.

6 89. Accordingly, Plaintiff Seguin has been monetarily damaged and suffered
7 injury in fact as a result of Nissan’s misconduct.

8 90. Plaintiff Seguin drove his 2007 Nissan Quest in a reasonably foreseeable
9 manner, as it was intended to be used. Nevertheless, on July 2, 2012, upon noticing a
10 high-pitched whining and rattling noises coming from the vehicle’s engine, Plaintiff
11 Seguin took his vehicle to the Keyes Woodland Hills Nissan dealership. There, Plaintiff
12 Seguin paid the dealership \$300 to diagnose the problem, and was told that the Timing
13 Chain Tensioning System in his vehicle was damaged and would need to be repaired for
14 \$2,788.

15 91. Rather than invest the additional \$2,788 into a car with an estimated Kelly
16 Blue Book® resale value of approximately \$7,000, as a result of Nissan’s unlawful
17 conduct, Plaintiff Seguin was forced to sell the vehicle for \$4,000, causing him to suffer a
18 substantial economic loss.

19 **Plaintiff Alfredo Padilla**

20 92. Plaintiff Alfredo Padilla is a citizen of California and a resident of South
21 San Francisco in San Mateo County, California.

22 93. Plaintiff Alfredo Padilla purchased, for personal, family or household
23 purposes, a new 2006 Nissan Pathfinder from a Nissan dealership in California.

24 94. Like all members of the Class, when Plaintiff Padilla purchased his 2006
25 Nissan Pathfinder from Nissan, he relied on a reasonable expectation that the vehicle’s
26 Timing Chain Tensioning System was designed to last beyond the warranty period
27 without need for repair or replacement. And when Plaintiff Padilla purchased his 2006
28 Nissan Pathfinder, like all members of the Class, he also relied on a reasonable

1 expectation that the vehicle's Timing Chain Tensioning System did not pose an
2 unavoidable safety risk.

3 95. Plaintiff Padilla reviewed Nissan's promotional materials and other
4 information, and had Nissan disclosed its knowledge of the Timing Chain Tensioning
5 System defects when Plaintiff Padilla purchased his 2006 Nissan Pathfinder, Plaintiff
6 Padilla would have seen such disclosures and been aware of them. Indeed, Nissan's
7 omissions were material to Plaintiff Padilla. He would not have purchased his 2006
8 Nissan Pathfinder, or he would not have paid the purchase price charged by Nissan, had
9 he known that the Timing Chain Tensioning System was prone to unavoidably
10 dangerous and premature failure, or that he likely would have to either spend hundreds
11 or thousands of dollars to repair the Timing Chain Tensioning System in the early years
12 of vehicle operation and ownership, or sell the vehicle at a loss.

13 96. Additionally, Plaintiff Padilla's 2006 Nissan Pathfinder suffered from the
14 Timing Chain Tensioning System defects while it was under warranty, but because
15 Nissan failed to disclose its knowledge of the problem to consumers like Plaintiffs,
16 although Plaintiff Padilla's 2007 Nissan Pathfinder was making the "whining" and
17 "rattling" or "ticking" noises that are symptomatic of the Timing Chain Tensioning
18 System defects, Plaintiff was not aware of the precise nature and extent of the problem.
19 Had Nissan disclosed its knowledge of the Timing Chain Tensioning System defects
20 prior to the expiration of his warranty, Plaintiff Padilla would have seen such disclosures
21 and been aware of them, and he would have demanded that Nissan repair his 2006
22 Nissan Pathfinder while it was under warranty.

23 97. Plaintiff Padilla drove his 2006 Nissan Pathfinder in a reasonably
24 foreseeable manner, as it was intended to be used. Nevertheless, on or around
25 September 26, 2012, with approximately 58,237 miles on the odometer of his 2006
26 Nissan Pathfinder, Plaintiff Padilla brought his vehicle to an authorized Nissan
27 dealership in California. The dealer informed Plaintiff Padilla that elements of his
28 Timing Chain Tensioning System, including the primary timing chain guide, slack side

(13091-ZK00A), and other related components needed to be replaced. Ultimately, Plaintiff Padilla paid \$1,747.16 for the repairs to the Timing Chain Tensioning System in his 2006 Nissan Pathfinder.

98. Below is a portion of the repair order concerning the required repairs to Plaintiff Padilla's Timing Chain Tensioning System:

| 07:28 26SEP12 09:58 05OCT12 | | | | |
|--|---------------|------------------|--------|-----------------|
| LINE | OPCODE | TECH TYPE HOURS | LIST | NET TOTAL |
| TCHAIN CUSTOMER APPROVES REPLACING TIMING CHAIN AS WELL AS SECONDARY CHAINS AND ALL OTHER RELATED COMPONENTS | | | | |
| | 63492 | CC | | 1160.88 1160.88 |
| 1 | WBILL-NIS24 | NISSAN WIPER BL | 16.00 | 16.00 16.00 |
| 1 | 13028-ZS00A | CHAIN-TIMING CA | 118.71 | 118.71 118.71 |
| 1 | 13070-EA200 | TENSIONER ASMY | 105.31 | 105.31 105.31 |
| 1 | 13091-ZK00A | CHAIN GUIDE | 61.26 | 61.26 61.26 |
| 1 | 13085-EA210 | GUIDE-CHAIN TEN | 22.30 | 22.30 22.30 |
| 1 | 13510-7Y000 | SEAL-OIL, CRANKS | 31.54 | 31.54 31.54 |
| 2 | 13028-ZK01C | CHAIN-CAMSHAFT | 41.10 | 41.10 82.20 |
| 1 | 13097-ZK01C | TENSIONER FACE | 4.47 | 4.47 4.47 |
| 2 | 15066-5E510 | SEAL-O RING | 11.27 | 11.27 22.54 |
| 2 | 15066-ZL80A | SEAL O RING | 9.79 | 9.79 19.58 |
| 1 | 999MP-1217HP | THREBOND 1217B | 29.54 | 29.54 29.54 |
| 1 | 999MP-AF00P36 | LONG LIFE ANTI | 34.53 | 34.53 34.53 |
| 1 | 13085-EA200 | GUIDE-CHAIN TEN | 22.30 | 22.30 22.30 |
| 1 | WBILL-NIS21 | NISSAN WIPER BE | 16.00 | 16.00 16.00 |
| 58237 REPLACED TIMING CHAIN AND ALL RELATED PARTS | | | | |
| ***** | | | | |

Plaintiff Roberto Galvan

99. Plaintiff Roberto Galvan is a citizen of California and a resident of the City of Riverside, in Riverside County, California

100. In or around April 2009, Plaintiff Galvan purchased, for personal, family or household purposes, a used 2005 Nissan Pathfinder from a Nissan dealership in California.

101. When Plaintiff Galvan purchased his 2005 Nissan Pathfinder, like all members of the Class, he relied on a reasonable expectation that the vehicle's Timing Chain Tensioning System was designed to last beyond the warranty period without need for repair or replacement. And, like all members of the Class, when Plaintiff Galvan purchased his 2005 Nissan Pathfinder, he also relied on a reasonable expectation that the vehicle's Timing Chain Tensioning System did not pose an unavoidable safety risk.

1 102. Over a period of several years prior to his purchase in 2009, Plaintiff
2 Galvan was exposed to Nissan's advertising campaign, including television and radio
3 commercials regarding the Subject Nissan Vehicles. Nissan's omissions were material
4 to Plaintiff Galvan. Had Nissan disclosed its knowledge of the Timing Chain
5 Tensioning System defects before Plaintiff Galvan purchased his 2005 Nissan
6 Pathfinder, he would have been exposed to them and thus, would have been aware of
7 such disclosures, and Plaintiff Galvan would not have purchased the vehicle, or he
8 would not have paid the purchase price.

9 103. Additionally, Plaintiff Galvan's 2009 Nissan Pathfinder exhibited the
10 Timing Chain Tensioning System defects while it was under warranty, but because
11 Nissan failed to disclose its knowledge of the problem to consumers like Plaintiff,
12 although Plaintiff Roberto Galvan's 2005 Nissan Pathfinder was making the "whining"
13 and "rattling" or "ticking" noises that are symptomatic of the Timing Chain Tensioning
14 System defects, Plaintiff was not aware of the precise nature and extent of the problem.
15 Had Nissan disclosed its knowledge of the Timing Chain Tensioning System defects,
16 Plaintiff Galvan would have seen such disclosures and been aware of them, and he
17 would have demanded that Nissan repair his 2005 Nissan Pathfinder while it was under
18 warranty.

19 104. Plaintiff Galvan drove his 2005 Nissan Pathfinder in a reasonable
20 foreseeable manner and in the manner it was intended to be used. Nevertheless, on or
21 around March 15, 2011, with approximately 47,424 miles on the odometer, Plaintiff
22 Galvan brought his vehicle to an authorized Nissan dealer in California. Plaintiff
23 Galvan informed the dealer, as recorded in his repair order, that "there is a humming
24 type noise heard from engine." The dealer informed Plaintiff Galvan that his timing
25 chain and guides needed to be replaced at a cost of \$1,600. Plaintiff Galvan, however,
26 was unable to afford the cost of repair and thus, he could not have the work done.

105. Following the dealer visit, Plaintiff Galvan's wife called Nissan directly to complain. Nissan informed Ms. Galvan that it would not cover any portion of the cost of the repair, because Plaintiff Galvan's 2005 Nissan Pathfinder was out of warranty.

STATUTE OF LIMITATIONS

106. Any applicable statutes of limitations have been tolled by Nissan's knowing and active concealment, denial, and misleading actions, as alleged herein. Plaintiffs and members of the Class defined below were kept ignorant of critical information required for the prosecution of their claims, without any fault or lack of diligence on their part. Plaintiffs and members of the Class could not reasonably have discovered the true latent nature of the Timing Chain Tensioning System defect or any of the issues and facts alleged herein.

107. Nissan is under a continuous duty to disclose to Plaintiffs and members of the Class the true character, quality and nature of the Subject Nissan Vehicles, and to disclose the existence of the material failure of the Timing Chain Tensioning System. Nissan knowingly, affirmatively and actively concealed the true character, quality and nature of the Timing Chain Tensioning System defect. Plaintiffs and members of the Class reasonably relied upon Nissan's knowing, affirmative and active concealment. Based on the foregoing, Nissan is estopped from relying on any statutes of limitation as a defense in this action.

108. The causes of action alleged herein did or will only accrue upon discovery of the latent Timing Chain Tensioning System defect, as a result of Nissan's fraudulent concealment of the Timing Chain Tensioning System defect. Plaintiffs and members of the Class did not discover, and could not have discovered, through the exercise of reasonable diligence, the true nature of the Timing Chain Tensioning System defect.

CLASS ACTION ALLEGATIONS

109. Plaintiffs bring this action, on behalf of themselves and all other similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

110. The class Plaintiffs seeks to represent (the "Class") is defined as follows: All residents of the United States who purchased or leased 2004-2008 Nissan Maxima vehicles, 2004-2009 Nissan Quest vehicles, 2004-2006 Nissan Altima vehicles (with the VQ35 engine), 2005-2007 Nissan Pathfinder vehicles, 2005-2007 Nissan Xterra vehicles, or 2005-2007 Nissan Frontier vehicles (with the VQ40 engine). Excluded from the Class are Nissan's officers, directors, and employees (the "Nationwide Class");

and

All persons who purchased or leased 2004-2008 Nissan Maxima vehicles, 2004-2009 Nissan Quest vehicles, 2004-2006 Nissan Altima vehicles (with the VQ35 engine), 2005-2007 Nissan Pathfinder vehicles, 2005-2007 Nissan Xterra vehicles, or 2005-2007 Nissan Frontier vehicles (with the VQ40 engine), in the State of California. Excluded from the Class are Nissan's officers, directors, and employees (the "California Subclass");

and

All persons who purchased or leased 2004-2008 Nissan Maxima vehicles, 2004-2009 Nissan Quest vehicles, 2004-2006 Nissan Altima vehicles (with the VQ35 engine), 2005-2007 Nissan Pathfinder vehicles, 2005-2007 Nissan Xterra vehicles, or 2005-2007 Nissan Frontier vehicles (with the VQ40 engine), in the State of Washington. Excluded from the Class are Nissan's officers, directors, and employees (the "Washington Subclass").

111. Plaintiffs reserve the right to amend the Class definition if discovery and further investigation reveals that the Class should be expanded or otherwise modified.

112. Plaintiffs reserve the right to establish subclasses where appropriate.

113. This action is brought and properly may be maintained as a class action pursuant to the provisions of the Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1), (b)(2) or (b)(3) and satisfies the requirements thereof.

1 114. Numerosity: While the exact number of members of the Class is unknown
2 to Plaintiffs at this time and can only be determined by appropriate discovery,
3 membership in the Class is ascertainable based upon the records maintained by Nissan.
4 At this time, Plaintiffs are informed and believe that the Class includes thousands of
5 members.

6 115. In particular, Plaintiffs are informed and believe that in 2004, Nissan sold
7 76,376 Maxima vehicles, 46,430 Quest vehicles, and 235,998 Altima vehicles. Plaintiffs
8 are informed and believe that in 2005, Nissan sold 75,425 Maxima vehicles, 40,357
9 Quest vehicles, 255,371 Altima vehicles, 76,156 Pathfinder vehicles, 72,447 Xterra
10 vehicles, and 72,838 Frontier vehicles. Plaintiffs are informed and believe that in 2006,
11 Nissan sold 69,763 Maxima vehicles, 31,905 Quest vehicles, 232,457 Altima vehicles,
12 73,124 Pathfinder vehicles, 62,325 Xterra vehicles, and 77,510 Frontier vehicles.
13 Plaintiffs are informed and believe that in 2007, Nissan sold 52,574 Maxima vehicles,
14 28,590 Quest vehicles, 63,056 Pathfinder vehicles, 51,355 Xterra vehicles, and 64,397
15 Frontier vehicles. Plaintiffs are informed and believe that in 2008, Nissan sold 47,072
16 Maxima vehicles and 18,252 Quest vehicles. Plaintiffs are informed and believe that in
17 2009, Nissan sold 8,437 Quest vehicles.

18 116. Therefore, the Class is sufficiently numerous that joinder of all members of
19 the Class in a single action is impracticable under Federal Rule of Civil Procedure Rule
20 23(a)(1), and the resolution of their claims through the procedure of a class action will
21 be of benefit to the parties and the Court.

22 117. Ascertainability: Names and addresses of members of the Class are
23 available from Nissan's records. Notice can be provided to the members of the Class
24 through direct mailing, publication, or otherwise using techniques and a form of notice
25 similar to those customarily used in consumer class actions arising under California state
26 law and federal law.

27 118. Typicality: Plaintiffs' claims are typical of the claims of other members of
28 the Class which he seeks to represent under Federal Rule of Civil Procedure 23(a)(3)

1 because Plaintiffs and each member of the Class has been subjected to the same
2 deceptive and improper practices and has been damaged in the same manner thereby.

3 119. Adequacy: Plaintiffs will fairly and adequately represent and protect the
4 interests of the Class as required by Federal Rule of Civil Procedure 23(a)(4). Plaintiffs
5 are adequate representatives of the Class, because they has no interests which are
6 adverse to the interests of the members of the Class. Plaintiffs are committed to the
7 vigorous prosecution of this action and, to that end, Plaintiffs have retained counsel who
8 is competent and experienced in handling class action litigation on behalf of consumers.

9 120. Superiority: A class action is superior to all other available methods of the
10 fair and efficient adjudication of the claims asserted in this action under Federal Rule of
11 Civil Procedure 23(b)(3) because:

- 12 (a) The expense and burden of individual litigation make it economically
13 unfeasible for members of the Class to seek to redress their “negative
14 value” claims other than through the procedure of a class action.
- 15 (b) If separate actions were brought by individual members of the Class,
16 the resulting duplicity of lawsuits would cause members to seek to
17 redress their “negative value” claims other than through the procedure
18 of a class action; and
- 19 (c) Absent a class action, Nissan likely would retain the benefits of its
20 wrongdoing, and there would be a failure of justice.

21 121. Common questions of law and fact exist as to the members of the Class, as
22 required by Federal Rule of Civil Procedure 23(a)(2), and predominate over any
23 questions which affect individual members of the Class within the meaning of Federal
24 Rule of Civil Procedure 23(b)(3).

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122. The common questions of fact include, but are not limited to, the following:
- (a) Whether the Timing Chain Tensioning System installed in the Subject Nissan Vehicles is prone to premature failure;
 - (b) Whether Nissan knew or should have known that Timing Chain Tensioning System installed in the Subject Nissan Vehicles is prone to premature failure;
 - (c) Whether Nissan had a duty to disclose that the Timing Chain Tensioning System installed in the Subject Nissan Vehicles is prone to premature failure;
 - (d) Whether Nissan breached its duty to disclose that the Timing Chain Tensioning System is prone to premature failure;
 - (e) Whether Nissan's conduct, as alleged herein, was unlawful, unfair, or fraudulent under the California's Unfair Competition Law, California Business & Professions Code sections 17200 *et seq.*;
 - (f) Whether Nissan's conduct, as alleged herein, violated California's Consumers Legal Remedies Act, California Civil Code sections 1750 *et seq.*;
 - (g) Whether Nissan's conduct, as alleged herein, constituted a breach of implied warranty pursuant to the Song-Beverly Consumer Warranty Act
 - (h) Whether Nissan was unjustly enriched at the expense of the Class;
 - (i) Whether Nissan actively concealed material facts from Plaintiffs and members of the Class for the unlawful purpose of transferring the cost of the Timing Chain Tensioning System failure to consumers; and
 - (j) Whether Plaintiffs and members of the Class are entitled to restitution and damages.

123. In the alternative, this action is certifiable under the provisions of Federal Rule of Civil Procedure 23(b)(1) and/or (b)(2) because:

- (a) The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Nissan;
- (b) The prosecution of separate actions by individual members of the Class would create a risk of adjudications as to them which would, as a practical matter, be dispositive of the interests of the other members of the Class not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
- (c) Nissan has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole and necessitating that any such relief be extended to members of the Class on a mandatory, class-wide basis.

124. Plaintiffs are not aware of any difficulty which will be encountered in the management of this litigation which should preclude its maintenance as a class action.

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

125. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

126. Plaintiffs bring this cause of action on behalf of themselves and the other members of the Nationwide Class, or, alternatively, the California Subclass.

127. This cause of action is brought under the Consumers Legal Remedies Act, California Civil Code sections 1750 *et seq.* ("CLRA"). Plaintiffs and members of the Class are consumers as defined by California Civil Code section 1761(d). The Subject Nissan Vehicles are goods within the meaning of California Civil Code section 1761(a).

1 128. Nissan violated and continues to violate the CLRA by engaging in the
2 following practices proscribed by California Civil Code section 1770(a) in transactions
3 with Plaintiffs and members of the Class, which were intended to result in, and did result
4 in, the sale of the Subject Nissan Vehicles:

5 (5) Representing that [the Subject Nissan Vehicles have]...
6 characteristics...[and] uses...which they do not have....

7 (7) Representing that [the Subject Nissan Vehicles] are of a
8 particular standard...if they are of another.

9 (9) Advertising [the Subject Nissan Vehicles]...with intent
10 not to sell them as advertised.

11 129. Nissan violated the CLRA by failing to disclose, within the warranty period
12 or at any point thereafter, to Plaintiffs and members of the Class that the Timing Chain
13 Tensioning System installed in the Subject Nissan Vehicles is prone to premature failure.

14 130. Nissan further violated the CLRA by actively concealing material facts from
15 Plaintiffs and members of the Class for the purpose of transferring the cost of repairing or
16 replacing the defective Timing Chain Tensioning System to consumers.

17 131. Nissan also violated the CLRA because its failure to disclose to Plaintiffs and
18 members of the Class the material fact that the Timing Chain Tensioning System is prone
19 to premature failure risked the safety of owners and occupants of the Subject Nissan
20 Vehicles.

21 132. As a result of Nissan's failure to disclose that the Timing Chain Tensioning
22 System installed in the Subject Nissan Vehicles is prone to premature failure, Plaintiffs
23 and members of the Class were exposed to safety risks, and were required to spend
24 thousands of dollars to repair or replace the Timing Chain Tensioning System, as well as
25 to repair the resulting damage to the engines, or sell the Subject Nissan Vehicles without
26 repair for a substantial loss.

1 133. Moreover, the fact that the Timing Chain Tensioning System is prone to
2 premature failure is material because no reasonable consumer expects that they will have
3 to spend thousands of dollars for repairs and replacements in the early years of vehicle
4 ownership, and because Plaintiffs and members of the Class had a reasonable expectation
5 that the vehicles would not suffer from a premature failure that would present a significant
6 safety risk.

7 134. Under Section 1782 of the CLRA, Plaintiffs notified Nissan in writing of the
8 particular violations of Section 1770 of the CLRA and demanded that Nissan rectify the
9 problems associated with the behavior detailed above, which acts and practices are in
10 violation of California Civil Code section 1770.

11 135. Nissan failed to respond adequately to Plaintiffs's above-described demand
12 within 30 days of Plaintiffs's notice, as required under California Civil Code section
13 1782(b). Therefore, Plaintiffs request damages and other relief permitted by California
14 Civil Code section 1780.

15 136. Under Section 1782(d) of the CLRA, Plaintiffs, on behalf of themselves and
16 members of the Class, also seeks an order enjoining the act and practices described above,
17 restitution of property, and any other relief that the court deems proper.

18 137. Nissan's conduct is malicious, fraudulent, and wanton, and the company
19 continues to intentionally mislead and withhold material information from consumers.
20 The malicious, fraudulent, and wanton nature of Nissan's conduct is evidenced by the fact
21 that even after receiving notice of the issues described above from Plaintiffs and countless
22 other consumers, Nissan continues to deny that there is any problem with the Timing
23 Chain Tensioning System installed in the Subject Nissan Vehicles and refuses to offer
24 Plaintiffs and members of the Class any remedy for the damages it has caused.
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SECOND CAUSE OF ACTION
Violation of Unfair Competition Law

(California Business & Professions Code §§ 17200 *et seq.*)

138. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

139. Plaintiffs bring this cause of action on behalf of themselves and the other members of the Nationwide Class, or, alternatively, the California Subclass.

140. California Business and Professions Code section 17200 prohibits “any unlawful, unfair or fraudulent business act or practice.” For the reasons described above, Nissan has engaged in unlawful, unfair, and/or fraudulent business acts or practices in violation of California Business and Professions Code section 17200.

141. Defendant’s misrepresentations and omissions of material facts, as set forth herein, constitute an unlawful practice because they violate California Civil Code sections 1572, 1573, 1709, 1710, 1711, 1770, California Business and Professions Code sections 17200 *et seq.* and the common law.

142. Nissan’s misrepresentations and omissions of material facts, as set forth herein, also constitute “unfair” business acts and practices within the meaning of California Business and Professions Code sections 17200 *et seq.*, in that Nissan’s conduct was injurious to consumers, offended public policy, and was unethical and unscrupulous. Plaintiffs also asserts a violation of public policy by withholding material facts from consumers. Nissan’s violation of consumer protection and unfair competition laws in California resulted in harm to consumers.

143. There were reasonable alternatives available to Nissan to further Nissan’s legitimate business interests, other than the conduct described herein.

144. California Business and Professions Code section 17200 also prohibits any “fraudulent business act or practice.”

145. Nissan’s misrepresentations and concealment of material facts, as set forth above, were false, misleading, and/or likely to deceive the public within the meaning of California Business and Professions Code section 17200.

1 146. Nissan's acts of misrepresentations and concealment were made with
2 knowledge of their effect, and were done to induce Plaintiffs and members of the
3 California Subclass to purchase the Subject Nissan Vehicles, and to prevent them from
4 seeking replacement or repair of the Timing Chain Tensioning System while the Subject
5 Nissan Vehicles were under warranty, thereby unlawfully transferring the costs from
6 Nissan to Plaintiffs and members of the California Subclass. Plaintiffs and members of
7 the California Subclass saw and justifiably relied on Nissan's knowing, affirmative, and
8 active concealment when they purchased the Subject Nissan Vehicles, and when they
9 failed to have their Timing Chain Tensioning System repaired or replaced within the
10 warranty period.

11 147. Nissan's conduct caused and continues to cause injury to Plaintiffs and
12 members of the California Subclass. Plaintiffs and members of the California Subclass
13 have suffered injury in fact and have lost money as a result of Nissan's fraudulent
14 conduct.

15 148. As a result of Nissan's failure to disclose, within the warranty period, that the
16 Timing Chain Tensioning System installed in the Subject Nissan Vehicles is prone to
17 premature failure, Plaintiffs and members of the California Subclass were exposed to
18 safety risks, and were required to spend thousands of dollars to repair or replace their
19 Timing Chain Tensioning System, or sell their Subject Nissan Vehicle without repair at a
20 substantial loss. Therefore, the fact that the Timing Chain Tensioning System is prone to
21 premature failure is material because no reasonable consumer expects that they will have
22 to spend thousands of dollars for repairs in the early years of vehicle ownership, and
23 because Plaintiffs and members of the California Subclass had a reasonable expectation
24 that the Subject Nissan Vehicles would not suffer from premature failure that would
25 present a safety risk.
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1 149. Additionally, the fact that the Timing Chain Tensioning System installed in
2 the Subject Nissan Vehicles is prone to premature failure is material because it presents
3 a safety issue and places the driver and passengers at risk of serious harm. When the
4 Subject Nissan Vehicles' Timing Chain Tensioning System fails, this sets off a chain
5 reaction, leading to catastrophic engine failure, as well as the inability of the vehicles to
6 accelerate or maintain speed. Thus, occupants of the Subject Nissan Vehicles are
7 exposed to rear end collisions and other accidents caused by the driver's inability to
8 maintain an appropriate and safe speed.

9 150. Plaintiffs and members of the California Subclass would not have
10 purchased the Subject Nissan Vehicles had it not been for Nissan's misrepresentations
11 and concealment of material facts. Furthermore, had it not been for Nissan's intentional
12 failure to disclose this safety defect, owners of the Subject Nissan Vehicles would have
13 had their defective Timing Chain Tensioning System repaired or replaced prior to
14 expiration of the warranty period.

15 151. Nissan has thus engaged in unlawful, unfair, and fraudulent business acts
16 entitling Plaintiffs and members of the California Subclass to judgment and equitable
17 relief against Nissan, as set forth in the Prayer for Relief. Specifically, Nissan's conduct
18 was unfair because it failed to disclose the safety defects, as alleged above.

19 152. Additionally, under Business and Professions Code section 17203, Plaintiffs
20 and members of the Class seek an order requiring Nissan to immediately cease such acts
21 of unlawful, unfair, and fraudulent business practices and require Nissan to correct its
22 actions
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THIRD CAUSE OF ACTION
Brought on Behalf of the Washington Subclass
Violation of Washington Consumer Protection Act
(RCW 19.86 *et seq.*)

153. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this First Amended Complaint

154. Plaintiff Kobe Falco brings this cause of action on behalf of himself and the other members of the Washington Subclass.

155. Nissan engaged in unfair or deceptive acts or practices when it: (i) failed to disclose that the Subject Nissan Vehicles and the Timing Chain Tensioning System were not of a particular standard, quality, or grade; (ii) failed to disclose, at and after the time of purchase or lease and repair, any and all known material defects or material nonconformity of the Subject Nissan Vehicles, including the Timing Chain Tensioning System; (iii) failed to disclose at the time of purchase or lease that the Subject Nissan Vehicles, including the Timing Chain Tensioning System, were not in good working order, were defective, and were not fit for their intended purpose; (iv) failed to give adequate warnings and notices regarding the use, defects, and problems with the Subject Nissan Vehicles' Timing Chain Tensioning System to customers and consumers who purchased or leased the Subject Nissan Vehicles, despite the fact that Nissan possessed prior knowledge of the inherent defects in the Subject Nissan Vehicles' Timing Chain Tensioning System; (v) failed to disclose, either through warnings or recall notices, or actively concealed the fact that the Subject Nissan Vehicles' Timing Chain Tensioning Systems were defective, despite the fact that Nissan knew of such defects; and (vi) caused Plaintiff Falco and members of the Washington Subclass to expend sums of money at its dealerships to repair or replace the Subject Nissan Vehicles' Timing Chain Tensioning System despite Nissan's knowledge of the defect.

1 156. Nissan either knew or should have known that the Subject Nissan Vehicles
2 and their Timing Chain Tensioning Systems were defectively designed or manufactured,
3 would fail prematurely, were not suitable for their intended use, and otherwise were not
4 as warranted by Nissan North America, Inc.

5 157. Nissan's unfair or deceptive acts or practices repeatedly occurred in its
6 trade or business, and were capable of deceiving a substantial portion of the purchasing
7 public.

8 158. As a direct and proximate cause of Nissan's unfair or deceptive acts or
9 practices, Plaintiff Falco and the Washington Subclass have suffered and will continue
10 to suffer actual damages in (i) expending out-of-pocket monies for repairs and
11 replacements of the Subject Nissan Vehicles' Timing Chain Tensioning System and loss
12 of use of the Subject Nissan Vehicles while the Timing Chain Tensioning System was or
13 is being repaired or replaced; (ii) the failure of consideration in connection with or
14 difference in value arising out of the variance between the Subject Nissan Vehicles as
15 warranted and the Subject Nissan Vehicles containing the defect; and (iv) the diminution
16 of resale value of the Subject Nissan Vehicles resulting from the defect.

17 159. As a result of Nissan's unfair and deceptive practices, Plaintiff Falco and
18 the members of the Washington Subclass are entitled to injunctive relief in the form of
19 restitution or disgorgement of funds paid to Nissan to purchase the Subject Nissan
20 Vehicles, or to repair and replace the Subject Nissan Vehicles' Timing Chain Tensioning
21 System, as well as compensatory and treble damages, attorneys' fees, and under RCW
22 19.86 *et seq.*
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FOURTH CAUSE OF ACTION
Breach of Implied Warranty Under the
Song-Beverly Consumer Warranty Act
(California Civil Code §§ 1792 and 1791.1 *et seq.*)

160. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

161. Plaintiffs bring this cause of action on behalf of themselves and the other members of the California Subclass.

162. Nissan was at all relevant times the manufacturer, distributor, warrantor or seller of the Subject Nissan Vehicles. Nissan knew or had reason to know of the specific use for which the Subject Nissan Vehicles were purchased.

163. Nissan provided Plaintiffs and members of the California Subclass with an implied warranty that the Subject Nissan Vehicles and any parts thereof are merchantable and fit for the ordinary purposes for which they were sold. However, the Subject Nissan Vehicles are not fit for the ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the Subject Nissan Vehicles and their Timing Chain Tensioning System suffers from an inherent defect at the time of sale and thereafter are not fit for their particular purpose of providing safe and reliable transportation.

164. Nissan impliedly warranted that the Subject Nissan Vehicles were of merchantable quality and fit for such use. This implied warranty included, among other things: (i) a warranty that the Subject Nissan Vehicles and the Timing Chain Tensioning System manufactured, supplied, distributed, or sold by Nissan is safe and reliable for providing transportation; and (ii) a warranty that the Subject Nissan Vehicles and their Timing Chain Tensioning System would be fit for their intended use while the Subject Nissan Vehicles were being operated.

165. Contrary to the applicable implied warranties, the Subject Nissan Vehicles and their Timing Chain Tensioning System, at the time of sale and thereafter, were not fit for their ordinary and intended purpose of providing Plaintiffs and members of the

1 California Subclass with reliable, durable and safe transportation. Instead, the Subject
2 Nissan Vehicles are defective, including but not limited to the defective design and
3 manufacture of their Timing Chain Tensioning System.

4 166. Nissan's actions, as complained of herein, breached the implied warranty
5 that the Subject Nissan Vehicles were of merchantable quality and fit for such use in
6 violation of California Civil Code §§ 1792 and 1791.1.

7 **FIFTH CAUSE OF ACTION**
8 **Fraud**

9 167. Plaintiffs hereby incorporate by reference the allegations contained in the
10 preceding paragraphs of this First Amended Complaint.

11 168. Plaintiffs bring this cause of action on behalf of themselves and the
12 members of the Nationwide Class.

13 169. Nissan concealed and suppressed material facts, namely, the fact that the
14 Timing Chain Tensioning System installed in the Subject Nissan Vehicles is prone to
15 premature failure, exposing drivers and occupants to safety risks, and members of the
16 Nationwide Class to suffer monetary damages.

17 170. Nissan knew its concealment and suppression of material facts was false
18 and misleading.

19 171. As a result of Nissan's failure to disclose to members of the Nationwide
20 Class the material fact that the Timing Chain Tensioning System installed in the Subject
21 Nissan Vehicles is prone to premature failure, consumers are required to spend
22 thousands of dollars to repair or replace the Timing Chain Tensioning System and the
23 damaged engine, or sell their vehicles at a substantial loss. Therefore, the fact that the
24 Timing Chain Tensioning System installed in the Subject Nissan Vehicles is prone to
25 premature failure is material because no reasonable consumer expects that they will have
26 to spend thousands of dollars for repairs in the early years of vehicle ownership, and
27 because Plaintiffs and members of the Class had a reasonable expectation that the
28 vehicles would not suffer from a premature failure that would present a safety risk.

1 172. Additionally, the fact that the Timing Chain Tensioning System installed in
2 the Subject Nissan Vehicles is prone to premature failure is material because it presents
3 a safety issue and places the driver and passengers at risk of serious harm. When the
4 Subject Nissan Vehicles' Timing Chain Tensioning System fails, this sets off a chain
5 reaction, leading to catastrophic engine failure, as well as the inability of the vehicles to
6 accelerate or maintain speed. Thus, occupants of the Subject Nissan Vehicles are
7 exposed to rear end collisions and other accidents caused by the driver's inability to
8 maintain an appropriate and safe speed. Accordingly, Plaintiffs and members of the
9 Nationwide Class would not have purchased the Subject Nissan Vehicles but for
10 Nissan's omissions and concealment of material facts.

11 173. Nissan made the omissions and concealment of material facts discussed
12 above with knowledge of the effect of concealing these material facts. Nissan knew that
13 by misleading consumers, Nissan would sell more Subject Nissan Vehicles, and would
14 furthermore discourage consumers from seeking replacement or repair of the Timing
15 Chain Tensioning System within the warranty period, thereby unlawfully transferring
16 the cost of replacement from itself to the vehicle's owner, both of which would result in
17 higher profit margins for the company.

18 174. Plaintiffs and members of the Nationwide Class justifiably relied upon
19 Nissan's knowing, affirmative and active concealment. By concealing material
20 information about the Subject Nissan Vehicles, Nissan intended to induce Plaintiffs and
21 members of the Class into purchasing the Subject Nissan Vehicles and discouraging
22 them from seeking replacement or repair of the Timing Chain Tensioning System within
23 the warranty period.

24 175. Nissan acted with malice, oppression and fraud.

25 176. As a direct and proximate result of Nissan's omissions and active
26 concealment of material facts, Plaintiffs and each member of the Nationwide Class has
27 been damaged in an amount according to proof at trial.
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SIXTH CAUSE OF ACTION
Unjust Enrichment

177. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this First Amended Complaint.

178. Plaintiffs bring this cause of action on behalf of themselves and the members of the Nationwide Class.

179. Nissan profited unjustly from the lease and sale of the Subject Nissan Vehicles at inflated prices as a result of concealing its knowledge of premature CVT failures.

180. As a proximate result of Nissan's wrongful acts and omissions described herein, and as a result of Nissan's ill-gotten benefits and profits, Nissan has been unjustly enriched at the expense of Plaintiffs and members of the Nationwide Class.

181. The circumstances as described herein are such that it would be inequitable for Nissan to retain these ill-gotten benefits and profits without paying the value thereof to Plaintiffs and the Nationwide Class.

182. Plaintiffs and members of the Nationwide Class are entitled to restitution of the amount of Nissan's ill-gotten gains, benefits and profits, including interest, resulting from their unlawful, unjust and inequitable conduct, as described above.

183. Accordingly, Plaintiffs and members of the Nationwide Class seek an order establishing Nissan as constructive trustees of the gains, benefits and profits that served to unjustly enrich them, together with interest during the period in which Nissan has retained such benefits and profits, and requiring Nissan to disgorge those profits to Plaintiffs and members of the Nationwide Class in a manner to be determined by the Court.

PRAYER FOR RELIEF

Plaintiffs, and on behalf of themselves and all others similarly situated, requests the Court enter judgment against Nissan, as follows:

1. Certifying the Class and subclasses, as requested herein;
2. Ordering that Nissan is financially responsible for notifying all members of the Class of the alleged omissions and active concealment of material facts discussed herein;
3. Awarding Plaintiffs and the members of the Class compensatory damages in an amount according to proof at trial;
4. Awarding restitution and disgorgement of Nissan's revenues to Plaintiffs and members of the Class;
5. Awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Nissan from continuing the unlawful practices as set forth herein, and directing Nissan to identify, with Court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Nissan by means of any act or practice declared by this Court to be wrongful;
6. Awarding to Plaintiffs and the Class punitive damages;
7. Ordering Nissan to engage in corrective advertising;
8. Any and all remedies provided pursuant to the Song-Beverly Act, including California Civil Code section 1794;
9. An award of attorneys' fees and costs pursuant to California Code of Civil Procedure section 1021.5;
10. Awarding interest on the monies wrongfully obtained from the date of collection through the date of entry of judgment in this action;

11. Awarding attorneys' fees, expenses, and recoverable costs reasonably incurred in connection with the commencement and prosecution of this action; and

12. For such other and further relief as the Court deems just and proper.

Dated: October 31, 2014

BARON & BUDD, P.C.

By: /s/ Mark Pifko
Mark Pifko

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11 GALVAN, individually, and on behalf of
12 other members of the public similarly
13 situated
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DEMAND FOR JURY TRIAL

Plaintiffs requests trial by jury on all issues so triable.

Respectfully submitted,

Dated: October 31, 2014

BARON & BUDD, P.C.

By: /s/ Mark Pifko
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