

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MARIE DEMARIA, on behalf of herself and
all others similarly situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA INC.,
NISSAN MOTOR COMPANY, LTD.,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

NATURE OF THE CASE

1. Plaintiff brings this proposed class action on behalf of herself and all other Illinois owners of Nissan Altima automobiles for model years 2002-2006 ("Class Vehicles"). Nissan sold the Class Vehicles without disclosing to consumers that Nissan had opted to install floorboards in the vehicles that do not withstand normal exposure to the elements, do not drain properly, and rust to the degree that the floorboards substantially deteriorate and allow visible exposure to the roadway beneath the vehicle ("Defect").

2. As a result of the Defect, there has been at least one reported accident with injuries. Hundreds of other drivers have told Nissan and the National Highway Traffic Safety Administration that they feel unsafe driving their Class Vehicles. Because the replacement of the floorboard can cost several thousand dollars, and because Nissan refuses to recognize the existence of the Defect or to cover the full cost of repairs, many owners of Class Vehicles are not in a position to replace the defective floorboard when they discover the problem. Additionally,

Nissan provides no assurances that any replacement floorboard will not suffer from the same problems.

3. Nissan's conduct violates Illinois law including the Illinois Consumer Fraud and Deceptive Business Practices Act and the Illinois Uniform Deceptive Trade Practices Act. On behalf of herself and the proposed Class, Plaintiff seeks to compel Nissan to warn drivers about the Defect and to bear the expense of replacing floorboards in Class Vehicles that never should have been placed in the stream of commerce in the first place.

PARTIES

4. Plaintiff Marie Demaria is a citizen and resident of Algonquin, Kane County, Illinois.

5. Defendant Nissan North America, Inc. has its headquarters and principal place of business in Franklin, Tennessee. Nissan North America, Inc. is the U.S. subsidiary of Nissan Motor Company, Ltd., which is a company that has its headquarters in Japan. Nissan North America, Inc. and Nissan Motor Company, Ltd. shall collectively be known as "Nissan."

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). There are at least 100 members in the proposed plaintiff class, the aggregated claims of the individual Class members exceed the sum or value of \$5,000,000, exclusive of interests and costs, and this is a class action in which Nissan and class members are citizens of different states.

7. This Court may exercise jurisdiction over Nissan because Nissan is registered to conduct business in Illinois; has sufficient minimum contacts in Illinois; and intentionally avails itself of the markets within Illinois through the promotion, sale, marketing, and distribution of its

vehicles, thus rendering the exercise of jurisdiction by this Court proper and necessary. Moreover, Nissan's wrongful conduct (as described below) foreseeably affects consumers in Illinois.

8. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred or a substantial part of property that is the subject of the action is located in this District.

SUBSTANTIVE ALLEGATIONS

The Altima Floorboard Defect

9. Nissan manufactures, markets, distributes, and warrants automobiles in the United States, including Nissan Altima automobiles.

10. The Nissan Altima is a mid-size vehicle that is "core to Nissan's brand appeal."¹

11. Nissan has previously called it "[a] consumer favorite and Nissan's top-selling model in the U.S." and noted that it is "the centerpiece of the Nissan lineup."²

12. Indeed, the Altima has consistently accounted for a significant portion of Nissan's sales. Plaintiff believes that Nissan's sales of the Class Vehicles account for anywhere between 22%-27% of Nissan's total sales between the years 2002 and 2006.

13. Nissan represents that its Altima vehicle is a "top safety pick."

14. Class Vehicles, like all modern vehicles, come factory-equipped with floorboards, which form the bottom of the passenger cabin. Floorboards are what drivers and passengers' feet

¹ Nissan Motor Corporation Annual Report 2014, *available at* http://www.nissan-global.com/EN/DOCUMENT/PDF/AR/2014/p12_e.pdf.

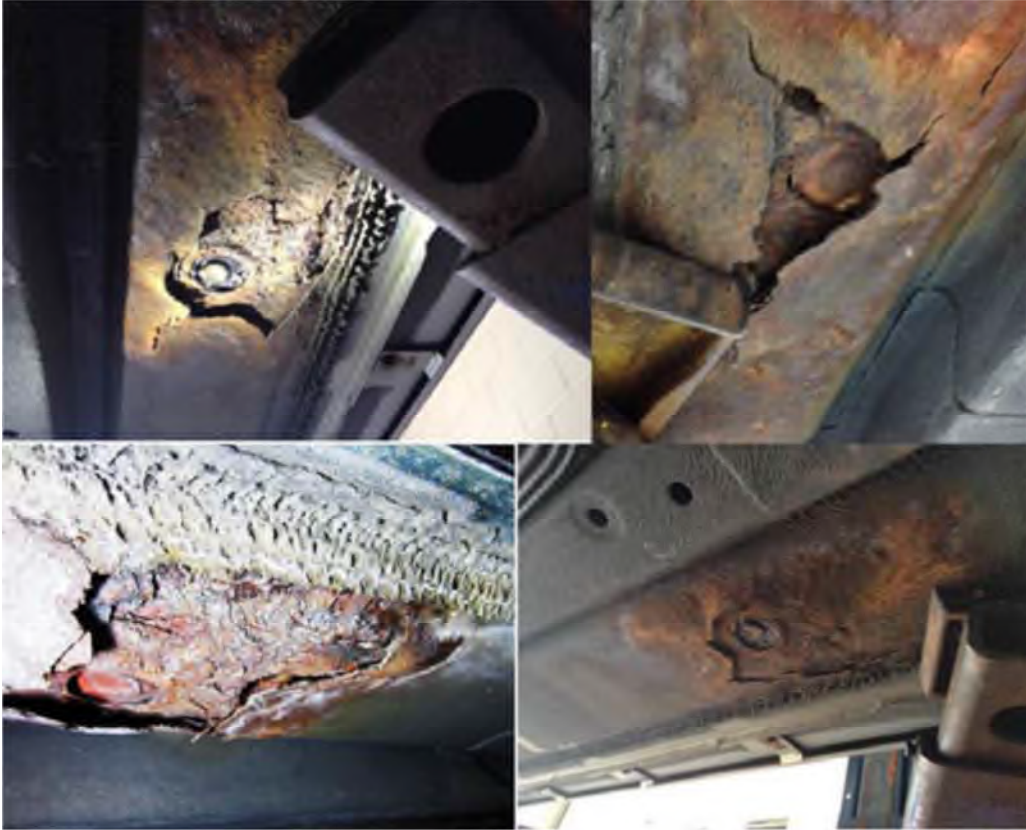
² Nissan Altima named one of the "10 Most Comfortable Cars Under \$30,000" by Kelley Blue book's KBB.com (Aug. 25, 2014), *available at* <http://nissannews.com/en-US/nissan/usa/channels/corporate-nissan-americas-news/releases/nissan-altima-named-one-of-the-10-most-comfortable-cars-under-30-000-by-kelley-blue-book-s-kbb-com>.

make contact with and what their personal objects rest on when they are on the floor of the interior of the vehicle. On the exterior, floorboards are the primary barrier between drivers and the road (and other objects) beneath the vehicle. The floorboards are made of metal and are covered by carpet on the interior side, while on the bottom, exterior side are exposed metal to which the subframe and other parts attach.

15. Floorboards serve a number of purposes, many of which are crucial for driver and passenger safety. Among other things, floorboards are a key aspect of the vehicles' structural integrity, prevent poisonous exhaust fumes from entering the cabin, and also protect drivers and passengers from making contact with the road itself as well as debris that is regularly kicked up underneath the vehicle.

16. Floorboards are intended to last the life of the vehicle and are thus not a "wear part" that drivers or mechanics expect will require repair or replacement during the vehicle's anticipated useful life. The floorboards in Class Vehicles, however, are prone to rusting and corroding in the course of normal operation of the vehicles, which can lead to large holes developing in the floorboards. The extent of the corrosion can be seen in part in the photographs reproduced below.³

³ These are photographs of the named Plaintiff's vehicle.



17. As the photographs show, the rust and corrosion can cause the floorboards to rust completely through, eliminating the main barrier between the passenger cabin and the road. The floorboard holes are particularly dangerous because the carpet on the interior of the vehicles masks the rust and corrosion from plain sight by drivers and passengers. As a result, drivers may continue to operate their vehicles for many miles while the rust and corrosion worsens, leading to a situation in which the holes permit the entry of poisonous exhaust fumes, intrusion of road debris, and even the possibility that passengers' feet or personal items may pass through the floorboard and hit the road. In the event of a collision, the corrosion can also increase the prospects for injury or death by reducing the structural integrity of the vehicle as well as the integrity of the particular components that attach to the floorboard (including passenger seating). In addition, in localities that require vehicle inspections, the degradation of the floorboard prevents the automobile from passing the inspection, leaving owners unable to use their vehicles.

18. The incidence of floorboard rust and corrosion cannot be blamed on the weather and is not limited to a geographic areas where snow and salt have a higher chance of causing a rusty underbody. The rust occurs from the interior of the vehicle to the outside, is only localized under the passenger and driver side floorboards, and the geographic dispersion of customer complaints is not limited to cold weather states.

19. Below are examples of complaints lodged with the National Highway Traffic Safety Administration (“NHTSA”) that reflect drivers’ safety concerns with Class Vehicles:

- 2005 Altima: I RECENTLY PURCHASED A 2005 NISSAN ALTIMA FOR MY SON WHO IS GOING AWAY TO COLLEGE. WHEN SEEING ON THE NEWS ABOUT THE RUST ISSUES WITH THE ALTIMA'S I IMMEDIATELY WENT AND CHECKED UNDERNEATH THE CAR TO DISCOVER THAT BOTH THE DRIVER AND PASSENGER SIDE FLOORBOARDS ARE RUSTED THROUGH TO THE INSIDE OF THE VEHICLE. THE CAR HAS BEEN PROPERLY MAINTAINED AND IN EXCELLENT CONDITION OTHERWISE. DUE TO THE MULTIPLE ISSUE IN THE 2002-2006 NISSAN ALTIMAS I BELIEVE THIS NEEDS TO BE A SAFETY RECALL DUE TO THE POSSIBILITY OF EXHAUST FUMES ENTERING THE VEHICLE. AT THE VERY LEAST NISSAN SHOULD PROVIDE A GOODWILL RECALL AND STOP TRYING TO PUSH THE BLAME ON OTHER ISSUES. (date of incident: 4/8/15, date of complaint: 4/8/15).⁴
- 2002 Altima: I HAVE MAILED AN OFFICIAL LETTER SINCE THE SPACE PROVIDED IS NOT SUFFICIENT FOR MY COMPLAINT. THE CONSUMER STATED DURING A RECENT OIL CHANGE, THE TECHNICIAN NOTICED AN ENORMOUS RUSTED HOLE ON THE DRIVER'S SIDE OF THE FLOOR PANEL UNDERNEATH THE VEHICLE. THE PASSENGER SIDE ALSO HAD A BIG RUSTED SPOT WHERE ANOTHER HOLE WAS DEVELOPING. THE CONSUMER WAS ADVISED BY A REPAIR SHOP TO REPLACE THE ENTIRE FLOOR PANEL SINCE IT WAS SO BADLY RUSTED. THE CONSUMER BELIEVED THE DEFECT WAS DUE TO THE ABSENCE OF DRAIN HOLES IN THE FLOOR PAN UNDERNEATH THE VEHICLE. THE DRAIN HOLES WERE VISIBLE TO HAVE BEEN OUTLINED, BUT THEY WERE NEVER

⁴ NHTSA ID Number: 10704518.

DRILLED THROUGH. THE WATER FROM THE AIR CONDITIONER WOULD GET TRAPPED ON TOP OF THE FLOOR PANEL AND COLLECT THERE, EVENTUALLY CAUSING RUST.. (date of incident: 8/23/10, date of complaint: 10/18/10).⁵

- 2003 Altima: FLOOR RUSTED THROUGH ON A 2003 NISSAN ALTIMA 3.5 SE WITH ONLY 55000 MILES ON IT. IN SERVICE DATE OF THE VEHICLE WAS APRIL 30, 2003. THE HOLE IN THE FLOOR OF THE VEHICLE WAS NOTICED IN MAY OF 2009. RUST PERFORATION WARRANTY FROM NISSAN IS FOR 5 YEARS ONLY. NISSAN UNWILLING TO HELP. EXHAUST AND OTHER FUMES CAN ENTER THE CAR. THIS IS UNACCEPTABLE FOR A CAR WITH THIS LOW MILEAGE. (date of incident: 5/17/09, date of complaint: 5/29/09).⁶
- 2003 Altima: I OWN A 2003 NISSAN ALTIMA THAT WAS PURCHASED BRAND NEW. THE CAR HAS NEVER BEEN IN AN ACCIDENT AND HAS ALWAYS BEEN WELL MAINTAINED...WASHED AND WAXED REGULARLY. I WAS CHANGING THE OIL ON 7/28/09 AND NOTICED SOMETHING HANGING FROM THE PASSENGER SIDE FLOOR WHICH TURNED OUT TO BE THE REMAINS OF SAID FLOOR. THERE IS A RUST HOLE APPROXIMATELY 2 FOOT LONG AND 6 INCHES WIDE IN THE PASSENGER SIDE OF THIS 6 YEAR OLD CAR. AFTER DOING SOME RESEARCH ONLINE I SEE THIS IS A FAIRLY COMMON FAILURE FOR THIS GENERATION ALTIMA AND NISSAN WILL DO ABSOLUTELY NOTHING TO HELP WITH THE REPAIR SINCE THE PERFORATION WARRANTY IS OVER AS OF 10/08. I HAVE HAD THE CAR INTO THE DEALERSHIP FOR RECALL WORK AND NOBODY FROM THE DEALERSHIP EVER MENTIONED THE HOLE IN THIS VEHICLE WHICH AT THAT TIME WOULD HAVE BEEN COVERED BY WARRANTY. NISSAN FLAT OUT DENIES TO DO ANYTHING TO HELP WITH THE REPAIR REGARDLESS OF THE FACT THAT THIS SHOULDN'T BE HAPPENING TO A 6 YEAR OLD CAR IN THE FIRST PLACE. IT'S AN OBVIOUS SAFETY ISSUE WITH A GIANT HOLE IN THE FLOOR THAT EXHAUST FUMES CAN ENTER BUT NISSAN REFUSES TO ACKNOWLEDGE THE DESIGN FLAW IN THIS VEHICLE. PLEASE HELP ME TO FORCE NISSAN TO ADMIT THE PROBLEM EXISTS AND GET IT FIXED AT THEIR COST. (date of incident: 7/28/09, date of complaint: 8/21/09).⁷

⁵ NHTSA ID Number: 10360974.

⁶ NHTSA ID Number: 10269941.

⁷ NHTSA ID Number: 10281316.

- 200? Altima: DEFECTIVE SHEET METAL DESIGN IN FLOOR PAN OF NISSAN ALTIMAS, BODY STYLE BEGINNING WITH MODEL YEAR 2002. DESIGN FLAW CAUSED LARGE RUST HOLES IN FRONT OF DRIVER AND PASSENGER SEAT, SEEMINGLY BY TRAPPING MOISTURE. MY HOLES APPROX 12" EACH. I AM HEARING SIMILAR COMPLAINTS FROM OTHER ALTIMA OWNERS. PERFORATION WARRANTY WAS 5 YEARS, AND DUE TO MY DEALERSHIP NOT NOTICING THE PROBLEM WITHIN THAT PERIOD, NISSAN CLAIMS NO RESPONSIBILITY. THESE HOLES MAY ALTER THE STRUCTURAL INTEGRITY OF THE BODY FRAME IN CASE OF SIDE IMPACT. ADDITIONALLY, WATER ENTERS THE CABIN AND REMAINS IN THE CARPET AND PAD. MY FLOOR PAN WILL NEED TO BE REPLACED, AND AM PREPARING TO SCHEDULE THE WORK. NISSAN'S RECOMMENDED LOCAL BODY SHOP HAS ESTIMATED REPAIRS APPROX. \$2300 US. (date of incident: 6/18/09, date of complaint: 8/21/09).⁸
- 2005 Altima: TOOK MY CAR IN TO BE INSPECTED (PA INSPECTION). FLOOR PAN ON MY 2005 ALTIMA IS COMPLETELY RUSTED THROUGH ON THE PASSENGER SIDE OF THE VEHICLE. NEEDS TO HAVE FLOOR PAN REPLACED. THIS CAR HAS VERY LOW MILEAGE, IS CLEAN AND GARAGE KEPT. CHECKED THE INTERNET, AND NOTICED QUITE A FEW COMPLAINTS ABOUT RUST ON THE PASSENGER AND DRIVE SIDE. NOTHING ELSE IS SHOWING RUST. HOW CAN ONE PART COMPLETELY RUST OUT AND THE REMAINING PART OF THE CAR HAS NONE AT ALL?? APPARENTLY THERE IS A DEFECT THAT IS HOLDING WATER/MOISTURE AND CAUSING THE RUST. THE CAR DOES NOT HAVE ANY MECHANICAL ISSUE BASICALLY LIKE NEW. HOWEVER, TOTALLY RUSTED OUT IN ONE SPOT. (date of incident: 3/6/10, date of complaint: 3/5/10).⁹
- 2006 Altima: VEHICLE IN QUESTION: 2006 NISSAN ALTIMA, CURRENTLY NISSAN'S ORIGINAL 60 MONTH UNLIMITED MILE RUST WARRANTY. 72,296 MILES. DRIVER AND PASSENGER FLOOR BOARD AREA ARE RUSTING THROUGH. (AROUND THE FOOT WELL AREA.) I BELIEVE THIS TO BE A KNOWN-DEFECT AND KNOWN ISSUE WITH THIS VEHICLE AND NISSAN IS NOT CORRECTING THIS ISSUE. I KNOW OTHER NISSAN ALTIMA OWNERS WHO HAVE HAD THE SAME PROBLEM AND THERE ARE NUMEROUS CASES OF THIS PROBLEM DOCUMENTED ON REPUTABLE WEB SITES. THIS IS A SAFETY ISSUE. THE DRIVER'S AND PASSENGER'S FEET CAN PUSH

⁸ NHTSA ID Number: 10281326.

⁹ NHTSA ID Number: 10319934.

THROUGH THE FLOOR AND ARE NOT ADEQUATELY PROTECTED DUE TO THE WEAKENED, RUSTED METAL SHOULD A ACCIDENT OCCUR. APRIL 15, 2010 SPOKE WITH ROLAND KOSTIEW (ROCKINHAM NISSAN SERVICE MANAGER) VIA TELEPHONE AND HE STATED: THAT HE HAS SEEN THIS RUST-THROUGH PROBLEM BEFORE? AND NISSAN DOESN'T DO ANYTHING ABOUT IT. HE WILL FIGHT FOR ME BECAUSE I AM A LOCAL CUSTOMER. NISSAN ATTRIBUTES THE PROBLEM TO THE FLOORBOARD AREA BEING USED AS A JACK-MOUNT POINT. HE TOOK PICTURES SHOWING THIS WAS NOT THE CASE AND HE AGREED THAT WOULD BE A RIDICULOUS POINT TO USE TO LIFT THE VEHICLE. APRIL 16, 2010 WAS INFORMED BY ROLAND KOSTIEW (ROCKINHAM NISSAN SERVICE MANAGER) VIA TELEPHONE THAT NISSAN WILL NOT COVER THE UNDERBODY RUST THROUGH AND THAT IT IS NOT COVERED BECAUSE OF ENVIRONMENTAL CAUSES WITH NO FURTHER EXPLANATION. (date of incident: 4/16/10, date of complaint: 4/17/10).¹⁰

- 2002 Altima: I HAVE A 2002 NISSAN ALTIMA AND IT HAS DEVELOPED A LARGE RUST HOLE UNDER THE PASSENGER AND DRIVER SIDE FLOOR PAN. THE CAR WAS RUST PROOFED WHEN IT WAS PURCHASED NEW. IT HAS NOT BEEN IN ANY ACCIDENTS. OTHER ALTIMA OWNERS HAVE NOT HAD ANY LUCK WITH NISSAN TO CORRECT THIS PROBLEM. THIS IS A COMMON PROBLEM/DEFECT THAT NISSAN REFUSES TO CORRECT. (date of incident: 4/17/10, date of complaint: 4/19/10).¹¹
- 2005 Altima: I HAVE BOUGHT BRAND NEW 2005 NISSAN ALTIMA 3.5SE IN OCTOBER OF 2004. JUST YESTERDAY DURING MY OIL CHANGE I HAVE NOTICED A HOLE UNDERNEATH THE CAR AND RUSTED AREA IN THE DIAMETER OF A FOOT OR SO. FLOORING RUSTED AND IT WAS OBVIOUSLY RESULT OF NOT FORCED DAMAGE BUT DEFECTIVE MATERIALS USED TO MAKE THE CAR FLOORING. I AM FINDING FORUMS AND LOADS OF COMPLAINTS THAT RIGHT AFTER THE WARRANTY IS EXPIRED CAR'S FLOORING SIMPLY START TO RUST. I DO NOT KNOW WHAT TO DO AND I AM SURE DEALERSHIP WILL TURN ME AWAY AS THE CAR IS NOT UNDER WARRANTY AND THEY USUALLY DO NOT HAVE BODY SHOPS. WHO CAN HELP ME AS I SPENT ABOUT \$33,000.00 FOR THIS

¹⁰ NHTSA ID Number: 10326176.

¹¹ NHTSA ID Number: 10326482.

CAR (LAST 6 YEARS OF PAYING IT OFF.... HELP!!?!? * (date of incident: 5/8/10, date of complaint: 5/9/10).¹²

- 2002 Altima: RE: 2002 NISSAN ALTIMA. THERE IS SEVERE RUST AND CORROSION IN SPECIFIC LOCATIONS DIRECTLY UNDER BOTH THE DRIVER AND FRONT PASSENGERS SEATS AND FLOORS. THE CORROSION APPEARS TO BE RELATED TO TWO FACTORY HOLES IN THE FLOOR, ONE ON EACH SIDE OF THE VEHICLE. THE CORROSION ON THE PASSENGER SIDE OF OUR CAR IS LESS SEVERE: A LARGE AREA OF RUST BUT A RELATIVELY SMALL HOLE (TENNIS BALL SIZE) THROUGH THE SHEET METAL. THE DRIVERS SIDE OF THE CAR HAS A LARGE HOLE (SOCCER BALL SIZE) IN THE FLOOR. THIS IS THE ONLY MAJOR CORROSION ON THE CAR (THE "REAR SUBFRAME" ASSEMBLY WAS REPLACED IN 2006 DUE TO CORROSION UNDER A NISSAN WARRANTY PROGRAM). THE FUEL FILLER NECK IS ALSO RUSTY AND DOES NOT SEAL PROPERLY, WHICH CAN CAUSE AN ENGINE ALERT WHEN THE FUEL VAPOR SEAL LEAK REACHES THE POINT WHERE THE ALERT IS TRIGGERED. THERE IS LITTLE OR NO CORROSION IN THE WHEEL WELLS OR FENDERS. BASED ON TWO BIDS FROM AUTO BODY SHOPS IN THIS AREA, THE COST TO REPAIR THE RUST DAMAGE WILL BE BETWEEN \$2500 AND \$3200. I HAVE TAKEN PHOTOGRAPHS OF APPROXIMATELY FORTY ALTIMAS IN THIS AREA. ALL BUT FIVE HAVE CORROSION IN THIS SPECIFIC AREA TO VARYING DEGREES. IT IS CLEARLY NOT LIMITED TO ONLY THE CAR WE OWN. NISSAN HAS A WARRANTY PROGRAM WHICH COVERS RUST PERFORATION FOR A PERIOD OF FIVE YEARS FROM THE DATE OF MANUFACTURE. I HAVE SPOKEN TO A NUMBER OF PEOPLE AT A DEALER IN THIS AREA REGARDING THIS PROBLEM. THEY CLAIM THAT NISSAN IS AWARE OF THIS PROBLEM ON 2001 THROUGH 2005 ALTIMAS, BUT HAS CHOSEN NOT TO WARRANT IT DUE TO THE EXPENSE, PREFERRING INSTEAD TO REFUSE TO BE RESPONSIBLE. NISSAN WILL APPARENTLY TAKE THE CARS IN TRADE AND SELL THEM TO WHOLESALE AUTO OPERATIONS WHERE THEY ARE SOLD TO CUSTOMERS WHO MAY OR MAY NOT BE AWARE OF THE PROBLEM. (date of incident: 4/1/10, date of complaint: 9/28/10).¹³
- 2006 Altima: I PURCHASED A NEW 2006 NISSAN ALTIMA ON 12-22-05. ON 1-8-11 I NOTICED A 6 TO 8 INCH RUST HOLE COMPLETELY THROUGH THE FLOORBOARD OF THE DRIVER'S SIDE FLOOR JUST

¹² NHTSA ID Number: 10329506.

¹³ NHTSA ID Number: 10358132.

FORWARD OF THE DRIVER'S SEAT. THE DEALERSHIP AND NISSAN AMERICA HAS REFUSED TO FIX THE PROBLEM STATING THAT THE WARRANTY HAD RUN OUT ON THE VEHICLE BY 2 WEEKS. MY CONTENTION IS THAT PROBLEM IS MATERIAL OR WORKMANSHIP DEFECT AND THAT THE PROBLEM HAS BEEN ONGOING AND ONLY DISCOVERED AT THIS TIME. I AM CERTAIN THAT THIS DAMAGE WILL COMPROMISE THIS VEHICLES PERFORMANCE IN A CRASH, POTENTIALLY ALLOW EXHAUST FUMES TO ENTER THE OCCUPANT CABIN AND BE GENERALLY A SAFETY HAZARD FOR THE DRIVER WHO RESTS HIS OR HER FEET DIRECTLY ON THIS AREA. I HAVE READ INTERNET REPORT THAT DESCRIBE FEMALES HIGH HEELS GETTING CAUGHT IN THE RUSTED FLOOR WHILE DRIVING. (date of incident: 1/8/11 date of complaint: 1/21/11).¹⁴

- 200? Altima: EXCESSIVE PREMATURE RUST ON DRIVER AND FRONT PASSENGER FLOOR PAN. BOTH ARE ABOUT 5"X10" IN SIZE AND CONSISTENT WITH MOST OTHER NISSAN ALTIMA RUST COMPLAINTS FOR CARS OF SIMILAR AGE. SINCE NOTICING THE RUST I HAVE LOOKED AT DOZENS OF SIMILAR NISSAN ALTIMAS IN STORE PARKING LOTS ALL WITH THE SAME PREMATURE RUST PATTERN. IT APPEARS THAT NISSAN DESIGNED THE FLOOR PANS WITH A DRAIN PLUG WHICH ALLOWS WATER PENETRATION ABOVE THE FLOOR PAN WHERE IT CAUSES RUST. THE REST OF THE FLOOR PAN ON THE ENTIRE VEHICLE IS IN EXCEPTIONALLY PRISTINE SHAPE, BUT DUE TO THE IMPROPERLY DESIGNED/INSTALLED FLOOR PLUGS THE RUST HAS CAUSED HOLES TO DEVELOP IN THE FLOOR PAN AROUND THE FRONT PASSENGER COMPARTMENT. UPON NOTICING THE RUST, I TALKED WITH A LOCAL MECHANIC WHO STATED HE HASN'T SEEN A NISSAN ALTIMA OF SIMILAR AGE IN HIS SHOP THAT DID NOT HAVE IDENTICAL RUST PATTERNS IN THE SAME SPOT. THIS IS OBVIOUSLY A MANUFACTURERS DEFECT AND THE RUST IN THIS ONE AREA AROUND THE DRAIN PLUGS IS INCONSISTENT WITH THE LACK OF RUST EVERYWHERE ELSE. HOLES IN FLOORBOARDS OF LATE MODEL CARS IS A HUGE SAFETY CONCERN BECAUSE MOST CONSUMERS WOULD NEVER SUSPECT THIS WOULD BE AN ISSUE ON LATE MODEL CARS WHICH ARE OTHERWISE NOT SHOWING ANY SIGNS OF RUST. HOLES IN THE FLOORBOARDS CAN ALLOW PENETRATION OF DEADLY EXHAUST FUMES, ESPECIALLY IN STOP AND GO TYPE DRIVING AS WELL AS PERSONAL SAFETY RISK AS THIS WEAKENS THE OVERALL STRENGTH OF THE UNIBODY

¹⁴ NHTSA ID Number: 10378195.

DESIGN IN A CRASH. ALSO IF UNDETECTED LONG ENOUGH IT CAN CAUSE SEATS TO LOOSEN AND FALL FROM THEIR MOUNTS. I STRONGLY URGE THE NATIONAL HIGHWAY TRANSPORTATION SAFETY BOARD TO ISSUE AN IMMEDIATE RECALL SINCE IT APPEARS THE MANUFACTURER IS UNWILLING TO ACKNOWLEDGE THE RISK IT IS PUTTING ON CONSUMERS. (date of incident: 9/29/11, date of complaint: 9/30/11).¹⁵

- 2005 Altima: 2005 NISSAN ALTIMA WITH 80,000 MILES ON IT. MY FATHER TOOK HIS CAR INTO BE INSPECTED AND THEY WILL NOT PASS IT BECAUSE OF THE FLOOR BOARDS COMPLETELY RUSTED OUT. AFTER RESEARCHING THIS ONLINE, THERE ARE MILLIONS OF DISSATISFIED NISSAN OWNERS WHO ARE BATTLING THIS VERY PROBLEM. NOW, IF MY FATHER CANNOT GET HIS CAR TO PASS INSPECTION, HE CANNOT USE IT. SO FAR, NISSAN HAS NOT DONE ANYTHING TO HELP WITH HIS ISSUE. MY FATHER HAS CALLED COUNTLESS REPAIR AND BODY SHOPS AND NO ONE WILL REPAIR ANY RUST. NOT EVEN THE DEALERSHIP. THE CUSTOMER SERVICE REP AT THE NISSAN DEALERSHIP WAS NOTHING MORE THAN RUDE AND INSENSITIVE BUT DID TELL MY DAD THAT THERE HAVE BEEN NUMEROUS COMPLAINTS AND REPAIR QUESTIONS ABOUT RUSTING FLOOR BOARDS. I HAVE SEEN PEOPLE CALL NISSAN CORPORATE HEADQUARTERS WITH THE SAME "SORRY" RESPONSE. NISSAN IS LOOKING AT A VERY LARGE CLASS ACTION LAWSUIT WHICH I WILL PURSUE TO THE FULLEST BECAUSE OF THEIR LACK OF RESPECT FOR THEIR CUSTOMERS AND FOR THEIR CRAFTSMANSHIP, LACK OF CONCERN, LACK OF SOLUTIONS. I HOPE I AM JOINED BY ANYONE ELSE WHO IS BATTLING THIS PROBLEM, LEAVE YOUR COMPLAINT HERE, AND HOPEFULLY SOME HELP WILL BE COMING SOON! (date of incident: 9/8/14, date of complaint: 9/8/14).¹⁶

NISSAN'S KNOWLEDGE OF THE DEFECT AND THE DANGERS POSED

20. Nissan knew or should have known when it sold the Class Vehicles that these vehicles contained the Defect, that their floorboards would not hold up to exposure to the

¹⁵ NHTSA ID Number: 10428093.

¹⁶ NHTSA ID Number: 10631474.

elements and/or prevent water from properly draining, and that the Class Vehicles were rendered unsafe and dangerously defective.

21. Nissan has known for a number of years that drivers were complaining that the floorboards in Class Vehicles were rusting prematurely. As illustrated in the examples quoted above, owners of Class Vehicles began complaining to NHTSA as far back as 2008. Owners of Class Vehicles were complaining about the Defect on public message boards which Nissan has access to with regularity, even earlier than 2008 in some cases.¹⁷

22. Despite Nissan's knowledge that the Class Vehicles' floorboards prematurely degraded with exposure to water by as early as 2008, it continued to install floorboards that suffered from the Defect. Furthermore, Nissan never extended its warranty to owners of Class Vehicles with rusted floorboards, and in many cases denied warranty liability or blamed the owners themselves for causing the corrosion.

23. Given the faulty construction of the floorboards in Class Vehicles, Nissan knew or should have known that they corrode and rust completely through when exposed to the elements during normal operations and/or when water is prevented from properly draining. Nissan nonetheless decided to sell Class Vehicles without altering the floorboards, putting Nissan owners, drivers, passengers, and others on the road at risk. Nissan did not tell customers that the floorboards would corrode and rust completely through when exposed to the elements during normal operations and/or when water is prevented from properly draining. Nissan thus

¹⁷ Nissan Forums Thread: Altima Rust Shocker!, <http://www.nissanforums.com/general-ultima-stanza-discussion/137783-ultima-rust-shocker.html> (last visited April 13, 2015); Nissan Forums Thread: Floorboard Rust Problem, <http://www.nissanclub.com/forums/2002-2006-nissan-ultima-discussion-2-5-3-5/287928-floorboard-rust-problem.html> (last visited April 13, 2015).

had exclusive and superior knowledge of the floorboard defect and actively concealed the defect and corresponding danger from consumers who had no way to reasonably discover the problem before buying and driving their Class Vehicles.

24. Had consumers been aware of the floorboard defect, they would not have purchased their Class Vehicles or would have paid far less money for them. A reasonable person would consider the Defect important information and would either pay substantially less for a Class Vehicle with a dangerously defective floorboard or not purchase or lease one at all.

25. Although there have been numerous complaints about the floorboards on the NHTSA website (which Nissan monitors), posted on Nissan's Facebook page, and made directly to Nissan customer service, Nissan continues to deny the existence of the Defect. Additionally, the defect was discussed in a "Today" news segment on NBC, which showed pictures of the corrosion.¹⁸

Nissan's Refusal to Repair the Defective Floorboards

26. Despite the overwhelming amount of evidence and number of complaints it has received about the damage and safety risks caused by the Defect, Nissan has refused to admit responsibility for creating the Defect to its customers or cover the cost of necessary repairs to the Class Vehicles. The total for parts and labor to replace a floorboard often costs hundreds or thousands of dollars, depending on the extent of damage. The cost of the labor alone may total nearly \$1,000, depending on the location of the Nissan dealership.

27. Nissan's refusal to pay the complete cost of floorboard repairs has caused great

¹⁸ Nissan Drivers Gripe About Rusty Floor Holes in Older Altimas, NBC News, <http://www.nbcnews.com/news/us-news/rust-n333291>.

hardship to Nissan owners. Many drivers cannot afford to spend what could amount to thousands of dollars to replace their floorboards and are forced to continue to drive unsafe Class Vehicles. Many owners also have difficulty selling their Class Vehicles because of their defective condition. Other owners are prevented from using their Class Vehicles at all because they live in areas that require inspection that the Class Vehicles cannot pass. All owners and operators of Class Vehicles are unnecessarily exposed to the outside elements as a result of damage to their Class Vehicles caused by the Defect. More importantly, all owners and operators of Class Vehicles are exposed to a significant risk of harm in the form of reduced structural integrity of the Class Vehicles, and the potential for injury.

PLAINTIFF'S EXPERIENCE

28. Plaintiff purchased her 2005 Nissan Altima in 2011, and regularly and routinely stores her car in her garage when not in use. Plaintiff never noticed any problem with the floorboard until the Summer of 2014 when she found that the underside of the floorboard was completely rusted-out such that the roadway was visible through the floor when the carpet was lifted.

29. Plaintiff contacted a Nissan dealership and was informed that it would cost approximately \$3,000.00 to repair the damage. The Nissan dealership refused to cover the costs of repair, to accept payments on this total amount or to offer a loaner vehicle. Plaintiff was informed that this issue happens to cars that are located in states with "bad weather." Plaintiff pointed out that Nissan should expect that its vehicles will be operated in all different kinds of weather environments and should have been able to handle all weather conditions.

30. The existence of the damage to her Class Vehicle caused by the Defect has caused

Plaintiff significant fear and anxiety while driving.

CLASS ACTION ALLEGATIONS

31. Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of herself and the following proposed class:

All residents of Illinois who have owned or leased a Nissan Altima model years 2003-2006.

32. Excluded from the proposed Class is Nissan; any affiliate, parent, or subsidiary of Nissan; any entity in which Nissan has a controlling interest; any officer, director, or employee of Nissan; any successor or assign of Nissan; anyone employed by counsel for Plaintiffs in this action; any judge to whom this case is assigned, his or her spouse, and all persons within the third degree of relationship to either of them, as well as the spouses of such persons; and members of the judge's staff, and anyone who purchased a Class Vehicle for the purpose of resale.

33. This action has been brought and may properly be maintained on behalf of the Class proposed above under the criteria of Federal Rule of Civil Procedure Rule 23.

34. Members of the Class are readily ascertainable because the class definition is based upon objective criteria.

35. **Numerosity**. Nissan sold thousands of Class Vehicles, including a substantial number in Illinois. Members of the proposed Class likely number in the hundreds or thousands and are thus too numerous to practically join in a single action. Class members may be notified of the pendency of this action by mail, supplemented by published notice (if deemed necessary or appropriate by the Court).

36. **Predominance**. Common questions of law and fact exist as to all members of the proposed class and predominate over questions affecting only individual class members. These

common questions include:

- a. Whether the Class Vehicles were manufactured with defective floorboards;
- b. Whether Nissan knew or should have known about the Defect and, if so, when Nissan discovered the Defect;
- c. Whether knowledge of the Defect would be important to a reasonable person, for example, because it poses an unreasonable safety risk;
- d. Whether Nissan disclosed the existence of the Defect to potential customers;
- e. Whether Nissan concealed the existence of the Defect from potential customers;
- f. Whether Nissan failed to provide free repairs of damage caused by the Defect.
- g. Whether Plaintiff and the other Class members are entitled to equitable relief, including declaratory relief, restitution, rescission, a preliminary and/or a permanent injunction; and
- h. Whether Plaintiff and the other Class members are entitled to damages and/or other monetary relief.

37. **Typicality**. Plaintiff's claims are typical of the claims of the proposed Class. Plaintiff and the proposed Class either purchased or leased a Class Vehicle that contains the same Defect, giving rise to substantially the same claims.

38. **Adequacy**. Plaintiff is an adequate representative of the proposed Class because her interests do not conflict with the interests of the members of the Class she seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff will prosecute this action vigorously by monitoring and directing the actions of class counsel. The interests of members of the Class will be fairly and adequately protected by Plaintiff and her counsel.

39. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each Class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Nissan economically feasible. Even if Class members themselves could afford such individualized litigation, the court system could not. In addition to the burden and expense of managing many actions arising from the Defect, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

40. In the alternative, the proposed Class may be certified because:

- a. the prosecution of separate actions by the individual members of the proposed Class would create a risk of inconsistent or varying adjudication with respect to individual Class members which would establish incompatible standards of conduct for Nissan;
- b. the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members 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 proposed Class, thereby making appropriate final and injunctive relief

with respect to the members of the proposed Class as a whole.

FIRST CAUSE OF ACTION
Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
(Plaintiff individually and on behalf of the Class)

41. Plaintiff, on behalf of herself and the proposed Class, hereby re-alleges the paragraphs above as if fully set forth herein.

42. Declaratory relief is intended to minimize “the danger of avoidable loss and unnecessary accrual of damages.” 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2751 (3d ed. 1998).

43. There is an actual controversy between Nissan and Plaintiff concerning:

- a. Whether the Class Vehicles are defectively designed thus causing them to fail;
- b. Whether Nissan knew or should have known of the Defect;
- c. Whether Nissan failed to warn against the potential unsuitability of its defectively designed Class Vehicles;
- d. Whether Nissan knowingly denies the existence of the Defect in Class Vehicles; and
- e. Whether Nissan bears responsibility for providing cost-free repairs for damage caused by the Defect in Class Vehicles.

44. Pursuant to 28 U.S.C. § 2201, the Court may “declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

45. Despite the repeated, documented failures of the Class Vehicles, Nissan refuses to acknowledge they are defectively designed, frequently blaming its customers for causing the damage.

46. Accordingly, based on Nissan's failure to act, Plaintiff seeks a declaration that the Class Vehicles are defective in their design, workmanship, and material choices, as alleged herein. The defective nature of the Class Vehicles is material and requires disclosure to all persons who own or lease a Class Vehicle.

47. The declaratory relief requested herein will generate common answers that will settle the controversy related to the alleged defective design of the Class Vehicles and the reasons for their repeated failure. There is an economy to resolving these issues, as they have the potential to eliminate the need for continued and repeated litigation.

SECOND CAUSE OF ACTION
Violation of Illinois Consumer Fraud and Deceptive Business Practices Act
815 ILCS 505/1, *et seq.* ("The CFA")
(Plaintiff individually and on behalf of the Class)

48. Plaintiff, on behalf of herself and the proposed Class, hereby re-alleges the paragraphs above as if fully set forth herein.

49. At all times relevant hereto, Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.* ("the CFA"), was in full force and effect.

50. Plaintiff and other Class members may sue as consumers within the meaning of the CFA, because Nissan's business activities involve trade or commerce, are addressed to the market generally, and otherwise implicate consumer protection concerns.

51. Section 2 of the CFA renders unlawful the "use or employment of any deception [including the] concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce."

52. When Nissan designed, developed, manufactured, marketed, and sold the Class Vehicles, it was involved in the conduct of trade and commerce under the CFA.

53. At the time Nissan developed, manufactured, marketed, and sold the Class Vehicles, it knew that they contained the Defect that posed serious safety risks to consumers like Plaintiff and Class members.

54. Nonetheless, Nissan concealed its knowledge of the Defect from consumers like Plaintiff and Class members and instead sold Class Vehicles as safe for normal use.

55. The Defect created and continues to create serious safety risks, which were hidden from the consumers.

56. Nissan intentionally concealed the unreasonable safety risks associated with the defective Class Vehicles that were material facts to consumers like Plaintiff and Class members. No reasonable consumer would have knowingly bought or leased a Class Vehicle if that consumer had known it was manufactured and distributed with the Defect.

57. Upon information and belief, in or around 2007 when Nissan changed the design of its floorboard to incorporate a change eliminating the Defect, it concealed the Defect of the earlier design from consumers including Plaintiff and Class members, thereby failing to offer to repair or remove the defective Class Vehicles from the stream of commerce even after attempting to remediate its own design errors.

58. Nissan did not recall the defectively designed Class Vehicles, nor did it notify consumers that the defective Class Vehicles could prematurely fail, were dangerous to occupants and should be replaced.

59. Nissan's intentional misrepresentations, omissions and concealments of material fact constitute unfair and/or deceptive practices in violation of the CFA.

60. Nissan violated the CFA not only when it sold the Class Vehicles but also when it represented them to be safe. When Nissan failed to disclose to Plaintiff and the Class members

that the Class Vehicles had the Defect that would cause premature corrosion and failure of the floorboard, Nissan's misrepresentations posed serious safety risks to consumers and the public.

61. Nissan violated the CFA when it sold Class Vehicles that it knew were unsafe for ordinary and intended, when it represented to the public that its Class Vehicles could be used safely, and when it failed to warn consumers that the Class Vehicles contained the Defect that pose serious safety risks to consumers and the public.

62. Nissan's deceptive practices, including but not limited to marketing of the Class Vehicles, were designed to induce Plaintiff and the Class members to purchase the Class Vehicles containing the Defect and to avoid the cost of replacing, repairing or retrofitting the defective Class Vehicles already in use by consumers throughout Illinois.

63. Nissan's violations of the CFA were designed to conceal, and Nissan failed to disclose, material facts about the Defect and the unreasonable safety risks of the Class Vehicles in order to induce Plaintiff and the Class members to purchase Class Vehicles and to avoid the cost of recalling, replacing, repairing or retrofitting the Class Vehicles.

64. Plaintiff and the Class members suffered injury in-fact as a direct result of Nissan's violations of the CFA in that they have purchased or leased Class Vehicles that pose an immediate safety risk and will have to be repaired or replaced.

65. Had Nissan disclosed the true quality and defective nature of the Class Vehicles, Plaintiff and Class members would not have purchased the Class Vehicles or would have paid substantially less for them.

66. Plaintiff and Class members have also been denied the use of their Class Vehicles, expended money on replacements, repairs, and damages to their Class Vehicles and suffered as a result of Nissan's conduct.

67. To this day, Nissan continues to violate the CFA by concealing the defective nature of the Class Vehicles by failing to issue a their recall, by failing to notify customers of the serious safety issues posed by the Defect, and by failing to offer cost-free repair or replacement of the defective Class Vehicles to consumers.

68. As a direct and proximate result of Nissan's unfair acts or practices alleged herein, Plaintiff and the Class members were damaged.

THIRD CAUSE OF ACTION
Violation of Illinois Uniform Deceptive Trade Practices Act
(815 ILCS 510/1, *et seq.*)
(Plaintiff individually and on behalf of the Class)

69. Plaintiff, on behalf of herself and the proposed Class, hereby re-alleges the paragraphs above as if fully set forth herein.

70. At all times relevant hereto, there was in full force and effect the Uniform Deceptive Trade Practices Act ("UDTPA"), 815 ILCS 510/1, *et seq.*]

71. Under Illinois' UDTPA, 815 ILCS 510/2 provides in pertinent part that a "person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation," the person does any of the following: "... (5) represents that goods or services have ... uses, benefits, or quantities that they do not have ... ; (7) represents that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another; ... [or] (12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding."

72. As a corporation, Nissan is a "person" within the meaning of 815 ILCS 510/1 (5).

73. Nissan's actions, as alleged herein, constitute deceptive, unfair, fraudulent, and unlawful practices committed in violation of 815 ILCS 510/1, *et seq.*

74. All of the conduct and misrepresentations alleged herein occurred in the course of Nissan's business and was part of a pattern or generalized course of conduct.

75. As described more fully above, Nissan knew of the Defect and that the Class Vehicles posed a serious safety risk to consumers. Nissan concealed that knowledge and misrepresented to consumers and the public that its Class Vehicles were safe for their intended use. Illustrations of Nissan's concealment of the Defect include: its continuation of sale and distribution of Class Vehicles despite its knowledge that they contained the Defect, its continuation of advertising that stated that the Class Vehicles were safe for consumers, and its denial of responsibility for repair of damages caused by the Defect.

76. Despite its knowledge of the serious safety risk the Class Vehicles posed to consumers, their Class Vehicles, and the public, Nissan failed to issue a warning or repair, retrofit, recall and/or replace the Class Vehicles and instead concealed the Defect and the safety issues with the Class Vehicles for years—concealment that is still occurring today.

77. As an entity with exclusive knowledge regarding the safety risk posed by the Class Vehicles, Nissan had a duty to disclose the Defect, particularly in light of the fact that the Class Vehicles posed a serious safety risk to Plaintiff and the Class members.

78. Plaintiff and the Class members reasonably expected that Nissan would disclose the existence of the Defect and the serious safety risk the Class Vehicles pose to consumers and the public and reasonably expected that Nissan would not sell Class Vehicles that were unsafe to use, information which is and was material to Plaintiff and Class members.

79. At all times relevant, Nissan knew or should have known that Plaintiff and the Class members did not know of, nor could they have reasonably discovered, the safety risk or

even the existence of Defect and that Nissan was in exclusive possession of the knowledge of the Defect.

80. By concealing the serious safety risk posed by its Class Vehicles, concealing the existence of the Defect and by representing that the Class Vehicles were safe, Nissan engaged in actionable conduct within the meaning of the UDTPA.

81. Had Plaintiff and Class members known of the serious safety risk or even the existence of Defect in the Class Vehicles, they would not have purchased the Class Vehicles or would have paid substantially less for their Class Vehicles.

82. Nissan's deceptive, unfair, fraudulent, and unlawful conduct alleged herein was specifically designed to and did induce Plaintiff and Class members to purchase the Class Vehicles.

83. Nissan violated the UDTPA when it concealed and/or failed to disclose the serious safety risk to consumers that its Class Vehicles posed, when it concealed and/or failed to disclose the fact that the Class Vehicles were defective as described herein, and when it breached its duty to disclose the safety risks and the Defect, instead selling and distributing Class Vehicles as if they were fit for their ordinary purposes, could be used safely, and did not pose an unreasonable safety risk.

84. As a direct and proximate result of Nissan's unfair acts or practices alleged herein, Plaintiff and the Class members were damaged.

FOURTH CAUSE OF ACTION
Unjust Enrichment
(Plaintiff individually and on behalf of the Class)

85. Plaintiff, on behalf of herself and the proposed Class, hereby re-alleges the paragraphs above as if fully set forth herein.

86. Nissan had knowledge of the Defect and the serious safety risks it poses, which it failed to disclose to Plaintiff and the Class Members.

87. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the Defect in the Class Vehicles and the concealment of the Defect, Nissan obtained monies which rightfully belong to Plaintiff and the Class members to the detriment of the Plaintiff and the Class members.

88. Nissan appreciated, accepted and retained the non-gratuitous benefits (i.e. profits) conferred by Plaintiff and the Class members who had no knowledge of the Defect. Plaintiff and the Class members either paid a higher price for their Class Vehicles that actually had lower values or paid Nissan monies for Class Vehicles that Plaintiff and the Class Members would not have purchased had they been aware of the Defect.

89. It would be inequitable and unjust for Nissan to retain these wrongfully obtained profits.

90. Nissan's retention of these wrongfully-obtained profits would violate the fundamental principles of justice, equity, and good conscience.

91. Plaintiff and the Class are entitled to restitution of the profits unjustly obtained, plus interest.

FIFTH CAUSE OF ACTION
Fraudulent Concealment
(Plaintiff individually and on behalf of the Class)

92. Plaintiff, on behalf of herself and the proposed Class, hereby re-alleges the paragraphs above as if fully set forth herein.

93. Nissan had a duty to disclose these safety, quality, dependability, and reliability issues because Nissan consistently marketed the Class Vehicles as safe for their normal and intended use.

94. Once Nissan made representations to the public about safety, quality, dependability, and reliability, it was under a duty to disclose the existence of the Defect, because where one does speak one must speak the whole truth and not conceal any information that would materially qualify those facts stated. A manufacturer that volunteers information about its product must be truthful, and the telling of a half-truth calculated to deceive constitutes fraud.

95. Upon information and belief, in or around 2007 when Nissan changed the design of the Class Vehicles to eliminate problems arising from the Defect, it concealed the existence of the Defect in the earlier design from consumers, including Plaintiff and Class members.

96. When it remedied the Defect in the Class Vehicles, Nissan failed to publicize the fact that the Class Vehicles (which continued to be sold within its distribution networks) were known to prematurely corrode. Nissan also did not recall the defectively designed Class Vehicles, nor did it notify owners that the defective Class Vehicles could spontaneously rust through, or that it was a risk of serious harm and should be repaired or replaced.

97. In addition, Nissan had a duty to disclose these omitted material facts because they were known and/or accessible only to Nissan, which has superior knowledge and access to the facts. Nissan knew these omitted material facts were not known to or reasonably discoverable by Plaintiff and the Class members.

98. These omitted facts were material because they directly impact the safety, quality, and reliability of the Class Vehicles. Nissan possessed exclusive knowledge of the Defect and of

quality control issues that rendered Class Vehicles inherently more dangerous and unreliable than similar automobiles.

99. Nissan actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff and the Class members to purchase Class Vehicles at a higher price that did not match their true value.

100. Nissan still has not made full and adequate disclosure of the existence of the Defect in Class Vehicles and continues to defraud Plaintiff and the Class Members.

101. Plaintiff and the Class members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiff's and the Class Members' actions in purchasing or leasing Class Vehicles were justified in light of their lack of knowledge.

102. Nissan was in exclusive control of the material facts, and such facts were not known to Plaintiff or the Class members.

103. As a result of the concealment and/or suppression of the facts, Plaintiff and the Class members sustained damage. Those Class members who want to rescind their purchase are entitled to restitution and consequential damages which arose from the sales transaction.

104. Nissan's acts were done maliciously, deliberately, with intent to defraud, and/or in reckless disregard of Plaintiff's and the Class members' rights and well-being.

105. Nissan's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, and Plaintiff and the Class members reserve the right to assert a claim for punitive damages upon satisfying the applicable statutory prerequisite pursuant to Illinois law.

SIXTH CAUSE OF ACTION
Negligence
(Plaintiff individually and on behalf of the Class)

106. Plaintiff, on behalf of herself and the proposed Class, hereby re-alleges the paragraphs above as if fully set forth herein.

107. Nissan owed Plaintiff and the Class a duty to provide thorough notice of known safety defects, such as the Defect.

108. Nissan also owed Plaintiff and the Class a duty, once it discovered the Defect, to ensure that an appropriate repair procedure was developed and made available to consumers.

109. Nissan owed Plaintiff and the Class a duty not to engage in fraudulent or deceptive conduct, including the knowing concealment of material information such as the existence of the Defect. This duty is independent of any contractual duties Nissan may owe or have owed.

110. Nissan also owed an independent duty to Plaintiff and the Class to disclose the Defect under the TREAD Act, 49 U.S.C. §§ 30101, *et seq.*, and its implementing regulations. Under the Act, Nissan must send notice to Class Vehicle owners, purchasers, and dealers whenever it “learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety.” 49 U.S.C. § 30118(c). Nissan was aware of the defective floorboards in the Class Vehicles, yet failed to timely notify owners, purchasers, and dealers about the defect. This duty is independent of any contractual duties Nissan may owe or have owed.

111. Nissan also had a duty to notify NHTSA of the Defect within five working days of discovering it. 49 C.F.R. § 573.6. Nissan was aware of the Defect in the Class Vehicles, yet

failed to timely notify the NHTSA. This duty is independent of any contractual duties Nissan may owe or have owed.

112. A finding that Nissan owed a duty to Plaintiff and the Class would not significantly burden Nissan. Nissan has the means to efficiently notify drivers of Class Vehicles about dangerous defects. The cost borne by Nissan for these efforts is insignificant in light of the dangers posed to Plaintiff and the Class by Nissan's failure to disclose the Defect and provide an appropriate notice and repair.

113. Nissan's failure to disclose the Defect in Class Vehicles to consumers and NHTSA was a departure from the reasonable standard of care.

114. Accordingly, Nissan breached its duties to Plaintiff and the Class.

115. Nissan's conduct was contrary to public policy favoring the disclosure of defects that may affect customer safety; these policies are embodied in the TREAD Act, and the notification requirements in 49 C.F.R. §§ 573.1, *et seq.*

116. As a direct, reasonably foreseeable, and proximate result of Nissan's failure to exercise reasonable care to inform Plaintiff and the Class of the Defect, and to provide appropriate repair procedures for the Defect, Plaintiff and the Class have suffered damages in that they spent more money than they otherwise would have on Class Vehicles which are of diminished value.

117. Plaintiff and the Class could not have prevented the damages caused by Nissan's negligence through the exercise of reasonable diligence. Neither Plaintiff nor the Class contributed in any way to Nissan's failure to provide appropriate notice and repair procedures.

118. Plaintiff and the Class seek to recover the damages caused by Nissan. Because Nissan acted fraudulently and with wanton and reckless misconduct, Plaintiff also seeks an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter a judgment awarding the following relief:

- a. An order certifying the proposed Class, and appointing Plaintiff and her counsel to represent the Class;
- b. An order awarding Plaintiff and the Class members their actual damages, punitive damages, and/or any other form of monetary relief provided by law;
- c. An order awarding Plaintiff and the Class restitution, disgorgement, or other equitable relief as the Court deems proper;
- d. An order requiring Nissan to adequately disclose and repair the Defect;
- e. An order awarding Plaintiff and the Class pre-judgment and post-judgment interest as allowed under the law;
- f. An order awarding Plaintiff and the Class reasonable attorney fees and costs of suit, including expert witness fees; and
- g. An order awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: April 14, 2015

RESPECTFULLY SUBMITTED,

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