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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

SHERI GRIMM, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA, INC.,

Defendant.

CASE NO.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

The Altima is one of the most popular vehicles manufactured and sold by Nissan. However, Altimas across the country suffer from a serious defect: floorboards that are prone to rust at significantly higher rates than other vehicles. Despite its knowledge of the defect, Nissan has refused to institute a recall or compensate Altima owners for the defect.

1 Plaintiff brings the following Complaint on behalf of Altima owners nationwide, and
2 respectfully submits the following:

3 **PARTIES**

4 1. Plaintiff Sheri Grimm is a resident of St. Louis County, Missouri.

5 2. Nissan North America, Inc. is a California corporation. It may be served via its
6 registered agent at: Corporation Service Company; 2710 Gateway Oaks Drive, Suite 150N;
7 Sacramento, California 95833.

8 **JURISDICTION AND VENUE**

9 3. The United States District Court for the Northern District of California has subject
10 matter jurisdiction over this action under the Class Action Fairness Act and the matter in
11 controversy exceeds the sum or value of \$5,000,000.00 exclusive of interests and costs. 28
12 U.S.C. § 1332(d)(2)(A).

13 4. Venue is proper in this District pursuant to 28 U.S.C. §1391(a), (b) and (c).
14 Defendant, during a relevant time period related to the allegations herein, conducted substantial
15 business in the State of California, and within this Federal Judicial District, is registered to and in
16 fact is doing business within the State of California and otherwise maintains requisite minimum
17 contacts with the State of California. Additionally, Defendant distributes in this district, receives
18 substantial compensation and profits from sales, maintenance, and service of the relevant
19 vehicles at issue in this case in this District, and has and continues to conceal and make material
20 omissions in this District so as to subject it to in personam jurisdiction in this District.

21 5. Defendant is or was an active California corporation during a relevant time period
22 related to the allegations herein that directs and coordinates, or did direct and coordinate during a
23 relevant time period related to the allegations herein, all of Nissan's activities, including design,
24 development, and marketing of Nissan vehicles including the relevant vehicles at issue in this
25 case, in the U.S. market. Defendant engaged in these activities affecting the design and sale of
26 the relevant vehicles at issue in this case from its principal place of business in California, and
27
28

has continued to perform significant and meaningful activities in connection with them in California.

FACTUAL ALLEGATIONS

6. The Nissan Altima is a mid-size vehicle that is “core to Nissan’s brand appeal.”¹ 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

7. The Altima is a popular vehicle. In fact, the Altima is Nissan’s “best selling vehicle.”³

8. In calendar year 2014, Nissan sold 335,644 Altima vehicles in the United States – an increase of 4.7 percent from its Altima sales in calendar year 2013.⁴

9. Indeed, the Altima has consistently accounted for a significant portion of Nissan’s sales during the last several years, as reflected in the following table:

¹ Nissan Motor Corporation Annual Report 2014, at p. 13.

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/releases/nissan-atlima-named-one-of-the-10-most-comfortable-cars-under-30-000-by-kelley-blue-book-s-kbb-com?page=3&query=altima+sales> (last accessed Feb. 18, 2015).

³ Nissan announces U.S. pricing for 2015 Altima (June 2, 2014) available at <http://nissannews.com/en-US/nissan/usa/releases/nissan-announces-u-s-pricing-for-2015-altima?page=4&query=altima+sales> (last accessed Feb. 18, 2015).

⁴ Nissan Group reports record December and 2014 calendar year U.S. sales (Jan. 5, 2015) available at <http://nissannews.com/en-US/nissan/usa/channels/U-S-Sales-Reports/releases/nissan-group-reports-record-december-and-2014-calendar-year-u-s-sales> (last accessed Feb. 18, 2015).

Calendar year	Nissan's total new-vehicle sales ⁵	Altima sales	Altima sales expressed as a percentage of Nissan's total sales
2002	739,850	201,822	27%
2003	794,800	201,240	25%
2004	855,000	235,889	27%
2005	1,076,900	255,371	23%
2006	1,019,500	232,457	22%
2007	1,068,500	284,762	26%
2008	951,450	269,668	28%
2009	770,100	203,568	26%
2010	908,600	229,263	25%
2011	1,042,500	268,981	25%
2012	1,141,700	302,934	26%
2013	1,248,400	320,723	25%
2014	1,269,565	335,644	26%

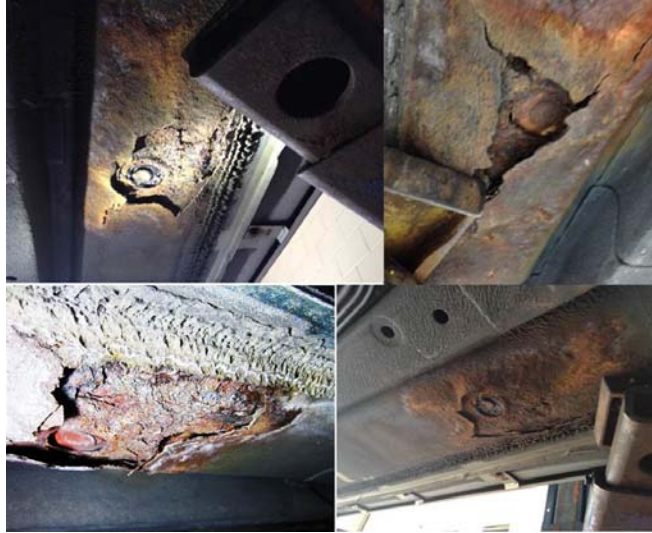
10. A significant percentage of Nissan Altima sales take place in California.

11. But the Altima has a significant and material defect: its floorboards rust out, leaving the vehicles unsafe and unfit for routine use.

12. In a recent news story, NBC published several photographs of examples of the rusted floorboards:⁶

⁵ Annual Financial Profile of America's Franchised New-Car Dealerships, NADADATA at p. 9 (2014) available at www.nada.org/nadadata (last accessed Feb. 18, 2015).

⁶ Tom Costello and Talesha Reynolds, *Nissan drivers gripe about rusty floor holes in older Altimas*, nbcnews.com (April 6, 2015) available at <http://www.nbcnews.com/news/us-news/rust-n333291>.



13. Consumers have repeatedly complained to Nissan and the National Highway Traffic Safety Administration (NHTSA) about the rust problem.

14. According to one recent report, NHTSA has received “more than 400 complaints” concerning the rust in Altima models from 2002 to 2006.⁷

15. A sampling of complaints from the NHTSA website include:

Date of Incident: 12/01/2014

NHTSA ID Number: 10662977

TL* The contact owns a 2002 Nissan Altima. The contact stated that the floorboards were completely rusted. The dealer diagnosed that the floorboards needed to be replaced. The vehicle was not repaired. The manufacturer was notified of the failure. The approximate failure mileage was 100,000.

Date of Incident: 10/01/2014

NHTSA ID Number: 10641698

I have two safety related issues with this [2004 Nissan Altima]. 1)

The front subframe has holes due to rust. 2) The front passenger

⁷ Ryan Kath, *Nissan owners feel road rage, express safety concerns over rust problem hiding beneath their feet*, KSHB.com (Feb. 9, 2015; updated Feb. 11, 2015) available at: <http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-safety-concerns-over-rust-problem-hiding-beneath-their-feet> (last accessed Feb. 18, 2015).

1 floor board is rusted through with a hole approximately 10" x 20".
 2 I took that car to Fred Martin Nissan for an inspection. They stated
 3 that these issues are not covered by warranty, recall or goodwill
 campaign. These issues appear to be manufacturing defects.

4 Date of Incident: 12/23/2014

5 NHTSA ID Number: 10668860

6 Floor boards rusted totally thru on drivers [sic] side and passengers
 7 [sic] side. Only thing stopping feet from going thru the floor is
 8 carpet. Seems to be a ongoing problem with the floors on Nissan. I
 believe this is a very dangerous problem that should be corrected
 by Nissan as a recall safety issue.⁸

9 16. Consumers have taken to other websites to complain. For example, on June 21,
 10 2014, a consumer posted:

11 I have a 2005 Nissan Altima with 121,000 miles. I am the original
 12 owner and this car has been garaged for most of its life. I was
 13 shocked last week, when an independent dealer was changing the
 14 oil, to find that the floor pans are completely rusted out. After
 15 researching this, I find that it is a very common problem among
 16 this car. I am extremely angry that Nissan is not acknowledging
 and fixing this manufacturing defect. Our Nissan dealership has
 done the majority of this service, and never once have they brought
 it to my attention. This is a safety hazard and should be addressed
 immediately by Nissan.⁹

17 17. On October 15, 2014, another consumer posted on a different website:

18 Owner of 2005 Nissan Altima (purchased new), garage kept,
 19 regularly maintained (oil changes, brakes, etc.) at dealership. On
 20 October 15 while I at [sic] the dealership for oil change I
 21 mentioned rattle from underneath the car and would they check for
 me. Their findings was [sic] a new muffler system for \$623 (which
 I did not have done).

23 ⁸ Available at: <http://www-odi.nhtsa.dot.gov/owners/SearchSafetyIssues> (last accessed
 24 Feb. 19, 2015).

25 ⁹ Available at: http://www.consumeraffairs.com/automotive/nissan_altima.html?page=2
 26 (last accessed Feb. 19, 2015).

On way home stopped at private muffler dealer for their opinion and that's when I found out about the rusted out floorboards. There is not one bit of rust on the rest of the car. Never in the 9 1/2 years did the dealership ever mention this occurring. Contacted Nissan Consumer Affairs, was assigned a Regional Rep who instructed me to take photos and get an estimate. Their decision was they were not about to take responsibility. I'm told a TSB (Technical Service Bulletin) was issued by the consumer was never made aware. This is definitely a defect and someone at Nissan should own up to it!¹⁰

18. According to a recent report that analyzed the NHTSA complaints, the foregoing examples are not unique because “[m]any of the vehicle owners said they could not get help from Nissan to fix the problem.”¹¹

19. Importantly, the complaints are not limited to a geographic area. According to an auto safety expert, “the complaints are not just in Rust Belt states, where snow and salt have a higher chance of causing a rusty underbody.”¹²

20. Because of the geographic dispersion of the complaints, the rust cannot “be blamed on the weather, especially since the rust is often localized under the floorboards but not other areas under the car.”¹³

¹⁰ Available at: www.carcomplaints.com/Nissan/Altima/2005/body_paint/floor_pan_rusted_through.shtml (last accessed Feb. 19, 2015).

¹¹ Ryan Kath, *Nissan owners feel road rage, express safety concerns over rust problem hiding beneath their feet*, KSHB.com (Feb. 9, 2015; updated Feb. 11, 2015) available at: <http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-safety-concerns-over-rust-problem-hiding-beneath-their-feet> (last accessed Feb. 18, 2015).

¹² Ryan Kath, *Nissan owners feel road rage, express safety concerns over rust problem hiding beneath their feet*, KSHB.com (Feb. 9, 2015; updated Feb. 11, 2015) available at: <http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-safety-concerns-over-rust-problem-hiding-beneath-their-feet> (last accessed Feb. 18, 2015).

1 21. Other experts agree that the rust is not ordinary. According to a body shop owner,
2 “If you see [the rust] repeatedly on numerous vehicles, generally there’s a reason for it . . . If it’s
3 doing it in the same place, it’s not random.”¹⁴

4 22. Despite the scope and dispersion of the complaints, Nissan has not initiated any
5 recalls or any other goodwill efforts to compensate consumers for the rusted floorboards.

6 23. This is particularly troubling given the safety risks associated with rusted
7 floorboards.

8 24. While rust may not pose a safety risk under normal circumstances, the “location
9 and severity of the rust in the Nissan Altimas could become a problem.”¹⁵ According to an auto
10 safety expert, the rust is “a safety risk for not only carbon monoxide but also if you’re in a
11 collision, the seat that’s not being supported correctly could actually move . . . Your feet could
12 go through Flintstone style and injure somebody. There are a number of ways this could become
13 a safety issue.”¹⁶

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16 ¹³ Ryan Kath, *Nissan owners feel road rage, express safety concerns over rust problem*
17 *hiding beneath their feet*, KSHB.com (Feb. 9, 2015; updated Feb. 11, 2015) available at:
18 [http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-](http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-safety-concerns-over-rust-problem-hiding-beneath-their-feet)
19 [safety-concerns-over-rust-problem-hiding-beneath-their-feet](http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-safety-concerns-over-rust-problem-hiding-beneath-their-feet) (last accessed Feb. 18, 2015).

20 ¹⁴ Ryan Kath, *Body shop owner: Nissan Altima floorboard rust problem is expensive repair,*
21 *can become ‘major issue’*, KSHB.com (Feb. 10, 2015) available at:
22 [http://www.kshb.com/news/local-news/investigations/body-shop-owner-nissan-altima-](http://www.kshb.com/news/local-news/investigations/body-shop-owner-nissan-altima-floorboard-rust-problem-is-expensive-repair-can-become-major-issue)
23 [floorboard-rust-problem-is-expensive-repair-can-become-major-issue](http://www.kshb.com/news/local-news/investigations/body-shop-owner-nissan-altima-floorboard-rust-problem-is-expensive-repair-can-become-major-issue) (last accessed Feb. 18,
24 2015).

25 ¹⁵ Ryan Kath, *Nissan owners feel road rage, express safety concerns over rust problem*
26 *hiding beneath their feet*, KSHB.com (Feb. 9, 2015; updated Feb. 11, 2015) available at:
27 [http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-](http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-safety-concerns-over-rust-problem-hiding-beneath-their-feet)
28 [safety-concerns-over-rust-problem-hiding-beneath-their-feet](http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-safety-concerns-over-rust-problem-hiding-beneath-their-feet) (last accessed Feb. 18, 2015).

¹⁶ Ryan Kath, *Nissan owners feel road rage, express safety concerns over rust problem*
hiding beneath their feet, KSHB.com (Feb. 9, 2015; updated Feb. 11, 2015) available at:
[http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-](http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-safety-concerns-over-rust-problem-hiding-beneath-their-feet)

1 25. Nissan is aware of the defect. According to a recent story from NBC News,
2 “Nissan said it has no plans to order a recall and notes that corrosion in older cars is not
3 unusual.” Nissan stated, “This issue is not considered a safety defect by Nissan . . .”¹⁷

4 26. Nissan’s refusal to accept responsibility for the defect has left consumers with a
5 hefty bill.

6 27. The rusted floorboards are expensive to repair. Repair estimates range from
7 \$3,200 to as high as \$5,000 – figures that often exceed the value of the entire vehicle.¹⁸

8 28. Additionally, some rusted Altimas no longer pass state safety inspections.¹⁹

9 29. Plaintiff Sheri Grimm purchased her 2002 Nissan Altima used in 2006.

10 30. She purchased her Altima at Moore Nissan in Ellisville, Missouri.

11 31. Plaintiff Sheri Grimm purchased her Altima for personal use.

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15 safety-concerns-over-rust-problem-hiding-beneath-their-feet (last accessed Feb. 18, 2015)
16 (emphasis added).

17 ¹⁷ Tom Costello and Talesha Reynolds, *Nissan drivers gripe about rusty floor holes in older*
18 *Altimas*, nbcnews.com (April 6, 2015) available at <http://www.nbcnews.com/news/us-news/rust-n333291>.

19 ¹⁸ Ryan Kath, *Nissan owners feel road rage, express safety concerns over rust problem*
20 *hiding beneath their feet*, KSHB.com (Feb. 9, 2015; updated Feb. 11, 2015) available at:
21 [http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-](http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-safety-concerns-over-rust-problem-hiding-beneath-their-feet)
22 [safety-concerns-over-rust-problem-hiding-beneath-their-feet](http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-safety-concerns-over-rust-problem-hiding-beneath-their-feet) (last accessed Feb. 18, 2015); Ryan
23 Kath, *Body shop owner: Nissan Altima floorboard rust problem is expensive repair, can become*
24 *‘major issue’*, KSHB.com (Feb. 10, 2015) available at: [http://www.kshb.com/news/local-](http://www.kshb.com/news/local-news/investigations/body-shop-owner-nissan-altima-floorboard-rust-problem-is-expensive-repair-can-become-major-issue)
25 [news/investigations/body-shop-owner-nissan-altima-floorboard-rust-problem-is-expensive-](http://www.kshb.com/news/local-news/investigations/body-shop-owner-nissan-altima-floorboard-rust-problem-is-expensive-repair-can-become-major-issue)
26 [repair-can-become-major-issue](http://www.kshb.com/news/local-news/investigations/body-shop-owner-nissan-altima-floorboard-rust-problem-is-expensive-repair-can-become-major-issue) (last accessed Feb. 18, 2015).

27 ¹⁹ Ryan Kath, *Nissan owners feel road rage, express safety concerns over rust problem*
28 *hiding beneath their feet*, KSHB.com (Feb. 9, 2015; updated Feb. 11, 2015) available at:
29 [http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-](http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-safety-concerns-over-rust-problem-hiding-beneath-their-feet)
30 [safety-concerns-over-rust-problem-hiding-beneath-their-feet](http://www.kshb.com/news/local-news/investigations/nissan-owners-feel-road-rage-express-safety-concerns-over-rust-problem-hiding-beneath-their-feet) (last accessed Feb. 18, 2015).

32. Had Plaintiff known of the Altima's defective floorboards, she either would not have purchased the vehicle or she would not have paid the price she did.

CLASS ACTION ALLEGATIONS

33. Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of himself and the following proposed classes:

All citizens of the United States who owned or leased a Nissan Altima as of April 6, 2015 ("Nationwide Class").

All citizens of Missouri who owned or leased a Nissan Altima as of April 6, 2015 ("Missouri Subclass").

34. Excluded from the Classes are Defendant, any affiliate, parent, employee or subsidiary of Defendant; any officer, director, or employee of Defendant; anyone employed by counsel for Plaintiff in this action; and any Judge to whom this case is assigned as well as his or her immediate family.

35. This action has been brought and may be properly maintained as a class action under Federal Rule of Civil Procedure 23.

36. Numerosity of the Class – Rule 23(a)(1). Class members are so numerous that their individual joinder is impracticable. The precise number of Class members and their addresses can be obtained from information and records in Nissan's possession and control. Class members may be notified of the pendency of this action by mail or by published notice or other appropriate methods.

37. Existence and Predominance of Common Questions of Law and Fact – Rule 23(a)(2), 23(b)(3). Common questions of law and fact exist as to all members of the Classes and predominate over questions affecting only individual Class members. These common legal and factual questions, each of which may also be certified under Rule 23(c)(4), include the following:

- a. Whether the Nissan Altima's floorboards are defective;
- b. When Nissan became aware of the defects;

- c. Whether the defects are material;
- d. Whether Nissan concealed the defects;
- e. Whether Nissan profited from its concealment of the defects;
- f. Whether Nissan's conduct harmed Plaintiff and the Class;
- g. Whether Nissan's conduct violated California Business and Professions Code §§ 17200 *et seq.*;
- h. Whether Nissan's conduct violated California Business and Professions Code §§ 1750 *et seq.*;
- i. Whether Nissan's conduct violated California Business and Professions Code §§ 17500 *et seq.*;
- j. Whether Nissan's conduct violated the Magnuson-Moss Warranty Act;
- k. Whether Nissan's conduct constituted fraudulent concealment;
- l. Whether Nissan's conduct constituted negligence;
- m. Whether Nissan's conduct violated the Missouri Merchandising Practices Act;
- n. 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
- o. Whether Plaintiff and the other Class members are entitled to damages and/or other monetary relief.

32. Typicality – Rule 23(a)(3). Plaintiff's claims are typical of the claims of the Classes because Plaintiff purchased a Nissan Altima.

33. Adequacy of Representation – Rule 23(a)(4). Plaintiff will fairly and adequately protect the interests of Class members. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff will prosecute this action vigorously. Plaintiff has no interests adverse or antagonistic to those of the Classes.

1 34. Superiority - Rule 23(b)(3). A class action is superior to all other available
2 means for the fair and efficient adjudication of this controversy. The damages or other financial
3 detriment suffered by individual Class members are small compared with the burden and
4 expense that would be entailed by individual litigation of their claims against Defendant. It
5 would thus be virtually impossible for the Class members, on an individual basis, to obtain
6 effective redress for the wrongs done them. Furthermore, even if Class members could afford
7 such individualized litigation, the court system could not. Individualized litigation would create
8 the danger of inconsistent or contradictory judgments arising from the same set of facts.
9 Individualized litigation would also increase the delay and expense to all parties and the court
10 system from the issues raised by this action. By contrast, the class action device provides the
11 benefits of adjudication of these issues in a single proceeding, economies of scale, and
12 comprehensive supervision by a single court, and presents no unusual management difficulties
13 under the circumstances here.

14 35. In the alternative, the Classes may be certified under Rule 23 (b)(1) and/or (b)(2)
15 because:

16 a. The prosecution of separate actions by individual Class members would
17 create a risk of inconsistent or varying adjudication with respect to individual Class
18 members that would establish incompatible standards of conduct for Defendant;

19 b. The prosecution of separate actions by individual Class members would
20 create a risk of adjudications with respect to them which would, as a practical matter, be
21 dispositive of the interests of other Class members not parties to the adjudications, or
22 substantially impair or impede their ability to protect their interests; and/or

23 c. Nissan has acted or refused to act on grounds generally applicable to the
24 Classes, thereby making appropriate final and injunctive relief with respect to the Class
25 members as a whole.
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TOLLING

36. Any applicable statute of limitations that might otherwise bar any Class member's claim has been tolled by Nissan's knowing and active concealment of the facts alleged above. Plaintiff and Class members were ignorant of vital information essential to the pursuit of their claims. Plaintiff and Class members could not reasonably have discovered that their Nissan Altima vehicles were defective because Nissan did not provide relevant information about the defects to the NHTSA or to vehicle owners/lessors, and continues to refuse to provide such notice to consumers.

COUNT I

**Violation of California Business and Professions Code §§ 17200 *et seq.*
(Brought on behalf of the Nationwide Class)**

37. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of the Nationwide Class against Defendant under the California Business and Professions Code §§ 17200 *et seq.*

38. California law prohibits "unlawful, unfair, or fraudulent business act or practice." Cal. Bus. & Prof. Code §§ 17200, 17203.

39. Throughout the class period, Nissan engaged unlawful business acts and/or practices by selling and/or distributing Altima vehicles with defective floorboards.

40. Nissan further engaged in unlawful business acts and/or practices by not informing consumers that the floorboards in Altimas were defective, even after the company was made aware of the defect.

41. Nissan's conduct was misleading and deceptive, and violated the California Business & Professions Code §§ 17500 *et seq.* and the Consumer Legal Remedies Act, codified at California Civil Code § 1750 *et seq.*

42. The acts, omissions, and practices alleged herein also constitute unfair business acts and practices in that Nissan's conduct is immoral, unscrupulous, and offends public policy by seeking to profit from defective products.

43. As a direct result of Nissan's unlawful, unfair or fraudulent business acts and/or practices, Plaintiff and members of the Nationwide Class suffered injury in fact and lost money or property.

44. Accordingly, Plaintiff, on behalf of herself and all others similarly situated, seeks restitution, injunctive relief against Nissan, and other relief as specifically prayed for herein.

COUNT II

Violation of California Business and Professions Code §§ 1750 *et seq.* (Brought on behalf of the Nationwide Class)

45. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of the Nationwide Class against Defendant under the California Business and Professions Code §§ 1750 *et seq.*

46. Nissan is a "person" within the meaning of California Civil Code §§ 1761(c) and 1770, and provides "goods" within the meaning of §§ 1761(a) and 1770.

47. Nissan's customers, including Plaintiff and Class members, are "consumers" within the meaning of Civil Code §§ 1761(d) and 1770.

48. Each purchase or lease of Nissan's Altima vehicles by Plaintiff and each class member constitutes a "transaction" within the meaning of Civil Code §§ 1761(e) and 1770.

49. Each class member purchased goods from Nissan that was primarily for personal, family, or household purposes.

50. The Consumer Legal Remedies Act makes it unlawful for a company to:

- a. Misrepresent the certification of goods. Cal. Civ. Code § 1770(a)(2)(3).
- b. Represent that goods have characteristics or approval which they do not have. *Id.* at § 1770(a)(5).

- c. Represent that goods are of a particular standard, quality, or grade, if they are of another. *Id.* at § 1770(a)(7).
- d. Advertise goods with the intent not to sell them as advertised. *Id.* at § 1770(a)(9).
- e. Represent that the subject of a transaction has been supplied in accordance with a previous representation when it has not. *Id.* at § 1770(a)(16).

51. Throughout the class period, Nissan violated and continues to violate the above-mentioned provisions.

52. As a direct and proximate result of Nissan's violations, Plaintiff and class members have suffered and are continuing to suffer harm.

53. Nissan's wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the California Consumer Legal Remedies Act because Nissan is still representing that the floorboards in Nissan Altima vehicles are not defective.

54. In accordance with Civil Code § 1780(a), Plaintiff and members of the class seek injunctive and equitable relief for Nissan's violations of the CLRA. In addition, after mailing appropriate notice and demand in accordance with Civil Code § 1782(a) and (d), Plaintiff will amend this Class Action Complaint to include a request for damages. Plaintiff and members of the class request that this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such unfair business practices, and for such other relief, including attorneys' fees and costs, as provided in Civil Code § 1780.

COUNT III

Violation of California Business and Professions Code §§ 17500 *et seq.* (Brought on behalf of the Nationwide Class)

55. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of the Nationwide Class against Defendant under the California Business and Professions Code §§ 17500 *et seq.*

57. Nissan's advertisements, representations, and labeling were designed to, and did, result in the purchase and use of Altima vehicles with defective floorboards, and Nissan profited from its sales of these products to unwary consumers.

59. Accordingly, Plaintiff on behalf of herself and all others similarly situated, seeks restitution and injunctive relief against Nissan in the form of an order prohibiting Nissan from engaging in the alleged misconduct described herein, and other relief as specifically prayed for herein.

Violation of the Magnuson-Moss Warranty Act
15 U.S.C. §§ 2301 *et seq.*
(Brought on behalf of the Nationwide Class)

61. Plaintiff is a “consumer” within the meaning of 15 U.S.C. § 2301(3).

63. Nissan Altima vehicles are “consumer products” under 15 U.S.C. § 2301(1).

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1 65. Nissan's express warranties are written warranties within the meaning of the
2 MMWA under 15 U.S.C. § 2301(6). The implied warranties associated with the Altimas are
3 covered under 15 U.S.C. § 2301(7).

4 66. Nissan breached these warranties as described in more detail above. Without
5 limitation, Nissan Altimas share a common design defect in that they are equipped with defective
6 floorboards that rust due to the design defect.

7 67. Plaintiff and each of the Nationwide Class members have had sufficient direct
8 dealings with either Nissan or its agents to establish privity of contract between Nissan and
9 Plaintiff and each of the Nationwide Class members. Nonetheless, privity is not required here
10 because Plaintiff and each of the Nationwide Class members are intended third-party
11 beneficiaries of contracts between Nissan and its dealers, and specifically, of Nissan's implied
12 warranties. Nissan's warranty agreements were designed for and intended to benefit the
13 consumers only. Privity also is not required because Nissan Altimas are dangerous
14 instrumentalities due to the defects and nonconformities outlined herein.

15 68. Affording Nissan a reasonable opportunity to cure its breach of written warranties
16 would be unnecessary and futile here. At the time of sale or lease of each Altima, Nissan knew,
17 should have known, or was reckless in not knowing of its misrepresentation concerning the
18 Altimas' inability to perform as warranted, but nonetheless failed to rectify the situation and/or
19 disclose the defective design. Under the circumstances, the remedies available under any
20 informal settlement procedure would be inadequate and any requirement that Plaintiff resort to
21 an informal dispute resolution procedure and/or afford Nissan a reasonable opportunity to cure
22 its breach of warranties is excused and thereby deemed satisfied.

23 69. Plaintiff and the other Nationwide Class members would suffer economic
24 hardship if they returned their Altimas but did not receive the return of all payments made by
25 them. Accordingly, Plaintiff and the other Nationwide Class members have not re-accepted their
26 Altimas by retaining them.

70. Plaintiff, individually and on behalf of the Nationwide Class, seek all damages permitted by law, including diminution in value of their vehicles, in an amount to be proven at trial.

**Fraudulent Concealment
(Brought on behalf of the Nationwide Class)**

71. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of the Nationwide Class against Defendant.

72. Nissan concealed material facts from Plaintiff, the Nationwide Class, the public, and NHTSA. Nissan knew that Altimas were designed and manufactured in a way that would cause the floorboards to rust, but Nissan concealed those facts. Consumers in the United States had no knowledge of the defects.

73. Nissan had a duty to disclose the facts to Plaintiff, the Nationwide Class, the public, and NHTSA, but failed to do so.

74. Nissan knew that Plaintiff and the Nationwide Class had no knowledge of those facts and that neither Plaintiff nor the Nationwide Class had an equal opportunity to discover the facts. Nissan was in a superior position over Plaintiff and the Nationwide Class.

75. By failing to disclose the material facts concerning the Altimas' defects, Nissan intended to induce Plaintiff and the Nationwide Class to purchase or lease the defective Altimas.

76. Plaintiff and the Nationwide Class would not have purchased or leased the Altima vehicle had they known of the rusted floorboard defect, or would not have paid as much as they did.

77. Nissan reaped the benefit of the sales and leases of Nissan Altimas as a result of its nondisclosure.

79. Nissan's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and the Nationwide Class, such that punitive damages are appropriate.

**Negligence
(Brought on behalf of the Nationwide Class)**

81. Nissan owed Plaintiff and the Nationwide Class a duty to provide thorough notice of known safety defects, such as the floorboard defect.

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

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1 and dealers about the defect. This duty is independent of any contractual duties Nissan may owe
2 or have owed.

3 85. Nissan also had a duty to notify the National Highway Traffic Safety
4 Administration (“NHTSA”) of the floorboard defect within five working days of discovering the
5 defect. 49 C.F.R. § 573.6. Nissan was aware of the defective floorboards in the Altima, yet failed
6 to timely notify the NHTSA. This duty is independent of any contractual duties Nissan may owe
7 or have owed.

8 86. A finding that Nissan owed a duty to Plaintiff and the Nationwide Class would
9 not significantly burden Nissan. Nissan has the means to efficiently notify drivers of Nissan
10 vehicles about dangerous defects. The cost borne by Nissan for these efforts is insignificant in
11 light of the dangers posed to Plaintiff and the Nationwide Class by Nissan’s failure to disclose
12 the defect and provide an appropriate notice and repair.

13 87. Nissan’s failure to disclose the defective floorboards in Altimas to consumers and
14 the NHTSA was a departure from the reasonable standard of care.

15 88. Accordingly, Nissan breached its duties to Plaintiff and the Nationwide Class.

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

19 90. As a direct, reasonably foreseeable, and proximate result of Nissan’s failure to
20 exercise reasonable care, information Plaintiff and the Nationwide Class of the defect, and
21 provide appropriate repair procedures for the defect, Plaintiff and the Nationwide Class have
22 suffered damages in that they spent more money on Altimas than they otherwise would have
23 which are of diminished value.

24 91. Plaintiff and the Nationwide Class could not have prevented the injuries caused
25 by Nissan’s negligence through the exercise of reasonable diligence. Neither Plaintiff nor the
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1 Nationwide Class contributed in any way to Nissan's failure to provide appropriate notice and
2 repair procedures.

3 92. Plaintiff, individually and on behalf of the Nationwide Class, seeks to recover the
4 damages caused by Nissan. Because Nissan acted fraudulently and with wanton and reckless
5 misconduct, Plaintiff also seeks an award of exemplary damages.

6 **COUNT VII**

7 **Violation of the Missouri Merchandising Practices Act** 8 **Mo. Rev. Stat. §§ 407.010 *et seq.*** 9 **(Brought on behalf of the Missouri Subclass)**

10 93. Plaintiff incorporates by reference and re-alleges all paragraphs previously
11 alleged herein. Plaintiff asserts this cause of action on behalf of the Missouri Subclass against
12 Defendant.

13 94. Plaintiff and Nissan are "persons" within the meaning of section 407.010(5).

14 95. Nissan's activities constitute the sale of "merchandise" within the meaning of
15 section 407.010(4).

16 96. Plaintiff purchased her 2002 Altima for personal use.

17 97. As set forth herein, Nissan's acts, practices and conduct violate section
18 407.020(1) in that, among other things, Nissan has used and/or continues to use unfair practices,
19 concealment, suppression and/or omission of material facts in connection with the advertising,
20 marketing, and offering for sale of Nissan Altimas.

21 98. Nissan's unfair, unlawful and deceptive acts, practices, and conduct include
22 selling Altima vehicles with a material defect and concealing the existence of that defect, thereby
23 endangering and harming Plaintiff and the Missouri Subclass. Nissan's conduct violates the
24 MMPA.

25 99. Nissan's conduct also violates the enabling regulations for the MMPA because it:
26 (1) offends public policy; (2) is unethical, oppressive, and unscrupulous; (3) causes substantial
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injury to consumers; (4) was not in good faith; (5) is unconscionable; and (6) is unlawful. *See* Mo. Code Regs. Ann. tit. 15, § 60-8.

100. As a direct and proximate result of Nissan's unfair and deceptive acts, Plaintiff and the Missouri Subclass have suffered damages in that they spent more money on Altima vehicles and related purchases than they otherwise would have and are left with vehicles that cannot be safely driven and which are of diminished value.

101. Plaintiff and the Missouri Subclass seek actual damages; a declaration that Nissan's methods, acts and practices violate the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 *et seq.*; an injunction prohibiting Nissan from continuing to engage in such unlawful methods, acts, and practices; restitution; rescission; disgorgement of all profits obtained from Nissan's unlawful conduct; pre and post-judgment interest; punitive damages; attorneys' fees and costs; and any other relief that the Court deems necessary or proper.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all similarly situated persons, requests judgment and relief as follows:

1. For an order certifying the proposed Classes, and appointing Plaintiff and her counsel of record to represent the proposed Classes;

2. For an order declaring that Nissan has violated California Business and Professions Code §§ 17200 *et seq.*;

3. For an order declaring that Nissan has violated California Business and Professions Code §§ 1750 *et seq.*;

4. For an order declaring that Nissan has violated California Business and Professions Code §§ 17500 *et seq.*;

5. For an order declaring that Nissan has violated the Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. §§ 2301 *et seq.*;

6. For an order declaring that Nissan engaged in fraudulent concealment;

8. For an order declaring that Nissan has violated the Missouri Merchandising
 es Act, codified at Mo. Rev. Stat. §§ 407.010 *et seq.*;

10. For an order awarding Plaintiff and Class members restitution, disgorgement, or other equitable relief as the Court deems proper;

12. For an order awarding Plaintiff and the Class reasonable attorneys' fees and costs of suit, including expert witness fees; and

13. For an order awarding such other and further relief as this Court deems just and proper.

Plaintiff, on behalf of herself and all similarly situated persons, demands a trial by jury on all issues that are triable to a jury.

Respectfully submitted,

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