

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

KRISTA COSTA, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

NISSAN NORTH AMERICA, INC., a  
California corporation,

Defendant.

CASE NO:

CLASS ACTION

JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

Plaintiff Krista Costa (“Plaintiff”), individually and on behalf of all others similarly situated, upon personal knowledge of facts pertaining to herself and on information and belief as to all other matters, by and through undersigned counsel, brings this Class Action Complaint against defendant Nissan North America, Inc. (“Defendant” or “Nissan”).

**NATURE OF THE ACTION**

1. Model Year 2013–2014 Nissan Altima vehicles (“Subject Vehicles”) contain defective continuously variable automatic transmissions (“CVT”) that cause shuddering, hesitation, stalling, unusual noises, and ultimately, premature transmission failure. The CVTs pose a significant safety risk. When the shuddering occurs, momentum of the Subject Vehicle is suddenly lost, the rate of speed drops or the vehicle stalls, and the brake lights do not illuminate. The defect is especially dangerous because it manifests when the driver presses the accelerator. Just when the driver attempts to accelerate, nothing occurs. This is sometimes followed by an unexpected surge of power. The CVTs increase the risk that the driver will lose control and cause a collision.

2. When owners of Subject Vehicles seek repair of their defective transmissions, they are routinely informed that the transmission requires replacement, at a cost upwards of \$3,000. With the replacement, the vehicles are then equipped with another defective CVT, and the cycle repeats.

3. Nissan knew the CVTs were defective in this way, were prone to shuddering, hesitation, stalling, unusual noises, and eventual premature failure yet failed to disclose these material facts to Plaintiff and other Class members. Nissan misrepresented the safety risk the Subject Vehicles pose to occupants and the public. Nissan knowingly engaged in omissions of material facts and false and misleading representations regarding the performance of CVTs in the Subject Vehicles.

4. The defective CVT included in the Altima purchased and leased by Plaintiff and other Class members did not perform as advertised, as promised, and as warranted. As a result of Nissan's unfair, deceptive, and fraudulent conduct, Plaintiff and the other Class members received a car worth less than as represented and less than what they paid for when purchasing their Subject Vehicles. Plaintiff and Class members have suffered injury in fact and incurred damages.

### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332(d) because this matter was brought as a class action under Fed. R. Civ. P. 23, at least one proposed Class member is of diverse citizenship from Defendant, the proposed Class includes more than 100 members, and the aggregate amount in controversy exceeds five million dollars (\$5,000,000), excluding interest and costs.

6. Venue is proper pursuant to 28 U.S.C. § 1391, because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred within the District of Massachusetts.

**PARTIES**

7. Plaintiff Krista Costa, is a citizen of the Commonwealth of Massachusetts and resides in Westford. In October 2014, Plaintiff purchased a new 2014 Nissan Altima 2.5 L from Sullivan Brothers Nissan in Kingston, Massachusetts. Plaintiff frequently experienced the CVT defect as a shaking of the vehicle at seemingly random moments during operation. Nissan has failed and refused to correct the problem, and Plaintiff continued to experience the complained-of issues with the CVT on her 2014 Altima. In June 2018, while operating her vehicle, the transmission failed. Plaintiff was very near her destination, so she was able to idle into a parking spot without serious incident. Plaintiff paid to have her vehicle towed to Sullivan Brothers Nissan, where Plaintiff was informed she needed to have her CVT replaced. She paid \$3,561.36 to have her CVT replaced.

8. Defendant is a California corporation with its principal place of business in Franklin, Tennessee. Defendant is the North American subsidiary of Nissan Motor Co. Defendant designed, manufactured, marketed, distributed, leased, and sold, through its authorized dealers and distributors, the Subject Vehicles in the United States to Plaintiff and the other Class members.

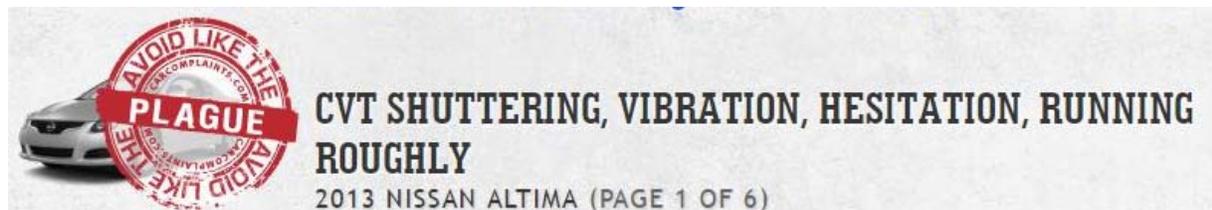
**FACTUAL BACKGROUND**

***The Defective 2013–2014 Nissan Altima CVT***

9. The Subject Vehicles are equipped with CVTs designed and manufactured by Jatco, Ltd., a majority-owned subsidiary of Nissan that specializes in the design and manufacture of transmissions. Unlike conventional automatic transmissions with planetary gears, CVTs employ two pulleys of adjustable diameter that continuously adjust the gear ratio of the transmission in response to the operator's inputs.

10. The CVTs Nissan used in the Subject Vehicles are defective. These transmissions fail to deliver the smooth operation Nissan promised. Instead, they frequently exhibit a shuddering sensation that is undesirable and detracts from the Subject Vehicles' performance. They eventually fail to operate altogether. Owners of the Subject Vehicles often experience the same defective judder, hesitation, stalling, or shudder, in addition to unusual noises, and premature transmission failure.

11. Carcomplaints.com, a website that compiles consumer complaints, has advised that consumers should "avoid [the 2013 Nissan Altima] like the plague," due to the high number of complaints regarding vibration and transmission failure related to the CVT. It was the biggest complaint on the website for a time.<sup>1</sup>



12. Similarly, carcomplaints.com has branded the 2014 model with its badge "Beware of the Clunker" primarily because "[o]wners are complaining about vibration and even transmission failure related to the CVT."<sup>2</sup>

13. As of July 12, 2018, the National Highway Traffic Safety Administration ("NHTSA") has received 261 complaints regarding the power train on the 2013 Nissan Altima and 96 complaints regarding the power train on the 2014 Nissan Altima. Almost all of these complaints

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<sup>1</sup>[https://www.carcomplaints.com/Nissan/Altima/2013/transmission/transmission\\_stopped\\_working.shtml](https://www.carcomplaints.com/Nissan/Altima/2013/transmission/transmission_stopped_working.shtml)

<sup>2</sup> <https://www.carcomplaints.com/Nissan/Altima/2014/>

regard the CVT's problems with jerking, stalling, shuddering, hesitating, or failing prematurely.

A sampling of these complaints includes:

- Transmission has failed abruptly in Nissan Altima 2013 at 79k miles almost ending in a collision in mid intersection. Nissan says it's past warranty and will not replace. I'm on the hook for \$3800 for a faulty transmission that could've caused a deadly accident. My kids were in the car at the time. . . ." (NHTSA ID number 11040232)
- My 2013 Nissan Altima, which was purchased new has had issues with the CVT transmission since it was purchased. in 9/2014 at 42k miles the transmission failed and was replaced. Now in 9/2017 I am being told by Nissan that the transmission that was replaced by them in 2014 is also bad and needs to be replaced at a cost to me of \$4,100.00. Who can afford a \$4,100 repair on a vehicle that is still being paid for monthly, and why is it the consumer's fault that Nissan NA is making and selling faulty, unsafe products? Nissan NA knows of the ongoing issues with these CVT transmissions, but chooses to [do] nothing to rectify the issues. My vehicle will not pull and makes a whining noise while I am driving. This i[s] the same issue that occurred in 2014. While I was in motion on a major interstate the vehicle began to lose power, spudder [sic] and jerk, and dropped down to about 10-15 mph. It was a horrifying experience to be in the middle of the interstate traveling at 60 mph, and all of a sudden start to lose speed. I was finally able to get the vehicle to the shoulder safely. These vehicles are unsafe to be driven.
- My 2013 Nissan Altima is stalling when being shifted into reverse or drive. The first instance that this happened, I was driving and slowing down at an intersection. The rpm's dropped, the car shook a little and it died. I had to put it into park and restart. I was able to make it about 2 miles away when it did it again, this time on a residential street thankfully. I tried about 5 times and was not able to move the vehicle, every time I shifted it into drive, it stalled. . . ." (NHTSA ID number 11048230)
- I was stopped at a red light and the car just turned itself off. I turn it back on and as soon as I put it in drive it turns itself off again. I finally get it going and get to my destination without anymore [sic] problems. The next day I go to start it and as soon as I put it in drive the car turns itself off, I continue to try to get it going but never did. I get it towed to the Nissan dealership and they said the entire transmission needs to be replaced. I get the transmission replaced. Now 3 months after I get a brand new transmission it's doing the same thing again. I start the car go to put it in drive and it turns off. (NHTSA ID number 11046444)

*Nissan's Deceptive Marketing of the CVT in Subject Vehicles*

14. Contrary to the danger and poor performance of the Subject Vehicles, which are being experienced by thousands of consumers, Nissan promoted the Subject Vehicles' CVT as a major selling point. In particular, Nissan focused on the CVT's supposed "smoothness."

15. In its press kit for the 2013 Altima, Nissan boasted that the vehicle included "a next-generation Xtronic CVT that takes Nissan's two decades of Continuously Variable Transmission leadership into a new dimension of smooth operation and fuel efficiency." Nissan also described the transmission as "designed for fluid-feeling performance."<sup>3</sup> Similarly, in its press kit for the 2014 Altima, Nissan advertised improved "drivability and responsiveness" owing to the CVT and describes the CVT as "smooth."<sup>4</sup>

16. In a magazine ad for the 2013 Altima, Nissan prominently featured the "all-new CVT," relying on the CVT as one of the major selling points of the vehicle:

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<sup>3</sup> <http://nissannews.com/en-US/nissan/usa/presskits/2013-nissan-altima>

<sup>4</sup> <http://nissannews.com/en-US/nissan/usa/channels/Altima-Sedan/presskits/us-2014-nissan-altima-sedan-press-kit>



SHIFT\_

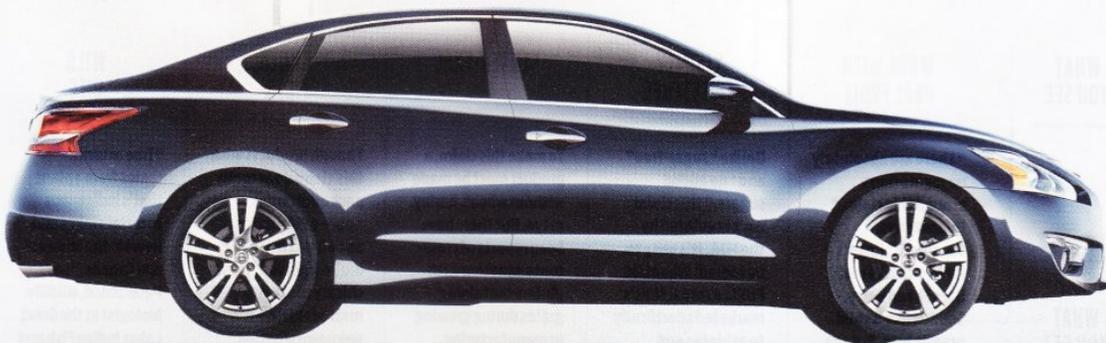
NISSAN  
**ALTIMA**

- Lightweight Materials
- All-New CVT
- Targeted 38 MPG HWY\*

## GO FARTHER, GO FASTER, GO LIGHTER.

Less is more when it comes to the All-New Nissan Altima: Our 2013 models feature weight-reducing materials like aluminum hoods and high-strength steel to increase MPG, and an improved CVT to achieve lower rpm at higher speeds. The innovation doesn't stop there; 70% of our sedans and crossovers now receive 31 MPG HWY or better. The most innovative Altima ever rings in Nissan's most innovative year.

**Nissan. Innovation that excites.**



The All-New Nissan Altima: coming Summer 2012

\*2013 projected EPA estimate of 38 MPG highway for Altima 2.5S. Actual mileage may vary with driving conditions – use for comparison only. Always wear your seat belt, and please don't drink and drive. ©2012 Nissan North America, Inc.

17. Nissan even produced and published several videos dedicated toward communicating the supposed smoothness and “seamlessness” of the CVT used in the Subject Vehicles.<sup>5</sup>

18. While promoting and marketing the Subject Vehicles, and in particular the Subject Vehicles’ CVT (including the CVT’s “smoothness,” “fluid-feeling performance,” “fuel efficiency,” “drivability and responsiveness,” and performance), Nissan concealed and failed to disclose the substantial defect in the CVTs, which was known to Nissan.

***Nissan’s History of Transmission Defects***

19. At the same time Nissan was touting the CVT to the car-buying public, Nissan was well aware of the problems it had long had with its CVTs, and a litany of failed countermeasures in an effort to resolve the problems associated with their CVTs.

20. In 2009, Nissan took the unusual measure of extending the warranty on the CVT to ten years or 120,000 miles for a large number of Nissan vehicles, including: 2003-2007 Nissan Muranos, 2007-2010 Nissan Sentra, Versa 1.8SL, Maxima, Altima, Altima Coupe, and Altima Hybrid vehicles, 2008-2010 Nissan Rogue vehicles, 2009 and 2010 Nissan Cube vehicles, and 2009 and 2010 Nissan Muranos.<sup>6</sup>

21. Nissan also issued numerous technical service bulletins (“TSBs”) in attempts to address CVT issues, described for example in NTB 10-121 as a “slight vehicle hesitation type feel and/or a surge type feel when all of the following conditions are present: Speed between 10 and 45 mph, and transmission torque converter clutch is engaged (lock mode), and Engine RPM between 1200 and 2000, and Light acceleration.” This TSB covered 2007-2011 Altimas.

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<sup>5</sup> <https://www.youtube.com/watch?v=L6tZ6NNnY9M>, <http://nissannews.com/en-US/nissan/usa/channels/Altima-Sedan/videos/altima-video>

<sup>6</sup> <http://www.nissanassist.com/ProgramDetails.php?menu=2>

22. NTB 13-002 was issued by Nissan on January 10, 2013, to implement a voluntary service campaign to reprogram the Transmission Control Unit in an attempt to prevent a CVT belt slip condition from occurring on certain 2013 Nissan Pathfinders.

23. Shortly after the summer 2012 release of 2013 Subject Vehicles, on September 27, 2012, Nissan issued NTB-12-081, which aimed to reprogram Transmission Control Units in certain Subject Vehicles to address what Nissan referred to as a shaking or a judder from the CVT when “coasting.” The communication notifying consumers of the campaign states, “continuing to drive the vehicle in this condition can lead to accelerated wear and damage to the CVT.” The TSB also warns in bold “**Failure to have this reprogramming performed in a timely manner could result in future damage to your vehicles’ transmission.**” The TSB also explains “if repair or replacement of the transmission becomes necessary outside of the powertrain warranty period, the resulting repair costs will be at the owner’s expense.”

24. On September 10, 2013, Nissan issued NTB 13-086 to attempt to resolve what Nissan describes as a judder (shudder, single or multiple bumps or vibrations), in certain Subject Vehicles.

25. In December 2013, Nissan CEO Carlos Ghosn announced that Nissan would increase oversight of Jatco, noting that expensive problems with Jatco’s CVTs and customer service issues related to the transmissions were negatively impacting Nissan’s bottom line.<sup>7</sup>

26. Nissan settled a class action lawsuit regarding defective CVTs in the 2013–2014 Nissan Pathfinder and Infiniti QX60/JX35 vehicles, owing to a defect in the Jatco CVT which

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<sup>7</sup> <http://www.autonews.com/article/20131202/OEM10/312029972/nissan-presses-jatco-to-end-cvt-glitches>

caused vibration or judder. *Batista v. Nissan North America, Inc.*, 14-cv-24728 (S.D. Fla. 2014). As part of the settlement, Nissan again provided a warranty enhancement.

27. Nissan has not made Plaintiff and other Class members whole for the defective CVTs in the Subject Vehicles.

***Nissan's Deceptive and Unfair Conduct***

28. Nissan's deceptive statements and omissions of material fact relating to the defective CVT that poses safety risks to drivers and passengers and others sharing the road constituted unfair and deceptive conduct under Massachusetts regulations and law.

29. Nissan's failure to service the Subject Vehicles under the New Vehicle Limited Warranty to correct or replace the defective CVTs constituted unfair and deceptive conduct under Massachusetts regulations and law.

30. In addition, Nissan's refusal to repair or replace the defective CVTs under warranty, while quoting or charging repair costs in some cases as high as several thousand dollars, knowingly presented Plaintiff and Class members with a series of bad choices: pay the exorbitant repair costs, pay even more money for a new vehicle, drive the Subject Vehicle in an unsafe condition, or be without a car. Knowingly placing Plaintiff and Class members in such an untenable position amounted to conduct that is clearly immoral, unethical, oppressive, and unscrupulous.

**CLASS ALLEGATIONS**

31. This action is brought as a class action pursuant to Fed. R. Civ. P. 23, on behalf of a Class defined as follows:

All persons who purchased or leased a 2013 or 2014 Nissan Altima for end use and not for resale in the Commonwealth of Massachusetts.

Excluded from the Class are: (i) Defendant and its officers and directors, agents, affiliates, subsidiaries, authorized distributors and dealers, (ii) all Class members who timely and validly request exclusion from the Class, and (iii) the Judge presiding over this action.

32. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

33. The members of the Class are so numerous that joinder of the Class members would be impracticable. On information and belief, Class members number in the thousands. The precise number of Class members and their addresses are presently unknown to Plaintiff, but may be ascertained from Defendant's records.

34. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Such common questions of law or fact include, *inter alia*:

- a. whether Nissan engaged in the conduct alleged herein;
- b. whether Nissan omitted and misrepresented material facts to purchasers and lessees of model year 2013 and 2014 Altimas, regarding, among other things, a "smooth" CVT transmission;
- c. whether Nissan's omissions and misrepresentations regarding the Subject Vehicles were likely to mislead a reasonable consumer;
- d. whether Nissan breached warranties with Plaintiff and the other Class members when it produced, distributed, and sold the Subject Vehicles;
- e. whether Nissan's refusal to perform the necessary repairs under warranty constituted unfair conduct;
- f. whether Plaintiff's and the other Class members' Subject Vehicles were worth less than as represented as a result of the conduct alleged herein;
- g. whether Plaintiff and the other Class members have been damaged and, if so, the extent of such damages; and

- h. whether Plaintiff and the other Class members are entitled to equitable relief, including but not limited to, restitution and injunctive relief.

35. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff individually and on behalf of the other Class members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action.

36. Plaintiff's claims are typical of the claims of the other Class members because, among other things, Plaintiff and the other Class members were injured through the substantially uniform misconduct described above. Plaintiff is advancing the same claims and legal theories on behalf of herself and all other Class members, and no defense is available to Defendant that is unique to Plaintiff.

37. Plaintiff is an adequate Class representative because she will fairly represent the interests of the other Class members. Plaintiff has retained counsel with substantial experience in prosecuting consumer class actions. Plaintiff and her counsel are committed to prosecuting this action vigorously on behalf of the Class they represent, and have the resources to do so. Neither Plaintiff nor her counsel has any interest adverse or antagonistic to those of the Class.

38. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Nissan, so it would be impracticable for Class members to individually seek redress for Nissan's wrongful conduct. Even if Class members could afford individual litigation, the court system should not be required to undertake such an

unnecessary burden. Individualized litigation would also create a potential for inconsistent or contradictory judgments, and would increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court.

**CAUSES OF ACTION**

**COUNT I**

**Violation of Massachusetts Gen. Law Chapter 93A**

39. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

40. The Massachusetts Regulation of Business Practice and Consumer Protection Act prohibits unfair and deceptive acts or practices in the conduct of trade or commerce. M.G.L. c. 93A, § 2(a).

41. Nissan, Plaintiff, and Class members are “persons” within the meaning of c. 93A, § 1(b).

42. Nissan engaged in “trade” or “commerce” within the meaning of c. 93A, § 1(b).

43. Plaintiff and other Class members are consumers who purchased or leased a Subject Vehicle for end use and not for resale.

44. Defendant’s conduct, as described above, in misrepresenting the Subject Vehicles’ performance, while omitting the facts that Subject Vehicles contained defective transmissions, constitutes unfair and deceptive conduct, which was likely to mislead a reasonable consumer.

45. A reasonable consumer would consider the quality of the transmission in a Subject Vehicle, and the defective nature of the CVT, to be important when making a decision whether to

purchase a Subject Vehicle. The disclosure of the defective CVT would have influenced prospective buyers not to enter into the transaction.

46. Nissan knew before the time of sale to Plaintiff and the other Class members, or earlier, that Subject Vehicles were produced with defective CVTs that posed a serious safety threat to drivers, passengers, and everyone else sharing the road with Subject Vehicles. Through consumer complaints, knowledge of design and production of the CVTs, internal product testing, and past experience, Defendant learned of the defect. The existence and ubiquity of the defect is illustrated by the numerous publicized consumer complaints, disputes, and failed remedial measures nationwide. Defendant's issuance of a series of TSBs directed to Subject Vehicles' CVTs and CVTs in prior models and related vehicles shows actual knowledge.

47. Nissan's conduct in refusing to perform the necessary repairs to Plaintiff's and Class members' Subject Vehicles constituted unfair conduct within the meaning of c. 93A, § 2.

48. Nissan's practices offend public policy, are immoral, unethical, oppressive, and unscrupulous, cause substantial injury to consumers, and pose a risk to public safety.

49. Nissan's conduct, as alleged herein, is in violation of at least the following regulations promulgated by the Massachusetts Attorney General under c. 93A:

- a. 940 C.M.R. § 3.02 (prohibiting, among other things, statements or illustrations used in advertisements which create a false impression of the grade, quality, value, or usability of the product offered);
- b. 940 C.M.R. § 3.05(1) (prohibiting claims or representations "made by any means concerning a product which, directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or

tendency or effect of deceiving buyers or prospective buyers in any material respect”);

- c. 940 C.M.R. § 3.08(2) (providing that it “shall be an unfair and deceptive act or practice to fail to perform or fulfill any promises or obligation arising under a warranty”); and
- d. 940 C.M.R. § 3.16(2) (providing that it is a violation of c. 93A, § 2 to “fail to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer to enter into the transaction”).

50. As a direct and proximate result of Nissan’s unfair and deceptive conduct, as alleged herein, Plaintiff and the other Class members have suffered injury-in-fact, including the following:

- a. Plaintiff and the other Class members, in purchasing the Subject Vehicles, received a car worth less than as represented in that they paid for a car with a smooth, fully operable transmission, free of defects, but did not receive that which they paid for;
- b. Plaintiff and the other Class members suffered diminution in value of the Subject Vehicles due to the existence of the CVT defects in their Subject Vehicles; and
- c. Plaintiff and the other Class members were faced with the choice of repairing their Subject Vehicles at substantial cost and inconvenience or being without their vehicles at substantial cost and inconvenience.

51. As a result of Defendant’s unfair and deceptive conduct in violation of c. 93A, Plaintiff and the other Class members have suffered actual damages, including the additional cost

they paid for a vehicle with a working and defect-free transmission, diminution in value of the Subject Vehicles, out-of-pocket losses related to repairing, maintaining, and servicing their defective Subject Vehicles, costs associated with arranging and obtaining alternative means of transportation, and other incidental and consequential damages recoverable under the law.

52. Had Plaintiff and the other Class members been aware of the omitted and misrepresented facts, *i.e.*, that the Subject Vehicles they purchased were defective and would cost them several thousands of dollars when the transmissions prematurely failed, Plaintiff and the other Class members would not have purchased the Subject Vehicles or would have paid significantly less for them than they actually paid.

53. On April 4, 2018, Plaintiff sent to Nissan a written demand for relief pursuant to ch. 93A, § 9(3).

54. Nissan failed to make a reasonable offer of relief in response to the demand.

55. Pursuant to Mass. Gen. Law, c. 93A, § 9, Plaintiff and the other Class members seek monetary relief measured as the greater of (a) actual damages in an amount to be determined at trial; or (b) statutory damages in the amount of \$25 for each violation. Because Nissan's conduct was committed willfully and knowingly, Plaintiff and the other Class members are entitled to recover up to three times their actual damages, but no less than two times actual damages.

56. Plaintiff and the other Class members also seek an order directing Nissan to correct its violations by repairing or replacing the defective CVTs on all Subject Vehicles.

**COUNT II**  
**Breach of Implied Warranty**

57. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

58. Defendant is and was at all relevant times a merchant with respect to Subject Vehicles, and manufactured, distributed, warranted and sold Subject Vehicles.

59. A warranty that Subject Vehicles were in merchantable condition and fit for the ordinary purposes for which they were sold is implied by law.

60. Plaintiff and the other Class members purchased Subject Vehicles manufactured and sold by Defendant in consumer transactions.

61. Subject Vehicles, when sold and at all times thereafter, were not in merchantable condition and the CVTs were not in merchantable condition and were not fit for the ordinary purpose for which cars are used. Subject Vehicles left Defendants' possession and control with defective CVTs that rendered them at all times thereafter unmerchantable, unfit for ordinary use, unsafe, and a threat to public safety. Plaintiff and the other Class members used their Subject Vehicles in the normal and ordinary manner for which Subject Vehicles were designed and advertised.

62. Defendant knew before the time of sale to Plaintiff and the other Class members, or earlier, that Subject Vehicles were produced with defective CVTs that were unfit for ordinary use and rendered Subject Vehicles unfit for their ordinary purposes.

63. Despite Plaintiff's and the other Class members' normal, ordinary, and intended uses, maintenance, and upkeep, the CVTs of Subject Vehicles experienced and continue to experience the CVT defect and premature failure.

64. Plaintiff's and the other Class members' CVTs and Subject Vehicles are not of fair or average quality, nor would they pass without objection in the trade under the contract description.

65. All conditions precedent to this claim have occurred or been performed.

66. Defendant knew before the time of sale to Plaintiff and the other Class members, or earlier, that Subject Vehicles were produced with defective CVTs that posed a serious safety threat to drivers, passengers, and everyone else sharing the road with Subject Vehicles. Through consumer complaints, knowledge of design and production of the CVTs, internal product testing, and past experience, Defendant learned of the defect. The existence and ubiquity of the defect is illustrated by the numerous publicized consumer complaints, disputes, and failed remedial measures nationwide. Defendant's issuance of a series of TSBs directed to Subject Vehicles' CVTs and CVTs in prior models and related vehicles shows actual knowledge.

67. Defendant's warranty disclaimers, exclusions and limitations, to the extent that they may be argued to apply, were, at the time of sale, and continue to be, unconscionable and unenforceable to disclaim liability for a known, latent defect. Defendant knew when it first made these warranties and their limitations that the defect existed, and the warranties might expire before a reasonable consumer would notice or observe the defect. Defendant also failed to take necessary actions to adequately disclose or cure the defect after the existence of the defect came to the public's attention and sat on its reasonable opportunity to cure or remedy the defect, its breaches of warranty, and consumers' losses. Under these circumstances, it would be futile to enforce any informal resolution procedures or give Defendant any more time to cure the defect or cure its breaches of warranty.

68. Defendant provided assurances that it will repair the defective CVTs through numerous TSBs<sup>8</sup> directed and designed to lull Plaintiff and the other Class members into reasonable and detrimental reliance on their efficacy. The TSBs nominally were addressed to

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<sup>8</sup> These TSBs include but are not limited to: NTB17-039c, NTB17-039d, NTB16-85, NTB16-85a, NTB16-110a, NTB16-110b, NTB16-110c, NTB16-110D, NTB16-110e, NTB16-110f, NTB16-110g, NTB16-121, NTB16-121a, NTB15-015h, NTB15-015g, NTB15-083, NTB15-084, NTB15-84b, NTB15-084c, NTB15-085b, NTB15-085c, NTB15-086, NTB15-086b, NTB15-086c, NTB05-86D, NTB15-087a, and NTB12-103e.

aspects of the CVT and the power train, but they were all designed to and did induce detrimental reliance by Plaintiff and the other Class members into thinking their CVTs were being remediated when they were not.

69. Defendant fraudulently concealed the defect and the cause of action from the knowledge of Plaintiff through affirmative acts done with intent to deceive. Defendant issued numerous TSBs throughout Plaintiff's ownership of her Subject Vehicle intended to mislead Plaintiff and the other Class members into believing that Defendant was curing the issues and fixing the problems. Defendant released numerous TSBs purporting to correct or cure Subject Vehicles' CVTs or related parts to conceal the persistence and breadth of the uniform defect plaguing Subject Vehicles.

70. As a direct and foreseeable result of the defect in Subject Vehicles' CVTs, Plaintiffs and the other Class members suffered diminution in the value of Subject Vehicles, out-of-pocket losses related to repairing, maintaining, and servicing their defective Subject Vehicles, costs associated with arranging and obtaining alternative means of transportation, and other incidental and consequential damages recoverable under the law.

### **COUNT III**

#### **Violation of Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.**

71. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

72. Plaintiff is a "consumer" within the meaning of the Magnuson Moss Warranty Act ("MMWA"), 15 U.S.C. § 2301(3).

73. Defendant is a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)–(5).

74. Subject Vehicles are “consumer products” within the meaning of the Magnuson Moss Warranty Act, 15 U.S.C. § 2301(1).

75. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written warranty or implied warranty.

76. Defendant’s representations as described herein that Subject Vehicles sold to Plaintiff and other Class members would feature “smooth” CVT operation are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6).

77. Defendant impliedly warranted that the Subject Vehicles are fit for ordinary use.

78. Defendant breached the warranties as described herein. Contrary to Defendant’s representations, Plaintiff’s and Class members’ Subject Vehicles are subject to shuddering, jerking, hesitation, stalling, and premature failure. As such, Plaintiff’s and the other Class members’ Subject Vehicles do not function as promised.

79. The CVT defect renders the vehicles unfit for ordinary use. The Subject Vehicles are uniformly equipped with a CVT that is prone to exhibit an unexpected shudder, jerk, hesitation, stalling, and premature failure. This makes the vehicles unfit and unreasonably dangerous for ordinary use.

80. Defendant knew of the defects in the Jatco CVTs included in the Subject Vehicles.

81. Defendant knew, or should have known, of its misrepresentations and omissions regarding the capabilities of the CVTs, yet proceeded with a coordinated advertising campaign through which Defendant misrepresented that the CVTs in the Subject Vehicles operated “smoothly” or “seamlessly.”

82. Defendant had actual notice of its breach of warranty. Defendant knew before the time of sale to Plaintiff and the other Class members, or earlier, that Subject Vehicles were

produced with defective CVTs that posed a serious safety threat to drivers, passengers, and everyone else sharing the road with Subject Vehicles. Through consumer complaints, knowledge of design and production of the CVTs, internal product testing, and past experience, Defendant learned of the defect. The existence and ubiquity of the defect is illustrated by the numerous publicized consumer complaints, disputes, and failed remedial measures nationwide. Defendant's issuance of a series of TSBs directed to Subject Vehicles' CVTs and CVTs in prior models and related vehicles shows actual knowledge.

83. Defendant's warranty disclaimers, exclusions and limitations, to the extent that they may be argued to apply, were, at the time of sale, and continue to be, unconscionable and unenforceable to disclaim liability for a known, latent defect. Defendant knew when it first made these warranties and their limitations that the defect existed, and the warranties might expire before a reasonable consumer would notice or observe the defect. Defendant also failed to take necessary actions to adequately disclose or cure the defect after the existence of the defect came to the public's attention and sat on its reasonable opportunity to cure or remedy the defect, its breaches of warranty, and consumers' losses. Under these circumstances, it would be futile to enforce any informal resolution procedures or give Defendant any more time to cure the defect or cure its breaches of warranty.

84. Defendant provided assurances that it will repair the defective CVTs through numerous TSBs directed and designed to lull Plaintiff and the other Class members into reasonable and detrimental reliance on their efficacy. The TSBs nominally were addressed to aspects of the CVT and the power train, but they were all designed to and did induce detrimental reliance by Plaintiff and the other Class members into thinking their CVTs were being remediated when they were not.

85. Defendant fraudulently concealed the defect and the cause of action from the knowledge of Plaintiff through affirmative acts done with intent to deceive. Defendant issued numerous TSBs throughout Plaintiff's ownership of her Subject Vehicle intended to mislead Plaintiff and the other Class members into believing that Defendant was curing the issues and fixing the problems. Defendant released numerous TSBs purporting to correct or cure Subject Vehicles' CVTs or related parts to conceal the persistence and breadth of the uniform defect plaguing Subject Vehicles.

86. Plaintiff and Class members were damaged as a result of Defendant's violation of the MMWA, because they received a product incapable of performing as the Defendant represented such product was capable of performing, and a product unfit for its ordinary use, rendering their vehicles less valuable than as represented.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, respectfully requests that the Court enter judgment in her favor and against Defendant as follows:

- A. Certifying the Class under Federal Rule of Civil Procedure 23 as requested herein;
- B. Appointing Plaintiff as Class Representative and undersigned counsel as Class Counsel;
- C. Finding that Nissan engaged in the unlawful conduct as alleged herein;
- D. Awarding Plaintiff and the other Class members actual, compensatory, and consequential damages;
- E. Awarding Plaintiff and the other Class members actual damages and statutory damages;
- F. Awarding Plaintiff and the other Class members declaratory and injunctive relief;
- G. Awarding Plaintiff and the other Class members restitution and disgorgement;
- H. Awarding Plaintiff and the other Class members multiple damages, should the finder of fact determine that Nissan's violations of c. 93A, § 2 were willful or knowing;

- I. Awarding Plaintiff and the other Class members pre-judgment and post-judgment interest on all amounts awarded;
- J. Awarding Plaintiff and the other Class members reasonable attorneys' fees, costs, and expenses; and
- K. Granting such other relief as the Court deems just and appropriate.

**JURY TRIAL DEMAND**

Plaintiff, individually and on behalf of all others similarly situated, hereby requests a jury trial, pursuant to Federal Rule of Civil Procedure 38, on all claims so triable.

DATED: July 20, 2018

Respectfully submitted,

/s/ David Pastor  
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