

NOTE: CHANGES MADE BY THE COURT

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOSHUA RAFOFSKY and JOSHUA
IRON WING, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA, INC.,
a California corporation,

Defendant.

Case No. 2:15-cv-01848 AB(MANx)

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
CERTIFYING SETTLEMENT
CLASS, DIRECTING NOTICE TO
THE CLASS, AND SCHEDULING
FAIRNESS HEARING**

WHEREAS, this matter has come before the Court pursuant to Plaintiffs' Motion for Preliminary Approval of Class Action Settlement;

WHEREAS, the Court finds that it has jurisdiction over the Action and the Related Action and each of the parties for purposes of settlement and asserts jurisdiction over the Class Members for purposes of effectuating this settlement

Case No. 2:15-cv-01848 AB(MANx)

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT, CERTIFYING SETTLEMENT CLASS, DIRECTING NOTICE TO THE CLASS, AND SCHEDULING FAIRNESS HEARING

1 and releasing their claims (all capitalized terms as defined in the Settlement
2 Agreement attached to the Memorandum as Exhibit A); and

3 WHEREAS, this Court has considered all of the submissions related to the
4 Motion and is otherwise fully advised in the premises;

5 IT IS HEREBY ORDERED AS FOLLOWS:

6 1. The Court certifies the following Class for settlement purposes only
7 (the “Settlement Class”):

8 All purchasers or lessees of a new 2014 Infiniti Q50, for end use and
9 not for resale, from an Infiniti dealer in the fifty United States, the
10 District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, and
or any other recognized territory and protectorate of the United
States.

11 The Settlement Class excludes any people or businesses that did not purchase or
12 lease the Class Vehicles for end use, thereby excluding any automobile dealers of
13 any kind or others who did not lease or purchase the Class Vehicles for end use.

14 The Settlement Class also excludes: (i) NNA and its officers, directors, attorneys,
15 agents, affiliates, subsidiaries, authorized distributors and dealers; (ii) all
16 Settlement Class members that timely and validly request exclusion from the
17 Settlement Class; and (iii) the Judge presiding over the Litigation.

18 As provided for in the Settlement, if the Court does not grant final
19 approval of the Settlement, or if the Settlement is terminated or cancelled
20 pursuant to the terms thereof, then the Settlement and the certification of the
21 Settlement Class provided for herein, will be vacated and the Litigation shall
22 proceed as though the Settlement Class had never been certified, without
23 prejudice to any party’s position on the issue of class certification or on any other
24 issue.

25 2. The Court finds, based on the terms of the Settlement that:
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1 a. There are questions of law and fact common to the Settlement
2 Class;

3 b. The claims of Representative Plaintiffs are typical of the
4 claims of members of the Settlement Class;

5 c. The Settlement Class is so numerous that joinder of all
6 members is impracticable;

7 d. Representative Plaintiffs and Class Counsel will fairly and
8 adequately represent the interests of the Settlement Class, and there are no
9 conflicts of interest between Representative Plaintiffs and members of the
10 Settlement Class;

11 e. Questions of law and fact common to Settlement Class
12 Members predominate over any questions affecting only individual members of
13 the Settlement Class; and

14 f. Certification of the Settlement Class is superior to other
15 methods for the fair and efficient adjudication of this controversy.

16 3. Accordingly, the Court hereby certifies the Settlement Class, for
17 settlement purposes only, pursuant to Rule 23(b)(3) of the Federal Rules of Civil
18 Procedure.

19 4. The terms of the Settlement are preliminarily approved as fair,
20 reasonable, and adequate, sufficient to warrant sending notice to the Settlement
21 Class, and are subject to further consideration thereof at the Fairness Hearing
22 referenced below. This Order incorporates herein the Settlement, and all of its
23 exhibits and related documents. Unless otherwise provide herein, the terms
24 defined in the Settlement shall have the same meanings in this Order. The
25 Settlement was reached as a result of arm's length negotiations by experienced
26 counsel and with the assistance and oversight of Hon. James Holderman (Ret.).
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1 The Court finds that the settlement embodied in the Settlement Agreement is
2 sufficiently within the range of reasonableness so that notice of the Settlement
3 should be given as provided in the Settlement Agreement and this Order. In
4 making this determination, the Court has considered the current posture of the
5 Litigation and the risks and benefits to the Parties involved in both settlement of
6 these claims and continuation of the Litigation.

7 5. Joshua Rafofsky, Joshua Iron Wing, and L. Zingerman D.D.S., P.C.,
8 d/b/a/ Niles Family Dental DDS, are appointed as representatives of the
9 Settlement Class. Ben Barnow, Erich P. Schork, and Anthony Parkhill of Barnow
10 and Associates, P.C., and Timothy G. Blood and Thomas J. O'Reardon, II, of
11 Blood Hurst & O'Reardon LLP, are appointed as Class Counsel.

12 6. A hearing (the "Final Fairness Hearing") shall be held before the
13 Court on **September 11, 2017 at 10:00 a.m.** in Courtroom 7B of the United
14 States District Court for the Central District of California, 350 West First Street,
15 Los Angeles, California, to determine: (a) whether the Settlement is fair,
16 reasonable, adequate, and in the best interests of the Settlement Class; (b)
17 whether a Judgment, as provided in the Settlement, should be entered granting
18 final approval of the Settlement; (c) whether, and in what amount, attorneys'
19 fees, costs, and expenses should be awarded to Class Counsel; and (d) whether,
20 and in what amount, representative plaintiff service awards should be awarded to
21 Plaintiffs. The Court may continue the Final Fairness Hearing without further
22 notice to Settlement Class Members.

23 7. If the Court fails to enter an Order Granting Final Approval in
24 accordance with all of the terms of the Agreement, or the Order Granting Final
25 Approval does not for any reason become Final, or the Defendant exercises its
26 discretion to set aside the Settlement, the Agreement and all negotiations,
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1 proceedings, documents prepared, and statements made in connection with the
2 Settlement Agreement shall be without prejudice to the Parties, shall not be
3 deemed or construed to be an admission or confession by the Parties of any fact,
4 matter, or proposition of law, and shall not be used or admissible in any manner
5 for any purpose, and all parties to the Litigation shall stand in the same position
6 as existed on April 17, 2017, and as if the Settlement Agreement had not been
7 negotiated, made, or filed with the Court. In such event, the parties to the
8 Litigation shall move the Court to vacate all orders entered by the Court pursuant
9 to any provision of this Agreement.

10 8. The Court has considered the Notice in the Settlement and finds that
11 the Notice and methodology as described in the Settlement and in the Declaration
12 of Carla Peak attached as Exhibit B to Plaintiffs' Memorandum of Points and
13 Authorities in Support of Motion for Preliminary Approval of Class Action
14 Settlement, including the exhibits attached thereto: (a) meets the requirements of
15 due process and Fed. R. Civ. P. 23(c) and (e); (b) constitutes the best notice
16 practicable under the circumstances to all persons entitled to notice; and (c)
17 satisfies the constitutional requirements regarding notice. In addition, the forms
18 of notice: (a) apprise Class Members of the pendency of the Litigation, the terms
19 of the proposed Settlement, their rights, and deadlines under the Settlement; (b)
20 are written in simple terminology; (c) are readily understandable by Class
21 Members; and (d) comply with the Federal Judicial Center's illustrative class
22 action notices. The Court approves the Notice and methodology as described in
23 the Settlement and in the Declaration of Carla Peak in all respects.

24 9. The Court hereby appoints Kurtzman Carson Consultants ("KCC")
25 to be the Settlement Administrator. Responsibilities of the Settlement
26 Administrator are set forth in the Settlement. Not later than 21 days before the
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1 date of the Fairness Hearing, the Settlement Administrator shall file with the
2 Court: (a) a list of those persons who have opted out or excluded themselves
3 from the Settlement; and (b) the details outlining the scope, methods, and results
4 of the Class Notice.

5 10. Individual Notice shall be provided by the Settlement Administrator
6 by mailing a postcard, substantially in the form attached as Exhibit A to the
7 Declaration of the Carla Peak, through the United States Postal Service to each
8 Settlement Class Member's mailing address, as indicated by records maintained
9 in the ordinary course of business by NNA. The Settlement Administrator shall:
10 (a) re-mail any notices returned by the United States Postal Service with a
11 forwarding address no later than **July 1, 2017**; and (b) by itself or using one or
12 more address research firms, as soon as practicable following receipt of any
13 returned notices that do not include a forwarding address, research such returned
14 mail for better addresses and promptly mail copies of the applicable notice to any
15 better addresses so found.

16 11. A second and third communication concerning the Settlement may
17 be by e-mail, if e-mail addresses are available. Those communications only need
18 to refer to the website set up by the Settlement Administrator, as described
19 below, and inform the Class Member that a selection of benefits still needs to be
20 made by the Settlement Class Member. Those communications may, at the
21 option of NNA, also offer additional information concerning Infiniti vehicles.
22 Nissan is also free to conduct any additional communications with its customers
23 including Settlement Class Members, so long as such communications are
24 compatible (i.e., do not contradict) the communications required by the
25 Settlement.

1 12. The Settlement Administrator shall establish a settlement website to
2 provide Settlement Class Members with important information regarding the
3 Settlement, including important dates and deadlines regarding the Settlement,
4 and related information. The website shall include, in .pdf format, the Settlement
5 Agreement, Frequently Asked Questions and Answers, the Order Granting
6 Preliminary Approval, the Long Form Notice, and the Claim Form.

7 13. The Long Form Notice shall advise Settlement Class Members of
8 the nature of the Litigation, certification of the Settlement Class for settlement
9 purposes only, the benefits made available to Settlement Class Members under
10 the Settlement, how to redeem such benefits, and describe the claims released
11 under the Settlement. The Long Form Notice shall advise Settlement Class
12 Members of their right to opt out of or object to the Settlement and to appear at
13 the Final Fairness Hearing and shall provide deadlines and procedures for
14 exercising those rights.

15 14. Any Settlement Class Member who wishes to opt-out of the
16 Settlement must, no later than 28 days prior to the date of the Final Fairness
17 Hearing in the Order Granting Preliminary Approval, send to a designated Post
18 Office Box established by the Settlement Administrator, a written and signed
19 statement, entitled "Request for Exclusion," requesting exclusion from the
20 Settlement Class. The Request for Exclusion must provide the Class Member's
21 full name, address, telephone number, e-mail address (if available), and the
22 Vehicle Identification Number (VIN) of his or her Class Vehicle. In all instances,
23 the date appearing on the postmark shall be controlling for determining when a
24 Request for Exclusion was mailed.

25 15. Persons who timely and validly exclude themselves from the
26 Settlement Class shall not be bound by the Settlement or the Final Order and
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1 Final Judgment. If a Settlement Class Member files a request for exclusion, that
2 person may not assert an objection to the Settlement. The Settlement
3 Administrator shall also be responsible for giving notice of the receipt of any
4 such requests for exclusion by promptly providing complete copies to Class
5 Counsel and Defendant's Counsel.

6 16. Each Settlement Class Member desiring to object to the Settlement
7 shall submit a timely written notice of their objection. To state a valid objection
8 to the Settlement, a Settlement Class Member must provide the following
9 information in their written objection: (i) his or her full name, address, telephone
10 number, and e-mail address (if available); (ii) the Vehicle Identification Number
11 (VIN) of his or her Class Vehicle(s); (iii) a statement of the objection(s),
12 including all factual and legal grounds for the position; (iv) copies of any
13 documents he or she wishes to submit in support; (v) the name, address, and
14 telephone number of his or her separate counsel in this matter, if any; and (vi) his
15 or her dated signature. In addition, the objection must list any other objections
16 submitted by the Settlement Class Member, or his or her counsel, to any class
17 action settlements in any court in the United States in the previous five years, or
18 else affirmatively state that no other such objections have been made. If an
19 objecting Settlement Class Member intends to appear, in person or by counsel, at
20 the Final Fairness Hearing, he or she must so state in the written objection. To
21 be timely, an objection must be mailed twenty-eight (28) days prior to the Final
22 Fairness Hearing in the Order Granting Preliminary Approval upon Ben Barnow,
23 Barnow and Associates, P.C., One North LaSalle Street, Suite 4600, Chicago, IL
24 60602, and also on Peter J. Brennan, Jenner & Block LLP, 353 North Clark
25 Street, Chicago, Illinois 60654. In all instances, the date appearing on the
26 postmark shall be controlling for determining when an Objection was mailed.

1 17. On or before **August 21, 2017**, Class Counsel shall file and
2 Defendant may file with the Court any memorandum or other materials in
3 support of final approval of the Settlement Agreement and also on or before **July**
4 **31, 2017**, Class Counsel shall file any Fee Request with the Court. Any reply
5 briefs relating to final approval of the Settlement Agreement or Class Counsel's
6 Fee Request or responses to objections to the Settlement Agreement shall be
7 filed on or before **August 28, 2017**.

8 18. Pending the Fairness Hearing and the Court's decision whether to
9 finally approve the Settlement Agreement, all proceedings in the Action, other
10 than proceedings necessary to carry out or enforce the Settlement Agreement or
11 this Order, are stayed and suspended, until further order from this Court.

12 19. Pending the Fairness Hearing and the Court's decision whether to
13 finally approve the Settlement, no Representative Plaintiff or Settlement Class
14 Member, either directly, representatively, or in any other capacity (other than a
15 Class Member who validly and timely elects to be excluded from the Class),
16 shall commence, continue, or prosecute against any of the Released Parties (as
17 that term is defined in the Settlement Agreement) any action or proceeding in
18 any court or tribunal asserting any of the matters, claims, or causes of action that
19 are to be released in the Settlement Agreement. In addition, all Representative
20 Plaintiffs, Class Members, and all persons in active concert or participation with
21 Class Members are preliminarily barred and enjoined from organizing Class
22 Members who have not been excluded from the Class into a separate class for
23 purposes of pursuing as a purported class action, any lawsuit based on or relating
24 to the claims and causes of action in the complaint in the Action or Related
25 Action, or the facts and circumstances relating thereto, or the release in the
26 Settlement Agreement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court
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1 finds that issuance of this preliminary injunction is necessary and appropriate in
2 aid of the Court’s continuing jurisdiction and authority over the Action. Upon
3 final approval of the Settlement Agreement, all Representative Plaintiffs and
4 Class Members who do not timely and validly exclude themselves from the Class
5 shall be forever enjoined and barred from asserting any of the matters, claims, or
6 causes of action released pursuant to the Settlement Agreement against any of the
7 Released Parties, and any such Representative Plaintiff and Class Members shall
8 be deemed to have forever released any and all such matter, claims, and causes of
9 action as provided for in the Settlement Agreement.


10 20. The Parties are authorized to take all necessary and appropriate
11 steps to establish the means necessary to implement the Settlement Agreement.

12 21. The deadlines set forth in this Order, including but not limited to,
13 adjourning the Fairness Hearing, may be extended by Order of the Court, for
14 good cause shown, without further notice to the Class Members—except that
15 notice of any such extensions shall be included on the settlement website. Class
16 Members should check the settlement website regularly for updates and further
17 details regarding extensions of these deadlines.

18 22. Class Counsel and Defendant’s Counsel are hereby authorized to
19 use all reasonable procedures in connection with approval and administration of
20 the Settlement Agreement that are not materially inconsistent with this Order of
21 the Settlement Agreement, including making without further approval of the
22 Court minor changes to the Settlement Agreement, to the form or content of the
23 Class Notice, or to any other exhibits that the Parties jointly agree are reasonable
24 or necessary.

1 23. The Court shall maintain continuing jurisdiction over these
2 settlement proceedings to assure the effectuation thereof for the benefit of the
3 Class.

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5 SO ORDERED this 1st day of May, 2017.

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9 Honorable Andre Birotte Jr.
 United States District Judge

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