

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE is entered into by and between Plaintiffs L. Zingerman, D.D.S., P.C. d/b/a Niles Family Dental (“Zingerman”), Joshua Iron Wing, and Joshua Rafofsky (Iron Wing and Rafofsky are referred to herein as the “California Plaintiffs”), individually and as representatives of the Settlement Class described herein (collectively “Representative Plaintiffs”), on the one hand, and Defendant, Nissan North America, Inc. (“NNA” or “Nissan” or “Defendant”), on the other hand (Representative Plaintiffs and Nissan are the “Parties”), and is made and entered into pursuant to Rule 23 of the Federal Rules of Civil Procedure and subject to Court approval. Subject to the terms provided herein, this Agreement is intended to forever settle and compromise all claims, disputes and controversies, of any kind or nature whatsoever, whether known or unknown, which were raised or could have been raised, between or among the Parties, which in any way arise out of or relate to the allegations and claims or the facts underlying the allegations and claims stated in *Zingerman v. Nissan North America, Inc.*, Case No. 14-cv-07835, currently pending in the United States District Court for the Northern District of Illinois, and *Joshua Rafofsky, et al. v. Nissan North America*, Case No. 2:15-cv-01848-AB-MAN, currently pending in the United States District Court for the Central District of California (collectively the “Litigation”). This Agreement, including the limitations set forth in this Agreement, settles the claims asserted in the above-captioned cases between Representative Plaintiffs and the Settlement Class, on the one hand, and NNA, on the other.

SECTION 1

FACTUAL BACKGROUND

1.01 The Litigation relates to Nissan’s marketing and sale of its 2014 Infiniti Q50 automobiles (“2014 Infiniti Q50s”) and the actual performance of the 2014 Infiniti Q50s. Representative Plaintiffs allege that the InTouch telematics system, sometimes referred to as the InTouch infotainment system (“InTouch System”) installed in 2014 Infiniti Q50s has failed to perform and continues to fail to perform as advertised and otherwise represented by Nissan, and that the InTouch System has not met their expectations or the expectations of other consumers. Subject to the Release and Covenant not to Sue in Section 5 below, the Settlement Agreement shall not affect Settlement Class Members’ rights under the limited warranty or any other applicable warranty regarding issues not involving the InTouch System. The rights of Settlement Class Members who opt out of the Settlement Agreement are not affected by this Settlement Agreement.

1.02 Representative Plaintiffs engaged in extensive discovery including reviewing voluminous documents and taking numerous depositions. The Parties made further filings with the Courts in the Central District of California and the Northern District of Illinois. In those filings, Representative Plaintiffs asserted that there were numerous deficiencies in the InTouch system broadly encompassed by the description that it was poorly designed, that it failed to perform to the standards that it was designed to, that performance was, in any event, deficient in numerous respects, that performance was not consistent with explicit and implicit representations that had been made in various materials published by Nissan, including performance relating to the accessibility of mobile phone apps (including Pandora, Facebook, iHeartRadio, Online Google Search), the ability of the system to access and read aloud emails, and the ability to access a calendar through the

system. Nissan denies that it is liable to Representative Plaintiffs or the Settlement Class, and denies that certification of a class would be proper absent a settlement.

1.03 The Parties participated in a settlement conference in front of Mediator James Holderman, retired Chief Judge of the United States District Court for the Northern District of Illinois, on Tuesday, February 21, 2017, and reached a resolution that is now embodied in this Agreement. This was the second mediation conducted by Judge Holderman regarding this matter, with the first one having been conducted almost a year earlier on March 24, 2016. At all times, the settlement negotiations have been adversarial, non-collusive, and conducted at arm's-length with the critical assistance of Judge Holderman. Negotiation of the relief to be provided to the Class Members was completed before there was any discussion of the amounts that Defendant would agree to pay, if approval was received from the court, to Representative Plaintiffs and to Class Counsel.

1.04 Class Counsel and Defendant's Counsel have investigated the facts and law regarding the alleged claims of the Representative Plaintiffs and potential defenses thereto, and the damages claimed by Representative Plaintiffs.

1.05 The Parties believe this is a fair, reasonable, and adequate Agreement and have arrived at this Agreement through arm's-length negotiations, taking into account all relevant factors, both present and potential.

1.06 NNA has denied, and continues to vigorously deny, all liability and damages to anyone with respect to the alleged facts or causes of action asserted in the Litigation. Nevertheless, without admitting or conceding any liability or damages whatsoever, NNA has agreed to settle the Litigation, on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing this Litigation; to avoid the diversion of resources and personnel required by continuing the Litigation; and to put to rest all claims that are, or could have been, brought or asserted in the Litigation, or any similar litigation in any court

or jurisdiction, administrative or governmental body or agency, tribunal, or arbitration panel, which are based upon, arising out of, or related in any way, in whole or in part, to any of the facts, circumstances, or conduct alleged or challenged in the Litigation. NNA has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Agreement.

1.07 Class Counsel have analyzed and evaluated the merits of the claims made against NNA in the Litigation, and the impact of this Agreement on Representative Plaintiffs and the Settlement Class. Based upon their analysis and evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery whatsoever for the Representative Plaintiffs and/or the Settlement Class, and/or might result in a recovery which is not as good as the settlement for Representative Plaintiffs and the Settlement Class, and/or might not occur for several years, Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Settlement is in the best interests of Plaintiffs and the Settlement Class. Among the factors evaluated by Class Counsel was an order entered by the United States District Court for the Central District of California on February 17, 2017, in which the court denied the California Plaintiffs' request that a class be certified pursuant to Rule 23 of the Federal Rules of Civil Procedure.

1.08 As a result of these and other considerations, the Parties have agreed to settle the Litigation as provided for herein.

SECTION 2
DEFINITIONS

The following are certain definitions applicable to this Agreement. Definitions contained elsewhere in the body of this Agreement shall also be effective.

2.01 Agreement. The term “Agreement” shall mean and refer to this document evidencing a mutual settlement and release of disputed claims, and it shall also incorporate those other documents contemplated by and/or identified in this Agreement including, but not limited to, the Notice and Claim Form.

2.02 Claim Form. “Claim Form” shall mean and refer to a document that Class Members are required to use in order to make a claim for reimbursement under this Agreement. The Claim Form will take three different forms. One version of the claim form will be part of the original Notice that is mailed to Class Members. Class Members can simply fill out that version of the claim form and return it to the designated address. The second version of the claim form will be available for download from a website set up by the Settlement Administrator and can be completed just like the first version and returned to the designated address. The third version of the claim form can be completed online at the website set up by the Settlement Administrator without the need to mail in any paper to the Settlement Administrator.

2.03 Class Counsel. “Class Counsel” shall mean and refer to counsel for Representative Plaintiffs: Ben Barnow, Erich P. Schork, and Anthony Parkhill of Barnow and Associates, P.C., and Timothy G. Blood and Tommy J. O’Reardon of Blood Hurst & O’Reardon LLP.

2.04 Class Member. The term “Class Member” shall mean and refer to any member of the Settlement Class.

2.05 Class Vehicles. The term “Class Vehicles” shall mean Model Year 2014 Infiniti Q50.

2.06 Court. The term “Court” shall mean and refer to any District Judge or Magistrate Judge for the United States District Court for the Central District of California who presides over the Litigation or a part of it.

2.07 Defendant. “Defendant” and “Nissan” and “NNA” shall each mean and refer to Nissan North America, Inc.

2.08 Defendant’s Counsel. “Defendant’s Counsel” shall mean and refer to Kenneth K. Lee and Daniel D. Welsh, Jenner and Block LLP, 633 West 5th Street, Los Angeles, California 90071, Peter J. Brennan and Jonathan Enfield, Jenner & Block LLP, 353 North Clark Street, Chicago, Illinois 60654.

2.09 Final Approval. “Final Approval” shall mean that all of the following have occurred:

- (a) The Court has entered an Order Granting Final Approval as defined herein; and
- (b) The Order Granting Final Approval has become “Final” without being modified, amended, or reversed in any way. The Order Granting Final Approval shall be “Final” under the following circumstances and, the date on which all of these circumstances have been satisfied shall be deemed the “Final Effective Date” (i.e. Order Granting Final Approval has become Final):
 - i. If no rehearing, reconsideration, or appellate review has been sought, then the Order Granting Final Approval is final when the time for seeking rehearing, reconsideration, or appellate review has expired; or
 - ii. If a rehearing, reconsideration or appellate review has been sought, then the Order Granting Final Approval is

final when all avenues of rehearing, reconsideration, and appellate review have been exhausted and the time for seeking any such further review has expired. However, if the only issue subject to rehearing, reconsideration, or appellate review concerns a challenge by Class Counsel to the amount of attorneys' fees or expenses awarded by the Court, then the Order Granting Final Approval shall be considered final notwithstanding such a challenge.

2.10 Final Fairness Hearing. The "Final Fairness Hearing" will be a hearing at such time, place, and date as set by the Court where, among other things, the Court will determine whether to approve the Agreement as fair, reasonable, and adequate. At the Final Fairness Hearing, any Class Member who wishes to object to the fairness, reasonableness, or adequacy of this Agreement will be provided with the opportunity to be heard, provided that the Class Member complies with the requirements for objecting to this Settlement.

2.11 InTouch System. The InTouch System shall mean and refer to the InTouch telematics system, sometimes referred to as the InTouch infotainment system installed in 2014 Infiniti Q50s.

2.12 Litigation. The "Litigation" shall mean and refer to *Zingerman v. Nissan North America, Inc.*, Case No. 14-cv-07835, currently pending in the United States District Court for the Northern District of Illinois, and *Joshua Rafofsky, et al. v. Nissan North America*, No. 2:15-cv-01848-AB-MAN, currently pending in the United States District Court for the Central District of California.

2.13 Notice. "Notice" shall mean and refer to the process of notifying Class Members of their rights with respect to this Agreement via direct mail. The Notice shall be accomplished by mailing a postcard through the United States Postal Service and also will be made available to Class Members at a designated website.

Separately from the Notice defined herein and no later than the time specified by statute, a notice of this Agreement shall be issued by Defendant or the Claims Administrator to the Attorney General of the United States and the Attorneys General in each of the jurisdictions where Class Members reside under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA Notice”).

2.14 Order Granting Final Approval. The “Order Granting Final Approval” shall mean and refer to an order entered by the Court consistent with the terms of the Order Granting Preliminary Approval and approving, among other things, the terms and conditions of this Agreement, including the manner and timing of providing Notice to the Class and certifying a Settlement Class, and finding that the terms of the Settlement are fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23(e). The Parties will submit to the Court a Proposed Order Granting Final Approval.

2.15 Order Granting Preliminary Approval. “Order Granting Preliminary Approval” shall mean and refer to the order entered by the Court preliminarily approving the terms and conditions of the Agreement, as set forth herein, certifying the Settlement Class for settlement purposes only, approving the manner and timing of providing Notice to the Settlement Class, setting the time period for opting out and/or filing objections, and scheduling the date of the Final Fairness Hearing. The Parties will submit to the Court a proposed Order Granting Preliminary Approval.

2.16 Parties. “Parties” shall mean and refer to NNA, and the Representative Plaintiffs as defined herein, and to the extent that NNA, Representative Plaintiffs, and the Settlement Class discharge any of their obligations under this Agreement through agents, the actions of those agents shall be considered the actions of the Parties.

2.17 Preliminary Approval. “Preliminary Approval” shall mean and refer to the entry by the Court of the Order Granting Preliminary Approval.

2.18 Representative Plaintiffs. “Representative Plaintiffs” shall mean Plaintiffs Joshua Rafofsky, Joshua Iron Wing, and L. Zingerman, D.D.S., P.C. d/b/a Niles Family Dental DDS of the Settlement Class described herein.

2.19 Settlement. The term “Settlement” shall mean and refer to the proposed resolution of the Litigation upon the terms outlined in this Agreement and related documents.

2.20 Settlement Administrator. “Settlement Administrator” shall mean and refer to Kurtzman Carson Consultants (“KCC”), the Court-appointed third-party agent or administrator who will collaborate with NNA in administering the Settlement. Some tasks will be performed by KCC and other tasks will be performed by NNA as KCC and NNA determine in their discretion, all with the goal of implementing the Settlement. KCC will be responsible for mailing the Notice, but will use information provided by NNA to enable it to provide appropriate notice.

2.21 Settlement Class. “Class” or “Settlement Class” or, individually “Settlement Class Member(s),” shall mean and refer to: All purchasers or lessees of a new 2014 Infiniti Q50, for end use and not for resale, from an Infiniti dealer in the fifty United States, the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, and or any other recognized territory and protectorate of the United States. The Settlement Class excludes any people or businesses that did not purchase or lease the Class Vehicles for end use, thereby excluding any automobile dealers of any kind or others who did not lease or purchase the Class Vehicles for end use. The Settlement Class also excludes: (i) NNA and its officers, directors, attorneys, agents, affiliates, subsidiaries, authorized distributors and dealers; (ii) all Settlement Class members that timely and validly request exclusion from the Settlement Class; and (iii) the Judge presiding over the Litigation.

2.22 Singular/Plural. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

SECTION 3

RELIEF

3.01 Relief, Settlement Notice, Attorneys' Fees, Costs, and Expenses.

- A. Upon entry of the Order Granting Preliminary Approval, NNA in conjunction with the Settlement Administrator will begin Notice to Class Members of their rights with respect to this Agreement. NNA will provide and pay for Notice to the Class.
- B. NNA shall have the responsibility to prepare and provide CAFA Notices required by the Class Action Fairness Act of 2005, Pub. L. 109-2 (2005), as specified in 28 U.S.C. § 1715. Class Counsel will cooperate in the drafting of such CAFA Notices and shall provide NNA with all information in its possession necessary for the preparation of the CAFA Notices.
- C. Claims under this Settlement will be administered by NNA in conjunction with a Settlement Administrator, which will be KCC or any other Settlement Administrator the Parties may agree upon. NNA will pay for the costs of administering the Settlement.
- D. Class Members may submit a claim to the Settlement Administrator. Class Members who choose to receive the cash option will receive \$30 unless the Class Member indicates in a statement as follows: "I downloaded the Infiniti InTouch App prior to April 17, 2017. I affirm under the laws of the United States of America that the information in this Claim is true and correct to the best of my knowledge, information, and belief." If the Class Member so indicates, the Class Member will receive an additional \$55 for a total of \$85. Nissan reserves the right to verify the accuracy of any such statement and, if the statement is not

consistent with available records, to question and/or challenge the accuracy of any statement and, in the event of a dispute as to eligibility, follow the procedure provided for elsewhere in the Continuing Jurisdiction paragraph of this Agreement to resolve disputes. Nissan will also provide an alternative choice for the Class Member. In lieu of the cash option, the Class Member may choose a voucher that will be good toward the purchase or lease of a new Infiniti vehicle in the amount of \$500. That voucher will be good for a purchase or lease of a new Infiniti vehicle until March 31, 2019. Nissan will permit the voucher to be used by a family member of the Class Member who resides at the same address as the Class Member. In addition, in the sole discretion of Nissan, Nissan can increase the value of the voucher above \$500 according to a formula to be determined in the sole discretion of Nissan. In addition, Nissan or the Claims Administrator may provide to those Class Members who select the voucher option the voucher (including the functional equivalent such as an authorization code) at any time after the Court grants Preliminary Approval and may choose to honor that voucher for any purchase or lease even before the Court has granted Final Approval. In the event that the Court does not grant Final Approval, Nissan may stop honoring those vouchers even if Nissan has previously honored vouchers that were distributed. However, Nissan will not be permitted not to honor vouchers for sales or lease contracts that were executed prior to any decision by the Court to deny Final Approval. Nissan will endeavor to establish a system with its independent dealer network so that the voucher may be redeemed at the dealers by presenting said voucher after the customer has negotiated the final price of a particular transaction. So, for example, if the final

negotiated selling price was \$40,000 for a particular vehicle, then the ultimate cost to the buyer would wind up being \$39,500. If that system proves not feasible, then Nissan will work with the Class Administrator to provide an alternate method to redeem the vouchers such as sending the Class Administrator the voucher with a proof of purchase or lease. In the event of joint purchasers or joint lessees, only one payment or voucher shall be made available to the joint purchasers or joint lessees. Any check issued shall be valid for a period of 90 days after the issuance of the check. In the event of unusual circumstances interfering with a Class Member's ability to cash the check, that Class Member may request and, for good cause shown (e.g. lost check, illness, out of the country, etc.) be re-issued a replacement check as long as such request comes no more than 180 days after the issuance of the check.

- E. To receive either the cash or the voucher, Class Members must respond to a communication from Nissan or the Class Administrator indicating which option the Class Members selects. Failure to make a selection between the cash option and the voucher option will mean that the Class Member will receive neither option. Nissan or the Class Administrator will attempt to contact Class Members a total of three times in total to get the Class Member to make a selection, although the first contact might be only by the mailing of a notice of settlement. Two of the three contacts may be made by email, if available, and no further contact needs to be made once a selection is made (i.e. no requirement to contact more than once if selection is made on first contact). In the event of any dispute concerning the eligibility of a Class Member or potential Class Member, Class Counsel and Defendant's Counsel shall attempt to resolve that issue among themselves. In the event of

disagreement, disputes will be resolved using the procedure set out in the Continuing Jurisdiction section below.

- F. To be timely, all Claim Forms must be mailed and postmarked or submitted using the designated online procedure no later than 120 days after the date in the Order Granting Preliminary Approval that is set for the Final Fairness Hearing. Untimely Claim Forms shall not be accepted, and all Class Members who submit untimely Claim Forms shall be deemed to have waived all claims under this Settlement. In all instances, the date appearing on the postmark shall be controlling for determining when a Claim Form was mailed.
- G. No later than forty-two days (42) days prior to the date set in the Order Granting Preliminary Approval for the Final Fairness Hearing, Class Counsel shall petition the Court for an award of attorneys' fees up to Seven Hundred and Ten Thousand Dollars (\$710,000) and service awards up to Five Thousand Dollars (\$5,000.00) for each of the Representative Plaintiffs, and NNA will not oppose such a request. In no event shall Class Counsel accept an attorneys' fees award larger than \$710,000, or Plaintiffs accept service awards larger than \$5,000 each. In addition, Class Counsel may petition the Court for an award of out-of-pocket costs and expenses up to Ninety Thousand Dollars (\$90,000.00). Fees and costs will be paid by NNA only after all possible appeals challenging the Settlement have been exhausted as explained further in the next section of the Agreement. It is not a basis to set aside this Settlement if the Court awards less than the maximum amount of fees, service awards, or expenses that NNA agrees to pay upon Court approval.

3.02 Payment of Attorneys' Fees, Costs, and Expenses. NNA shall wire transfer monies sufficient to satisfy the court-approved award of attorneys' fees, costs, and expenses, and service awards to a designated bank account as directed in writing by Class Counsel. The completion of the above-referenced wire transfer shall satisfy Defendant's obligation of payment to Class Counsel. The wire transfer shall occur:

- A. Within forty-five (45) calendar days from the date of Final Approval, provided Class Counsel: (i) accepts the Court's award of attorneys' fees, costs, and expenses, and service awards; (ii) does not appeal said award of fees, costs, and expenses, and service awards; and (iii) informs NNA in writing that it will not pursue an appeal of said award; or
- B. In the event that the Court awards Class Counsel attorneys' fees, costs, and expenses, and service awards in an amount less than \$710,000, \$90,000, and \$5,000 each respectively, and Class Counsel pursues an appeal seeking to recover the difference between the Court's award and those amounts above, NNA shall wire transfer the monies within forty-five (45) calendar days from the date that the amount of the fees, costs, and expenses, and service awards awarded has been fully adjudicated, and all avenues of appeal have been exhausted or abandoned (in writing) by Class Counsel.

3.03 The Parties agree, for purposes of this Settlement only, to the certification of the Settlement Class. If the Settlement is not approved by the Court, or if the Settlement is terminated or cancelled pursuant to the terms of this Agreement, then this Agreement and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified without prejudice to any party's position on the issue of class certification or on any other issue.

3.04 The Parties did not discuss attorneys' fee, costs, and expenses, or Representative Plaintiff service awards, as provided for elsewhere in the Agreement until after the substantive elements of the Agreement had been agreed upon.

SECTION 4

APPROVAL AND CLASS NOTICE

4.01 Preliminary Approval by the Court. The Parties will file this Agreement and supporting documentation with the Court to seek an Order Granting Preliminary Approval.

4.02 Settlement Class Notice. The Notice to the Settlement Class in this Litigation will be provided as set forth above. The cost of disseminating notice and implementing the notice specified in this Agreement shall be borne by NNA. The Settlement Administrator shall: (a) re-mail any notices returned by the United States Postal Service with a forwarding address no later than the deadline found in the Preliminary Approval Order; (b) by itself or using one or more address research firms, as soon as practicable following receipt of any returned notices that do not include a forwarding address, research such returned mail for better addresses and promptly mail copies of the applicable notice to any better addresses so found. A second and third communication concerning the Settlement may be by email, if email addresses are available. Those communications only need to refer to the website set up by the Settlement Administrator and that a selection still needs to be made by the Class Member. Those communications may, at the option of Nissan, also offer additional information concerning Infiniti vehicles. Nissan is also free to conduct any additional communications with its customers including Class Members so long as such communications are compatible with (i.e. do not contradict) the communications required by this Agreement.

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

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

4.05 Claims Procedure and Claims Period. Immediately upon Notice being accomplished, Class Members may begin to submit Claim Forms.

4.06 Opt-outs. Any Class Member who wishes to opt-out of the Settlement must send to a designated Post Office Box established by the Settlement Administrator, by a date ordered by the Court, a written and signed statement, entitled “Request for Exclusion,” requesting exclusion from the Settlement Class. The Request for Exclusion must provide the Class Member’s full name, address, telephone number, e-mail address (if available), and the Vehicle Identification Number (VIN) of his or her Class Vehicle. In all instances, the date appearing on the postmark shall be controlling for determining when a Request for Exclusion was mailed.

The Settlement Administrator shall also be responsible for giving notice of the receipt of any such requests for exclusion by promptly providing complete copies to Class Counsel and Defendant’s Counsel.

4.07 Objections to Settlement. Any Class Member who wishes to object to the Settlement must send to Class Counsel and Defendant's Counsel by a date ordered by the Court, a written and signed statement entitled "Objection." To state a valid objection to the Settlement, a Class Member must provide the following information in the written objection: (i) his or her full name, address, telephone number, and e-mail address (if available); (ii) the Vehicle Identification Number (VIN) of his or her Class Vehicle(s); (iii) a statement of the objection(s), including all factual and legal grounds for the position; (iv) copies of any documents he or she wishes to submit in support; (v) the name, address, and telephone number of his or her separate counsel in this matter, if any; and (vi) his or her dated signature. In addition, the objection must list any other objections submitted by the Class Member, or his or her counsel, to any class action settlements in any court in the United States in the previous five years, or else affirmatively state that no other such objections have been made. If an objecting Class Member intends to appear, in person or by counsel, at the Final Fairness Hearing, he or she must so state in the written objection. To be timely, an objection must be served twenty-eight (28) days prior to the date set in the Order Granting Preliminary Approval for the Final Fairness Hearing upon Ben Barnow, Barnow and Associates, P.C., One North LaSalle Street, Suite 4600, Chicago, IL 60602, and also on Peter J. Brennan, Jenner & Block LLP, 353 North Clark Street, Chicago, Illinois 60654. In all instances, the date appearing on the postmark shall be controlling for determining when an Objection was mailed.

Any Class Member who fails to comply with the provisions of this paragraph and the preceding paragraphs shall be deemed to have waived and forfeited any and all objections to the Settlement, may be barred from speaking or otherwise presenting views at the Final Fairness Hearing, and shall be bound by all the terms of the Agreement and by all proceedings, orders, and judgments in the Litigation.

The parties will request that the Court enter an order providing that the filing of an objection allows Class Counsel or Defendant's Counsel to notice the objecting person for, and to take, his or her deposition consistent with the Federal Rules of Civil Procedure at a designated location, and to seek any documentary evidence or other tangible things that are relevant to the objection. Failure by an objector to make him or herself available for a deposition or to comply with expedited discovery requests may result in the Court striking the objection or otherwise denying that person opportunity to be heard. The Court may tax the costs of any such discovery to the objector or the objector's counsel should the Court determine that the objection is frivolous or made for any improper purpose. These procedures and requirements for objecting are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement, in accordance with the due process rights of all Class Members.

4.08 Entry of Order Granting Final Approval. At the time the Court considers the Order Granting Preliminary Approval, the Parties will request that the Court set the Final Fairness Hearing for a date which is more than ninety (90) days after Defendant's last day to issue notice required by the Class Action Fairness Act. At the Final Fairness Hearing, the Parties will request that the Court, among other things: (a) enter an Order Granting Final Approval in accordance with this Agreement; (b) certify a Settlement Class; (c) approve the Agreement as final, fair, reasonable, adequate, and binding on all Class Members; and (d) enjoin any Class Member who has not opted out from bringing any proceeding in any other court. In addition, at the Final Fairness Hearing, Class Counsel shall petition the Court for an award of attorneys' fees and costs as set forth above.

4.09 Effect of Failure to Enter Order Granting Final Approval of Settlement and Defendant's Right to Set Aside Settlement. In the event the Court fails to enter an Order Granting Final Approval in accordance with all of the terms

of this Agreement, or the Order Granting Final Approval does not for any reason become Final as defined herein, the Parties shall proceed as follows:

- A. If the Court declines to enter the Order Granting Final Approval as provided for in this Agreement, the Litigation will resume unless the Parties agree within thirty (30) days to: (1) seek reconsideration or appellate review of the decision denying entry of the Order Granting Final Approval; or (2) attempt to renegotiate the settlement and seek Court approval of the renegotiated settlement.
- B. In the event the Parties seek reconsideration and/or appellate review of the decision denying entry of the Order Granting Final Approval and such reconsideration and/or appellate review is denied, the Parties shall have no further rights or obligations under this Agreement.
- C. It shall not be deemed a failure to enter the Order Granting Final Approval for the Court to deny, all or in part, the attorneys' fees, service awards, and cost award requested by Class Counsel. In such case, this Agreement shall be deemed valid and enforceable, notwithstanding the Court's order awarding less than the requested amount of attorneys' fees, service awards, and costs. However, Class Counsel shall retain all rights of appellate review to such an order.

Prior to the time that the Order Granting Final Approval becomes Final, NNA shall also have the right to set aside or rescind this Agreement and recover all attorneys' fees paid (if any), in its sole discretion, within 30 days of the occurrence of any of the following events:

1. More than 100 Class Members opt out;
2. An opt-out class is certified; or

3. There are any modifications to this Agreement or related documents by any court, or by any tribunal, agency, entity, or person that have an adverse impact on NNA.

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

SECTION 5

RELEASE AND COVENANT NOT TO SUE

5.01 Release and Covenant Not to Sue. Regardless of whether Class Members make claims under this Settlement, the Order Granting Final Approval will dismiss all claims by Class Members with prejudice and will, with the exception of claims for personal injury, subordination, property damage not herein described, and/or wrongful death, forever release, remise, acquit, satisfy, and discharge Defendant and all of its current and former parent corporations, subsidiaries, divisions, affiliated and related entities, stockholders and directors, and each of their independent authorized dealers, fiduciaries, administrators, executors, directors, officers, members, affiliates, employees, agents, representatives, attorneys, insurers,

trustees, conservators, successors-in-interest, and assigns as applicable and without limitation, from any and all manner of actions, cause and causes of action, accounts, agreements, bills, bonds, claims, contracts, controversies, versants, damages, debts, demands, dues, executions, judgments, liability, liens, proceedings, promises, reckonings, specialties, suits, sums of money, trespasses and variances whatsoever and any equitable, legal, and administrative relief, whether based on federal, state or local law, statute or ordinance, regulation, contract, common law, or any other source including any claims relating to federal or state law, known or unknown, that have been or could have been raised in the Litigation or any other litigation or proceeding, whether before a court, administrative or governmental body or agency, tribunal, or arbitration panel, that relate in any way to the subject matter of this litigation. The foregoing includes any claimed deficiencies in the InTouch system broadly encompassed by the description that it was poorly designed, that it failed to perform to the standards that it was designed to, that performance was, in any event, deficient in numerous respects, that performance was not consistent with explicit and implicit representations that had been made in various materials published by Nissan, including performance relating to the accessibility of mobile phone apps (including Pandora, Facebook, iHeartRadio, Online Google Search), the ability of the system to access and read aloud emails, and the ability to access a calendar through the system.

Regardless of whether Class Members make claims under this Settlement, upon entry of the Order Granting Final Approval, Plaintiffs and each Class Member expressly agree that they, acting individually or together, shall not institute, maintain, prosecute, sue, or assert in any litigation or proceeding in any court, administrative or governmental body or agency, tribunal, or arbitration panel, any action and actions, cause and causes of action, claims, controversies, demands, or suits against NNA arising out of or related in any way, in whole or in part, to any

claims relating to the Litigation. Excluded from this paragraph are any such suits, arbitrations, claims, proceedings, or actions involving claims for personal injury, property damage not herein described and/or wrongful death.

The proposed Order Granting Final Approval to be submitted to the Court will include, among other things, the release and covenant-not-to-sue terms as set forth in this Agreement and all the provisions set forth above. The Parties agree to submit a joint proposed Order Granting Final Approval to the Court at a reasonable time before the hearing on the Order Granting Final Approval. The Parties agree to work together and cooperate on drafting such a proposed order including making any changes necessary or appropriate in light of any ruling of the Court.

5.02 Waiver of all Claims.

Representative Plaintiffs stipulate and agree that, upon Final Approval, they shall be deemed to have, and by operation of the Final Approval shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code to the extent it is applicable (or any other similar provision under federal, state or local law to the extent any such provision is applicable), which is quoted below. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Thus, subject to and in accordance with the provisions of this Settlement, even if NNA, Representative Plaintiffs, or Class Members may hereafter discover facts in addition to or different from those which they now know or believe to be true with

respect to the subject matter of any and all claims that they have released, upon Final Approval, they shall be deemed to have and by operation of the Final Approval shall have, fully, finally, and forever settled and released any and all claims of any kind between NNA, Plaintiffs, and Class Members related to this Litigation. This is true whether claims are known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Each Class Member expressly waives any and all rights under any other federal or state statute or law of similar effect with respect to the subject matter of this Litigation.

5.03 Defendant's Reservation To Collect Debts

Nothing herein shall preclude any action to enforce the terms of this Agreement. Furthermore, nothing in this Agreement is intended in any way to affect Defendant's rights to collect any outstanding debt or other amounts owed to them by Class Members, all of said rights being expressly reserved.

SECTION 6

MISCELLANEOUS PROVISIONS

6.01 Cooperation Between the Parties. The Parties shall cooperate fully with each other and shall use their best efforts to obtain Court approval of this Agreement and all of its terms.

6.02 Entire Agreement. No representations, warranties, or inducements have been made to any of the Parties, other than those representations, warranties, and covenants referenced in this Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.

6.03 Modification of Agreement. No waiver, modification or amendment of the terms of this Agreement, made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by Class Counsel and Defendant's Counsel, and then only to the extent set forth in such written waiver, modification or amendment, and subject to any required Court approval.

6.04 Construction of Agreement. The Parties acknowledge as part of the execution hereof that this Agreement was reviewed and negotiated by their counsel and agree that the language of this Agreement shall not be presumptively construed against any of the Parties hereto. This Agreement shall be construed as having been drafted by all the Parties to it, so that any rule of construction by which ambiguities are interpreted against the drafter shall have no force and effect.

6.05 Arms' Length Transaction. The Parties have negotiated all the terms and conditions of this Agreement at arms' length with the active assistance of mediator, the Honorable James Holderman (retired).

6.06 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties, the Settlement Class, and their respective heirs, successors and assigns.

6.07 Waiver. Any failure by any of the Parties to insist upon the strict performance by any of the other Parties of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

6.08 When Agreement Becomes Effective; Counterparts. This Agreement shall become effective upon its execution by Defendant's Counsel and Class Counsel. The Parties may execute this Agreement in counterparts, and execution in one or more counterparts shall have the same force and effect as if all Parties had signed the same instrument. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement shall remain enforceable. However, Representative Plaintiffs and NNA shall each retain the right to seek from the Court, under its continuing jurisdiction as set forth below in paragraph 6.11, an appropriate order to address the ramifications of any order of a court of competent jurisdiction holding a provision of this Agreement to be unenforceable.

6.09 No Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation, or undertaking established herein to any third party as a beneficiary to this Agreement.

6.10 Captions. The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

6.11 Continuing Jurisdiction. The Court shall retain jurisdiction over the interpretation and implementation of this Agreement, as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement.

6.12 Electronic Signatures. Any party may execute this Agreement by signing their name on the designated signature block below, and transmitting that signature page electronically to all counsel. Any signature made and transmitted electronically for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement, and shall be binding upon the Party transmitting their signature electronically.

6.13 Commitment to Support by Parties. Representative Plaintiffs, Class Counsel, NNA, and Defendant's Counsel agree to recommend approval of and to support this Settlement to the Court and to undertake their best efforts, including all reasonable steps contemplated by this Settlement, to give force and effect to its terms and conditions. NNA shall have no obligation to affirmatively support an award of attorney's fees, but as explained in detail above, shall not oppose a request for fees and costs. Neither Representative Plaintiffs, Class Counsel, NNA, nor Defendant's Counsel shall in any way encourage any objections to this Settlement Agreement (or any of its terms or provisions) or encourage any Class Members to elect to opt out.

6.14 Publicity. If contacted by the press, each Party must provide information consistent with the terms of this Agreement and cannot provide information inconsistent with the terms of this Agreement. Neither Class Counsel, Representative Plaintiffs, Defendant's Counsel, NNA, nor any agents or representatives of Class Counsel, Representative Plaintiffs, Defendant's Counsel, or NNA will contact the press or media, or anyone affiliated with public relations or the media, seeking publicity concerning the Litigation or Settlement.

6.15 Exhibits. Any exhibits, if any, hereto are incorporated herein by reference as if set forth herein verbatim, and the terms of any exhibits are expressly made a part of this Agreement.

6.16 Cessation of Litigation Activity. Plaintiffs and the Settlement Class agree not to initiate any additional litigation against Defendant relating to, arising out of, or related in any way, in whole or in part, to any claims relating to federal or state law, known or unknown, that have been or could have been raised in the Litigation or any other litigation or proceeding in these or any other courts, administrative or governmental body or agency, tribunal, or arbitration panel. At the conclusion of the second mediation with Judge Holderman, the Parties agreed to cease all litigation activity and immediately notified the courts that the Parties had reached a settlement that would be embodied in a written agreement, which is this Settlement Agreement. Any consumer who properly excludes himself or herself from the Settlement Class is not subject to this paragraph.

6.17 Confidential Discovery Materials. Within 30 days of Final Approval, Plaintiffs' Counsel shall return to Defendant's Counsel, or shall provide to counsel a certification under oath, of the destruction of: (1) all matter produced in discovery in the Litigation that was designated as "Confidential" or "Subject to Protective Order;" and (2) all depositions except for the depositions of Class Plaintiffs. Defendant's Counsel shall retain copies of deposition transcripts and exhibits thereto for a period of two (2) years until April 17, 2019.

6.18 Class Certification. If, for any reason, the Settlement provided for herein is not approved by the Court in complete accordance with the terms of the Settlement (unless the only modification is a reduction in the fees or costs awarded to Class Counsel) or the Final Effective Date does not occur, then no class will be deemed certified by or as a result of this Agreement, and the Litigation for all purposes will revert to its status as of April 17, 2017. In such event, Defendant will

not be deemed to have consented to certification of any class, and will retain all rights to oppose, appeal, or otherwise challenge, legally or procedurally, class certification or any other issue in this case, including, but not limited to, contesting certification of the identical Class provided for herein.

6.19 Dismissal. Upon granting final approval of the Settlement, the Court shall dismiss the Litigation with prejudice.

DATED: April __, 2017

NISSAN NORTH AMERICA, INC.

Carlos Servin

Senior Vice President, Finance

DATED: April __, 2017

Barnow and Associates, P.C.

Ben Barnow

*Attorneys for Plaintiffs L. Zingerman, D.D.S., P.C.,
Joshua Rafofsky, Joshua Iron Wing*

DATED: April __, 2017

Blood Hurst & O'Reardon LLP

Timothy G. Blood

*Attorneys for Plaintiffs L. Zingerman, D.D.S., P.C.,
Joshua Rafofsky, Joshua Iron Wing*

not be deemed to have consented to certification of any class, and will retain all rights to oppose, appeal, or otherwise challenge, legally or procedurally, class certification or any other issue in this case, including, but not limited to, contesting certification of the identical Class provided for herein.

6.19 Dismissal. Upon granting final approval of the Settlement, the Court shall dismiss the Litigation with prejudice.

DATED: April __, 2017 NISSAN NORTH AMERICA, INC.

Carlos Servin
Senior Vice President, Finance

DATED: April 19, 2017

Barnow and Associates, P.C.

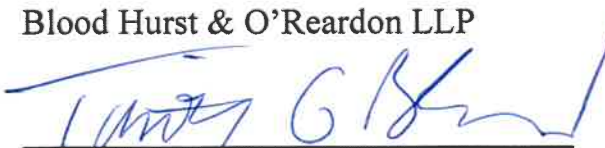


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Joshua Rafofsky, Joshua Iron Wing*

DATED: April 19, 2017

Blood Hurst & O'Reardon LLP



Timothy G. Blood

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