

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

|  |   |                          |
|--|---|--------------------------|
| MICHELLE NELSON,                         | ) |                          |
| individually and on behalf of a class of | ) | Case No. 3:17-cv-1114    |
| similarly situated individuals,          | ) |                          |
|  | ) |                          |
| <i>Plaintiff,</i>                        | ) | COMPLAINT – CLASS ACTION |
|  | ) |                          |
| v.                                       | ) | JURY DEMAND              |
|  | ) |                          |
|  | ) |                          |
| NISSAN NORTH AMERICA, INC.,              | ) |                          |
| a California company,                    | ) |                          |
|  | ) |                          |
| <i>Defendant.</i>                        | ) |                          |

**FIRST AMENDED CLASS ACTION COMPLAINT**

Plaintiff Michelle Nelson brings this class action suit against Defendant, Nissan North America, Inc. (“Defendant” or “Nissan”), on her own behalf and on behalf of a class of other individuals who purchased Infiniti brand vehicles manufactured and/or sold by Defendant, to obtain relief from Defendant for the serious defect in the vehicles’ paint. **This defect has resulted in unsightly discoloration, delamination and peeling, as well as significant rust and corrosion, with the risk of additional such rust and damage to the underlying metal body of the vehicles, and as a result has caused a substantial decline in the resale value of the vehicles.** Despite knowledge of this defect, Defendant has failed to disclose it and has also refused to provide the necessary repairs. For her First Amended Class Action Complaint, Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and as to all other matters, upon information and belief, including investigation conducted by her attorneys.

**JURISDICTION AND VENUE**

1. This Court has diversity jurisdiction under 28 U.S.C. § 1332(a) and (d), because

(1) at least one member of the putative class is a citizen of a state different from any Defendant, (2) the amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and (3) none of the exceptions under that subsection apply to the instant action.

2. This Court has personal jurisdiction over Defendant because Defendant has ongoing and systematic contacts with the State of Tennessee, and conducts business in this District.

3. Venue is proper in the Middle District of Tennessee because Defendant is headquartered in this District, transacts business in this District, and because a substantial part of the events or omissions giving rise to the claims occurred within this District, as decisions and actions relating to this lawsuit and which impacted Plaintiff and the putative class were made or taken throughout the State of Tennessee and in this District.

### **PARTIES**

4. Plaintiff Michelle Nelson is a natural person and a citizen of the State of Georgia.

5. Defendant, Nissan North America, Inc., is a California corporation with its principal place of business in Franklin, Tennessee. Defendant designs, manufactures, markets, distributes, supplies, services, repairs, sells, and leases passenger vehicles, including its Infiniti brand vehicles, throughout the country and in this District.

### **FACTUAL ALLEGATIONS**

6. One of the most popular brands of luxury passenger vehicles in the United States, including SUVs (sports utility vehicles) and sedans, is Infiniti, Defendant's luxury brand. Defendant sells thousands of Infiniti vehicles every month and markets its Infiniti vehicles as "modern luxury," while trumpeting an "unprecedented commitment to professionalism and customer service" in its product literature.

7. The purchaser of an automobile has a reasonable expectation that, absent some sort of collision or extreme “Act of God” event, the paint on his or her vehicle, especially that of a “luxury” vehicle, will generally last throughout the vehicle’s lifetime.

8. However, Defendant has manufactured, marketed, distributed, supplied, and sold Infiniti vehicles with defective paint and/or paint application, resulting in the paint fading and peeling, or delaminating, which creates an unacceptable appearance for any vehicle, but particularly for a luxury vehicle brand such as Infiniti. Not only does the vehicle become unsightly, the defective paint application also exposes the body of the vehicle and results in rust and corrosion, with the risk of increased rust and corrosion over time.

9. Upon information and belief, the fading and peeling of the paint is a result of a latent manufacturing defect that existed at the time of the application of the paint, which occurred as part of the manufacturing process. The nature of the defect is such that, absent disclosure from Defendant, a consumer would not be aware of it at the time of purchase or likely until the paint subsequently starts fading and peeling.

10. In January 2016, Plaintiff visited an authorized Infiniti dealership and, based on Infiniti’s reputation as a quality luxury car manufacturer and her prior ownership of other Infiniti vehicles, purchased a used 2011 Infiniti QX56 with “Pearl White” paint, and with approximately 68,000 miles on it. The total cost of the vehicle was approximately \$43,000.00.

11. At the time she purchased her vehicle, Plaintiff also purchased a 48,000 mile, 48-month extended warranty from a Nissan affiliate for \$6,500.00.

12. In or about February 2017, which was approximately one year after her purchase of the vehicle, and still during the life of the extended warranty, Plaintiff first noticed that the paint on her vehicle had begun to fade to a grayish appearance from the originally purchased

“Pearl White,” and portions of the vehicle were stripped of paint altogether.

13. In or about March 2017, as the paint continued to fade and peel away, Plaintiff contacted the Infiniti dealer where she had purchased the vehicle and requested that the paint be repaired. The dealer, however, denied responsibility, denied that the warranty purchased by Plaintiff covered this paint issue, and was unwilling to offer any relief to Plaintiff.

14. Plaintiff then contacted Defendant’s Infiniti corporate customer service department to seek relief, but Plaintiff was advised that there was nothing Defendant was willing to do to rectify the situation.

15. By the time that Plaintiff complained to the dealership and to Defendant about the paint defect, and, indeed, at the time Plaintiff purchased her vehicle, both Defendant and its Infiniti dealers had knowledge of the defect. Nonetheless, Defendant failed to disclose the existence of the defective paint to Plaintiff, or otherwise acknowledge their awareness of the problem.

16. Defendant has received multiple complaints from consumers over the past several years about paint defects in Infiniti vehicles, including for years prior to Plaintiff purchasing her Infiniti vehicle. Despite Defendant and its dealerships having knowledge as to the latent paint defect in the Infiniti vehicles and knowledge that the vehicle Plaintiff intended to purchase was likely to experience the same paint defect, Plaintiff was sold her vehicle without any disclosure from Defendant or its dealership regarding this paint defect. Defendant later failed to accept any responsibility and/or provide any meaningful relief to Plaintiff and other consumers who complained, despite Defendant having actual knowledge of the paint defect.

17. Many people across the United States have experienced this defect and even a cursory internet search reveals this quite plainly. For example, on November 20, 2016, on

Infiniti's own web forum,<sup>1</sup> a customer provided photographs and complained as follows:

So, I am not the kind of guy to do this. I don't just take to the interweb anytime I get excited or angered. I don't post pictures of my dinners; I don't forward funny cat videos. Heck, the only time I have ever tweeted was when my 7-year old kicked me in the goods. The truth is I don't have time between clients, kids, and trips to the Infiniti service department to be doing this kind of stuff. But sometimes, things are so bad, you are left with no other choice but to stand up and make a stink. That's the point I have reached with my Infiniti QX56. Part of me feels the need to warn potential buyers of the hell I have suffered; a larger part of me needs to sleep peacefully knowing I did not simply submit to the will of a corporation more beholden to their bottom line than they are to their customers....Then, my paint started peeling off in king-sized sheets. I mean, it's not flaking from rock-dings, its peeling off like clothes during spring break. No big deal, right? I mean, this is obviously a manufacturing defect, so Infiniti will have no issue paying to have it repainted, right? I mean, it'll be inconvenient, but I have gotten used to that with this car. **WRONG!!!!!!** I hope you can imagine my jaw-dropping **SHOCK** to learn Infiniti will not pay for what is **CLEARLY** a manufacturing defect...



18. Additionally, and as a representation that Defendant has known of the widespread paint defects in its Infiniti vehicles for quite some time, on September 20, 2012, yet another

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<sup>1</sup> See <http://x.infinitihelp.com/forum/showthread.php/infiniti-paint-problems-free-stickers-13897.html?p=57263> (last visited November 14, 2017).

frustrated Infiniti owner posted the following blog:<sup>2</sup>

Infiniti G35 paint problems – I never though I would have them. It’s an Infiniti, after all! Synonymous with quality, or so I thought.

I bought a G35 new for my wife in 2004. It is still a great car except for the Infiniti G35 paint problems! Everything on the car works great. However...

I recently drove it to Palm Springs, as my car was in the shop. When I got there, I noticed that the paint on the roof was peeling or something. I didn’t have time to investigate it, I worked about 18 hour days for a week volunteering at an event for a well-known international speaker. But when I got back I noticed serious infiniti G35 paint problems.

The clearcoat was peeling off. It started as a small area, but has gotten bigger and bigger. So what did I do? Look on the internet, of course. In particular there is a G35 forum that has many posts about 2004 Infiniti G35 paint problems. So I thought, maybe Infiniti would stand up and want to deal with their Infiniti G35 paint problems.

So I went tot the local dealer, actually the same location where I bought the car new, although it is now under new management. I met the service director, who was very nice, and explained that there was no warranty for this sort of thing, but that my Infinit G35 paint problems might be addressed by the factory.

Except that it wasn’t, she called me back today and apologetically said that the factory rep was not interested in doing anything about my Infiniti G35 paint problems. Now I have a 1993 Mustang and the paint is perfect. I have a 1995 Jeep Cherokee and other than a number of scratches and dents, the paint on it is also perfect. And, from reading the online forums it seems like there are LOTS of Infiniti G35 paint problems. And it doesn’t look like they have corrected them, either, from what I have read.

Did I mention that the car is kept garaged?

So BEFORE you buy an Infiniti, if you plan to keep it more than, say, 5 years, you might want to look into the horrible paint they have used. I am VERY disappointed in them, and I wont be buying another Infiniti product.

19. Further evidencing that complaints about the paint defect with the QX56 model (the model purchased by Plaintiff) have been known to Defendant for several years now, on

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<sup>2</sup> See <http://www.terraincogito.com/infiniti-g35-paint-problems> (last visited November 14, 2017).

March 10, 2015, another Infiniti QX56 owner posted the following complaint on carcomplaints.com, which sets forth facts similar to Plaintiff's situation:<sup>3</sup>

I purchased the car new along with an extended warranty. At about 3 1/2 years old we noticed paint peeling. We were told from an auto painter that it was a defect in the manufacturers paint. So we call Infiniti corporate along with dealing with local dealerships and are told its out of warranty and they won't fix. We were at 61,000 miles and not even 4 years old yet. I've contacted Infiniti consumer affairs they are rude and decline any assistance putting the burden on local dealerships which won't fix the problem. Almost 2 years later paint is peeling all over roof of car and Infiniti still refuses to fix it or acknowledge the problem even though its posted on several websites and a news outlet went after Nissan for the same problem years ago. Would just like Infiniti to stand by its product and consumers who invested 70+ thousand dollars to purchase their supposed luxury vehicle.

20. The quotations above are just a very small sample of the dozens of publicly available consumer complaints spanning a multi-year period prior to Plaintiff's purchase of her vehicle regarding the paint on Infiniti's vehicles, and prior to Plaintiff bringing the defect to the attention of both the dealer and Defendant. Indeed, there are many other websites where Infiniti owners have voiced complaints about defective paint on their vehicles including, and most prevalently, Infiniti's Facebook page.

21. For example, on September 1, 2015, an individual identifying herself as the owner of a 2011 Infiniti QX56 (which is the same year, make, and model of Plaintiff's vehicle) posted the following on Infiniti's official Facebook page<sup>4</sup>:

Well I own a 2011 Infiniti QX56 with 82k miles. First we had a hole in the ac cooler which they would not cover under warranty and cost me \$1800 to fix. Paint starting peeling off of roof with 75k miles and lucky dealer made a mistake and they fixed it for me **but they did tell me that the 2011 white paint were having problems with the paint chipping**... [Emphasis added].

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<sup>3</sup> See [https://www.carcomplaints.com/Infiniti/QX56/2011/body\\_paint/paint\\_is\\_peeling.shtml](https://www.carcomplaints.com/Infiniti/QX56/2011/body_paint/paint_is_peeling.shtml) (last visited November 14, 2017).

<sup>4</sup> See <https://www.facebook.com/INFINITI/posts/10150577901954955> (last visited November 14, 2017).

22. An Infiniti representative responded to that September 1, 2015 Facebook post on September 2, 2015.

23. That September 1, 2015 Facebook chain has 89 comments posted to it as of the date of this filing, with most directed toward peeling paint on the respective poster's 2011 Infiniti QX56 vehicles, and many of the posts on Infiniti's official Facebook page preceded Plaintiff's purchase of her 2011 Infiniti QX56 vehicle at issue herein. Infiniti representatives responded to the majority of the posts, often directing the posters to contact Infiniti's consumer affairs department, directing them to the service department of their local Infiniti retailer, or alternatively requesting posters to "private message" Infiniti representatives through Facebook and to provide more specific information about their vehicle, including the VIN and name on the vehicle registration.

24. Defendant learned of the paint defect well before Plaintiff and the Class and Subclass Members purchased the Class and Subclass vehicles, through sources such as its knowledge of and experience with automotive engineering and pre-release evaluation and testing of the components and vehicles; early consumer complaints made directly to Defendant, and/or posted on public online vehicle owner forums; testing done in response to those complaints; aggregate data from Defendant's dealers; as well as through other internal sources unavailable to Plaintiff prior to discovery.

25. During the pre-release process of designing, manufacturing, engineering, and testing the Class and Subclass vehicles, Defendant necessarily would have gained comprehensive and exclusive knowledge about the Class and Subclass vehicles' paint; the types and properties of materials used to make the paint, including their durability and whether those materials would weaken over time regardless of wear and use; and the cumulative and specific impacts on the

paint caused by wear and use, the passage of time, and environmental factors.

26. An adequate pre-release analysis of the paint used for the Class and Subclass vehicles would have revealed to Defendant that the paint was insufficiently durable for the vehicles' intended use or was otherwise defective, and would not likely last the useful life of the vehicle. Thus, during the pre-release design stage of the Class and Subclass vehicles, Defendant knew or should have known that the paint it chose for the Class and Subclass vehicles was defective, and such knowledge was further confirmed with significant public complaints.

27. Upon information and belief, Defendant's dealers/authorized service centers use Defendant's replacement parts that they order directly from Defendant. Therefore, Defendant would have detailed and accurate data regarding the number and frequency of replacement part orders, including paint, concerning Class and Subclass vehicles.

28. Defendant also knew or should have known about the paint defect because, upon information and belief, numerous consumer complaints regarding Class and Subclass vehicle paint were made directly to Defendant. The number of complaints, and the consistency of their descriptions of the paint defects in the Class and Subclass vehicles, alerted, or in the exercise of reasonable diligence should have alerted, Defendant to this defect affecting the Class and Subclass vehicles.

29. The full universe of complaints made directly to Defendant about the Class and Subclass vehicles' paint defect is information presently in the exclusive custody and control of Defendant and is not yet available to Plaintiff prior to discovery. However, as set forth above, **publicly-available information reveals that many Class and Subclass vehicle owners complained directly to Defendant and Defendant's dealerships and service centers about the paint defects and failures their vehicles experienced.**

30. In sum, before Plaintiff and Class and Subclass members purchased their Class and Subclass vehicles, Defendant was aware of the paint defect complained of herein, should have been aware of the paint defect complained of herein through the exercise of reasonable care, and/or was reckless or negligent in failing to be aware of the paint defect complained of herein.

31. Moreover, the number and consistency of Class and Subclass member complaints describing the paint defect complained of herein underscores the fact that Class and Subclass members considered the paint defect complained of herein to be a material issue to a reasonable consumer.

32. Instead of accepting responsibility for the latent manufacturing defect present in its vehicles, Defendant has turned its back on customers, including Plaintiff, and Defendant has denied all responsibility for the resulting damage caused to Plaintiff's vehicle. Defendant has not disclosed the defect, has not publicly acknowledged its existence, and has not taken any reasonable steps to rectify the situation, including failing or refusing to issue a product recall.

33. The paint fading, peeling and delamination on Plaintiff's vehicle, and the resulting rust and corrosion, a portion of which is shown in the true and accurate photos of Plaintiff's vehicle set forth below, has resulted in a significant decrease in its resale value. The decreased value, and the money needed to even attempt to remedy the problem, is greater than simply the cost of a new paint job, because the paint peeling and delamination also increases the risk that the vehicle will require additional repairs to the body of the vehicle, which is exposed to moisture and, thus, at increased risk of rust and corrosion.



34. Only after a putative class action complaint was filed in another jurisdiction, with allegations similar to those alleged herein, did Defendant offer Plaintiff a \$750.00 discount off of a new paint job. Defendant never offered cash compensation to Plaintiff and, importantly, the

relief offered by Defendant was insufficient, as the amount offered by Defendant constituted but a small fraction of the actual cost of a new paint job.

35. The paint that Defendant used on Plaintiff's vehicle, and the vehicles of the other Class and Subclass members, did not conform to industry standards for any vehicle, much less for luxury vehicles at the price point paid by Plaintiff and these other Infiniti owners.

36. The nonconformity with industry standards was especially apparent given the relatively young age of Plaintiff's vehicle—which began to experience paint problems only one year after Plaintiff purchased the vehicle and only six years after the vehicle was manufactured.

37. A basis of the bargain for Plaintiff's purchase was that the paint on Plaintiff's vehicle would last for the lifetime of the vehicle. Plaintiff would not have purchased the vehicle, or would have paid significantly less for it, had she known that its paint would fade, delaminate and/or begin peeling, and would result in significant rust and corrosion, within approximately one year of purchase.

### **CLASS ACTION ALLEGATIONS**

38. Plaintiff brings this action as a class action pursuant to Rule 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure. Plaintiff brings this action individually and on behalf of all similarly situated persons as the Court may determine to be appropriate for class certification treatment, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b). Plaintiff seeks to represent the following national class ("Class") and a subclass ("Subclass") as follows:

The Class: All persons in the United States who within the applicable statute of limitations period, and as shown by Defendant's records, purchased a new or used Nissan Infiniti brand vehicle with defective paint.

The Georgia Subclass: All Georgia residents who, within the applicable statute of limitations period, and as shown by Defendant's records, purchased a new or used Nissan Infiniti brand vehicle with defective paint.

39. Plaintiff's claims are typical of those of the other Class and Subclass members. If each Class and Subclass member were to bring his or her claims in a separate, individual action, such individual claims would require proof of many of the same facts, would seek the same relief, and would rely upon the same theories of recovery.

40. Plaintiff will fairly and adequately represent the interests of the other members of the Class and Subclass. Plaintiff's counsel has substantial experience prosecuting complex litigation and class actions. Plaintiff and her counsel are committed to zealously prosecuting this action on behalf of the other Class and Subclass members, and have the financial resources to do so. Neither Plaintiff nor her counsel have any interest adverse to those of the other members of the Class or Subclass.

41. Absent this suit proceeding as a class action, most members of the Class and Subclass would find the cost of litigating their individual claims to be prohibitively expensive and would not be able to obtain any effective remedy for their damages. Treating common questions of law and fact on a classwide basis is superior to multiple individual actions because doing so would conserve the courts' resources, as well as the resources of the parties, and would promote consistency and efficiency of adjudication.

42. Defendant has acted and failed to act on grounds applicable to both Plaintiff and the other members of the Class and Subclass, necessitating the imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and Subclass, and making injunctive or corresponding declaratory relief appropriate for the Class and Subclass as a whole.

43. The factual and legal bases of Defendant's liability to Plaintiff and to the other members of the Class and Subclass are the same, causing injury to Plaintiff and to all of the other

members of the Class and Subclass. Plaintiff and the other members of the Class and Subclass have all suffered harm and damages due to the unlawful and wrongful conduct of Defendant.

44. Infiniti brand vehicles are some of the most popular luxury vehicles sold in America, and the QX56 (Plaintiff's model vehicle) is one of Defendant's flagship models. Defendant sells thousands of Infiniti vehicles every month, and upon information and belief, there are tens of thousands of members of the Class and at least hundreds of members of the Subclass, such that joinder of all members is impracticable.

45. There are many questions of law and fact common to the claims of the Plaintiff and the other members of the Class and Subclass, and those questions predominate over any questions that may affect individual members of the Class and Subclass. Common questions for the Class and Subclass include, but are not limited to, the following:

1. Did Defendant manufacture, distribute, supply, market, and/or sell Infiniti brand vehicles?
2. Was there a latent paint defect in Infiniti brand vehicles which were manufactured, distributed, supplied, marketed, and/or sold by Defendant?
3. Was the paint defect experienced by Plaintiff and the Class and Subclass members a result of Defendant's negligence?
4. Did Defendant warrant or otherwise represent that its vehicles would be free from the paint defect experienced by the Class and Subclass members?
5. Did Defendant knowingly fail to disclose to the Class and Subclass members the existence and cause of the paint defect?
6. Did Defendant continue to manufacture, market, distribute, supply, and sell vehicles with the alleged paint defect even after becoming aware of such defect?
7. Did the fading and peeling of the paint on the Infiniti vehicles constitute a breach of warranty made by Defendant to Plaintiff and the other Class members?
8. Did Defendant fail to provide an adequate remedy to the Class and Subclass for the defective paint?

9. Are Plaintiff and the other Class and Subclass members entitled to monetary, restitutionary, and/or injunctive relief or other remedies, and, if so, what should be the nature of such remedies?

**COUNT I: Violation of 15 U.S.C. § 2301, et seq. (the Magnuson-Moss Warranty Act)**

46. Paragraphs 1–45 of the Complaint are expressly incorporated as if fully re-written and re-alleged herein.

47. Plaintiff and the other Class members are “consumers” within the meaning of 15 U.S.C. § 2301(3).

48. Defendant is a “supplier” and “warrantor” within the meanings of sections 15 U.S.C. § 2301(4)-(5).

49. The defective Infiniti vehicles are “consumer products” within the meaning of 15 U.S.C. § 2301(1).

50. A consumer damaged by a warrantor’s noncompliance with an implied warranty has a cause of action pursuant to 15 U.S.C. §2301(d)(1).

51. Each Infiniti vehicle purchased by the Class members came, as a matter of law, with an implied warranty of merchantability such that each vehicle was warranted to be of merchantable quality such that it would pass without objection in the trade and would be fit for the ordinary purposes for which it is to be used.

52. Plaintiff and the other Class members each contracted with Defendant, through its dealer-agents and its related entities to purchase Infiniti vehicles, and the purchase price paid by Plaintiff and the Class members constituted substantial consideration for the vehicles.

53. Defendant breached the implied warranty of merchantability because the Infiniti vehicles purchased by Plaintiff and the other Class members were not fit for the ordinary purposes for which they were to be used. The Infiniti vehicles purchased by Plaintiff and the

Class and Subclass members contained a latent paint defect that existed at the time the vehicles left the hands of Defendant, and the vehicles would not pass inspection as conforming goods within the trade because at the time of sale they had defective paint that would fade in color, peel, and delaminate, and result in rust and corrosion, during the lifetime of the vehicle.

54. Defendant knew of the defect at the time of sale. Defendant's cars were unfit for driving, and given the substantial and material alterations to the vehicles' appearance and significant risk of corrosion and damage to the body of the vehicle, such vehicles were materially different and inferior than the vehicles consumers believed they had purchased.

55. Defendant's breach of warranty deprived Plaintiff and the Class and Subclass members the benefit of their bargain with Defendant, as the quality, durability and appearance of the vehicles' paint, along with the vehicles' ability to withstand rust and corrosion, were material to their purchasing decisions.

56. Plaintiff specifically informed Defendant about its breach of the implied warranty prior to the filing of this action, and Defendant had a reasonable amount of time to cure its breach. Defendant has still not cured the breach even after the filing of similar lawsuits in other jurisdictions, and even after the filing of the initial Complaint in this action. Defendant failed to effectively remedy the breach as to Plaintiff and, despite being aware of the defective paint and being informed of the defect by numerous other Class and Subclass members, Defendant has failed to provide any reasonable remedy. Under these circumstances, any requirement for other Class or Subclass members to provide Defendant any further reasonable opportunity to cure its breach of the implied warranty should be deemed satisfied and fully excused.

57. Under 15 U.S.C. § 2310(e), notice of breach of warranty need not be provided until after Plaintiff has been appointed Class Representative.

58. As a proximate and foreseeable result of Defendant's breach of warranty, Plaintiff and the Class and Subclass members have and/or will sustain damages and loss. These damages include, *inter alia*: the decrease in resale value of their vehicles resulting from the paint defect, including color fading, peeling/delamination, and increased rust and corrosion; expectation damages as a result of Plaintiff and the Class and Subclass members having been denied the benefit of the bargain they agreed to with Defendant; and any further monetary or other damages that Plaintiff and the Class and Subclass members have incurred and/or will incur in order to effectively remedy their vehicles' paint-related problems.

59. The amount in controversy of Plaintiff's individual claims meets or exceeds \$25 in value, and the total sum or value of all claims to be determined in this class action meets or exceeds \$50,000 (not including interest and costs).

60. Given the latent nature of the paint defect and Defendant's concealment of the defect, any limitations period that would otherwise bar the claims of Plaintiff or the other Class or Subclass members should be tolled. Additionally, Plaintiff and the Class and Subclass members continue to suffer a violation of their legally protected interests each day that Defendant fails to remedy the defect and make them whole.

**COUNT II: Breach of Implied Warranty of Merchantability**

61. Paragraphs 1–60 of the Complaint are expressly incorporated as if fully re-written and re-alleged herein.

62. Plaintiff and the other Class and Subclass members each contracted with Defendant, through its dealer-agents and its related entities, to purchase Infiniti vehicles, and the purchase price paid by Plaintiff and the Class and Subclass members constituted substantial consideration for the vehicles.

63. The Infiniti vehicles purchased by Plaintiff and the Class and Subclass members contained a latent paint defect that existed at the time the vehicles left the hands of Defendant.

64. Defendant breached the implied warranty of merchantability that was provided by Defendant to each vehicle owner, as the Infiniti vehicles purchased by Plaintiff and the other Class and Subclass members were not fit for the ordinary purposes for which they were to be used. The purchased vehicles were objectively unreasonable and would not pass inspection as conforming goods within the trade, because at the time of sale they had defective paint that has and/or will fade in color, peel, and delaminate, and will cause rust and corrosion, during the lifetime of the vehicle.

65. The paint defect in the Infiniti vehicles is the direct and proximate cause of the damages and losses incurred, and/or to be incurred, by Plaintiff and the other Class and Subclass members in an amount to be determined at trial. These damages include, *inter alia*: the decrease in resale value of the vehicles resulting from the paint defect, including color fading, peeling/delamination, and increased rust and corrosion; expectation damages as a result of Plaintiff and the Class and Subclass members being denied the benefit of the bargain they agreed to with Defendant; and any further monetary or other damages that Plaintiff and the Class and Subclass members have incurred and/or will incur in order to effectively remedy their vehicles' paint-related problems.

66. Given the latent nature of the paint defect and Defendant's concealment of the defect, any limitations period that would otherwise bar the claims of Plaintiff or the other Class or Subclass members should be tolled. Additionally, Plaintiff and the Class and Subclass members continue to suffer a violation of their legally protected interests each day that Defendant fails to remedy the defect and make them whole.

### **COUNT III: Negligence**

67. Paragraphs 1–66 of the Complaint are expressly incorporated as if fully re-written and re-alleged herein.

68. Defendant owed Plaintiff and the other Class and Subclass members a duty to design and manufacture its vehicles in such a way as to ensure that they would not contain defects – such as the extreme paint defects discussed herein – and a duty to take precautions against allowing the distribution of these defective vehicles to thousands of consumers.

69. Defendant and/or its agents negligently designed, manufactured, tested, and/or applied the defective paint on its Infiniti vehicles.

70. The negligent design, manufacturing, testing and/or application of the paint caused the color to material fade and the paint to materially peel.

71. As a direct and proximate result of Defendant's negligence, Plaintiff and the other Class and Subclass members have sustained and/or will sustain damages.

### **COUNT IV: Fraudulent Concealment**

72. Paragraphs 1–71 of the Complaint are expressly incorporated as if fully re-written and re-alleged herein.

73. Defendant intentionally misrepresented, concealed and/or omitted material facts from Plaintiff and the Class and Subclass members about the defect in the paint on its Infiniti vehicles.

74. Defendant intended to induce Plaintiff and the Class and Subclass members to purchase its Infiniti vehicles and to purchase them at a higher price than Plaintiff and the Class and Subclass members would have paid had the defect been disclosed, and Defendant continues to misrepresent, conceal and/or omit material facts in an effort to avoid being responsible for

remediating the paint defects. When confronted by consumers with complaints regarding the premature failure of the paint, Defendant developed and implemented a concerted plan to respond with denial, refusing to appropriately fix any of the vehicles.

75. Due to Defendant's superior knowledge of the paint defects – given that it and/or its agents designed, manufactured, tested, and applied the paint to the vehicles; manufactured, distributed and/or supplied the vehicles to consumers; and became aware of a significant number of consumer complaints over an extended period of time – it had a duty to disclose to Plaintiff and the Class and Subclass members information regarding the paint defects, and its failure or refusal to disclose the paint defects constituted affirmative misrepresentations and/or intentional omissions by Defendant.

76. Plaintiff and the Class and Subclass members were unaware of the paint defects when they purchased the vehicles, and they relied on statements by Defendant and its dealer-agents that included these material misrepresentations and/or omissions when they purchased these defective Infiniti vehicles. Plaintiff and the members of the Class and Subclass relied on the omitted facts to their detriment and would not have acted as they did had they known the omitted facts relating to the paint.

77. Defendant's material misrepresentations and omissions regarding the paint used on its Infiniti vehicles concerned information that reasonable consumers would deem important when making a decision about whether to purchase a vehicle, particularly an expensive luxury Infiniti vehicle.

78. As a direct and proximate result of Defendant's wrongful conduct and practices, Plaintiff and the Class and Subclass members have suffered and/or will suffer damages.

79. Defendant's wrongful acts alleged herein were intentional and malicious, and

were taken with the intent to mislead and defraud. As such, Plaintiff and the Class and Subclass members are entitled to punitive and exemplary damages.

#### **COUNT V: Unjust Enrichment**

80. Paragraphs 1–45 and 67 to 79 of the Complaint are expressly incorporated as if fully re-written and re-alleged herein.

81. Plaintiff brings this unjust enrichment claim in the alternative, to the extent the Court finds that there was no express or implied warranties or contracts between Plaintiff and/or the Class and Subclass members, on the one hand, and Defendant, on the other hand.

82. Defendant knew of the paint defect in its Infiniti vehicles at the time the vehicles were distributed to Infiniti dealerships and at the time the vehicles were sold to Plaintiff and the other Class and Subclass members.

83. Despite having knowledge of the defect, Defendant failed to disclose the existence of the defect to Plaintiff and the other Class and Subclass members at or prior to the time of the sale of the vehicles and has failed to conduct any product recall or otherwise notify purchasers or potential purchasers of the defect.

84. As a result of its failure or refusal to disclose the existence of the paint defect, as set forth above, Defendant was able to, and did, charge a higher price for its Infiniti vehicles than what the vehicles' true value should have been, such that Defendant obtained monies that rightfully belong to Plaintiff and the other Class and Subclass members. Defendant has received a measurable benefit as a result of its wrongful practices.

85. Defendant accepted and retained non-gratuitous benefits conferred by Plaintiff and the other Class and Subclass members, who, without knowledge of the defect, paid a higher price for their Infiniti vehicles than their actual lower value. Plaintiff and other Class and

Subclass members did not confer these benefits officiously or gratuitously, and it would be inequitable and unjust for Defendant to retain these wrongfully-obtained profits.

86. Plaintiff and other Class and Subclass members are therefore entitled to restitution in an amount to be determined at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, respectfully requests that this Court enter a judgment against Defendant for the following relief:

1. An order certifying the Class and/or Subclass as defined above;
2. A declaration that Defendant breached its implied warranties, both through Magnuson-Moss and through common law, to Plaintiff and the Class and/or Subclass members;
3. Notification to all Class and/or Subclass members about the inaccurate and deceptive description of the defective Infinity vehicles and the defective paint attributed to them;
4. An award to Plaintiff and the Class and/or Subclass of actual, compensatory, and punitive damages, as proven at trial;
5. An order awarding Plaintiffs and the Class and/or Subclass members restitution, disgorgement, or such other equitable relief as the Court deems proper
6. An award to Plaintiff and the Class and/or Subclass of reasonable attorneys' fees, costs, and pre- and post-judgment interest;
7. An injunction barring Defendant from continuing to distribute, supply, market, and sell its defective Infiniti vehicles as fit for their ordinary purposes until Defendant has remedied the defects complained of; and
8. An award to Plaintiff and the Class and/or Subclass of such other and further relief as may be determined to be just, equitable and proper by this Court.

**JURY DEMAND**

Plaintiff hereby demands trial by jury on all issues so triable in this action.

Dated: November 15, 2017

Respectfully submitted,

MICHELLE NELSON, individually and on behalf of a class of similarly situated individuals

/s/ Edwin E. Wallis III .  
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Our File No. 17-219CN

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of this filing has been served on all opposing parties via the Court's ECF notification service.

/s/ Edwin E. Wallis III .