

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

MICHELLE NELSON, individually and)	
on behalf of all others similarly situated,)	
)	
<i>Plaintiff,</i>)	No. 3:17-cv-01114
)	
v.)	
)	Hon. Eli Richardson
NISSAN NORTH AMERICA, INC.,)	
a California corporation,)	
)	
<i>Defendant.</i>)	

**ORDER GRANTING FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND FINAL JUDGMENT**

WHEREAS, on August 16, 2019 this Court entered an Order Preliminarily Approving Class Action Settlement Agreement, Conditionally Certifying Settlement Class, and Directing Notice of Proposed Class Settlement, preliminarily approving the proposed Settlement pursuant to the terms of the Settlement Agreement and directing that notice be given to the members of the Settlement Class;

WHEREAS, pursuant to the Parties’ plan for providing notice to the Settlement Class (the “Notice Plan”), the Settlement Class was notified of the terms of the proposed Settlement and of a Final Approval Hearing to determine, *inter alia*, whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release and dismissal of the claims against Defendant in the Underlying Actions; and

WHEREAS, a Final Approval Hearing was held on December 19, 2019;

WHEREAS, prior to the Final Approval Hearing, proof of completion of the Notice Plan was filed with the Court, along with declarations of compliance. Settlement Class Members were

therefore notified of the terms of the proposed Settlement and their right to appear at the hearing in support of or in opposition to the proposed Settlement;

NOW, THEREFORE, the Court, having heard the oral presentations made at the Final Approval Hearing; having reviewed all of the submissions presented with respect to the proposed Settlement; having determined that the Settlement is fair, adequate, and reasonable; and having reviewed the materials in connection therewith,

IT IS HEREBY ORDERED:

1. The capitalized terms in this Order and Judgment shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

2. The Court has jurisdiction over the subject matter of the Underlying Actions, all claims raised therein, and all Parties thereto, including the members of the Settlement Class.

3. The Court finds, solely for the purposes of considering this Settlement, that the requirements of Federal Rule of Civil Procedure 23 are satisfied, including requirements for the existence of numerosity, commonality, typicality, adequacy of representation, manageability of the Settlement Class for settlement purposes, that common issues of law and fact predominate over individual issues, and that settlement and certification of the Settlement Class are superior to alternative means of adjudicating the claims and disputes at issue in the Underlying Actions.

4. For purposes of the Settlement and this Final Approval Order, the Settlement Class is:

All persons in the United States and its territories including Puerto Rico who purchased any White-painted Nissan Rogue produced between January 11, 2013 and April 23, 2013, and/or any White-painted Infiniti QX56 produced between November 20, 2009 and December 12, 2012.

Excluded from the Settlement Class are NNA; any entity that is a subsidiary of or is controlled by NNA; anyone employed by Class Counsel; any judge to whom the Underlying Actions are assigned, his or her spouse, and members of the judge's staff.

5. The Settlement Class, which will be bound by this Final Approval Order, shall include all members of the Settlement Class who did not submit a timely and valid request for exclusion. No Settlement Class members requested exclusion.

6. Plaintiffs Michelle Nelson and John Anglin shall serve as Class Representatives of the Settlement Class.

7. The Court appoints the following counsel as Class Counsel for purposes of this settlement:

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The Court finds that the Plaintiffs and Class Counsel have and will fairly and adequately represent and protect the interests of the absent members of the Settlement Class in accordance with Federal Rule of Civil Procedure 23.

8. The Court finds that the Notice Plan set forth in Section 4 of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of the Underlying Actions, certification of the Settlement Class for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law. The Court further finds that Defendant has fully and timely met the requirements for notice to appropriate federal and state officials under 28 U.S.C. § 1715, and that this Order is issued 90 or more days after the service of such notice.

9. Consistent with the Court's findings at the December 19, 2019 hearing, the Settlement, as set forth in the Settlement Agreement and this Order is in all respects fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account the risks that both sides faced with respect to the merits of the claims alleged and remedies requested, the risks of maintaining a class action, and the expense and duration of further litigation, pursuant to Fed. R. Civ. P. 23(e), and therefore the Settlement is approved. The Court has reviewed and considered the objections of Ryan Farrar, Dianne Machado, Gerald Fitzgerald, Gerard Francis, and

Elizabeth Forsbrand, as well as the Class Representatives' submissions in support of final approval ("Motion for Final Approval," Dkts. 87, 88) and presentation of oral argument by Class Counsel and counsel for Defendant. The Court hereby overrules such objections on their merits for the reasons stated at the December 19, 2019 hearing, including that while the objectors seek to increase the benefits provided by the Settlement, none of the objectors has demonstrated that the benefits under the Settlement are not fair, reasonable, and adequate under the circumstances and in light of the substantial risks and costs posed by continued litigation. Accordingly, the Parties shall effectuate the Settlement Agreement according to its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

10. Upon the Effective Date, the claims against Defendant, by operation of this Final Approval Order, shall be fully, finally, and forever released, relinquished, and discharged pursuant to Section 8 of the Settlement Agreement. All members of the Settlement Class who have not validly excluded themselves from the Settlement hereby fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties as described in Paragraph 8.2 of the Settlement Agreement. All members of the Settlement Class who have not validly excluded themselves from the Settlement are hereby enjoined, pursuant to the All Writs Act, 28 U.S.C. § 1651, and the Anti-Injunction Act, 28 U.S.C. § 2283, and as described in Paragraph 7.2.7 of the Settlement Agreement, from prosecuting any claims released under the Settlement.

11. This Final Approval Order, the Settlement Agreement, the Settlement which it reflects, and any and all acts, statements, documents or proceedings relating to the Settlement are not, and shall not be construed as or used as an admission by or against NNA of any fault, wrongdoing, or liability on its part, or of the validity of any claim in the Underlying Actions or of the existence or amount of damages.

12. The claims of the Plaintiff Class Representatives and all members of the Settlement Class in this case are hereby dismissed in their entirety with prejudice. Except as otherwise provided in this Order and/or in this Court's Order Awarding Attorneys' Fees and Expenses in this case, entered in response to Class Counsel's motion therefor brought in connection with the Settlement, the parties shall bear their own costs and attorneys' fees. The Court reserves jurisdiction over the implementation of the Settlement, including enforcement and administration of the Settlement Agreement, including any releases in connection therewith and any other matters related or ancillary to the foregoing.

13. Having reviewed the unopposed Motion for Approval of Attorneys' Fees, Expenses, and Incentive Awards ("Motion for Attorneys' Fees," Dkts. 84, 85), the Court approves payment of attorneys' fees, costs and expenses to Class Counsel in the amount of \$1,780,000. This amount shall be paid by Defendant in accordance with the terms of the Settlement Agreement. The Court, having considered the materials submitted by Class Counsel in support of their Motion for Final Approval and Motion for Attorneys' Fees, and the fact that no objections have been made with respect to the attorneys' fees, costs and expenses sought by Class Counsel, finds the award of attorneys' fees, costs and expenses appropriate and reasonable for the following reasons: first, the Court finds that the Settlement provides substantial and extraordinary benefits to the Settlement Class. Second, the Court finds the payment fair and reasonable in light of the substantial work

performed by Class Counsel. Third, the Court concludes that the Settlement was negotiated at arms-length without collusion and with the assistance of an experienced third-party mediator, and that the negotiation of attorneys' fees only followed agreement on the settlement benefit for the Settlement Class Members. Finally, the Court notes that the Class Notice specifically and clearly advised the Settlement Class that Class Counsel would seek an award up to the amount sought.

14. The Court approves incentive awards of \$10,000 for each of the Class Representatives, Michelle Nelson and John Anglin, and specifically finds such amounts to be reasonable in light of the services performed by the Class Representatives for the Settlement Class, including taking on the risks of litigation and helping achieve the benefits being made available to the Settlement Class. These amounts shall be paid by Defendant in accordance with the terms of the Settlement Agreement.

15. The Court finds that no reason exists for delay in entering this Final Approval Order. Accordingly, the Clerk is hereby directed forthwith to enter this Final Approval Order.

16. The Parties, without further approval from the Court, are hereby permitted to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with the Final Approval Order and do not limit the rights of the Settlement Class Members.

17. Notwithstanding provisions 1.31 and 1.35 of the Parties' Settlement Agreement, the Repaint Claim Period and Reimbursement Period shall commence on January 10, 2020.

18. Without affecting the finality of this Final Approval Order for purposes of appeal, the Court retains jurisdiction as to all matters related to the administration, consummation,

enforcement, and interpretation of the Settlement Agreement and this Final Approval Order, and for any other necessary purpose.

IT IS SO ORDERED.

Dated: December 19, 2019

A handwritten signature in black ink that reads "Eli Richardson". The signature is written in a cursive style with a horizontal line underneath the name.

Hon. Eli Richardson
U.S. District Court Judge