

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. _____ - CIV

TRACY SANBORN
on behalf of herself and all others similarly
situated,

Plaintiff,

v.

NISSAN NORTH AMERICA INC.,
NISSAN MOTOR COMPANY, LTD.,

Defendants.

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

NATURE OF THE CASE

1. Plaintiff brings this proposed class action on behalf of herself and other Florida owners of Nissan Altima and Infiniti vehicles. Nissan sold the vehicles without first telling consumers that Nissan had opted to install dashboards in the vehicles that do not withstand exposure to sunlight and that melt, emit a noxious chemical smell, and take on a reflective quality. When the dashboards become reflective, drivers trying to see through the windshield have to struggle to see past the image of the dashboard in the windshield. When the sun or another bright light catches the dashboard at the right angle, the glare off of a melted dashboard can significantly obstruct the driver's view, thus endangering everyone on the road.

2. As a result of the defect, there have been at least two reported accidents; while many other drivers have told Nissan and the National Highway Traffic Safety Administration that they feel unsafe driving their vehicles. Because the replacement of the dashboard can cost several thousand dollars, however, and because Nissan refuses to cover the full cost of repairs, many drivers are not in a

position to replace the dashboard when they learn of the problem. Additionally, Nissan has provided no assurances that replacement dashboards will not suffer from the same problems.

3. Nissan's conduct violates Florida's Deceptive and Unfair Trade Practices Act. On behalf of herself and the proposed class, Plaintiff seeks to compel Nissan to warn drivers about the known defect and to bear the expense of replacing dashboards that should never have been placed in the stream of commerce in the first place.

PARTIES

4. Plaintiff Tracy Sanborn is a citizen and resident of Pembroke Pines, located in the County of Broward, Florida.

5. Defendant Nissan North America, Inc. has its headquarters and principal place of business in Franklin, Tennessee. Nissan North America, Inc. is the U.S. subsidiary of Nissan Motor Company, Ltd., which is a company that has its headquarters in Japan. Nissan North America, Inc. and Nissan Motor Company, Ltd. shall collectively be known as "Nissan" or "Defendant."

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). There are at least 100 members in the proposed plaintiff class, the aggregated claims of the individual Class members exceed the sum or value of \$5,000,000, exclusive of interests and costs, and this is a class action in which Nissan and class members are citizens of different states.

7. This Court may exercise jurisdiction over Nissan because Nissan is registered to conduct business in Florida; has sufficient minimum contacts in Florida; and intentionally avails itself of the markets within Florida through the promotion, sale, marketing, and distribution of its vehicles, thus rendering the exercise of jurisdiction by this Court proper and necessary. Moreover, Nissan's wrongful conduct (as described below) foreseeably affects consumers in Florida.

8. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

SUBSTANTIVE ALLEGATIONS

9. Nissan North American, Inc. manufactures, markets, distributes, and warrants automobiles in the United States, including Nissan Altima and Infiniti cars. Infiniti is the luxury

division of Nissan. This lawsuit concerns 2007-2009 Nissan Altima, 2003-2008 FX35 Infiniti, 2003-2008 FX45 Infiniti, 2006-2008 G35 Infiniti, 2006-2008 M35 Infiniti, and 2008-2009 G37 Infiniti vehicles.

The Altima and Infiniti Dashboard Defect

10. 2007-2009 Nissan Altima, 2003-2008 FX35 Infiniti, 2003-2008 FX45 Infiniti, 2006-2008 G35 Infiniti, 2006-2008 M35 Infiniti, and 2008-2009 G37 Infiniti vehicles (the “Class Vehicles”) have defective dashboards that melt and crack when exposed to sunlight.

11. When the dashboards melt they produce a noxious chemical smell and ooze a chemical compound that is sticky to the touch. The dashboards also melts, deforms, cracks, and tears, as can be seen below. The degradation causes the dashboards in Class Vehicles to become reflective, resulting in unpredictable glare being cast onto the windshield and into the drivers’ eyes. This makes it difficult and sometimes impossible to see and safely operate the vehicle, putting drivers, passengers, and others on the road at risk. Even when a driver’s vision is obstructed for just a moment, the driver cannot see and respond to hazards, such as children running in front of the vehicle or pedestrians trying to cross the road.

12. In addition, the Class Vehicles are equipped with a passenger side airbag that deploys through precisely designed perforations in the dashboard. The parts affecting airbag release are designed with great attention to detail, with the recognition that in an accident it is essential that they deploy as designed. Thus, the spacing and size of the perforations designed to facilitate the properly timed and located airbag release are subject to precise specifications. As the dashboards in Class Vehicles degrade, however, they commonly become visibly misshapen, raising the likelihood that in the event of a collision, the airbag will not release as designed.

13. Owners of 2007-2009 Altimas have posted pictures on Nissan's Facebook page showing the severity of the glare from their melting dashboards. For example, Cindi posted the following pictures of the glare from her melting Nissan Altima dashboard on Nissan's Facebook page on April 3, 2014¹:



¹ <https://www.facebook.com/nissanusa/posts/10152938385130375#> ; These pictures were also reproduced in a news story at: <http://www.wptv.com/web/wptv/money/consumer/the-center-for-auto-safety-thinks-melting-dashboards-are-a-safety-defect-and-should-be-recalled?searchType=ALL&compId=517381720>



14. As seen in this picture, Cindi showed Nissan how much her view was obstructed by the glare from her melting dashboard. The first picture shows how the glare makes it very difficult to see a pedestrian just a few feet from the vehicle.

15. On May 28, 2014, Art posted a picture on Nissan's Facebook wall showing the glare on his windshield from his melted Nissan Altima dashboard²:



² <https://www.facebook.com/nissanusa/posts/10152938385130375#>

16. As this was posted on Nissan's Facebook page, which the company routinely monitors, Nissan has had the opportunity to get a firsthand look at how the defect affects drivers. As the photograph above shows, the shiny surface of Art's melting dashboard created a reflection on the windshield of his car that makes it very hard to see when driving.

17. At least two drivers have reported getting into accidents because of the glare from Nissan's melting dashboards.

18. A driver of a 2008 Altima reported on April 16, 2014 that he got in an accident on September 1, 2012. The driver stated in his NHTSA complaint:

On February 2013 I had a frontal car accident due to the glare on my windshield of my melting dashboard on my 08 Altima. My dashboard seems to be melting without no reason. Dealer will not replace defective dashboard as it is not part of a recall. This is a serious issue which may cause a serious accident [or even] death to a motorist or pedestrian. Nissan needs to make a recall on this issue. It is obvious that this was a defect on their behalf for the majority of 08 Altimas.³

19. One driver reported in his NHTSA complaint that the glare from his melting dashboard caused him to veer off the road and crash into an embankment on February 17, 2014. He stated in his NHTSA complaint:

The dashboard on my 2008 Nissan Altima coupe has melted (possible plasticizer migration) and it has become very difficult to drive because of the glare it produces on the windshield, this lead to me to veer off the road and into the embankment. The Nissan dealer told us that they have seen a lot of dashes on the Altima with this problem in Florida, but there is nothing they can do because it is out of the initial factory warranty and they claim the Nissan extended warranty does not cover it. Several Florida residents who own 2008 Altima coupes are experiencing the same problem. This appear to be a manufacturers defect and has really become a serious safety hazard. I respectfully request you're help in this matter. I can provide pictures if necessary. Below are a few forums addressing the situation [HTTP://FORUMS.NICOCLUB.COM/MY-DASHBOARD-IS-MELTING-T569582.HTML](http://forums.nicoclub.com/my-dashboard-is-melting-t569582.html)
[HTTP://WWW.ALTIMAFORUMS.NET/SUPER-STICKY-DASHBOARD-T15553.HTML](http://www.altimaforums.net/super-sticky-dashboard-t15553.html)?T=15553 [HTTP://WWW.NISSANCLUB.COM/FORUMS/2007-2012-](http://www.nissanclub.com/forums/2007-2012-)

³ NHTSA ID Number: 10583012.

NISSAN-ALTIMA-DISCUSSION-2-5-3-5/343066-MELTING-DASHBOARD-PROBLEM.HTML

HTTP://WWW.CARCOMPLAINTS.COM/NISSAN/ALTIMA/2008/ACCESSORIES-INTERIOR/DASHBOARD_IS_MELTING.SHTML

HTTP://WWW.ABOUTAUTOMOBILE.COM/COMPLAINT/2008/NISSAN/ALTIMA/WINDOW HTTP://MYTHREECENTS.COM/SHOWREVIEW.CGI?ID=109390. *TR (date of incident: 2/17/14, date of complaint: 2/20/14).⁴

20. Below are further examples of complaints lodged with NHTSA reflecting drivers' safety concerns:

- 2008 Altima: Beginning in 2012 (less than 4 years after purchasing my car), I started to notice that portions of the dashboard were melting. In the years since, it has gotten progressively worse. My mechanic told me he's never seen anything like it, even in much, much older cars. From what I can tell, many others are experiencing this same problem. This is not a cosmetic issue, but rather a serious safety concern. The melting dashboard is shiny and reflect sunlight, causing sudden blinding glares while driving. I have experienced these sudden flashes of light several times on the highway. The reality of being unable to see while at speed exceeding 60 miles is incredibly scary and dangerous. (date of incident: 8/1/12, date of complaint: 4/20/14).⁵
- 2009 Altima: My 2009 Nissan Altima Coupe'[s] Dabs is melting. A car dealership told me when the dashboard is melting the airbag on the passenger side will not deploy correctly in a crash. I also can not see out of the front windshield because the shiny sticky mess throws a blinding glare while driving. Nissan will not help me. This is a problem with the product used for the dashboard. (date of incident: 11/1/13, date of complaint: 5/2/14)⁶
- 2007 Altima: My Nissan Altima, the dashboard is starting to crack and melt. The local news channel in my area did investigation on this problem. Looks like I'm not the only one having this problem. They advise to file a complaint, and the local dealership only solution is to have the whole dashboard replaced. (date of incident:5/1/13, date of complaint: 6/13/14).⁷

⁴ NHTSA ID Number: 10565148.

⁵ NHTSA ID Number: 10583727.

⁶ NHTSA ID Number: 10586129.

⁷ NHTSA ID Number: 10598251.

- 2008 Altima: The dashboard on my Nissan Altima is melting. The material has become very shiny and sticky creating a horrible glare on my windshield and I cannot see while I am driving. It is very dangerous and I was told by Nissan the melting material is emitting fumes. The windshield also has a constant film on it from the melting material, which combined with the glare is hazardous. (date of incident: 12/16/13, date of complaint: 8/13/14)⁸
- 2009 Altima: My dashboard is sticky and appears to be melting away. This shiny surface causes an awful glared reflection on the windshield. Also, it causes the car to appear old and everything sticks to it including papers and insects. It's pretty gross! (date of incident: 1/1/13, date of complaint: 4/8/14).⁹
- 2008 Altima: Affected are of vehicle: Dashboard This is a safety hazard! The vehicle was purchased on 7/14/2012. At the time of purchase, it had approximately 36889 miles. Purchased as a previously owned vehicle. About one month after, we noticed that the top of the dashboard by the windshield material started to melt. The material, is a like a foam that gets hot, sticky and starts to melt. It can start a fire any minute. We took the vehicle to the Nissan dealership, located at Semoran Blvd in Orlando, FL, the same place we bought the car two months before. The staff at the dealership proceeded to inform me that, after several visit, that they never seen something like that and they couldn't do anything because the warranty expired. We took the vehicle to a Nissan authorized shop. The technician informed us for that for the Nissan model for that year 2008 the material used was not the standard one. We are reaching out to Nissan to remedy this problem immediately. This is not only an issue that needs to be cover by the manufacturer and present a safety hazard to my family and the community in general. If we don't hear from Nissan in 10 days we are going to go to BBB and the government. (date of incident: 9/17/12, date of complaint: 12/26/12).¹⁰
- 2008 Altima: I noticed about 6 months ago, that there was a shiny, sticky substance on my dashboard and it has been getting worse as the months go by. It has gotten to a point that it is dangerous for me to drive my car because of the glare that it produces off my windshield. I can't even put something over the dash, cause it will stick and tear the dash board apart, if it moves. This is not only a hazard to myself, but to anyone else in my car and to other drivers. I pointed it out to a representative at Nissan dealership months ago and he said he didn't know what was causing it, he couldn't help me. I feel

⁸ NHTSA ID Number: 10622045.

⁹ NHTSA ID Number: 10578396.

¹⁰ NHTSA ID Number: 10490156.

it's a defective type material and I'm sure its also not a healthy breathing environment for me. (date of incident: 9/1/13, date of complaint: 3/14/14).¹¹

- 2008 Infiniti G35: Dashboard is sticky and melting causing glare on windshield (date of incident: 10/17/13 date of complaint: 10/07/14).¹²
- 2006 Infiniti M35: The dashboard in my vehicle is melting. There is a glare that blind me and the dash above the steering wheel melts so bad and gets so hot it burns my fingers while driving. I try to avoid touching it but forget sometimes. I shouldn't have to avoid getting burned while driving. (date of incident: 8/13/14 date of complaint: 8/13/14).¹³
- 2008 Infiniti M35: Dashboard is shiny, sticky & gummy in number of areas. The vehicle is one owner (owned by a retired person), has always been garage kept & does not sit outside in the elements. It has been meticulously maintained & the dash has never had any substances (i.e. protectants) applied. The local Infiniti dealer's service department inspected the dash & stated that the material was breaking down & the dash needs to be replaced. A case was initiated with Infiniti USA that resulted in the manufacturer declining to accept any responsibility due to the vehicle no longer being within the original warranty period. The repair has not yet been completed due to the high cost involved. (date of incident: 3/15/14, date of complaint: 9/16/14).¹⁴
- 2007 Infiniti G35: Top of dashboard melting and creating a glare (date of incident: 7/10/13, date of complaint: 9/2/14).¹⁵
- 2008 Infiniti G37: My dashboard is melted. Obvious defect of the manufacturer...It's sticky and shiny which makes it hard to see and pay attention while I'm driving. I saw that other people have the same problem from my local news station and decided to fill

¹¹ NHTSA ID Number: 10569275.

¹² NHTSA ID Number: 10643103.

¹³ NHTSA ID Number: 10622060.

¹⁴ NHTSA ID Number: 10633643.

¹⁵ NHTSA ID Number: 10630188.

this out. *JS (ellipses in original) (date of incident: 11/20/13, date of complaint: 4/30/14).¹⁶

NISSAN'S KNOWLEDGE OF THE DEFECT AND THE DANGERS POSED

21. Nissan knew or should have known when it sold the Class Vehicles that the dashboards would not hold up to exposure to sunlight and that the result would be an unsafe condition for drivers.

22. Nissan has known for decades that dashboard reflections can impair drivers' vision and can make it harder to see pedestrians and objects on the road. For instance, a paper published in 1996 by researchers for the University of Michigan Transportation Research Institute found that when a dashboard casts a reflection in the windshield it can impair the drivers' vision. *See* Schumann, Josef, Daytime Veiling and Driver Visual Performance: Influence of Windshield Rake Angle and Dashboard Reflectance, *The University of Michigan Transportation Research Institute* (1996).

23. Likewise, product defects that obstruct the vision of drivers pose a severe safety hazard, and there have been many recalls related to obstructions of the driver's vision. For instance, there were several recalls in 1998 for defective windshield wipers in Nissan 200sx cars because when windshield wipers cannot clean the glass of the windshield, a driver's vision can be obstructed.¹⁷ Other automotive manufacturers, such as Ford, have had recalls because of bubbles that form on the windshield in higher temperatures, which could obstruct drivers' vision.¹⁸ Similarly to these prior recalls, the Class Vehicles' melting dashboards pose a severe safety hazard to drivers because they can obstruct a driver's vision.

24. Nissan became aware in at least 2006 that drivers were complaining that the dashboards in Infiniti FX 35 and FX 45 Infiniti vehicles were melting and degrading. Nissan was ultimately persuaded to extend the warranty for those vehicles, covering dashboard degradation for up to 8 years in 2003-2008 FX 35 and FX45 vehicles. Many Florida owners of 2003-2008 FX35 and FX45 Infiniti

¹⁶ NHTSA ID Number: 10585806.

¹⁷ http://www.automd.com/recall/nissan_m/200sx_mm/

¹⁸ <http://www.nccconsumer.org/news-articles/ford-recalls-e-series-vehicles-with-windshield-defect.html>

vehicles, however, were still denied a repair of their dashboards because their vehicles were out of the 8 year extended warranty when their dashboards started to melt and deteriorate. Nissan also did not compensate the Florida owners of 2003-2008 FX35 and FX45 Infiniti vehicles for the loss in resale value to their vehicles from the known problem with Infiniti's melting dashboards. Nissan also never disclosed to drivers that their melting dashboards were a safety hazard and maintained that the issue was merely cosmetic.

25. Despite Nissan's knowledge in at least 2006 that its Infiniti dashboards melted and degraded with exposure to sunlight, Nissan continued to install dashboards that melt when exposed to sunlight. Furthermore, Nissan never extended its warranty to drivers of vehicles with melting dashboards in Nissan 2007-2009 Nissan Altima, 2006-2008 G35 Infiniti, 2006-2008 M35 Infiniti, and 2008-2009 G37 Infiniti vehicles.

26. Given the composition of the dashboards in Class Vehicles, Nissan knew or should have known that the dashboards would melt and crack with exposure to sunlight. Nissan nonetheless decided to sell Class Vehicles without altering the dashboards, putting Nissan drivers, passengers, and others on the road at risk. Nissan did not tell customers or dealers that the dashboards would melt and crack with exposure to sunlight. Nissan thus had exclusive and superior knowledge of the dashboard defect and actively concealed the defect and corresponding danger from consumers who had no way to reasonably discover the problem before buying and driving their vehicles.

27. Had consumers been aware of the dashboard defect in their vehicles, they would not have purchased their vehicles or would have paid far less money for them. As Nissan knows, a reasonable person would consider the dashboard defect important and would not purchase or lease a vehicle with a potentially defective dashboard or would pay substantially less for the vehicle.

28. Although there have been numerous complaints about the dashboards through the NHTSA website (which Nissan monitors), posted on Nissan's Facebook page, and made directly to Nissan customer service, Nissan continues to deny the existence of a safety defect. Additionally, the

defect was discussed in a Florida ABC-affiliate news segment, which showed pictures of the glare that drivers experience from their melting dashboards.¹⁹ In response to the news report about the dashboard defect, Nissan stated: “We have become aware of a few isolated consumer complaints about the dashboard appearance in their vehicle.”

Nissan’s Refusal to Repair the Defective Dashboards

29. Despite the large amount of evidence and number of warnings that Nissan has had about the safety risk that melting dashboards pose, Nissan has refused to notify its customers of the dashboard safety defect or to cover the full costs of repairs for the Class Vehicles. The total for parts and labor to replace a dashboard is around \$2,000, depending on where the part is replaced. Just the cost of the labor may total nearly \$1,000, depending on the location of the Nissan dealership.

30. Many customers have made complaints to NHTSA about Nissan’s failure to pay for the full cost to replace defective dashboards:

- 2009 Altima: I purchased a 2008 Nissan Altima Brand New in 2007, and currently the dashboard is melting. I recently visited my local Nissan dealership as I was told to do so by Nissan Consumer Affairs for a diagnostics. There the dealership also agreed the dashboard is peeling and melting. I was quoted a total cost of \$1860 for parts and labor. I then contacted Nissan Consumer Affairs regarding the matter and they created a case # and said they would get back with me on the issue. A week later they contacted me to say that they will pay for the parts but not the labor because my vehicle is no longer under warranty. I cannot possibly understand why I should be penalized or have to pay for any of this when it is completely not my fault. This is the first have ever seen of a melting dashboard and I’ve had two cars prior to his one, one being a 1995 and there were no issues of a melting dashboard. This melting dashboard is also hazardous for me, the child I am carrying and my two year old son, as it does affect my view while driving when its sunny out, which is pretty much all the time where I live, there is a really bad glare of the dashboard on my windshield. Unfortunately, this car is my only means of

¹⁹ <http://www.wptv.com/money/consumer/sticky-shiny-safety-issue-drivers-complain-of-sun-glare-from-melting-dashboards>

transportation and buying another car is out of the question for me financially. (date of incident: 7/11/14 date of complaint: 7/18/14).²⁰

- 2008 Altima: My 2008 Altima Coupe Dashboard is melting. It started with a small spot on the dash, I thought it was [moisture] from the air conditioner. A few days later the spot was getting larger. I felt it and it felt like sticky clear glue. Now it's getting larger almost all the way across the dash. I took it to the Nissan dealership and the guy said he ha[s] never seen anything like this. He told me the only thing he can do is order another one for me and that's over \$2,000.00. I feel that I should not have to pay for another dashboard, when it's a defect from the manufacturer and it needs to be a recall on this product. (date of incident: 6/2/13, date of complaint: 7/26/14).²¹
- 2008 Altima: The dashboard has been melting and getting gooey and sticky for months. This causes a distracting sparkling reflection on the windshield during certain days when it is very sunny and the sun shines directly at windshield. The defect was reported to Nissan (dealership in Fort Lauderdale, Florida, and the corporate office) but the company does not want to pay for repairing it because the warranty has expired, despite numerous similar complaints by other owners of the same model and the safety issue. (date of incident: 5/15/14, date of complaint: 6/9/13).²²
- 2008 Altima: Sometime in December 2013 I noticed the dashboard of my Nissan Altima 2008 melting causing a shiny substance [that] causes a tremendous glare on the windshield which makes it difficult to see when driving. This should not be happening...obviously defective materials by Nissan. I have researched and on one complaint forum alone found 196 pages of the same complaint and the same year and model . . . I filed a complaint directly with Nissan on 2-17-14 I was told that I needed to get a diagnoses from a Nissan dealer so I did ... Nissan clearly stated that the dashboard needed to be replaced ... well on 2-21-14 a Nissan rep named [xxx] out of Tennessee called me back and said that Nissan will not pay for the replacement of the dashboard... I can supply you with photos of my issues and a list of 100's of others with the same complaint. I appreciate your assistance with this matter. (redactions and ellipses by NHTSA) (date of incident: 12/13/13, date of complaint: 2/23/14).²³

²⁰ NHTSA ID Number: 10614598.

²¹ NHTSA ID Number: 10616446.

²² NHTSA ID Number: 10596975.

²³ NHTSA ID Number: 10565528

31. Nissan's refusal to pay for the complete cost of dashboard repairs has caused great hardship to Nissan owners. Many drivers cannot afford to spend up to \$2,000 to replace their dashboards and are forced to continue to drive unsafe cars, risking getting into an accident. Nissan owners also have difficulty selling their vehicles because of their melted dashboards. Nissan owners who are able to sell their cars with melted dashboards are forced to sell their vehicles at a steep discount due to the dashboard defect.

PLAINTIFF'S EXPERIENCE

Tracy Sanborn

32. Tracy Sanborn purchased a 2009 Nissan Altima with her sister from Nissan AutoNation in Pembroke Pines, Florida in approximately January 2011. In January or February of 2014, the dashboard in her car began to melt. She tried to cover the dashboard up, but whenever she would try to cover up the dashboard, the material would stick to the dashboard and cause tears. The melting dashboard on Ms. Sanborn's car causes a harsh glare on her windshield that obscures her vision. The glare from the dashboard presents a safety hazard whenever she drives the car and the sun is shining.

33. Ms. Sanborn took her car into a Nissan dealer and received an estimate for the replacement of her melting dashboard on approximately August 18, 2014. She was told by a specialist from Nissan that they will only cover 50% of the cost for her replacement dashboard because her car is no longer covered under warranty. The Nissan dealership told her that she only had 30 days to get her dashboard replaced using their 50% reimbursement policy. Nissan later told Ms. Sanborn that they would pay \$800 of the cost of replacing her dashboard, but Nissan refused to pay the rest of the cost. The specialists at Nissan told her that there was nothing else they could do for her.

34. Ms. Sanborn is scared to drive her car around during the day because her melting dashboard causes a glare on her windshield when the sun is shining. The dashboard has released noxious fumes since it began melting, and she is concerned about the potential affect any fumes from the melting dashboard could have on her and her family while they are in the car.

CLASS ACTION ALLEGATIONS

35. Plaintiff seeks to represent the class set forth below, within which "Class Vehicle" is defined to include all 2007-2009 Nissan Altima, 2003-2008 FX35 Infiniti, 2003-2008 FX45 Infiniti,

2006-2008 G35 Infiniti, 2006-2008 M35 Infiniti, and 2008-2009 G37 Infiniti vehicles.

Plaintiff Sanborn proposes to represent:

All persons who purchased or leased a Class Vehicle in Florida.

36. Excluded from the proposed class is Nissan; any affiliate, parent, or subsidiary of Nissan; any entity in which Nissan has a controlling interest; any officer, director, or employee of Nissan; any successor or assign of Nissan; anyone employed by counsel for Plaintiff in this action; any judge to whom this case is assigned, his or her spouse, and all persons within the third degree of relationship to either of them, as well as the spouses of such persons; and anyone who purchased a Class Vehicle for the purpose of resale.

37. This action has been brought and may properly be maintained on behalf of the class proposed above under the criteria of Federal Rule of Civil Procedure Rule 23.

38. Numerosity. Nissan sold hundreds of thousands of Class Vehicles, including a substantial number in Florida. Members of the proposed class likely number in the tens or hundreds of thousands and are thus too numerous to practically join in a single action. Class members may be notified of the pendency of this action by mail, supplemented by published notice (if deemed necessary or appropriate by the Court).

39. Existence and predominance of common questions. Common questions of law and fact exist as to all members of the proposed class and predominate over questions affecting only individual class members. These common questions include whether:

- a. Class Vehicles were factory equipped with defective dashboards;
- b. Nissan knew or should have known about the dashboard defect and, if so, when Nissan discovered the defect;
- c. The existence of the dashboard defect would be important to a reasonable person, for example, because they pose an unreasonable safety risk;
- d. Nissan disclosed the dashboard defect to potential customers;
- e. Nissan dealerships have failed to provide free dashboard repairs for Class Vehicles.

40. Typicality. Plaintiff's claims are typical of the claims of the proposed class. Plaintiff and the class members she proposes to represent purchased a Class Vehicle that contains the same defective dashboard, giving rise to substantially the same state and federal claims.

41. Adequacy. Plaintiff is an adequate representative of the proposed class because her interests do not conflict with the interests of the members of the class she seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. The interests of members of the class will be fairly and adequately protected by Plaintiff and her counsel.

42. Superiority. The class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Nissan economically feasible. Even if class members themselves could afford such individualized litigation, the court system could not. In addition to the burden and expense of managing many actions arising from the Nissan defect, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

43. In the alternative, the proposed class may be certified because:
- a. the prosecution of separate actions by the individual members of the proposed class would create a risk of inconsistent or varying adjudication with respect to individual class members which would establish incompatible standards of conduct for Nissan;
 - b. the prosecution of separate actions by individual class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
 - c. Nissan has acted or refused to act on grounds generally applicable to the proposed

class, thereby making appropriate final and injunctive relief with respect to the members of the proposed class as a whole.

FIRST CAUSE OF ACTION

**By Plaintiff Tracy Sanborn on Behalf of a Florida Class
Violation of the Florida Deceptive and Unfair Trade Practices Act,
Fla. Stat. § 501.201, *et seq.***

44. Plaintiff Sanborn, on behalf of herself and the proposed class, hereby re-alleges the paragraphs above.

45. The purpose of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.*, is to “protect the consuming public...from those who engage in unfair methods of competition, or unconscionable, deceptive or unfair acts or practice in the conduct of any trade or commerce.” Fla. Stat. § 501.202(2).

46. Plaintiff Sanborn and class members are “consumers” within the meaning of Fla. Stat. §501.203(7).

47. At all relevant times, Nissan was engaged in trade or commerce within the meaning of Fla. Stat. §501.203(8).

48. Nissan has violated Florida’s Deceptive and Unfair Trade Practices Act by failing to disclose, at the point of sale or otherwise, that the dashboard in Class Vehicles is defective and poses a safety hazard. This conduct offends public policy and is unethical, unscrupulous, and substantially injurious to consumers.

49. As a direct and proximate result of Nissan’s conduct, Plaintiff Sanborn and other members of the class have been harmed in that they purchased Class Vehicles they otherwise would not have, paid more for Class Vehicles than they otherwise would, paid for dashboard diagnoses, repairs, and replacements, and/or rental cars, and are left with Class Vehicles of diminished value and utility because of the defect. Meanwhile, Nissan has sold more Class Vehicles than it otherwise could have and charged inflated prices for Class Vehicles, unjustly enriching itself thereby.

50. Pursuant to Fla. Stat. §501.211, Plaintiff Sanborn and the Florida class seek damages, a declaratory judgment, and an order requiring Nissan to adequately disclose and repair the dashboard defect.

SECOND CAUSE OF ACTION
By Plaintiff Tracy Sanborn on Behalf of a Florida Class
Unjust Enrichment

51. Plaintiff Sanborn, on behalf of herself and the proposed class, hereby re-alleges the paragraphs above.

52. Plaintiff brings this claim individually and on behalf of the Class.

53. Plaintiff and Class members have conferred non-gratuitous benefits on Defendant by purchasing and leasing Class Vehicles, reasonably expecting to receive a vehicle that was free of defects.

54. Defendants have knowledge of and have accepted and retained the benefits conferred.

55. The Class Vehicles purchased and used by Plaintiffs and Class members contained defective dashboards, and Plaintiffs and Class members would not have paid money for their vehicles, or would have paid substantially less for their vehicles had they been aware that their vehicles had defective dashboards. Under the circumstances, it would be inequitable for Defendant to retain the benefit conferred without compensating Plaintiff and Class members.

56. Plaintiff requests that this Court enter judgment in their favor for disgorgement and restitution of the benefits conferred on Defendant, including wrongful profits and revenues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. For an order certifying the proposed class and appointing Plaintiff and her counsel to represent the class;
- b. For an order awarding Plaintiff and the members of the class actual damages or any other form of damages provided by and pursuant to the statute cited above;
- c. For an order awarding Plaintiff and the members of the class restitution, disgorgement or other equitable relief as the Court deems proper;

