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FILED
12 SEP 24 PM 3:53
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

Case No. **CV12-08238DDP (PJWx)**

HUMBERTO DANIEL KLEE and
DAVID WALLAK individually, and
on behalf of a class of similarly
situated individuals,

Plaintiffs,

v.

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

Defendants.

CLASS ACTION COMPLAINT FOR:

- (1) Violations of California Consumer Legal Remedies Act
- (2) Violations of Unfair Business Practices Act
- (3) Breach of Implied Warranty pursuant to Song-Beverly Consumer Warranty Act
- (4) Negligent Misrepresentation
- (5) Violation of the Arizona Consumer Fraud Act

**Jury Trial Demanded As to All Claims
So Triable**

INTRODUCTION

1
2 1. The Nissan Leaf is an electric car designed and manufactured by
3 Nissan Motor Company, Ltd. (“Nissan Japan”) and marketed, distributed, sold,
4 warranted and serviced by Nissan North America, Inc. (“NNA” or “Nissan
5 U.S.A.”) (collectively, “Nissan” or “Defendants”). As further alleged below,
6 Defendants made materially misleading representations and omissions regarding
7 the Leaf’s battery capacity and driving range. Defendants also failed to disclose
8 and/or intentionally omitted to reveal a uniform design defect in the Leaf’s
9 battery system that causes all Nissan Leaf Class Vehicles to prematurely lose
10 battery life and driving range.

11 2. To remedy Defendants’ misconduct, Plaintiff HUMBERTO
12 DANIEL KLEE brings this action for injunctive relief, pursuant to California’s
13 consumer protection statutes, on behalf of himself and all current owners or
14 lessees in California of 2011-2012 Nissan Leaf vehicles (collectively, “Class
15 Vehicles”). Plaintiff KLEE seeks an order, *inter alia*, (1) enjoining Nissan from
16 using misleading information in connection with selling the Leaf; (2) compelling
17 Nissan to issue corrective disclosures to Leaf owners and lessees; (3) compelling
18 Nissan to remove and replace Plaintiffs and Class Members’ battery systems
19 with a suitable alternative product; (4) compelling Nissan to provide class
20 members with a new battery for the Leaf that does not contain the defects alleged
21 herein; and/or (5) compelling Nissan to reform its Leaf battery warranty, in a
22 manner deemed to be appropriate by the Court, to cover the loss of battery
23 capacity under warranty as alleged herein and to notify all class members that
24 such warranty has been reformed.

25 3. Plaintiff DAVID WALLAK brings this action for damages, pursuant
26 to Arizona law, on behalf of himself and all current and former owners or lessees
27 in Arizona of 2011-2012 Nissan Leaf vehicles.

28 4. The Nissan Leaf is an electric vehicle propelled by an electric motor

1 and powered by a rechargeable lithium ion (“Li-ion”) battery pack. Instead of
2 adding gasoline or diesel fuel to a gas tank, Nissan Leaf owners charge their
3 vehicles at charging stations or using at-home chargers.

4 5. Whereas owners of typical gasoline vehicles can expect a range of
5 around 300 miles per tank, Nissan advertises the Leaf’s range at 100 miles or
6 less, depending on “a number of variables, including road conditions and the
7 weather.”

8 6. Nissan’s advertised driving range was a material, and perhaps the
9 most important, factor for Plaintiffs and Class Members who purchased a Nissan
10 Leaf. Consumers who use their Nissan Leaf for daily commutes must, as a
11 practical matter, charge their vehicles on a daily basis, a process that can take
12 approximately seven (7) hours for a full charge. Any reduction in vehicle range
13 can have a substantial impact on the vehicle’s viability as a practical mode of
14 transportation.

15 7. As further alleged herein, Nissan’s representations regarding the
16 Leaf’s driving range were misleading. Unbeknownst to purchasers, the
17 advertised driving range is based on the vehicle’s performance only after fully
18 charging the battery to 100% capacity. In fact, however, charging the battery to
19 100% causes battery damage, and Nissan expressly recommends that owners *not*
20 charge their vehicles to 100% in order to maximize battery life and that the
21 battery be charged to only 80% capacity.

22 8. Before purchase or lease, Nissan failed to disclose its own
23 recommendation that owners avoid charging the battery beyond 80% in order to
24 mitigate battery damage and failed to disclose that Nissan’s estimated 100 mile
25 range was based on a full charge battery, which is contrary to Nissan’s own
26 recommendation for battery charging. Consumers thus were misled by Nissan’s
27 representations regarding driving range without being aware that these ranges
28 were only achievable by charging the battery in a manner contrary to Nissan’s

1 own guidance.

2 9. Second, Nissan failed to disclose and/or intentionally omitted to
3 reveal a design defect in the Leaf's battery system (the "thermal management
4 defect") which is causing all Class Vehicles to suffer widespread, severe and
5 premature loss of driving range, battery capacity and battery life.

6 10. Other electric vehicles equipped with lithium ion batteries in North
7 America, including the Chevrolet Volt, the Toyota RAV4 EV, and the Ford
8 Focus Electric, are equipped with active thermal management systems. These
9 systems circulate cooling fluid throughout the battery array, actively cooling the
10 batteries.

11 11. Nissan, however, opted not to include an active thermal
12 management system in the Leaf. The lack of an adequate active cooling system
13 is a design defect that fails to adequately cool the batteries, causing the batteries
14 to suffer heat-related damage and causing premature battery capacity loss, well
15 in excess of Nissan's own guidelines.

16 12. While Nissan's owner's manual provides that the Leaf may lose
17 20% of battery capacity over *five (5) years* of operation, in fact, class members'
18 vehicles, especially those vehicles exposed to warm climates, are losing over
19 27.5% battery capacity within the first *one (1) to two (2) years of operation*.
20 This battery capacity loss results in a reduction in the vehicle's driving range.

21 13. As described below, Nissan was well aware of the active thermal
22 management defect and failed to disclose it. Moreover, Nissan exacerbated its
23 wrongful conduct, by expressly *excluding* loss of battery capacity under its
24 8 year/100, 000 mile battery warranty, even though it knew of the thermal
25 management defect and propensity of the battery to lose capacity in excess of the
26 amounts disclosed.

27 14. To remedy the wrongful conduct alleged herein as to the California
28 Class, as defined below, Plaintiff KLEE seeks injunctive relief as provided by

1 California's consumer protection statutes. Any damages or monetary relief that
2 might be awarded with respect to the California Class is incidental to the
3 injunctive relief sought.

4 15. To remedy the wrongful conduct alleged herein as to the Arizona
5 Class, Plaintiff WALLAK seeks damages pursuant to Arizona law.

6 **PARTIES**

7 16. Plaintiff HUMBERTO DANIEL KLEE is a California citizen who
8 resides in Pomona, California. In June 2011, Plaintiff leased a new 2011 Nissan
9 Leaf from Nissan dealer Empire Nissan, in Ontario, California.

10 17. Mr. Klee leased his vehicle primarily for his personal, family, or
11 household use. Nissan manufactured, sold, distributed, advertised, marketed,
12 and warranted the vehicle.

13 18. In July 2012, only thirteen (13) months into his lease, Mr. Klee's
14 battery capacity level gauge lost one bar on the vehicle's internal Battery
15 Capacity Level gauge. In September 2012, Plaintiff lost a second bar from his
16 battery capacity level gauge. A loss of two battery capacity level gauge bars
17 represents a capacity reduction of at least 21.5%.

18 19. Mr. Klee has also noticed a substantial drop in driving range since
19 the beginning of the lease.

20 20. Were Mr. Klee aware of the misrepresentations and omissions
21 described herein, he would not have leased his vehicle as further alleged herein.

22 21. At all times, Mr. Klee, like all Class Members, drove his vehicle in a
23 foreseeable manner and in the manner in which it was intended to be used.

24 22. Plaintiff DAVID WALLAK is an Arizona citizen who resides in
25 Phoenix, Arizona. In July 2012, Mr. Wallak purchased a used 2011 Nissan Leaf
26 in Tolleson, Arizona with 7,063 miles on the odometer. Mr. Wallak purchased
27 his vehicle primarily for his personal, family, or household use. Nissan
28 manufactured, sold, distributed, advertised, marketed, and warranted the vehicle.

1 23. At the time of purchase, Mr. Wallak's vehicle had 11 out of 12
2 capacity bars remaining on his battery capacity level gauge.

3 24. Within two (2) weeks of purchase, two (2) bars disappeared from
4 Mr. Wallak's battery capacity level gauge, bringing his vehicle's loss of capacity
5 level bars to three (3) total. A loss of three bars represents a battery capacity
6 reduction of at least 27.5%.

7 25. Were Mr. Wallak aware of the misrepresentations and omissions
8 described herein, he would not have purchased his vehicle as further alleged
9 herein.

10 26. At all times, Mr. Wallak, like all Class Members, drove his vehicle
11 in a foreseeable manner and in the manner in which it was intended to be used.

12 27. Defendants Nissan North America, Inc. and Nissan Motor Company
13 Ltd., are automobile design, manufacturing, distribution, and/or servicing
14 corporations doing business in all 50 states. Defendants design, manufacture,
15 distribute, market, service, repair, sell and lease passenger vehicles, including the
16 Class Vehicles, nationwide.

17 28. Defendant, Nissan Motor Company, Ltd., is an automobile design,
18 manufacturing, sale, leasing, distribution, and servicing corporation organized
19 under the laws of Japan. Nissan Motor Company, Ltd. is the parent and owns
20 100% of Nissan North America Inc.

21 29. Defendant, Nissan North America Inc., is a corporation organized
22 and in existence under the laws of the State of California and registered with the
23 California Department of Corporations to conduct business in California.
24 NNA's Corporate Headquarters were located at Gardena, California until on or
25 about 2007 when NNA moved its Corporate Headquarters to Franklin,
26 Tennessee. Nissan North America, Inc. is the distributor and warrantor of the
27 Class Vehicles in the United States.

28 30. At all relevant times, Defendants were engaged in the business of

1 designing, manufacturing, constructing, assembling, marketing, distributing, and
2 selling automobiles and other motor vehicles and motor vehicle components in
3 Los Angeles County and throughout the United States of America.

4 **JURISDICTION**

5 31. This is a class action.

6 32. Some members of the Proposed Class are citizens of states different
7 from the home state of Defendants.

8 33. On information and belief, the value of Class Members' aggregate
9 claims exceeds \$5,000,000.00, exclusive of interest and costs.

10 34. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

11 **VENUE**

12 35. Nissan, through its business of distributing, selling, and leasing the
13 Class Vehicles, has established sufficient contacts in this district such that
14 personal jurisdiction is appropriate. Defendants are deemed to reside in this
15 district pursuant to 28 U.S.C. § 1391(a).

16 36. In addition, a substantial part of the events or omissions giving rise
17 to these claims and a substantial part of the property that is the subject of this
18 action are in this district. In addition, Plaintiff's Declaration, as required under
19 California Civil Code section 1780(d) but not pursuant to *Erie* and federal
20 procedural rules, which reflects that a substantial part of the events or omissions
21 giving rise to the claims alleged herein occurred, or a substantial part of property
22 that is the subject of this action, is situated in Los Angeles County, California, is
23 attached as Exhibit 1.

24 37. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

25 **FACTUAL ALLEGATIONS**

26 **Battery Capacity Loss**

27 38. Nissan designed, manufactured, distributed, sold, and leased the
28 Class Vehicles. Nissan sold thousands of Class Vehicles in California and

1 Nationwide, directly or indirectly, through dealers and other retail outlets.

2 39. In 2010, Nissan brought the Class Vehicles to the market and
3 repeatedly and consistently advertised an “up to 100 mile” driving range for the
4 Nissan Leaf.

5 40. Nissan’s advertised driving range is based on the vehicle’s
6 performance after fully charging the battery to 100% capacity. However, Nissan
7 misrepresented and failed to disclose to Class Members prior to purchase that
8 Nissan’s estimated 100-mile range is based on a *full* charge; that Nissan itself
9 recommended that vehicle owners *not* charge their batteries to 100%; that
10 owners should charge their Leaf vehicles to only 80% battery capacity to prevent
11 damage to the battery and maximize the battery’s longevity and maintain its
12 capacity; and that charging to 100% capacity can cause battery damage. As
13 Nissan’s own Leaf owner’s manual admits: “To extend the life span of the Li-
14 ion battery, use long life mode by selecting [80% Charge (Improves Battery
15 Longevity)].”

16 41. Further, Nissan knew and failed to disclose that the Leaf suffers
17 from a defect in the Leaf’s battery system that causes all of the vehicles to lose
18 battery capacity materially in excess of Nissan’s described range.

19 42. Lithium ion batteries experience a reduction in the amount of
20 electricity or charge they can hold over time. This battery capacity loss results in
21 a reduction in the vehicle’s driving range. In the Nissan Leaf owner’s manual,
22 Nissan explicitly estimates that the Leaf may lose 20% of battery capacity over
23 five (5) years of operation. Nissan recently informed consumers on Facebook,
24 “If a LEAF is treated as outlined in the Owner’s Manual, you can expect 80
25 percent of the battery capacity after 5 years.”¹

26
27 ¹ Nissan Facebook Page (August 29, 2012), [http://www.facebook.com/nissanleaf/posts/142423552561869?comment_id=282400&offset=0&total_com](http://www.facebook.com/nissanleaf/posts/142423552561869?comment_id=282400&offset=0&total_comments=29)
28 [ments=29](http://www.facebook.com/nissanleaf/posts/142423552561869?comment_id=282400&offset=0&total_comments=29)

1 43. Similarly, Mark Perry, Nissan's Director of Product Planning, stated
2 in a 2010 interview, "We don't need thermal management for the U.S., but we
3 are looking at the technology for Dubai and other locations like that.... **We've**
4 **gone on the record saying that the pack has a 70 to 80 percent capacity after**
5 **10 years.**"²

6 44. However, in practice, class members especially those whose
7 vehicles are exposed to warm climates, are finding their battery capacity reduced
8 by 27.5% or more within the first *one (1) to two (2) years of operation*.

9 45. Contrary to Nissan's public representations, many Class Members'
10 vehicles have already reached Nissan's five (5) to ten (10) year capacity loss
11 projections *after less than two (2) years of operation*. As detailed below, scores
12 of consumers online have already reported losses of one (1) to three (3) bars on
13 the vehicle's internal Battery Capacity Level gauge, representing battery
14 capacity losses of 15% to 27.5% or more.³ These losses of capacity are due to
15 the thermal management defect.

16 46. Other electric vehicles equipped with lithium ion batteries in North
17 America, including the Chevrolet Volt, the Toyota RAV4 EV, and the Ford
18 Focus Electric, are equipped with active thermal management systems. These
19 systems circulate cooling fluid throughout the battery array, actively cooling the
20 batteries. Nissan, however, opted not to include an active thermal management
21 system in the Leaf. The lack of an adequate active cooling system is a design
22 defect that fails to adequately cool the batteries, causing the batteries to suffer
23 heat-related damage and causing premature battery capacity loss in excess of
24 Nissan's representations.

25
26 ² Domenik Yoney, *Is the Nissan Leaf battery pack Underengineered?*
27 (August 31, 2012) <http://green.autoblog.com/2010/01/25/is-the-nissan-leaf-battery-pack-under-engineered/>

28 ³ My Nissan Wiki, *Compendium of battery losses* (August 28, 2012).
<http://www.mynissanleaf.com/>

1 47. Managing battery temperature is critical to maintaining capacity in
2 lithium ion batteries. In an article posted on Nissan's website in February 2012,
3 Nissan admits that "The biggest cause of a battery's lifespan being shortened is
4 overheating."⁴

5 48. Plaintiffs and Class Members, particularly those residing in warmer
6 climates, are experiencing precipitous drops in battery capacity well in excess of
7 Nissan's stated estimates for rates of decline, due to the thermal management
8 defect.

9 49. As Nissan Leaf owners experience losses of battery capacity, they
10 also experience proportionate losses of driving range. Further, when Class
11 Members complain to Nissan's authorized dealers about the problem, they are
12 instructed to avoid charging their batteries beyond 80% of current capacity to
13 avoid further damage. Thus, Plaintiffs' and Class Members' driving ranges are
14 dropping due to both the loss of battery capacity *as well as* Nissan's prescribed
15 limitation on charging their batteries beyond 80% of current capacity.

16 50. In February 2012, in an apparent attempt to address concerns about
17 the thermal management defect, Nissan posted an article on its website stating:

18 **"A battery that can control its heating temperature**
19 **without a cooling mechanism is also longer lasting,**
20 since the biggest cause of a battery's lifespan being
21 shortened is overheating. (Nissan Technology
22 Magazine, *017 Why did Nissan Develop an EV Battery?*
23 (August 28, 2012), [http://www.nissan-
24 global.com/EN/TECHNOLOGY/MAGAZINE/ev_batte-
25 ry.html](http://www.nissan-global.com/EN/TECHNOLOGY/MAGAZINE/ev_battery.html)) (emphasis added).

26 51. In 2010, Wired magazine reported that, according to Nissan product
27 planner Paul Hawson, Nissan decided to omit an active thermal management
28 system in order to save room in the car's interior:

 Asked why Nissan chose not to use active thermal

⁴ Nissan Technology Magazine, *017 Why did Nissan Develop an EV Battery?* (August 28, 2012), http://www.nissan-global.com/EN/TECHNOLOGY/MAGAZINE/ev_battery.html.

1 management, Hawson explained the engineers
2 experimented with it but found it required a central
3 tunnel on top of the pack. That would intrude on cabin
4 space, splitting the rear bench into two seats with a
5 hump in the middle. Nissan, he said, decided to use
6 only passive cooling to preserve passenger space.
7 (Darryl Siry, *In Race to Market, Nissan's Electric Car*
8 *Takes Shortcuts* (August 31, 2012),
9 <http://www.wired.com/autopia/2010/01/nissan-leaf-2/>))

6 52. Plaintiffs are informed and believe and based thereon allege that
7 Defendants knew or should have known that the Class Vehicles are defective and
8 not fit for their intended purpose of providing consumers with safe and reliable
9 transportation. Nevertheless, Defendants have actively concealed and failed to
10 disclose this defect from Plaintiffs and the Class Members at the time of
11 purchase or lease and thereafter.

12 53. Since 2010, if not before, Nissan knew that the Class Vehicles and
13 their battery systems were defectively designed. Rather than alerting Class
14 Members and offering to repair the Class Vehicles, Nissan has concealed this
15 problem from its customers at the time of purchase or lease and thereafter.

16 54. Defendants knew of and concealed the thermal management defect
17 that is present in every Class Vehicle, along with the attendant lack of warranty
18 coverage and associated repair costs, from Plaintiffs and Class Members, at the
19 time of sale, lease, and repair and thereafter. The existence of the thermal
20 management defect is a fact that a reasonable consumer would consider material
21 when deciding whether to purchase or lease an electric vehicle with an
22 advertised range of 100 miles per charge or less.

23 55. Reasonable consumers, like Plaintiffs, expect and assume that an
24 electric vehicle will achieve range advertised by its manufacturer, will function
25 in a manner that will not pose a safety hazard, and is free from defects. Plaintiffs
26 and Class Members further expect and assume that Nissan will not sell or lease
27 vehicles with known defects, such as the thermal management defect, and will
28 disclose any such defects to its consumers when it learns of them. They do not

1 expect Nissan to fail to disclose the thermal management defect to them or to
2 continually deny the defect.

3 56. As a result of their reliance on Defendant's omissions and/or
4 misrepresentations, owners and/or lessees of the Class Vehicles suffered an
5 ascertainable loss of money, property, and/or value of their Class Vehicles.

6 57. As a result of the thermal management defect, Plaintiffs and the
7 Class Members were harmed and suffered actual damages. Had Plaintiffs and
8 other Class Members known of the thermal management defect, they would not
9 have purchased or leased the Class Vehicles or would have paid less for them.
10 Further, Plaintiffs and the Class Members were harmed in that the Class Vehicles
11 suffer unexpected battery deterioration damage and resultant premature loss of
12 battery and diminution in value.

13 **Nissan's Knowledge of the Thermal Management Defect**

14 58. Dating back to 2010, if not before, Nissan was aware of the thermal
15 management defect. Nissan, however, failed and refused to disclose this known
16 defect to consumers. As a result of this failure, Plaintiffs and Class Members
17 have been damaged.

18 59. For example, in 2009, before the Leaf was released, Elon Musk,
19 CEO of Tesla Motors, described the Leaf's thermal management system as
20 "primitive," due to its failure to actively cool the batteries. Musk predicted that
21 due to Nissan's failure to include an active thermal management system in the
22 Leaf, its battery would experience temperatures "all over the place," causing it to
23 suffer "huge degradation" in cold environments and to basically "shut off" in hot
24 environments.

25 60. Nissan also has a long history of studying lithium ion electric
26 batteries and is thus well versed in their chemical properties, limits, and
27 tolerances. According to a 2012 Nissan PowerPoint presentation entitled "EV /
28 HEV Safety," Nissan has been studying batteries for electric vehicles since 1992:

1 “We started Lithium battery research in 1992,
2 beginning with a cobalt type battery in a cylindrical cell
3 package. In the late 90’s, we started developing a
4 [Manganese]-type cell and in the early 2000’s
developed a laminated cell. This led to the current cell
configuration.”

5 61. In 2010, battery expert Menahem Anderman was quoted in an
6 Automotive Engineering Online article expressing skepticism over the Leaf
7 battery and the thermal management defect herein alleged:

8 Without proper cooling technology, “a pouch cell
9 design with a manganese chemistry will perform very
10 poorly” in hot climates, said Anderman of the Leaf
11 battery. “Can you expect 10 years from the battery?
12 Definitely not in Phoenix, I’m pretty sure not in L.A.,
and I’m not sure about San Francisco and Atlanta.”
(Patrick Ponticel, *Battery guru a skeptic about Leaf,
Volt batteries* (August 29, 2012),
<http://www.sae.org/mags/aei/8299>).

13 62. Nissan was contacted by Automotive Engineering online in 2010 to
14 respond to the expert’s concerns, and was thus aware of the thermal management
15 defect:

16 Contacted by AEI for comment, Nissan North America
17 Manager of Technology Communications Colin Price
18 stated: “We are confident [the cells] will dissipate heat
well and anticipate the battery pack will have 70 to
19 80% of capacity left after 10 years of automotive use.”
(*Id.*)

20 63. In addition, complaints filed by consumers with the NHTSA and
21 posted on the Internet demonstrate indicate Defendants’ awareness of the defect
22 and that problems with the thermal management system are widespread.

23 64. Many purchasers and lessees of the Class Vehicles have experienced
24 problems with premature battery capacity loss. The following are some
25 complaints relating to thermal management system failure (spelling and grammar
26 mistakes remain as found in the original) (Safecar.gov, *Search for Complaints*
27 (August 28, 2012), <http://www-odi.nhtsa.dot.gov/complaints/>):
28

NHTSA Complaints:

- 1
- 2 a. [2011 NISSAN LEAF] LOST FIRST BATTERY CAPACITY
- 3 BAR AFTER ONE YEAR OF OWNERSHIP. THIS RESULTS
- 4 IN A 15% LOSS IN CAPACITY. DIFFICULTIES ARE
- 5 OCCURRING TO ACHIEVE DRIVING DISTANCES AND
- 6 HABITS FROM THE PREVIOUS YEAR. VEHICLE WILL
- 7 SOON NO LONGER FUNCTION AS AN FORM OF
- 8 TRANSPORTATION IF RANGE CONTINUES TO DIMINISH.
- 9 THE CAPACITY LOSS SEEMS TO BE A DEFECT IN THE
- 10 BATTERY AND IS UNACCEPTABLE TO LOOSE A LARGE
- 11 AMOUNT IN A SHORT TIME FRAME. *TR
- 12
- 13 b. 2011 NISSAN LEAF ELECTRIC VEHICLE. PURCHASED ON
- 14 8/6/2011, LOST A BATTERY CAPACITY BAR ON
- 15 06/21/2012 - 10 MONTHS, 15 DAYS AFTER PURCHASE.
- 16 THIS IS A 15% LOSS OF BATTERY CAPACITY. NISSAN
- 17 ADVERTISES AN EXPECTED 80% CAPACITY
- 18 REMAINING AFTER 5 YEARS. I TOOK THE CAR TO THE
- 19 DEALER THE NEXT DAY FOR INSPECTION AND WAS
- 20 TOLD MY BATTERY IS "NORMAL," AND SO IS THE LOST
- 21 CAPACITY. I DISAGREE AND BELIEVE THE BATTERIES
- 22 NISSAN IS USING IN THIS CAR ARE UNFIT FOR THE
- 23 HIGH TEMPERATURES IN MY LOCAL AREA OF
- 24 PHOENIX, AZ. *TR
- 25
- 26 c. [2011 NISSAN LEAF] BATTERY CAPACITY HAS
- 27 DECREASED OVER 15%, IN JUST 7200 MILES. PLEASE
- 28 INVESTIGATE DEFECT IN NISSAN LEAF BATTERY.
- PLEASE HAVE NISSAN INSTITUTE RECALL FOR DEFECTIVE BATTERIES IN 2011/2012 NISSAN LEAF VEHICLES. *TR
- d. [2011 NISSAN LEAF] THE NISSAN LEAF IS A 100% BATTERY OPERATED VEHICLE. THERE IS A BUILT-IN BATTERY CAPACITY INDICATOR THAT IS DISPLAYED AS 12 INDICATOR BARS. EACH BAR REPRESENTS A % OF THE BATTERIES CAPACITY TO HOLD A CHARGE. NISSAN CLAIMS THAT GRADUAL CAPACITY LOSS IS NORMAL AND THAT DRIVER SHOULD EXPECT TO HAVE 80% OF THEIR CAPACITY LEFT AFTER 5 YEARS AND 70% AFTER 10. I LOST MY FIRST BAR AT THE BEGINNING OF APRIL, SECOND BAR FIRST WEEK OF JUNE, AND THIRD BAR FIRST WEEK OF JULY. NISSAN HAS NOT DEFINED WHAT THESE BARS MEAN, HOWEVER, I DO NOT BELIEVE THAT THE LOSS OF THREE BARS IN 4 MONTHS AFTER OWNING THE CAR FOR A YEAR IS GRADUAL. I HAVE SENT MY CAR TO 2

1 DIFFERENT NISSAN DEALERSHIPS AND EVEN LET
2 NISSAN NORTH AMERICA TAKE MY CAR FOR 16 DAYS
3 FOR TESTING. SO FAR, NISSAN HAS TOLD ME THAT
4 EVERYTHING IS NORMAL. I BELIEVE THAT HAVING A
5 100% BATTERY OPERATED VEHICLE MARKETED TO A
6 MASS CUSTOMER BASE AND BEING DRIVEN ON OUR
7 STREETS AND HIGHWAYS SHOULD HAVE A
8 DEPENDABLE BATTERY. *TR

9 e. [2011 NISSAN LEAF] THE PROBLEM IS THE BATTERY,
10 WE WERE TOLD BY NISSAN THAT THERE WOULD BE
11 A SLOW LOSS OF CAPACITY AND UP TO 20% LOSS AT 5
12 YEARS. THIS IS ONLY IN HOT CLIMATES LIKE
13 ARIZONA, TX AND CA. THE CAR SHOULD HAVE HAD A
14 BATTERY COOLING SYSTEM. *TR NOW AFTER PAY
15 \$40,000 FOR THE CAR IN THE FIRST YEAR MY DRIVING
16 RANGE IS DOWN SO MUCH IN MY SECOND YEAR THE
17 CAR WILL BE WORTHLESS TO DRIVE OR SELL. *TR

18 f. [2011 NISSAN LEAF] MY NISSAN LEAF HAS
19 EXPERIENCED A 1 CAPACITY BAR LOSS FOR IT'S
20 LITHIUM-ION BATTERY, REDUCING THE AMOUNT OF
21 AVAILABLE MILES TO DRIVE. I BELIEVE THAT THIS IS
22 PREMATURE AND THAT THIS IS IN RELATION TO
23 LIVING IN A HOT WEATHER CLIMATE AREA (SUMMER
24 MONTHS). NISSAN HAS BEEN INFORMED BY ME OF
25 THIS CONDITION. THIS IS NOT THE ONLY INSTANCE, IF
26 POSSIBLE, PLEASE SEE ATTACHED SITE:
27 [HTTP://MYNISSANLEAF.COM/WIKI/INDEX.PHP?TITLE=R
EAL_WORLD_BATTERY_CAPACITY_LOSS](http://myNissanLeaf.com/wiki/index.php?title=R
28 EAL_WORLD_BATTERY_CAPACITY_LOSS). *TR

Internet Postings:

g. I live in Phoenix, I lost my First bar at the beginning of April,
Second bar first week of June, and Third bar First week of July. I
still love my Leaf, but it will not get me to work 1-way in the
next few weeks (45 miles). 2 different dealerships have told me
this is normal Update! I got my car back today from
Nissan's 2 week testing in Casa Grande. My Nissan Dealership
was not able to tell me much about what was done to my car, but
I still have 3 Battery Capacity Bars missing and the Leaf's
Mileage Guess-O-Meter is still reading on 48 mile estimated
range on 100% charge with climate control on. I don't know
when, or even if I will ever find out what was done to my car, or
if Nissan has or is planning a fix. I was hoping to have better
information from Nissan for this update, but alas, this is what I
was given, or should I say not given. (Nissan Leaf Facebook
Page, *Nissan North America on the Balancing Act* (August 29,

2012), <http://www.facebook.com/nissanleaf/posts/142423552561869>)

- h. I lost my third capacity bar on my LEAF a few days ago and thought this might be interesting information to add to your list. I lost the first bar at 3500 miles after just 3.5 month (End of June to Beginning of October - so all through summer). I lost the second at 10500 miles after 12 month (just before the yearly battery check or just at the start of the next summer). I lost my third capacity bar at Aug 14, 12000miles, Chandler, AZ, 12000 miles, owned: 14 months (just after we hit 118F). I reported the first one immediately and they had the car for a couple of days and told me afterwards that this is "normal". I didn't get a case number for this, but I still have the initial email response, the battery report and the phone number of the engineer." (Nissan Leaf Facebook Page, *Nissan North America on the Balancing Act* (August 29, 2012), <http://www.facebook.com/nissanleaf/posts/142423552561869>)
- i. Lost 3rd Bar, down to 9 bars only! (My Nissan Wiki, *Real World Battery Capacity Loss*(August 29, 2012), http://www.mynissanleaf.com/wiki/index.php?title=Real_World_Battery_Capacity_Loss)
- j. Took delivery on my Leaf in July '11. Lost first bar around Aug 1st, 2012 and my second bar today (1 month and 850 miles later). I hope Nissan will get info out to Leaf owners soon. Living in Phoenix. (Nissan Leaf Facebook Page, *Nissan North America on the Balancing Act* (August 29, 2012), <http://www.facebook.com/nissanleaf/posts/142423552561869>)
- k. I live in Oklahoma and at the concern of having a huge 38k paper weight I am not driving my leaf. We are having temps between 105 - 110 for the next two weeks!!!! I am really irritated. I did not spend 38,000.00 for it to sit in my garage. That might not even help because my garage was 105 yesterday!!!! (Nikki Gordon- Bloomfield, *Nissan Responds to Wilting Arizona Leafs, Studies Lost Battery Capacity Page 2* (August 29, 2012), http://www.greencarreports.com/news/1077971_nissan-responds-to-wilting-arizonan-leafs-studies-lost-battery-capacity/page-2)
- l. 26 days between losing capacity bar one and bar two. (My Nissan Wiki, *Real World Battery Capacity Loss*(August 29, 2012), http://www.mynissanleaf.com/wiki/index.php?title=Real_World_Battery_Capacity_Loss)
- m. [Lost second capacity bar] 3,446 miles from first bar loss.

1 Estimated range: 12 bars (last summer) ~ mid 80's total range;
2 11 bars (early 2012 summer) ~ mid 70's range: 10 bars (end
3 2012 summer) ~ high 60's range..." (Mv Nissan Wiki, *Real*
4 *World Battery Capacity Loss*(August 29, 2012).
http://www.mynissanleaf.com/wiki/index.php?title=Real_World_Battery_Capacity_Loss)

5 n. [Lost second capacity bar] 90% of mv charging is in mv garage
6 to 80% overnight with 6 temp bars at start. Car is garaged at
7 work and never left outside baking in the sun for any extended
8 period of time." (Mv Nissan Wiki, *Real World Battery Capacity*
Loss(August 29, 2012), http://www.mynissanleaf.com/wiki/index.php?title=Real_World_Battery_Capacity_Loss)

9 65. Nissan also had superior and exclusive knowledge of the thermal
10 management defect, and knew or should have known that the defect was not
11 known or reasonably discoverable by Plaintiffs and Class Members before they
12 purchased or leased the Class Vehicles.

13 66. Plaintiffs are informed and believe and based thereon allege that
14 before Plaintiffs leased and purchased their vehicles, and since 2010, if not
15 before, Nissan knew about the thermal management defect through sources not
16 available to consumers, including pre-release testing data, early consumer
17 complaints about the thermal management defects to Nissan and its dealers,
18 testing conducted in response to those complaints, high failure rates and
19 replacement part sales data, aggregate data from Nissan dealers, technical
20 automotive publications criticising the thermal management system in the Class
21 Vehicles, among other internal sources of aggregate information about the
22 problem.

23 67. While Nissan has been fully aware of the thermal management
24 defect in the Class Vehicles, it actively concealed the existence and nature of the
25 defect from Plaintiffs and Class Members at the time of purchase, lease, service
26 visit, and thereafter. Specifically, Nissan failed to disclose or actively concealed
27 at and after the time of purchase, lease, or repair:

28 (a) any and all known material defects or material nonconformity

- 1 of the Class Vehicles, including the defects relating to the
2 battery systems;
- 3 (b) that the Class Vehicles, including their battery systems, were
4 not in good in working order, were defective, and were not fit
5 for their intended purposes; and
- 6 (c) that the Class Vehicles and the design of their battery systems
7 were defective, despite the fact that Nissan learned of such
8 defects through analysis as early as 2010, and through
9 alarming capacity decline, customer complaints, and through
10 other internal sources, as early as 2011.

11 68. When consumers present the Class Vehicles to an authorized Nissan
12 dealer complaining of premature battery capacity loss, consumers are typically
13 told that the situation is “normal”⁵ even where the battery has lost 27.5% or more
14 of its capacity in less than two (2) years due to the thermal management defect.

15 69. To this day, Nissan still has not notified Plaintiffs and the Class
16 Members that the Class Vehicles suffer from a systemic defect that causes the
17 batteries to prematurely lose capacity.

18 CLASS ACTION ALLEGATIONS

19 70. Plaintiff KLEE brings this lawsuit for injunctive relief, pursuant to
20 Federal Rules of Civil Procedure 23(a) and 23(b)(2), on behalf of himself and all
21 persons in California who purchased or leased any 2011 through 2012 Nissan
22 Leaf vehicles (the “California Class”) and on behalf of a California Sub-Class
23 defined as all California Class Members who are “consumers” within the
24

25 ⁵ For example, one consumer complained online as follows: “I live in
26 Phoenix, I lost my First bar at the beginning of April, Second bar first week of
27 June, and Third bar First week of July. I still love my Leaf, but it will not get me
28 to work 1-way in the next few weeks (45 miles). 2 different dealerships have told
me this is normal.” (My Nissan Wiki, *Real World Battery Capacity Loss*
(August 29, 2012), [http://www.mynissanleaf.com/wiki/index.php?
title=Real_World_Battery_Capacity_Loss](http://www.mynissanleaf.com/wiki/index.php?title=Real_World_Battery_Capacity_Loss)).

1 meaning of California Civil Code § 1761(d) (“the CLRA Sub-Class”).

2 71. To the extent that the California Class remedy involves any
3 monetary relief, such monetary relief would be incidental to the injunctive relief
4 sought. As the wrongs alleged apply equally and identically to all class members
5 and flow directly from liability to the class as a whole on the claims forming the
6 injunctive relief, no individualized facts or additional hearings would be
7 required. Proof of purchase of the vehicle (i.e., proof of harm) entitles each class
8 member to the same relief for the wrongs alleged. Moreover, any restitution or
9 monetary relief would be formulaic and objectively calculable and not dependent
10 in any significant way on subjective differences between class members.

11 72. Plaintiff WALLAK brings this lawsuit as a class action, pursuant to
12 Federal Rules of Civil Procedure 23(a) and 23(b)(3), on behalf of himself and all
13 persons in Arizona who purchased or leased any 2011 through 2012 Nissan Leaf
14 vehicles (the “Arizona Class”).

15 73. Excluded from the Classes and Sub-Class are: (1) Defendants, any
16 entity or division in which Defendants have a controlling interest, and their legal
17 representatives, officers, directors, assigns, and successors; (2) the Judge to
18 whom this case is assigned and the Judge’s staff; and (3) those persons who have
19 suffered personal injuries as a result of the facts alleged herein. Plaintiffs reserve
20 the right to amend the Class and Sub-Class definitions if discovery and further
21 investigation reveal that the Class and Sub-Class should be expanded or
22 otherwise modified.

23 74. Numerosity: Although the exact number of Class Members is
24 uncertain and can only be ascertained through appropriate discovery, the number
25 is great enough such that joinder is impracticable. The disposition of the claims
26 of these Class Members in a single action will provide substantial benefits to all
27 parties and to the Court. The Class Members are readily identifiable from
28 information and records in Defendants’ possession, custody, or control, as well

1 as from records kept by the California Department of Motor Vehicles and the
2 Arizona Department of Transportation.

3 75. Typicality: The claims of representative Plaintiffs are typical of the
4 claims of the Class in that the representative Plaintiffs, like all Class Members,
5 purchased and leased a Class Vehicle designed, manufactured, and distributed by
6 Nissan and containing a battery power supply that suffers from the thermal
7 management defect. The representative Plaintiffs, like all Class Members, have
8 been damaged by Defendants' misconduct in that they have purchased or leased
9 a vehicle with an undisclosed thermal management system defect that has or will
10 result in heat related damage to the battery and resulting battery capacity loss.
11 The representative Plaintiffs, like all Class Members, have also been damaged by
12 Defendants' misrepresentations and omissions with regard to vehicle range in
13 that they purchased vehicles which do not perform as advertised. Furthermore,
14 the factual bases of Nissan's misconduct are common to all Class Members and
15 represent a common thread resulting in injury to all Class Members.

16 76. Commonality: There are numerous questions of law and fact
17 common to Plaintiffs and the Class that predominate over any question affecting
18 only individual Class Members. These common legal and factual issues include
19 the following:

- 20 (a) Whether Class Vehicles suffer from defects relating to the
21 thermal management system;
- 22 (b) Whether Defendants know about the defects relating to the
23 battery system and, if so, how long Defendants have known of
24 the defect;
- 25 (c) Whether the defective nature of the battery system constitutes
26 a material fact;
- 27 (d) Whether Defendants had a duty to disclose the defective
28 nature of the battery system to Plaintiffs and Class Members;

- 1 (e) Whether Defendants advertised the Class Vehicles to the
2 Class throughout the United States with materially deceptive,
3 untrue, or misleading statements regarding vehicle range;
4 (f) Whether Defendants made materially untrue or misleading
5 statements of facts to the Class concerning the advertised
6 vehicle ranges;
7 (g) Whether Defendants concealed from or omitted to state
8 material facts to the Class concerning the actual vehicle
9 ranges of the Class Vehicles;
10 (h) Whether Defendants knew or, by the exercise of reasonable
11 care, should have known, that the materially misleading
12 statements of fact made to the Class about the vehicle ranges
13 had the capacity or tendency to confuse and mislead;
14 (i) Whether Plaintiff Klee and the California Class Members are
15 entitled to equitable relief, including but not limited to a
16 preliminary and/or permanent injunction;
17 (j) (k) Whether Plaintiff Wallak and the other Arizona Class
18 Members are entitled to damages;
19 (k) Whether Defendants knew or reasonably should have known
20 of the defects relating to the battery system before they sold
21 and leased Class Vehicles to Class Members;
22 (l) Whether Defendants should be declared financially
23 responsible for notifying all Class Members of the problems
24 with the Class Vehicles and for the costs and expenses of
25 repairing and replacing the defective battery systems; and
26 (m) Whether Defendants breached the implied warranty of
27 merchantability pursuant to the Song-Beverly Act as to the
28 California Class.

1 77. Adequate Representation: Plaintiffs will fairly and adequately
2 protect the interests of the Class Members. Plaintiffs have retained attorneys
3 experienced in the prosecution of class actions, including consumer and product
4 defect class actions, and Plaintiffs intend to prosecute this action vigorously.

5 78. Predominance and Superiority as to the Arizona Class: A class
6 action for damages in Arizona is superior to other available methods for the fair
7 and efficient adjudication of the controversy in Arizona as the Arizona
8 Consumer Fraud Act does not provide for an injunction as statutory relief.
9 Absent a class action, most Arizona Class Members would likely find the cost of
10 litigating their claims prohibitively high and would therefore have no effective
11 remedy at law. Because of the relatively small size of the individual Class
12 Members' claims, it is likely that only a few Class Members could afford to seek
13 legal redress for Defendants' misconduct. Absent a class action, Arizona Class
14 Members will continue to incur damages, and Defendants' misconduct will
15 continue without remedy. Class treatment of common questions of law and fact
16 would also be a superior method to multiple individual actions or piecemeal
17 litigation in that class treatment will conserve the resources of the courts and the
18 litigants, and will promote consistency and efficiency of adjudication.

19 79. 23(b) (2) as to the California Class and Sub Class: Final injunctive
20 relief or corresponding declaratory relief, as expressly provided in California
21 under the CLRA, the UCL and the Song Beverly Consumer Warranty Act, is
22 appropriate respecting the California class as a whole because Defendants have
23 acted or refused to act on grounds that apply generally to the California class. A
24 single injunction would provide relief to each member of the California class.
25 Defendants' misrepresentations and wrongful conduct was identical to each class
26 member. A determination as to the common issues under Rule 23(a) will, in one
27 stroke, permit the fact finder to grant the injunctive relief sought.
28

1 **FIRST CAUSE OF ACTION**

2 **(Violation of California’s Consumer Legal Remedies Act,**
3 **California Civil Code § 1750, et seq.**

4 **Against All Defendants By Plaintiff Klee On Behalf of the CLRA Sub-Class)**

5 80. Plaintiffs hereby incorporate by reference the allegations contained
6 in the preceding paragraphs of this Complaint.

7 81. Plaintiff Humberto Daniel Klee (“Klee”) brings this cause of action
8 on behalf of himself and on behalf of the members of the CLRA Sub-Class.

9 82. Defendants are “persons” as defined by California Civil Code
10 § 1761(c).

11 83. Klee and CLRA Sub-Class Members are “consumers” within the
12 meaning of California Civil Code § 1761(d) because they purchased their Class
13 Vehicles for personal, family or household use.

14 84. By failing to disclose and concealing the defective nature of the
15 battery systems from Plaintiffs and prospective Class Members, Defendants
16 violated California Civil Code § 1770(a), as they represented that the Class
17 Vehicles had characteristics and benefits that they do not have, and represented
18 that the Class Vehicles and their battery systems were of a particular standard,
19 quality, or grade when they were of another. *See* Cal. Civ. Code §§ 1770(a)(5)
20 and (7).

21 85. Defendants violated section 1770(a)(9) of the CLRA by advertising
22 the vehicles with the intent not to sell the vehicles as advertised.

23 86. Defendants’ unfair and deceptive acts or practices occurred
24 repeatedly in Defendants’ trade or business, were capable of deceiving a
25 substantial portion of the purchasing public, and imposed a serious safety risk on
26 the public.

27 87. Defendants knew that the Class Vehicles and their batteries suffered
28 from an inherent defect, were defectively designed or manufactured, would fail

1 prematurely, and were not suitable for their intended use.

2 88. Defendants were under a duty to Klee and the Class Members to
3 disclose the defective nature of the battery systems because:

- 4 (a) Defendants were in a superior position to know the true state
5 of facts about the safety defect in the Class Vehicles' battery
6 systems;
- 7 (b) Plaintiff Klee and the Class Members could not reasonably
8 have been expected to learn or discover that their battery
9 systems had a dangerous safety defect until manifestation or
10 failure;
- 11 (c) Defendants made partial disclosures about the quality of the
12 Class Vehicles without revealing the defective nature of the
13 Class Vehicles and their battery systems; and
- 14 (d) Defendants knew that Plaintiff Klee and the Class Members
15 could not reasonably have been expected to learn or discover
16 the safety defect.

17 89. In failing to disclose the defective nature of the Class Vehicles and
18 their batteries, Defendants knowingly and intentionally concealed material facts
19 and breached their duty not to do so.

20 90. In representing that its vehicles would achieve an up to 100 mile
21 driving range without disclosing that its advertised ranges were only achievable
22 by charging the battery in a damaging, capacity-reducing manner that is against
23 Nissan's own recommendations, Defendants knowingly and intentionally
24 affirmatively misrepresented material facts to Plaintiff Klee and Class Members
25 and breached their duty not to do so.

26 91. The facts concealed or not disclosed by Defendants to Plaintiff Klee
27 and the Class Members are material in that a reasonable consumer would
28 consider them important in deciding whether to purchase a Class Vehicles or pay

1 a lesser price. Had Plaintiff Klee and other Class Members known that the Class
2 Vehicles would exhibit heat related battery damage and consequential loss of
3 battery capacity and driving range due to the thermal management defect, they
4 would not have purchased the Class Vehicles or would have paid less for them.
5 Had Plaintiff Klee and Class Members known that Nissan's advertised driving
6 ranges were based on a 100% charge, and that to mitigate capacity loss, they
7 would need to limit charges to 80%, they would not have purchased the Class
8 Vehicles or would have paid less for them.

9 92. Plaintiff Klee relied on Defendants' misrepresentations and
10 omissions. Plaintiff Klee and the Class Members are reasonable consumers who
11 do not expect their driving ranges and battery capacities to precipitously drop
12 due to a thermal management defect. This is the reasonable and objective
13 consumer expectation relating to contemporary mass production vehicles.

14 93. As a result of Defendants' conduct, Plaintiff Klee and Class
15 Members have been harmed and have suffered actual damages in that the Class
16 Vehicles have experienced and will continue to experience heat related battery
17 damage and consequential loss of battery capacity and driving range due to the
18 defect herein alleged.

19 94. As a result of Defendants' conduct, Plaintiff Klee and Class
20 Members were harmed and suffered actual damages as a result of Defendants'
21 misrepresentations and omissions with regard to vehicle range in that they
22 purchased vehicles which do not perform as advertised.

23 95. As a direct and proximate result of Defendants' unfair or deceptive
24 acts or practices, Plaintiff Klee and Class Members suffered and will continue to
25 suffer actual damages.

26 96. Plaintiff Klee and the Class are entitled to equitable relief.

27 97. Plaintiff Klee provided Defendants with notice of their alleged
28 violations of the CLRA pursuant to California Civil Code § 1782(a).

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SECOND CAUSE OF ACTION
(Violation of California Business & Professions Code § 17200, et seq.
Against All Defendants By Plaintiff Klee
On Behalf of the California Class)

98. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

99. Plaintiff Klee brings this cause of action on behalf of themselves and on behalf of all California Class Members.

100. California Business & Professions Code § 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or misleading advertising.”

101. Plaintiff Klee and the California Class Members are reasonable consumers who do not expect their vehicles to exhibit heat related battery damage and consequential loss of battery capacity and driving range due to the defect herein alleged.

102. Plaintiff Klee and the Class Members are reasonable consumers who do not expect Nissan to base its advertised driving ranges on a fully charged battery without disclosing that Class Members would need to avoid charging the battery beyond 80% capacity to mitigate long term battery capacity loss.

103. Defendants knew the Class Vehicles and their battery systems suffered from inherent defects, were defectively designed or manufactured, would fail prematurely, and were not suitable for their intended use.

104. In failing to disclose the thermal management defect, Defendants knowingly and intentionally concealed material facts and breached their duty not to do so.

105. In representing that its vehicles would achieve an up to 100 mile driving range without disclosing that its advertised ranges were only achievable by charging the battery in a damaging, capacity-reducing manner that is against

1 Nissan's own recommendations, Defendants have knowingly and intentionally
2 affirmatively misrepresented material facts and breached their duty not to do so.

3 106. Defendants were under a duty to Plaintiff Klee and the Class
4 Members to disclose the defective nature of the Class Vehicles and their battery
5 systems:

- 6 (a) Defendants were in a superior position to know the true state
7 of facts about the safety defect in the Class Vehicles' battery
8 systems;
- 9 (b) Defendants made partial disclosures about the quality of the
10 Class Vehicles without revealing the defective nature of the
11 Class Vehicles and their battery systems; and
- 12 (c) Defendants actively concealed the defective nature of the
13 Class Vehicles and their battery systems from Plaintiff Klee
14 and the Class.

15 107. Had Plaintiff Klee and other Class Members known that the Class
16 Vehicles would exhibit heat related battery damage and consequential loss of
17 battery capacity and driving range due to the defect herein alleged, they would
18 not have purchased the Class Vehicles or would have paid less for them.

19 108. Plaintiff Klee relied on Defendants' misrepresentations and
20 omissions. Had Plaintiff Klee and Class Members known that Nissan's
21 advertised driving ranges were based on a 100% charge, but that to mitigate
22 capacity loss, they would need to limit charges to 80%, they would not have
23 purchased the Class Vehicles or would have paid less for them.

24 109. Defendants continued to conceal the defective nature of the Class
25 Vehicles and their battery systems even after Class Members began to report
26 problems. Indeed, Defendants continue to cover up and conceal the true nature
27 of the problem.

28 110. By their conduct, Defendants have engaged in unfair competition

1 and unlawful, unfair, and fraudulent business practices.

2 111. Defendants' unfair or deceptive acts or practices occurred
3 repeatedly in Defendants' trade or business, and were capable of deceiving a
4 substantial portion of the purchasing public.

5 112. Defendants' conduct was likely to deceive a reasonable consumer.

6 113. Defendants' conduct was unlawful in that, among other things, it
7 violated the California Consumer Legal Remedies Act.

8 114. As a direct and proximate result of Defendants' unfair and deceptive
9 practices, Plaintiff Klee and the Class have suffered and will continue to suffer
10 actual damages.

11 115. Defendants have been unjustly enriched and should be required to
12 make restitution to Plaintiff Klee and the Class pursuant to §§ 17203 and 17204
13 of the Business & Professions Code.

14 **THIRD CAUSE OF ACTION**

15 **(Breach of Implied Warranty Pursuant to**

16 **Song-Beverly Consumer Warranty Act,**

17 **California Civil Code §§ 1792 and 1791.1, et seq.**

18 **Against All Defendants By Plaintiff Klee On Behalf of the California Class)**

19 116. Plaintiffs hereby incorporate by reference the allegations contained
20 in the preceding paragraphs of this Complaint.

21 117. Plaintiff Klee brings this cause of action against Defendants on
22 behalf of himself and on behalf of the members of the California Sub-Class.

23 118. Defendants were at all relevant times the manufacturer, distributor,
24 warrantor, and/or seller of the Class Vehicles. Defendants knew or had reason to
25 know of the specific use for which the Class Vehicles were purchased.

26 119. Defendants provided Plaintiff Klee and Class Members with an
27 implied warranty that the Class Vehicles and any parts thereof are merchantable
28 and fit for the ordinary purposes for which they were sold. However, the Class

1 Vehicles are not fit for their ordinary purpose of providing reasonably reliable
2 and safe transportation because, *inter alia*, the Class Vehicles and their battery
3 systems suffered from an inherent defect at the time of sale and thereafter are not
4 fit for their particular purpose of providing safe and reliable transportation.

5 120. Defendants impliedly warranted that the Class Vehicles were of
6 merchantable quality and fit for such use. This implied warranty included,
7 among other things: (i) a warranty that the Class Vehicles and their battery
8 systems were manufactured, supplied, distributed, and/or sold by Nissan were
9 safe and reliable for providing transportation; and (ii) a warranty that the Class
10 Vehicles and their battery systems would be fit for their intended use while the
11 Class Vehicles were being operated.

12 121. Contrary to the applicable implied warranties, the Class Vehicles
13 and their battery systems at the time of sale and thereafter were not fit for their
14 ordinary and intended purpose of providing Plaintiff Klee and the Class
15 Members with reliable, durable, and safe transportation. Instead, the Class
16 Vehicles are defective, including but not limited to the defective design of their
17 battery systems.

18 122. Defendants' actions, as complained of herein, breached the implied
19 warranty that the Class Vehicles were of merchantable quality and fit for such
20 use in violation of California Civil Code §§ 1792 and 1791.1.

21 **FOURTH CAUSE OF ACTION**

22 **(Negligent Misrepresentation Against All Defendants**
23 **By Plaintiff Wallak On Behalf of the Arizona Class)**

24 123. Plaintiffs incorporate by reference each preceding and succeeding
25 paragraph as applicable as though fully set forth at length herein.

26 124. Defendants provided false and/or incorrect information to Plaintiff
27 Wallak and the members of the Arizona Class about the range and the lack of a
28 thermal management defect in the Class Vehicles at the time of sale.

1 125. Also at the time of sale, Defendants omitted and/or failed to disclose
2 material information to Plaintiff Wallak and the members of the Arizona Class
3 about the range and the lack of a thermal management defect in the Class
4 Vehicles.

5 126. Defendants intended that Plaintiff Wallak and the members of the
6 Arizona Class rely on these misrepresentations and/or omissions.

7 127. Defendants failed to exercise reasonable care in
8 obtaining and communicating these misrepresentations and/or
9 omissions.

10 128. Plaintiff Wallak and the members of the Arizona Class reasonable
11 relied on Defendants' material misrepresentations and/or omissions.

12 129. As a direct and proximate result of Defendants' misrepresentations
13 and/or omissions, Plaintiff Wallak and Class Members were injured.

14 130. Wallak and the Class were unaware of these misrepresentations and
15 reasonably could not have discovered them when they purchased their
16 automobiles from Nissan.

17 **FIFTH CAUSE OF ACTION**

18 **(Violation of the Arizona Consumer Fraud Act,**

19 **Ariz. Rev. Stat. §§ 44-1521 *et seq.***

20 **Against All Defendants By Plaintiff Wallak On Behalf of as to the Arizona**
21 **Class Only)**

22 131. Plaintiffs hereby incorporate by reference the allegations contained
23 in the preceding paragraphs of this complaint.

24 132. Defendants knew that the Class Vehicles and their batteries suffered
25 from an inherent defect, were defectively designed or manufactured, would fail
26 prematurely, and were not suitable for their intended use.

27 133. In representing that its vehicles would achieve an up to 100 mile
28 driving range without disclosing that its advertised ranges were only achievable

1 by charging the battery in a damaging, capacity-reducing manner that is against
2 Nissan's own recommendations, Defendants knowingly and intentionally
3 misrepresented and omitted material facts and breached their duty not to do so.

4 134. Plaintiff Wallak and Class Members reasonably relied on
5 Defendants' material misrepresentations and omissions in their advertisements of
6 the Class Vehicles and in the purchase of the Class Vehicles.

7 135. Nissan's use of deception, false promises, misrepresentations and
8 material omissions in connection with the sale and advertisement of its services,
9 violates the Arizona Consumer Fraud Act, Ariz. Rev. Stat. § 44-1522(A).

10 136. Had Plaintiff Wallak and other Class Members known that the Class
11 Vehicles would exhibit heat related battery damage and consequential loss of
12 battery capacity and driving range due to the defect herein alleged, they would
13 not have purchased the Class Vehicles or would have paid less for them.

14 137. Had Plaintiff Wallak and Class Members known that Nissan's
15 advertised driving ranges were based on a 100% charge, but that to mitigate
16 capacity loss, they would need to limit charges to 80%, they would not have
17 purchased the Class Vehicles or would have paid less for them.

18 138. Plaintiff Wallak and the Class suffered injury in fact to a legally
19 protected interest. As a result of Defendants' conduct, Plaintiff Wallak and
20 Class Members were harmed and suffered actual damages in that the Class
21 Vehicles experienced and will continue to experience heat related battery
22 damage and consequential loss of battery capacity and driving range due to the
23 thermal management defect. Had Plaintiff Wallak and other Class Members
24 known of the thermal management defect, they would not have purchased or
25 leased the Class Vehicles or would have paid less for them.

26 139. As a result of Defendants' conduct, Plaintiff Wallak and Class
27 Members were harmed and suffered actual damages as a result of Defendants'
28 misrepresentations and omissions with regard to vehicle range because they

1 purchased vehicles which do not perform as advertised.

2 140. As a direct and proximate result of Defendants' unfair or deceptive
3 acts or practices, Plaintiff Wallak and Class Members suffered and will continue
4 to suffer actual damages.

5 **RELIEF REQUESTED**

6 1. Plaintiffs, on behalf of themselves and Class Members request the
7 Court to enter judgment against Defendants, as follows:

- 8 (a) An order certifying the proposed Classes and Sub-Classes,
9 designating Plaintiffs as named representative of the Class,
10 and designating the undersigned as Class Counsel;
- 11 (b) On behalf of the California Class, an order enjoining Nissan
12 from selling the Leaf with the misleading information;
13 enjoining Nissan from misrepresenting the mileage range of
14 the Nissan Leaf and compelling Nissan to issue corrective
15 disclosures; compelling Nissan to remove and replace
16 Plaintiffs and Class Members' battery systems with a suitable
17 alternative product; compelling Nissan to provide class
18 members with a new battery for the Leaf that does not contain
19 the defects alleged herein; and/or compelling Nissan to reform
20 its Leaf battery warranty, in a manner deemed to be
21 appropriate by the Court, to cover the loss of battery capacity
22 under warranty as alleged herein and to notify all class
23 members that such warranty has been reformed.
- 24 (c) On behalf of the Arizona Class, damages, including all
25 monies paid by Plaintiff and Class Members for any repairs
26 that had to be made and all monies attributable to diminution
27 in value of the Class Vehicles;
- 28 (d) An award of pre-judgment and post-judgment interest, as

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- provided by law;
- (e) Leave to amend the Complaint to conform to the evidence produced at trial;
 - (f) An award of attorneys' fees and costs, as allowed by law, including an award of attorneys' fees and costs pursuant to California Code of Civil Procedure § 1021.5, the Consumer Legal Remedies Act, and the Song Beverly Consumer Warranty Act, and Arizona statutes; and
 - (g) Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

2. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

Dated: September 24, 2012

Respectfully submitted,
Initiative Legal Group APC

By: 
Jordan Lurie
Andrew Sokolowski
Tarek Zohdy

Attorneys for Plaintiffs
Humberto Daniel Klee and David Wallak

EXHIBIT 1

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7 Attorneys for Plaintiffs Humberto Daniel Klee and David Wallak

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

10 HUMBERTO DANIEL KLEE and
11 DAVID WALLAK, individually, and
on behalf of other members of the
12 general public similarly situated,

13 Plaintiff,

14 vs.

15 NISSAN NORTH AMERICA, INC.;;
and NISSAN MOTOR COMPANY,
16 LTD.,

17 Defendants.

Case No:

**DECLARATION OF HUMBERTO
DANIEL KLEE IN SUPPORT OF
PLAINTIFF'S SELECTION OF
VENUE FOR TRIAL OF CLAIMS
ARISING UNDER THE
CALIFORNIA CONSUMER LEGAL
REMEDIES ACT**

[Cal. Civ. Code, § 1780, subd. (d)]

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DECLARATION OF HUMBERTO DANIEL KLEE

I, HUMBERTO DANIEL KLEE, declare under penalty of perjury as follows:

1. I make this declaration based upon my personal knowledge except as to those matters stated herein that are based upon information and belief, which I believe to be true. Unless the context indicates otherwise, I have personal knowledge of the facts stated in this Declaration and if called as a witness, I could and would competently testify thereto. I am Plaintiff Humberto Daniel Klee in the above-captioned matter.

2. Pursuant to California Civil Code section 1780(d), this Declaration is submitted in support of Plaintiff’s Selection of Venue for the Trial of Plaintiff’s Cause of Action alleging violation of California’s Consumer Legal Remedies Act.

3. I leased my 2011 Nissan Leaf, which is the vehicle at issue in this action, from authorized Nissan dealer, Empire Nissan, in the Central District of California (San Bernardino County). I reside in Pomona, California, in the County of Los Angeles.

4. On information and belief, Defendant Nissan Motor Company, Ltd., is a Japanese corporation. Defendant Nissan Motor Company, Ltd. owns 100% and is the parent corporation of Defendant Nissan North America, Inc.

5. On information and belief, Defendant Nissan North America Inc. is a corporation organized and in existence under the laws of the State of California, and registered with the California Department of Corporations to conduct business in California. Defendant Nissan North America Inc.’s Corporate Headquarters was located at Gardena, California, until on or about 2007 when it moved its Corporate Headquarters to Franklin, Tennessee.

6. On information and belief, Defendants Nissan Motor Company, Ltd. and Nissan North America Inc. (collectively, “Defendant” or “Nissan”), through their various entities, design, manufacture, construct, assemble, market, distribute,

1 and sell the 2011 and 2012 Nissan Leaf vehicles at issue in Plaintiff's Complaint
2 filed concurrently herewith, in the Central District of California, Los Angeles
3 County, and throughout the United States of America.

4 7. Based on the facts set forth herein, this Court is a proper venue for the
5 prosecution of Plaintiff's Cause of Action alleging violation of California's
6 Consumer Legal Remedies Act because Defendant conducts business activities in
7 the County of Los Angeles, California, including, but not limited to marketing,
8 distributing and/or selling Class Vehicles to Class Members. *See*, Cal. Civ. Code §
9 1780(d).

10 I declare under penalty of perjury under the laws of the State of California
11 that the forgoing is true and correct. Executed this ___th day of September, 2012 in
12 Pomona, California.

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14  9/20/12
15 Humberto Daniel Klee

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT CALIFORNIA
CIVIL COVER SHEET**

ORIGINAL

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| I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> HUMBERTO DANIEL KLEE and DAVID WALLAK individually, and on behalf of a class of similarly situated individuals, | DEFENDANTS NISSAN NORTH AMERICA, INC., and NISSAN MOTOR COMPANY, LTD. |
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| (b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Andrew J. Sokolowski, Initiative Legal Group APC1800 Century Park East, 2nd Floor Los Angeles, California 90067, Telephone: (310) 556-5637 | Attorneys (If Known) |
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|--|---|----------------------------|---|----------------------------|---------------------------------------|------------|------------|-----------------------|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|--------------------------|---------------------------------------|----------------------------|---|----------------------------|----------------------------|---|----------------------------|----------------------------|----------------|----------------------------|---------------------------------------|
| II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> U.S. Government Plaintiff <input type="checkbox"/> Federal Question (U.S. Government Not a Party) <input type="checkbox"/> U.S. Government Defendant <input checked="" type="checkbox"/> Diversity (Indicate Citizenship of Parties in Item III) | III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%;">PTF</td> <td style="width:10%;">DEF</td> <td style="width:40%;"></td> <td style="width:10%;">PTF</td> <td style="width:10%;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td><input type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input checked="" type="checkbox"/> 6</td> </tr> </table> | | PTF | DEF | | PTF | DEF | Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 | Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input checked="" type="checkbox"/> 6 |
| | PTF | DEF | | PTF | DEF | | | | | | | | | | | | | | | | | | | | |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 | | | | | | | | | | | | | | | | | | | | |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | | | | | | | | | | | | | | | | | | | | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input checked="" type="checkbox"/> 6 | | | | | | | | | | | | | | | | | | | | |

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ Greater than \$5,000,000.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

California Civil Code § 1750, et seq.; California Business & Professions Code § 17200; California Civil Code §§ 1792 and 1791.1; Ariz. Rev. Stat. §§ 44-1521

VII. NATURE OF SUIT (Place an X in one box only.)

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|--|--|--|---|--|---|
| OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes | CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 |
|--|--|--|---|--|---|

CV12-08230

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

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| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| Plaintiff HUBERTO DANIEL KLEE: Los Angeles, California | Plaintiff DAVID WALLAK: Maricopa, Arizona |

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

| | |
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| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| | NISSAN NORTH AMERICA, INC.: Williamson County, Tennessee NISSAN MOTOR COMPANY, LTD.: Japan |

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

| | |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| Los Angeles, California | Maricopa, Arizona |

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Andrew J. Scholauchi Date September 24, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action |
|---------------------|--------------|--|
| 861 | HIA | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862 | BL | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923) |
| 863 | DIWC | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g)) |
| 863 | DIWW | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g)) |
| 864 | SSID | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended. |
| 865 | RSI | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g)) |