

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

LAURA FRANCES HAYS,)
on behalf of herself and all others)
similarly situated,)
)
Plaintiff,)
)
v.)
)
NISSAN NORTH AMERICA, INC.,)
)
Defendant.)

Case No. 4:17-CV-0353-BCW

ORDER OF PRELIMINARY APPROVAL

Before the Court is Plaintiff’s Unopposed Motion for Preliminary Settlement Approval and to Direct Notice to the Class. (Doc. #131). The parties have informed the Court that they have mediated the case and have reached a settlement agreement. The Settlement Agreement is filed as an exhibit to Plaintiff’s Motion, and it includes copies of the supporting documents necessary to effectuate the settlement. (Doc. #131-1).

The Court has reviewed the Settlement Agreement and finds that the factors articulated in Federal Rule of Civil Procedure 23(e) weigh in favor of preliminary approval. Accordingly, after careful review of the record before the Court, the Court grants Plaintiff’s unopposed motion and ORDERS as follows.

1. **Preliminary Approval of Proposed Settlement.** The Settlement Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable, adequate and within the range of reasonableness for preliminary settlement approval. The Court finds that (a) the Agreement resulted from extensive arm’s length negotiations; (b) the Agreement satisfies the factors set forth in Rule 23(e); and (c) the Agreement is sufficient to warrant notice of the

Settlement to persons in the Settlement Class (defined herein) and a full hearing on the approval of the Settlement.

2. **Class Certification.** The Court previously certified this case for class treatment, defining the class as:

All persons in Missouri who (1) currently own or lease a Class Vehicle, or (2) who previously owned or leased a Class Vehicle and paid for repairs to rust in a front floor pan of a Class Vehicle. Class Vehicles include model years 2002-2006 Nissan Altimas and model years 2004-2008 Nissan Maximas.

See March 8, 2021 Order (Doc. #120). In settling the case, the Parties have adopted that definition with a slight clarification: Class Vehicles must either be currently registered in Missouri, or previously have been registered in Missouri at the time the Settlement Class Member paid to repair corrosion on a front floor pan. See Settlement Agreement at ¶¶ 21, 50, 61-65. (Doc. #131-1). For the same reasons set forth in its Order granting class certification, as well as those presented in Plaintiff's Unopposed Motion for Preliminary Settlement Approval, the Court finds that the proposed Settlement Class satisfies the criteria of Rule 23.

3. **Class Counsel and Representative.** The Court confirms that the following are appointed as Class Counsel: Matthew L. Dameron of Williams Dirks Dameron LLC, and Norman E. Siegel and Todd E. Hilton of Stueve Siegel Hanson LLP. Moreover, the Court confirms that Laura Frances Hays is appointed as the Class Representative.

4. **Class Notice Plan.** The proposed Class Notice Plan, including the postcard notice, long-form notice, and the settlement website, is the best notice practicable under the circumstances, is a reasonable manner of notice, and constitutes valid, due and sufficient notice to

the Settlement Class in full compliance with the requirements of applicable law, including but not limited to the Due Process Clause of the United States Constitution, and is therefore APPROVED.

5. **Notice and Claims Administrator.** Kurtzman Carson Consultants LLC (KCC) is hereby APPOINTED as the Settlement Administrator to implement the terms of the proposed Settlement Agreement. The Settlement Administrator is authorized to implement the parties' Class Notice Plan as outlined in the Declaration of Carla A. Peak on behalf of KCC. The Court also authorizes the Settlement Administrator to carry out other such responsibilities as are provided for in the Settlement Agreement or as may be agreed to by counsel for the Parties. The Settlement Administrator is directed to establish a settlement website (www.missourifloorpansettlement.com) and to issue notice, pursuant to the Settlement Agreement.

6. **Claims Deadline.** All claim forms must be submitted electronically, or, if mailed, postmarked no later than one year after the Effective Date of the settlement. The Effective Date means the date this Court's Order granting final approval of the class settlement becomes final and is no longer subject to appeal.

7. **Objections.**

- a. Any Settlement Class Member who complies with the requirements of this paragraph may object to any aspect of the proposed Settlement Agreement either on his or her own or through an attorney hired at his or her expense. Any Settlement Class Member who objects to the proposed Settlement Agreement must file with the Court, and serve on Class Counsel and Counsel for NNA at the addresses set forth in the Settlement Agreement, a written statement of objection postmarked no later than sixty (60) calendar days after the Notice is mailed to the Settlement Class and posted to the Settlement Administrator's website.

b. The written objection must include: (a) the full name, address, telephone number and email address, if any, of the Settlement Class Member; (b) dates the objector owned or leased a Class Vehicle, the model, model year, and Vehicle Identification Number (VIN) of the Class Vehicle; (c) proof that the objector owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, lease document, or other document reflecting current or former ownership); (d) a specific statement of all grounds for the objection and, if applicable, any legal support for the objection; (e) a statement whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; (f) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; (g) a list of all class action settlements to which the Settlement Class Member has objected in the past five (5) years, if any; (h) copies of any papers, briefs, or other documents upon which the objection is based; (i) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing either personally or through counsel; and (j) the signature of the objecting Settlement Class Member.

8. **Requests for Exclusion.**

a. Any Class Member shall have the right to opt out of the Settlement Class. In order to exercise this right, a Class Member must timely deliver a written request for exclusion to the Settlement Administrator's address, which will be listed on the Settlement Website (www.MissouriFloorpanSettlement.com). The written request must be postmarked no later than the Opt-Out/Objection Deadline, which deadline

shall be specified in the mailed postcard notice, as well as on the Settlement Website and in the Long-Form Notice posted on the Settlement Website. No person shall be deemed opted-out of the Class through any purported “mass” or “class” opt-outs. So-called “mass” or “class” opt-outs shall not be allowed.

- b. To be effective, the Request for Exclusion must include: the Class Member’s full name, current address, and telephone number, and the VIN number of their Class Vehicle, and it must be signed by the Class Member. A request for exclusion by a current owner of a Class Vehicle does not exclude from the Settlement a former owner of the same Class Vehicle to the extent the former owner previously paid for corrosion repairs to the front floor pan at the time the former owner owned/leased it in Missouri. Nor does a request for exclusion by a former owner of a Class Vehicle exclude from the Settlement a current Missouri owner/lessee of the same Class Vehicle.
- c. Any Class Member who properly requests to be excluded from the Class shall not:
 - (a) be bound by any orders or judgments entered in the case relating to the Settlement Agreement;
 - (b) be entitled to relief under, or be affected by, the Settlement Agreement;
 - (c) gain any rights by virtue of the Settlement Agreement;
 - or (d) be entitled to object to any aspect of the Settlement Agreement. Any Settlement Class Member who obtains relief pursuant to the terms of this Settlement Agreement after the receipt of the Notice gives up the right to exclude him or herself from this Settlement.

9. **Final Approval Hearing.** The Parties have requested that the Court set a Final Approval Hearing on or near 210 days following entry of this Preliminary Approval Order. A Final Approval Hearing is set for

September 29, 2022, at 10:00am in Courtroom 7D, at:

**U.S. District Court for the Western District of Missouri
400 East Ninth Street
Kansas City, Missouri 64106**

IT IS SO ORDERED.

Date: March 24, 2022

/s/ Brian C. Wimes

JUDGE BRIAN C. WIMES

UNITED STATES DISTRICT COURT