

**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,

Plaintiffs,

v.

Case No. 4:17-CV-00353-BCW

NISSAN NORTH AMERICA INC.,

Defendants.

**DEFENDANT NISSAN NORTH AMERICA INC.'S
ANSWER TO PLAINTIFF'S AMENDED CLASS ACTION COMPLAINT**

Defendant Nissan North America Inc. ("NNA") hereby answers Plaintiff's Amended Class Action Complaint (the "Complaint") as follows:

By way of a general response, all allegations are denied unless specifically admitted, and any factual averment admitted is admitted only as to the specific fact and not as to any conclusions, characterizations, implications, or speculation contained in the averment or in the Complaint as a whole.

NATURE OF THE CASE

1. NNA admits that Paragraph 1 identifies a putative class that Plaintiff may seek to certify in this litigation. NNA denies that the requisites for class action treatment are present and that this action could properly proceed as a class action. Nissan denies the remaining allegations of Paragraph 1.

2. NNA denies the allegations of Paragraph 2.

3. The allegations of Paragraph 3 consist of argument and legal conclusions to which no response is required. To the extent a further response is required, NNA denies the allegations of Paragraph 3.

PARTIES

4. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and, therefore, denies the same.

5. NNA admits that NNA has its principal place of business in Franklin, Tennessee. NNA admits it is a subsidiary of Nissan Motor Company, Ltd., which is a company that has its headquarters in Japan. NNA denies that Plaintiff may interchangeably refer to NNA and Nissan Motor Company, Ltd. for all purposes in the Complaint.

JURISDICTION AND VENUE

6. The allegations of Paragraph 6 consist of argument and legal conclusions to which no response is required. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 and, therefore, denies the same.

7. The allegations of Paragraph 7 consist of argument and legal conclusions to which no response is required. To the extent a response is required, NNA admits that it is registered to conduct business in Missouri. NNA states that it lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 7 and, therefore, denies the same.

8. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and, therefore, denies the same.

9. NNA admits it maintains a website at www.nissanusa.com. NNA further admits that, according to that website, there are 17 Nissan dealers in Missouri. NNA further admits that the website provides a “Learn More” link for particular dealers, which further provides links to information on that dealer’s inventory, driving directions to that dealer, contact information for the dealer, a form for booking a test drive with the dealer, and a link to that dealer’s independent website. NNA further admits that each individual dealer’s website may display local promotional or marketing offers. Except as expressly admitted, NNA denies the remaining allegations of Paragraph 9.

10. NNA admits the allegations of Paragraph 10.

11. NNA admits that the website www.nissanusa.com includes a link titled “Build Your Nissan” that may be used by users. NNA further admits that consumers in Missouri who have access to the website may access this link. NNA further admits that links on NNA’s website titled “View Local Offers” permits website users to view certain financing or other offers for Nissan vehicles, which includes a link titled “Contact Dealer” that leads to an online form to “Request a Quote On Your New Nissan,” which may permit a user to investigate financial offers with the independent dealers. Except as expressly admitted, NNA denies the remaining allegations of Paragraph 11.

12. NNA admits that its websites include links to a “Nissan USA eSTORE Parts & Accessories.” This “eSTORE” provides links to the websites of independent dealers, including dealers in Missouri, at which certain parts and accessories may be purchased.

13. The allegations of Paragraph 13 consist of argument and legal conclusions to which no response is required. To the extent a response is required, NNA states that it lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 13 and, therefore, denies the same.

SUBSTANTIVE ALLEGATIONS

14. NNA admits the allegations of Paragraph 14.

15. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA states the allegations in Paragraph 15 consist of argument and legal conclusions and the subject of expert opinion and testimony, to which no response is required. To the extent a response is required, NNA denies the remaining allegations of Paragraph 15.

16. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA lacks knowledge or information sufficient to form a belief as to the truth of allegations regarding the image in Paragraph 16 and, therefore, denies the same. NNA states the remaining allegations in Paragraph 16 consist of argument and legal conclusions and the subject of expert opinion and testimony, to which no response is required. To the extent a response is required, NNA denies the remaining allegations of Paragraph 16.

17. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA states the remaining allegations in Paragraph 17 consist of argument and legal conclusions and the subject of expert opinion and testimony, to which no response is required. To the extent a response is required, NNA denies the remaining allegations of Paragraph 17.

18. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA states the remaining allegations in Paragraph 18 consist of argument and legal conclusions and the subject of expert opinion and testimony, to which no

response is required. To the extent a response is required, NNA denies the remaining allegations of Paragraph 18.

19. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA admits that the general construction of the floor assembly for model year 2002-2006 Nissan Altima vehicles from the inner side includes carpet, melt sheets, floor metal, and areas of undercoating. NNA states the remaining allegations in Paragraph 19 consist of argument and legal conclusions and the subject of expert opinion and testimony, to which no response is required. To the extent a response is required, NNA denies the remaining allegations of Paragraph 19.

20. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA admits that the floor assembly in 2002-2006 Nissan Altima vehicles were designed with a hole approximately one inch in diameter, which was covered with sealing tape also known as a butyl patch. NNA states the remaining allegations in Paragraph 20 consist of argument and legal conclusions and the subject of expert opinion and testimony, to which no response is required. To the extent a response is required, NNA denies the remaining allegations of Paragraph 20.

21. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA states the remaining allegations in Paragraph 21 consist of argument and legal conclusions and the subject of expert opinion and testimony, to which no response is required. To the extent a response is required, NNA denies the remaining allegations of Paragraph 21.

22. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA states the remaining allegations in Paragraph 22 consist of

argument and legal conclusions and the subject of expert opinion and testimony, to which no response is required. To the extent a response is required, NNA denies the remaining allegations of Paragraph 22.

23. NNA denies the allegations of Paragraph 23.

24. NNA denies the allegations of Paragraph 24.

25. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25 regarding vehicles manufactured by other entities and, therefore, denies the same. NNA denies the remaining allegations of Paragraph 25.

26. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 regarding vehicles manufactured by other entities and, therefore, denies the same. NNA denies the remaining allegations of Paragraph 26.

27. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27 regarding vehicles designed or manufactured by other entities and, therefore, denies the same. NNA states the remaining allegations in Paragraph 27 consist of argument and legal conclusions and the subject of expert opinion and testimony, to which no response is required. To the extent a response is required, NNA denies the remaining allegations of Paragraph 27.

28. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA states the remaining allegations in Paragraph 28 consist of argument and legal conclusions and the subject of expert opinion and testimony, to which no

response is required. To the extent a response is required, NNA denies the remaining allegations of Paragraph 28.

29. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA states the remaining allegations in Paragraph 29 consist of argument and legal conclusions and the subject of expert opinion and testimony, to which no response is required. To the extent a response is required, NNA denies the remaining allegations of Paragraph 29.

30. NNA denies the allegations of Paragraph 30.

31. NNA denies the allegations of Paragraph 31.

32. NNA denies the allegations of Paragraph 32.

33. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. The anonymous complaints are not allegations and speak for themselves. NNA denies the remaining allegations, conclusions, characterizations, implications or speculation of Paragraph 33.

34. NNA denies the allegations of Paragraph 34.

35. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA denies the remaining allegations of Paragraph 35.

36. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA denies the remaining allegations of Paragraph 36.

37. NNA denies the allegations of Paragraph 37.

38. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38 and, therefore, denies the same.

39. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA admits that it is aware of some complaints regarding Nissan vehicles made to the NHTSA and other entities. NNA lacks knowledge or information sufficient to form a belief as to the truth of the contents in the “news segment” contained at the website link in a footnote to Paragraph 39 and, therefore, denies the same. NNA denies the remaining allegations in paragraph 39.

40. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA admits that it issued a Technical Service Bulletin titled “Floor Pan Repair,” which speaks for itself, and which includes a photograph identified as an example of rust. NNA denies allegations in Paragraph 40 interpreting, paraphrasing, or drawing conclusions or implications from that language. NNA denies the remaining allegations of Paragraph 40.

41. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA admits that it issued a Technical Service Bulletin titled “Floor Pan Repair” for Class Vehicles that have rust in the floor pan area, which speaks for itself, and which includes a photograph identified as an example of rust. NNA denies allegations in Paragraph 41 interpreting, paraphrasing, or drawing conclusions or implications from that language. NNA denies the remaining allegations of Paragraph 41.

42. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA admits that it issued a Nissan Bulletin titled “2002-06 Altima & 2004-08 Maxima Floor Pan Repair Kit,” which contains, among other language, the language quoted in Paragraph 42 and which speaks for itself. NNA denies allegations in Paragraph 42 interpreting, paraphrasing, or drawing conclusions or implications from that language. NNA denies the remaining allegations of Paragraph 42.

43. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. Any bulletins identified in NNA’s admissions in Paragraphs 40, 41, and 42 speak for themselves and NNA denies allegations in Paragraph 43 interpreting, paraphrasing, or drawing conclusions or implications from that language. To the extent a response is required, NNA denies the remaining allegations of Paragraph 43.

44. NNA denies any and all allegations that assert or imply any defect with the floorboards on model year 2002-2006 Nissan Altima vehicles. Any bulletins identified in NNA’s admissions in Paragraphs 40, 41, and 42 speak for themselves and NNA denies allegations in Paragraph 44 interpreting, paraphrasing, or drawing conclusions or implications from that language. To the extent a response is required, NNA denies the remaining allegations of Paragraph 44.

45. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding what “the consumer will need to pay” in Paragraph 45 and, therefore, denies the same. Any bulletins identified in NNA’s admissions in Paragraphs 40, 41, and 42 speak for themselves and NNA denies allegations in Paragraph 45 interpreting, paraphrasing, or

drawing conclusions or implications from that language. To the extent a response is required, NNA denies the remaining allegations of Paragraph 45.

46. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding costs in Paragraph 46 and, therefore, denies the same. NNA denies the remaining allegations of Paragraph 46.

47. NNA denies the allegations of Paragraph 47.

48. NNA denies the allegations of Paragraph 48.

49. NNA denies the allegations of Paragraph 49.

50. NNA denies the allegations of Paragraph 50.

51. NNA denies the allegations of Paragraph 51.

52. NNA denies the allegations of Paragraph 52.

53. NNA denies the allegations of Paragraph 53.

54. NNA denies the allegations of Paragraph 54.

55. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 55 and, therefore, denies the same.

56. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 56 and, therefore, denies the same.

57. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 57 and, therefore, denies the same.

58. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 58 and, therefore, denies the same.

59. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59 and, therefore, denies the same.

60. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 60 and, therefore, denies the same.

61. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 61 and, therefore, denies the same.

62. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 62 regarding Plaintiff's communications with "the Nissan dealership" and, therefore, denies the same. NNA admits Plaintiff contacted NNA regarding rust and provided a preliminary estimate from Carstar and that NNA responded within two business days that NNA could not assist at that time. Except as expressly admitted, NNA denies the remaining allegations of Paragraph 62.

63. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 63 and, therefore, denies the same.

64. The allegations of Paragraph 64 consist of argument and legal conclusions to which no response is required. To the extent a response is required, NNA denies the allegations of Paragraph 64.

CLASS ACTION ALLEGATIONS

65. NNA admits that Paragraph 65 identifies a putative class that Plaintiff may seek to certify in this litigation. NNA denies that the requisites for class action treatment are present and that this action could properly proceed as a class action. Nissan denies the remaining allegations of Paragraph 65.

66. NNA admits Paragraph 66 identifies exclusions to a putative class that Plaintiff may seek to certify in this litigation. NNA denies that the requisites for class action treatment are

present and that this action could properly proceed as a class action. NNA denies the remaining allegations of Paragraph 66.

67. The allegations of Paragraph 67 consist of argument and legal conclusions to which no response is required. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 67.

68. NNA admits that thousands of Class Vehicles have been sold, including a number in Missouri. The remaining allegations of Paragraph 68 consist of argument and legal conclusions to which no response is required. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required and except as expressly admitted, NNA denies the remaining allegations of Paragraph 68.

69. The allegations of Paragraph 69 consist of argument and legal conclusions to which no response is required. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 61, including allegations in subparagraphs 69(a)-(i).

70. The allegations of Paragraph 70 consist of argument and legal conclusions to which no response is required. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 70.

71. The allegations of Paragraph 71 consist of argument and legal conclusions to which no response is required. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 71.

72. The allegations of Paragraph 72 consist of argument and legal conclusions to which no response is required. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 72.

73. The allegations of Paragraph 73 consist of argument and legal conclusions to which no response is required. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 65, including allegations in subparagraphs 73(a)-(c).

FIRST CAUSE OF ACTION
Declaratory Judgment Act, 28 U.S.C. § 2201, et seq.
(Plaintiff Individually and on behalf of the Class)

74. NNA incorporates by reference all its responses to Paragraphs 1-73 as if fully set forth in this Paragraph 74.

75. The allegations of Paragraph 75 consist of argument and legal conclusions to which no response is required. To the extent a response is required, NNA denies the allegations of Paragraph 75.

76. The allegations of Paragraph 76 consist of argument and legal conclusions to which no response is required. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 76, including allegations in subparagraphs 76(a)-(e).

77. The allegations of Paragraph 77 consist of argument and legal conclusions to which no response is required. To the extent a response is required, NNA denies the allegations of Paragraph 77.

78. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA denies the remaining allegations of Paragraph 78.

79. The allegations of Paragraph 79 consist of argument and legal conclusions to which no response is required. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 79.

80. The allegations of Paragraph 80 consist of argument and legal conclusions to which no response is required. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 80.

SECOND CAUSE OF ACTION
Missouri Breach of Express Warranty
(Plaintiff Individually and on behalf of the Class)

81. NNA incorporates by reference all its responses to Paragraphs 1-80 as if fully set forth in this Paragraph 81. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 81 is required. Doc. #91.

82. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 82 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 82.

83. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 83 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 83.

84. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 84 is required. Doc. #91. To the extent a response is required, NNA admits that NNA provided certain limited express warranties for its vehicles, the terms, limitations, and conditions

of which are contained in Warranty Information Booklets, which speak for themselves. The remaining allegations in Paragraph 84 consist of argument and legal conclusions to which no response is required. NNA notes that Paragraph 84 is an incomplete statements of the terms, conditions, and limitations of the express warranties and, on that basis, NNA denies the remaining allegations of Paragraph 84.

85. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 85 is required. Doc. #91. To the extent a response is required, NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 85 and, therefore, denies the same.

86. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 86 is required. Doc. #91. To the extent a response is required, NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required as to the remaining allegations, NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 86 and, therefore, denies the same.

87. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 87 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 87.

88. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 88 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 88.

89. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 89 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 89, including subparagraphs 89(a)-(b).

90. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 90 is required. Doc. #91. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA specifically denies that this action can be maintained as a class action. NNA denies the remaining allegations of Paragraph 90.

THIRD CAUSE OF ACTION
Violation of the Missouri Merchandising Practices Act
Mo. Rev. Stat. §§ 407.010 et seq. (“the MMPA”)
(Plaintiff Individually and on behalf of the Class)

91. NNA incorporates by reference all its responses to Paragraphs 1-90 as if fully set forth in this Paragraph 91.

92. The allegations of Paragraph 91 consist of argument and legal conclusions to which no response is required. To the extent a response is required, NNA admits that Plaintiff has accurately cited portions of Mo. Rev. Stat. § 407.020.1, which speaks for itself. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect.

93. The allegations of Paragraph 93 consist of argument and legal conclusions to which no response is required. To the extent a response is required, NNA notes this is an incomplete statement of the law and, on that basis, denies the allegations of Paragraph 93.

94. The allegations of Paragraph 94 consist of argument and legal conclusions to which no response is required. NNA specifically denies that this action can be maintained as a

class action. To the extent a response is required, NNA notes this is an incomplete statement of the law and, on that basis, denies the allegations of Paragraph 94.

95. The allegations of Paragraph 95 consist of argument and legal conclusions to which no response is required. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA notes this is an incomplete statement of the law and, on that basis, denies the allegations of Paragraph 95.

96. The allegations of Paragraph 96 consist of argument and legal conclusions to which no response is required. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA notes this is an incomplete statement of the law and, on that basis, denies the allegations of Paragraph 96.

97. The allegations of Paragraph 97 consist of argument and legal conclusions to which no response is required. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 97.

98. The allegations of Paragraph 98 consist of argument and legal conclusions to which no response is required. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 98.

99. The allegations of Paragraph 99 consist of argument and legal conclusions to which no response is required. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect.

NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 99.

100. The allegations of Paragraph 100 consist of argument and legal conclusions to which no response is required. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 100.

101. The allegations of Paragraph 101 consist of argument and legal conclusions to which no response is required. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 101.

102. The allegations of Paragraph 102 consist of argument and legal conclusions to which no response is required. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. NNA specifically denies that this action can be maintained as a class action. To the extent a response is required, NNA denies the allegations of Paragraph 102.

103. The allegations of Paragraph 103 consist of argument and legal conclusions to which no response is required. NNA denies any and all allegations that assert or imply any defect with the floorboards on Class Vehicles, or that NNA had knowledge of any purported defect. To the extent a response is required, NNA denies the allegations of Paragraph 103.

104. NNA denies the allegations of Paragraph 104.

105. NNA denies the allegations of Paragraph 105.

106. NNA denies the allegations of Paragraph 106.

107. NNA denies the allegations of Paragraph 107.

108. NNA denies the allegations of Paragraph 108.

109. NNA denies the allegations of Paragraph 109.

110. NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 110 and, therefore, denies the same.

111. NNA denies the allegations of Paragraph 111.

112. NNA denies the allegations of Paragraph 112.

FOURTH CAUSE OF ACTION
Unjust Enrichment
(Plaintiff Individually and on behalf of the Class)

113. NNA incorporates by reference all its responses to Paragraphs 1-112 as if fully set forth in this Paragraph 113. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 13 is required. Doc. #91.

114. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 114 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 114.

115. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 115 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 115.

116. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 116 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 116.

117. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 117 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 117.

118. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 118 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 118.

119. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 119 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 119.

FIFTH CAUSE OF ACTION
Fraudulent Concealment
(Plaintiff Individually and on behalf of the Class)

120. NNA incorporates by reference all its responses to Paragraphs 1-119 as if fully set forth in this Paragraph 120. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 121 is required. Doc. #91.

121. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 121 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 121.

122. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 122 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 122.

123. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 123 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 123.

124. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 124 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 124.

125. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 125 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 125.

126. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 126 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 126.

127. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 127 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 127.

128. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 128 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 128.

129. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 129 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 129.

130. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 130 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 130.

131. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 131 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 131.

132. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 132 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 132.

133. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 133 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 134.

SIXTH CAUSE OF ACTION
Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.
(Plaintiff Individually and on behalf of the Class)

134. NNA incorporates by reference all its responses to Paragraphs 1-134 as if fully set forth in this Paragraph 135. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 134 is required. Doc. #91.

135. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 135 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 135.

136. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 136 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 136.

137. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 137 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 137.

138. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 138 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 138.

139. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 139 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 139.

140. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 140 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 140.

141. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 141 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 141.

142. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 142 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 142.

143. The allegations of Paragraph 143 consist of argument and legal conclusions to which no response is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 143.

144. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 144 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 144.

145. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 145 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 145.

146. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 146 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 146.

147. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 147 is required. Doc. #91. To the extent a response is required, NNA denies the allegations of Paragraph 147.

148. The Court has dismissed this Count and therefore no response to the allegations in Paragraph 148 is required. Doc. #91. To the extent a response is required, NNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 148 and, therefore, denies the same.

NNA not required to respond to respond to Plaintiff's pray for relief, but to the extent such a response is deemed required, NNA denies Plaintiff is entitled to the relief requested following Paragraph 148, or to any relief whatsoever.

NNA'S AFFIRMATIVE DEFENSES

In addition to the foregoing denials, NNA alleges and asserts the following affirmative defenses applicable to each and every allegation and each and every count contained in the Complaint, and without assuming any burden of pleading or proof that would otherwise rest on Plaintiff. Further, that the defenses are pleaded in the alternative does not constitute an admission of liability as to any claim or cause of action that Plaintiff and putative class members are entitled to any relief whatsoever. Hereafter, "Plaintiff" will refer to Plaintiff and putative class members.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Some or all of the claims of Plaintiff are barred by the applicable statute of limitations and repose.

THIRD AFFIRMATIVE DEFENSE

This Court lacks jurisdiction, including personal jurisdiction, to adjudicate some or all of Plaintiff's claims against NNA.

FOURTH AFFIRMATIVE DEFENSE

Some of all of Plaintiff's claims are subject to a binding arbitration clause contained in contracts to which Plaintiff is bound.

FIFTH AFFIRMATIVE DEFENSE

The claims and damages of Plaintiff, if any, are barred or diminished, if any, as the proximate result of the acts or omissions of a third party or an unforeseen, intervening, and/or superseding event or cause, for which NNA is not responsible.

SIXTH AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred by the applicable doctrine of waiver, estoppel, unclean hands, or laches.

SEVENTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims may be barred, in whole or in part, by the voluntary payment doctrine.

EIGHTH AFFIRMATIVE DEFENSE

Any allegedly defective condition in the vehicles described in Plaintiff's Complaint developed as a result of unforeseeable misuse, abuse, abnormal use, alterations, changes,

modifications, neglect, or improper maintenance or repairs made to the vehicle after it left the possession and control of NNA by persons or entities over which NNA has no control. Therefore, any recovery by Plaintiff is barred.

NINTH AFFIRMATIVE DEFENSE

The claims of Plaintiff are barred, in whole or in part, by settlement or by accord and satisfaction of their claims.

TENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred by the doctrine of res judicata.

ELEVENTH AFFIRMATIVE DEFENSE

Some of all of Plaintiff's claims are barred by the economic loss doctrine.

TWELFTH AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred because the subject floorboard was not designed, manufactured, or assembled in a defective manner.

THIRTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred because NNA provided adequate instructions or warnings regarding any risk of injury, or Plaintiff otherwise knew or should have known of any risk of injury and all said risks and dangers, if any, were fully appreciated and voluntarily assumed during all times set out in the Complaint. Plaintiff voluntarily or unreasonably placed herself in a position of danger, if such position of danger did in fact exist, and thereby assumed the risk of all injuries that might or did result therefrom. Plaintiff is, therefore, barred from any recover herein or her damages, if any, are reduced according to law.

FOURTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred because the risks allegedly associated with the subject floorboard were not known or reasonably knowable in light of the prevailing scientific knowledge at the time the floorboard was placed on the market.

FIFTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred to the extent that the subject floorboard was used in disregard of the instructions and directions regarding its use, abused, neglected, or modified or altered.

SIXTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred because the benefits of the subject floorboard outweigh whatever harm or negative impact, if any, it has caused Plaintiff and the putative class members.

SEVENTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred because the subject floorboard complied with all applicable federal and state statutes, regulations, and safety standards, or was manufactured, designed, tested, and labeled in a manner conforming to the generally recognized or prevailing state of relevant scientific and technological knowledge available at the time.

EIGHTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred because there exists no reasonable alternative design that would make the subject floorboard safer when used for their intended purposes.

NINETEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred because Plaintiff failed to provide NNA with a reasonable number of attempts to repair the allegedly defective vehicle, or reasonable or timely notice of any alleged defect or non-conformity with the vehicle's warranty.

TWENTIETH AFFIRMATIVE DEFENSE

The conditions which Plaintiff allege exist in the subject vehicle do not substantially impair its use, value, or safety.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The defects which Plaintiff alleges exist may not be covered by any implied warranty.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate or minimize her alleged damages.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The claims of Plaintiff are barred, in whole or in part, by the voluntary payment doctrine.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is defective for failure to join indispensable parties.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The defects which Plaintiff alleges exist in her vehicle have been corrected by NNA or its authorized dealership.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred because there was a lack of privity or sufficient direct nexus between Plaintiff and NNA.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's recovery and theory of recovery are barred, in whole or in part, by the terms of any applicable express limited warranty.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred, in whole or in part, to the extent NNA fulfilled all of its obligations, if any, under any express or implied warranty, to the extent any such warranty existed, with respect to any transaction with Plaintiff.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The claims of Plaintiff are barred as she has sustained no cognizable injury or damages compensable at law or in equity.

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert some or all of the claims.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff is not entitled to pursue claims as a class action.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Some or all of the claims of Plaintiff are preempted by federal law.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Some or all of the claims of Plaintiff are subject to the primary jurisdiction doctrine.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

To the extent Plaintiff are seeking recovery for benefits received, or anticipated to be received, from another source for the injuries alleged in the First Amended Complaint, such benefits are not recoverable in this action.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Notwithstanding the claims and contentions of Plaintiff, Plaintiff received all or substantially all of the benefit from the subject products that Plaintiff and the putative class members hoped and intended to receive and, to that extent, any damages and/or restitution that Plaintiff or the putative class members might be entitled to recover from NNA must be denied or correspondingly reduced.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

Some or all of the claims of Plaintiff are impliedly preempted by the Motor Vehicle Safety Act, 49 U.S.C. § 30101, et seq., or by other federal statutes or regulations.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff seeks to impose overwhelming and disproportionate liability in violation of NNA's substantive and procedural due process rights.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

To the extent Plaintiff's claims are based on a theory providing for liability without proof of causation, the claims violate NNA's rights under the United States Constitution and the Missouri State Constitution.

THIRTY-NINTH AFFIRMATIVE DEFENSE

The claims of Plaintiff and imposition of damages, including treble or exemplary damages, are barred, in whole or in part, by the Commerce Clause of the United States Constitution because they purport to regulate interstate commerce and impermissibly place an undue and unreasonable burden on interstate commerce.

FORTIETH AFFIRMATIVE DEFENSE

The claims of Plaintiff are barred to the extent that the business practices alleged were carried out for legitimate business reasons.

FORTY-FIRST AFFIRMATIVE DEFENSE

The claims of the Plaintiff may be barred to the extent that the vehicles or their component parts are designed, assembled, and distributed by persons for whom NNA has no legal responsibility.

FORTY-SECOND AFFIRMATIVE DEFENSE

The claims of Plaintiff may be barred, in whole or in part, by applicable law relating to spoliation of evidence.

FORTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims for treble or exemplary damages cannot be sustained, because the applicable laws regarding the standards for determining liability for, and amount of, treble or exemplary damages fail to give NNA adequate prior notice of the conduct for which treble or exemplary damages may be imposed with the severity of the penalty that may be imposed, and are void for vagueness in violation of NNA's due process rights guaranteed by the United States Constitution.

FORTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims for exemplary and treble damages are barred by the due process clauses of the Fifth and Fourteenth Amendments and the excessive fines clause of the Eighth Amendment to the United States Constitution, and similar state constitutional provisions.

FORTY-FIFTH AFFIRMATIVE DEFENSE

NNA alleges that any award of treble or exemplary damages based on anything other than NNA's conduct in connection with the sale of the specific vehicles that are the subject of this lawsuit would violate the due process clause of the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment, as incorporated into the Fourteenth Amendment, because any other judgment for treble or exemplary damages in this case cannot protect NNA against impermissible multiple punishment for the same wrong.

FORTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims for treble or exemplary damages cannot be sustained to the extent they seek to punish NNA for alleged harm to non-parties and/or persons who are not before the Court. Imposition of treble or exemplary damages under such circumstances would violate NNA's procedural and substantive due process rights and equal protection rights under the Fifth and

Fourteenth Amendments to the United States Constitution, and would be improper under the common law and public policies of the United States.

RESERVATION OF RIGHT TO AMEND

NNA reserves the right to assert additional defenses, counterclaims, cross-claims, or third-party claims as they become known throughout the course of this litigation and as may become available.

DEMAND FOR JURY TRIAL

NNA hereby demands a trial by jury on all issues so triable.

WHEREFORE, NNA hereby requests:

- a. That judgment be entered in its favor and against Plaintiff;
- b. That the Complaint and all its claims be dismissed with prejudice;
- c. For attorneys' fees and costs of suit; and
- d. For such other and different relief as this Court may deem just and proper.

Dated: October 29, 2019

Respectfully Submitted,

SHOOK, HARDY & BACON L.L.P.

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