

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(Class Action)  
SUPERIOR COURT

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NO: 500-06-000796-165

**ALBERT HADIDA**, domiciled at 6595 Mackle road #222, Côte St-Luc, district of Montreal, Quebec, H4W 2Y1

Applicant

-vs-

**NISSAN CANADA INC.**, legal person having its head office at 5290 Orbitor Drive, P.O. Box 1709, Station B, Mississauga, Ontario, L4W 4Z5

and

**NISSAN NORTH AMERICA INC.**, legal person having its head office at 1 Nissan Way, Franklin, Tennessee, 37067, United States of America

and

**NISSAN MOTOR CO., LTD.**, legal person having its head office at 1-1, Takashima 1-chome, Nishi-ku, Yokohama-shi, Kanagawa 220-8686, Japan

Defendants

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**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO APPOINT THE  
STATUS OF REPRESENTATIVE PLAINTIFF  
(ARTICLE 571 AND FOLLOWING C.C.P)**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE  
DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS FOLLOWS:**

**I. GENERAL PRESENTATION**

**A) THE ACTION**

1. Applicant wishes to institute a class action on behalf of the following group, of which he is a member, namely:

**Group:**

All natural persons, legal persons established for a private interest, partnerships and associations or other groups not endowed with juridical personality, resident in Canada (subsidiarily Quebec), who, any time between May 8<sup>th</sup>, 2006 to November 30<sup>th</sup>, 2015 (the "**Class Period**"), purchased and/or leased one or more of the Nissan Versa Model Years 2007-2012 (the "**Defective Vehicles**") manufactured, distributed, supplied, wholesaled and/or imported by Nissan;

(hereinafter referred to as the "**Group**")

or any other group to be determined by the Court;

2. During the Class Period, Defendants Nissan Canada, Nissan North America Inc., and Nissan Motor Co. Ltd. (hereinafter collectively referred to as "**Nissan**"), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and sold automobiles through independent retailers, outlets, and authorized dealerships throughout Canada, including within the province of Quebec;
3. In November of 2015, Defendant Nissan Canada Inc. mailed out to some, but not to all, Group members a document titled "Owner Notification Transport Canada 2015402" (the "**Recall Notice**"), Applicant disclosing the Recall Notice he received as **Exhibit P-1**;
4. The Recall Notice mailed by Defendant Nissan Canada Inc. to some Group members advises them, *inter alia*, of the following:

Nissan has decided that a **defect which relates to motor vehicle safety exists** in Model Year 2007-2012 Nissan Versa vehicles. Our records indicate that you own or lease the Nissan vehicle identified by the VIN on the inside of this notice.

**Reason for Recall**

**Due to a production issue**, the front coil springs in certain Versa vehicles may have insufficient corrosion coating. Heavy concentrations of road salt used in the winter may cause the front coil springs to develop corrosion over time. This can result in fracture of the spring. A fractured spring may damage the front tire and adversely affect the handling of the vehicle, **increasing the risk of a crash**.

**French version:**

Nissan a déterminé qu'il existe une défectuosité par rapport à la sécurité des véhicules automobiles sur certains Nissan Versa 2007 à 2012. Nos dossiers indiquent que vous êtes propriétaire ou locataire du véhicule Nissan qui porte le NIV indiqué dans le présent avis.

**Raison du rappel**

En raison d'un problème de production, les ressorts hélicoïdaux avant de certaines Versa pourraient ne pas avoir reçu un revêtement anticorrosion adéquat. De fortes concentrations de sel de voirie utilisé en hiver pourraient causer la corrosion des ressorts hélicoïdaux avant avec le temps, ce qui pourrait se traduire par une fracture des ressorts. Des ressorts brisés pourraient endommager les pneus avant et nuire à la tenue de route du véhicule, augmentant ainsi le risque de collision.

[Our emphasis underlined in bold]

5. Contrary to what is provided under the *Canada Motor Vehicle Safety Act* and its *Regulations*, Nissan did not send the Recall Notice to all Nissan Versa (2007-2012 year models) owners and prescribed persons (defined as a person who obtained the vehicle from the company, such as a lessee) within 60 days after the day on which it became aware of the Defect, but waited close to 5 years before sending any notices to Group members (as more fully detailed below at paragraphs 35 to 38);
6. As of the eve of filing this Application, some Group members have not yet received the Recall Notice at all;

**Latent Defects:**

7. As manufactures, distributors, suppliers, wholesalers and/or importers of the Defective Vehicles, Nissan is bound to warrant Group members that the vehicles and its accessories are, at the time of the sale, free of latent defects which render them unfit for the use for which it was intended or which so diminish its usefulness that the buyer would not have bought it or paid so high a price if he had been aware of them;
8. According to Transport Canada, Nissan's recall affecting **110,604** Canadian Nissan Versa vehicles (year models 2007-2012) is related to the vehicles' suspension systems because "*the front **suspension coil springs** may have been manufactured with an inadequate phosphorous coating, and/or could have low residual stress in the springs*" (hereinafter the "**Defect**"), as it appears from the Recall Details for Transport Canada Recall # 2015402, Applicant disclosing **Exhibit P-2**;

9. In its Recall Notice, Exhibit P-1, Nissan admits to selling and leasing vehicles to Group members that contained the Defect;
10. In its Technical Service Bulletin<sup>1</sup> #NTB15-078, sent to its dealers and dated **September 17<sup>th</sup>, 2015**, Nissan informs its dealers that “*Nissan is conducting this Voluntary Recall Campaign to replace the front **suspension** coil springs on certain specific Model Year 2007-2012 Versa vehicles...*”, Applicant disclosing **Exhibit P-3**;
11. The word “*suspension*” does not appear in the Recall Notice sent to Group members, but is again described in a letter sent to Nissan by the U.S. Department of Transportation, dated **September 30<sup>th</sup>, 2015**, confirming that the recall concerns **218,019 vehicles** in the United States and that the Defect effects the suspensions of Group members’ vehicles, Applicant disclosing **Exhibit P-4**, which states the following:

**Makes/Models/Model Years:** NISSAN/VERSA/2007-2012

**Mfr's Report Date:** September 14, 2015

**NHTSA Campaign Number:** 15V-573

**Components:** SUSPENSION:FRONT:SPRINGS:COIL SPRINGS

**Potential Number of Units Affected:** 218,019

12. The Defect in the Defective Vehicles is latent, sufficiently serious, existed at the time of the sale and was unknown to the Group members;
13. A reasonable buyer in the same circumstances could not have detected the Defect at the time of the sale;
14. As professional sellers, Nissan is presumed to have known about the Defect since the Nissan Versa vehicles (year models 2007 to 2012) were manufactured and sold from **May 8<sup>th</sup>, 2006**, through **November 12<sup>th</sup>, 2012**, dates confirmed on the last page of Nissan’s Updated TSB to its dealers, sales, service and parts managers, dated February 15<sup>th</sup>, 2016, Applicant disclosing **Exhibit P-5**;
15. Group members benefit from the legal presumption that the Defect existed at the time of the sale, since the Defective Vehicles sold by Nissan to Group members

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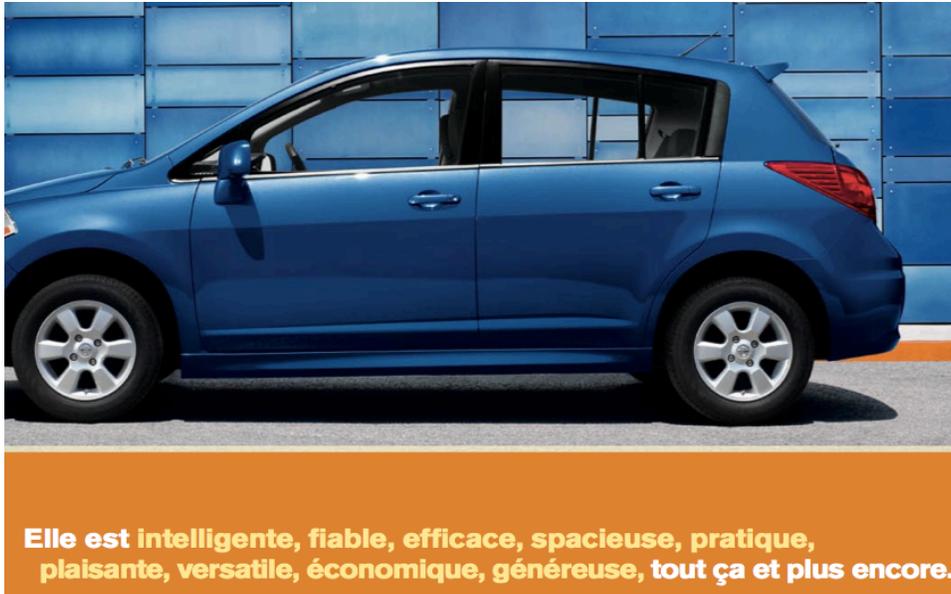
<sup>1</sup> Technical service bulletins (hereinafter “**TSB**”) are **issued by Nissan to assist technicians** with diagnosis and repair. TSBs address specific concerns or conditions such as rough idles, noises and rattles. These specific concerns can be the result of customer or repair shop feedback. The TSB for a specific concern or condition will provide an up-to-date engineering-approved vehicle modification, repair procedure or service part (source: [http://www.nissan-techinfo.com/TSB/TSB\\_xml/nmlIndex.aspx](http://www.nissan-techinfo.com/TSB/TSB_xml/nmlIndex.aspx));

- malfunction and/or deteriorate prematurely in comparison with identical vehicles or vehicles of the same type;
16. Nissan cannot rebut this presumption because it has admitted in the Recall Notice, Exhibit P-1, that the “defect” is “due to a production issue” and not due to improper use of the vehicle by Group members;
  17. Moreover, Nissan’s claim that “Heavy concentrations of road salt used in the winter may cause the front coil springs to develop corrosion over time” only underscores the fact that Nissan failed to adequately design the Defective Vehicles, which should have never been sold in markets such as Quebec, Ontario, Alberta, and Saskatchewan (to name a few), where harsh winters are commonplace;
  18. According to Nissan’s TSB dated February 15<sup>th</sup> 2016, Exhibit P-5, the Defective Vehicles were manufactured at the plants in the cities of Aguascalientes and Cuernavaca, in Mexico;
  19. On **May 8<sup>th</sup>, 2006**, the date that Nissan began manufacturing the Defective Vehicles in Mexico, Nissan was very well aware that there are heavier concentrations of salt used on roads in Canada and snowbelt states, than used in Mexico and southern states (if any at all);
  20. On **May 8<sup>th</sup>, 2006**, Nissan knew that it should have manufactured the Defective Vehicles with adequate phosphorous/corrosion coating, so that they would be fit for the purposes for which these kind of vehicles are ordinarily used (that is, to be driven on streets, including on Canada’s wintery roads);
  21. Nissan admits that the Defective Vehicles were not durable in normal use for a reasonable length of time, and this having regard to their price, the terms of the contracts and the conditions of their use by Group members;
  22. As a result of the foregoing, Nissan violated Quebec’s *Consumer Protection Act* (the “CPA”), the *Civil Code of Quebec* (the “CCQ”) and other consumer and sales legislation applicable across Canada, because the Defective Vehicles were not fit for the purposes for which goods of that kind are ordinarily used (i.e. for driving without the risk of crash causing injury and/or property damage);
  23. Group members are entitled to exercise directly against Nissan a recourse based on a latent defect in the Defective Vehicles, because they could have never discovered the Defect by an ordinary examination of their respective vehicles;
  24. Section 53 of the CPA bars Nissan from pleading that it was unaware of the Defect;
  25. Nissan not only put the lives of Group members in danger, but also the safety of

other drivers, cyclists and pedestrians who share the roads with Group members;

**Nissan's False Advertising:**

26. Furthermore, Nissan falsely advertised its Nissan Versa vehicles as being “reliable” (*fiable*) and offering drivers “security” and “safety” (*sécurité*), as it appears, for instance, from Nissan’s French brochure titled “**Versa 2010 de Nissan**”, Applicant disclosing **Exhibit P-6**:



27. Egregiously, Nissan goes as far marketing the safety and reliability of its coil springs (“*les ressorts*”) in the same **2010 brochure**, Exhibit P-6, by stating: “**Les ressorts. Un ressort contrôle la vitesse et l’étendue du choc après une bosse pour une conduite plus douce et plus stable, et des virages amorcés en sécurité**”, as appears below:

**Manuelle ou automatique ?** Le choix vous appartient. Les deux sont des joueurs bien établis et toujours prêts lorsque vient le temps de démarrer votre journée. Peu importe ce que ça implique, peu importe la destination.

**Les ressorts** Un ressort contrôle la vitesse et l’étendue du choc après une bosse pour une conduite plus douce et plus stable, et des virages amorcés en sécurité.

**Amortisseur de chocs à contrôle des ondulations** Un amortisseur de chocs à contrôle des ondulations amortit les ballotements et les vibrations indésirables pour des déplacements plus doux et plus tranquilles.

Amortisseur classique

Amortisseur à contrôle des ondulations

Ondulation

28. In its 2008 Nissan Versa brochure, Applicant disclosing **Exhibit P-7**, Nissan makes the same false representations concerning the safety offered to Group members by its coil springs by stating: “A great relationship with the road is handled by thoughtful technology, including a **rebound spring** inside each shock absorber. By helping to control how fast and how far the shock extends after hitting a bump or when the vehicle is leaning in a turn, **you enjoy** a smoother ride and flatter, **more secure cornering**”, as it appears from the image below:



< Versa's available premium audio system features 6 strategically placed speakers, an in-dash MP3/WMA-capable 6-CD changer (good for over 70 hours of music), an auxiliary audio input<sup>2</sup> for your MP3/WMA player, and available XM™ Satellite Radio?

A great relationship with the road is handled > by thoughtful technology, including a rebound spring inside each shock absorber. By helping to control how fast and how far the shock extends after hitting a bump or when the vehicle is leaning in a turn, you enjoy a smoother ride and flatter, more secure cornering.

<sup>1</sup>WardsAuto.com's Lower Small Car segment, January 2007. <sup>2</sup>Driving is serious business and requires your full attention. Do not operate any devices connected to the auxiliary input while driving. <sup>3</sup>XM™ is a trademark of XM Satellite Radio Inc. and used under licence by XM Canada. Required XM subscription sold separately after three trial months. Reception of the XM signal may vary depending on location. All fees and programming subject to change. Subscriptions subject to terms and conditions available at [www.xmradio.ca](http://www.xmradio.ca).

29. There is no doubt that the representations made by Nissan during the Class Period concerning the security offered by its coil springs were false, Nissan having admitted in the Recall Notice, Exhibit P-1, that the front coil springs are defective and actually increase the risk of a crash!

**Nissan's failure to mention an important fact in its representations (s. 228 CPA):**

30. Nissan committed prohibited business practices by its false or erroneous representations concerning the quality of the Defective Vehicles, as well as by its omission to divulge an important fact on concerning the safety of the Defective Vehicles (a vehicle that is not safe to drive is an important fact) for which it was, or should have been, aware of since **May 8<sup>th</sup>, 2006**;
31. The fact that Nissan “voluntarily” chose to execute its obligations<sup>2</sup> does not deprive Group members from asking this honorable Court for a reduction of their very own obligations, on the grounds that Nissan failed in its obligation to mention an important fact in its representations made to consumers (pursuant to section 228 and paragraph c of section 272 CPA);

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<sup>2</sup> It is important to note, however, that as of the filing of this action, a number of Group members have not received the first Recall Notice from Nissan. Moreover, many Group members who received the first Recall Notice are yet to receive the second letter instructing them on how to proceed with the repair. Nissan is thus yet to execute its obligations with respect to these Group members.

32. Replacing the front suspension coil springs (years later) does not alone compensate the damages suffered by Group members kept in the dark by Nissan, who failed to mention an important fact to Group members at the time of they acquired their Nissan Versas (year models 2007 to 2012);
33. Although, as professionals sellers, Nissan has “presumed knowledge” of the Defect since **May 8<sup>th</sup>, 2006**, there was ample information publicly available for Nissan to obtain “actual knowledge” of the Defect, such as consumer complaints, describing the suspension/steering issues, publicly recorded on the website of the *National Highway Traffic Safety Administration* (the “**NHTSA**”), *United States Department of Transportation* (DOT), Applicant disclosing *en liasse* only one page of complaints from the NHTSA website (although there are many more) as **Exhibit P-8**. The first complaint filed as early as **June 27<sup>th</sup>, 2007**, described the following:

TL\*THE CONTACT OWNS A 2007 NISSAN VERSA. WHILE DRIVING APPROXIMATELY 60-70 MPH, THE VEHICLE VEERS TO THE LEFT. WHEN DECELERATING, THE VEHICLE VEERS TO THE RIGHT AND FEELS AS IF IT WILL SPIN OUT. THE CONTACT HAS SCHEDULED AN APPOINTMENT AT THE DEALER FOR JUNE 29, 2007. THE POWERTRAIN WAS UNKNOWN. THE CURRENT AND FAILURE MILEAGES WERE 30. THE CONSUMER STATED TOOK THE VEHICLE TO CERRITO'S AND THE MECHANIC TEST DROVE THE VEHICLE AND STATED THERE WAS NOTHING WRONG WITH THE VEHICLE. THE FOREMAN STATED IT COULD BE STEERING BUT SINCE IT IS ELECTRIC AND DOES NOT HAVE POWER STEERING. SHE DOES NOT KNOW IF THAT IS THE REASON THE VEHICLE IS VEERING TO EITHER THE RIGHT OR LEFT. THE CONSUMER STATED FEELS UNSAFE DRIVING THE VEHICLE AND PROVIDED EMAILS FROM OTHER CONSUMERS WITH THE SAME DEFECT. THE CONSUMER ALSO PROVIDED A COPY OF THE REPAIR INVOICE. UPDATED 07/31/07 \*TR

34. Another complaint filed **April 29<sup>th</sup>, 2008**, forming part of Exhibit P-8, describes the following:

MY VEHICLE HAS BEEN IN THE SHOP REPEATEDLY FOR THE FRONT END "**POPPING**" **WHEN TURNING RIGHT**. **THE RIGHT STRUT** AND BUSHING, RACK AND PINION, AND SWAY BAR HAS BEEN REPLACED. THIS VEHICLE STILL HAS A QUICK "POP" WHICH CAN BE FELT IN THE STEERING WHEEL WHEN INITIALLY TURNING RIGHT. I FEAR SOMETHING MAY FAIL WHEN DRIVING AND LOSS OF CONTROL MAY OCCUR. **THIS HAS BEEN AN ONGOING PROBLEM THAT EVEN NISSAN CANNOT SEEM TO FIX. I HAVE COMPLAINED TO NISSAN ABOUT THIS ISSUE AND AS YOU CAN SEE THEY HAVE REPLACED NUMEROUS PARTS.** I DON'T KNOW WHAT ELSE TO DO. \*TR

[our emphasis underlined in bold].

35. As consumer complaints increased, Nissan further acknowledged the existence of the Defect, issuing **TSB NTB11-032**, dated **March 28<sup>th</sup>, 2011**, to only its dealers, in which Nissan implemented repairs in attempt to fix the Defect, Applicant disclosing **Exhibit P-9**, which states as follows:

**APPLIED DATES:**

2007-2010: All

2011 vehicles built before January 21, 2011

**IF YOU CONFIRM**

A **noise** (clunking, **popping**, or bumping) coming from the front strut assembly **when the steering wheel is turned.**

**All 2007-2009 Versa:**

1. Install the gray and green tubes listed in the Parts Information section onto the TOP and BOTTOM ends of both (LH and RH) **front suspension coil springs.**

2. Replace both (LH and RH side) strut mounting bearings with the ones listed in the Parts Information section.

**All 2010 and Applicable 2011 Versa:**

Install the gray and green tubes listed in the Parts Information section onto the TOP and BOTTOM ends of both (LH and RH) **front suspension coil springs.**

**[our emphasis underlined in bold].**

36. And yet, from **2006** (marketing date) until **November 2015** (Recall Date), Nissan continued selling Defective Vehicles to Group members, while failing to mention an important fact concerning the Defective Vehicles;
37. Nissan had a legal obligation to mention this important fact (that the front suspension coil springs have insufficient phosphorous/corrosion coating), because:
- a) as a professional seller, Nissan is presumed to be aware of the Defect since **May 8<sup>th</sup>, 2006** (*date de la connaissance présumée*);
  - b) many complaints concerning the Defective Vehicles were filed and were easily accessible to Nissan on the NHTSA website as early as **June 27<sup>th</sup>, 2007**;
  - c) Nissan acknowledged the Defect and implemented a fix therefor in its TSB NTB11-032, dated **March 28<sup>th</sup>, 2011**;

38. It is safe for Applicant to deduce that Nissan was aware of the defect before the sending out of TSB NTB11-032, Exhibit P-9, to its dealers and that Nissan's actual knowledge (*connaissance réelle*) of the Defect is at some point in time between **May 8<sup>th</sup>, 2006**, and **March 28<sup>th</sup>, 2011**;
39. Despite having presumed and actual knowledge of the Defect by early **2011** at the latest, Nissan remained silent and failed to inform Group members of an important fact, Applicant disclosing *en liasse* the French and English versions of the **2012 Nissan Versa** brochure as **Exhibit P-10**, extracts of which are reproduced below:

### French (Canadian) Version:



Ressorts anti-rebond – Contrôlent la vitesse et l'étendue du choc après une bosse pour une conduite plus stable et des virages plus précis et plus sécuritaires.

**877** kilomètres entre les pleins

**SÉCURITÉ : Mieux vaut prévenir que guérir. C'est pourquoi la Versa est truffée de technologies de pointe offertes de série afin d'assurer votre protection.**

Contrôle dynamique du véhicule (CDV) – Vous aide à garder le cap si votre Versa commence à survirer ou à sous-virer, en réduisant la puissance du moteur ou en appliquant la force de freinage appropriée.

### English (American) Version:



#### **SAFETY:**

**Our priority is to help you avoid an accident in the first place. That's why Versa comes standard with these advanced safety technologies.**

**Vehicle Dynamic Control (VDC)** – Helps to keep you on your steered path, if Versa begins to experience oversteer or understeer, by reducing engine power and/or applying brake pressure to specific wheels.<sup>2</sup>

**Anti-lock Braking System (ABS)** – Versa's standard advanced ABS system gives confident, secure braking when you need it most.

**Electronic Brake force Distribution** – Adjusts brake proportioning to compensate for added weight from passengers or cargo. It even adjusts as fuel is consumed.

**Brake Assist** – "Reads" how quickly the brakes are engaged and immediately applies maximum available power boost for braking.

**Brake Override Technology** – Like every Nissan since 2005, Versa Sedan comes standard with Brake Override Technology. It's designed to help slow down your vehicle and bring it to a safe stop in an emergency by overriding accelerator input and reducing engine power when the accelerator and brake pedals are applied simultaneously.

40. Ironically, in the French version of the brochure used in Quebec and Canada, Nissan states under the heading titled "Sécurité": "**SÉCURITÉ : Mieux vaut prévenir que guérir. C'est pourquoi la Versa est truffée de technologies de pointe offertes de série afin d'assurer votre protection**", yet Nissan failed to practice what it preached;
41. Similarly, under the "Safety" heading in the English version the 2012 Nissan Versa brochure, Nissan states: "**SAFETY: Our priority is to help you avoid an accident in the first place. That's why Versa comes standard with these advanced safety technologies**", when in reality Nissan was undeniably aware that the Defect increased Group members' risk of a crash causing injury and/or property damage;

**Nissan's Knowledge of the Defect and remedies:**

42. Applicant respectfully submits that this honorable Court take into account the presumed date of **May 8<sup>th</sup>, 2006**, based on the wording of the third paragraph of section 53 of the *CPA* (for Group members protected by the *CPA*). As for Group members that are not consumers as defined by the *CPA*, the date of the existence of the Defect will have to be defined at a later stage of these proceedings, based on the wording of article 1729 *CCQ*;
43. As a result the foregoing, Applicant and Group members, who are consumers within the meaning of the *CPA* are justified in claiming compensatory damages, as well as punitive damages based on several sections of the *CPA*, including but not limited to sections 37, 38, 41, 53, 228 and 272;
44. Pursuant to article 1728 *CCQ*, Nissan is bound not only to restore (or reduce) the price of the Defective Vehicles, but also to make reparation for the injury suffered by Group members who are governed by the general rules of civil law;
45. Group members who purchased their vehicles in provinces other than Quebec have causes of action against Nissan for breach of implied conditions of merchantability and fitness for purpose;

**B) THE PARTIES**

46. The Applicant is a buyer and consumer within the meaning of the *CCQ*;
47. The Applicant is a consumer within the meaning of the *CPA*, as well as within the consumer protection and trade practice legislation in other Canadian jurisdictions;
48. The Applicant is a buyer within the meaning of the Sale of Goods legislation in force in Canadian provinces outside of Quebec;

49. Defendant Nissan Canada Inc. (hereinafter "**Nissan Canada**") is a Canadian corporation with its head office in Mississauga, Ontario. It is a subsidiary of Defendants Nissan North America, Inc. and Nissan Motor Co., Ltd. that engages in the business of selling automobiles and automobile parts at wholesale throughout Canada, including within the province of Quebec, the whole as appears more fully from copy of an extract from the enterprise's information statement from the Quebec enterprise register (CIDREQ), disclosed herein as **Exhibit P-11**;
50. Nissan Canada has an elected domicile at 1 Place Ville Marie 37<sup>th</sup> Floor, Montreal, Quebec, H3B 3P4, as it appears from Exhibit P-11;
51. Defendant Nissan North America, Inc. (hereinafter "**Nissan North America**") is an American corporation with its head office in the state of Tennessee. It is a parent company of Defendant Nissan Canada and a subsidiary of Defendant Nissan Motor Co., Ltd.;
52. Nissan North America's operations consist of automotive styling, engineering, consumer and corporate financing, sales and marketing and distribution and manufacturing of automobiles;
53. Defendant Nissan Motor Co., Ltd. (hereinafter "**Nissan Motor**") is a Japanese corporation with its head office in Kanagawa, Japan. It is a parent company of Defendant Nissan Canada and it is Japan's second-largest automotive company.
54. Nissan Motor manufactures, distributes, services, and sells automobiles through independent retailers, outlets, and authorized dealerships worldwide, including in Canada, under the Nissan, Infiniti, and Datsun brands;
55. The Defendants are "professional sellers" within the meaning of article 1729 CCQ;
56. The Defendants are "merchants" within the meaning of the CPA, and operate an enterprise within the meaning of the CCQ, and their activities are governed by these legislation, among others;
57. The Defendants are also "*suppliers*" under the consumer protection and trade practice legislation in other Canadian jurisdictions, as well as "*sellers*" under the Sale of Goods legislation in force in Canadian provinces outside of Quebec and their activities are governed by these legislation, among others;
58. Given the close ties between the Nissan Defendants and considering that their obligations were contracted for the operation of an enterprise, they are presumed solidarily liable for the acts and omissions of the other;

**II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):**

**1) The facts alleged appear to justify the conclusions sought:**

59. On **July 31<sup>st</sup>, 2013**, Applicant purchased a 2009 Nissan Versa (VIN: 3N1BC13E09L488317) from CITÉ NISSAN, in the district of Montreal, as it appears from the Contract of Sale ("*Contrat de vente*"), Applicant disclosing **Exhibit P-12**;
60. Applicant purchased this Nissan Versa because he was looking for a vehicle that was safe and within his budget;
61. Applicant was assured by his sales representative that the Nissan Versa he was purchasing was a safe vehicle; he then agreed to purchase the vehicle for **\$10,922.63** including sales taxes, as it appears from Exhibit P-12;
62. The representations made by the sales representative concerning the vehicle's safety were consistent with those made by Nissan in its marketing materials, such as the annual Nissan Versa brochures from 2007 to 2012 (see Exhibits P-6, P-7 and P-10 for an example);
63. Applicant agreed to pay an additional \$1,782.11 to purchase Nissan's Platinum PSP (*Programme sécuritaire prolongé*) which offered him an additional warranty for 4 years or 40,000 kilometers, as well as peace of mind;
64. Applicant paid a total of **\$12,704.74** for his Nissan Versa 2009 model, as it appears from Exhibit P-12;
65. At the time of sale, Applicant was under the impression that he was purchasing a vehicle that was free of any production issues, as well as any design and/or manufacturing defects;
66. Unbeknownst to him, he overpaid for the purchase price, as the Defective Vehicle was in fact suffering from a serious Defect;
67. The Applicant was entitled to expect, and rightly expected, that Nissan guarantee the quality of the products it designs and markets;
68. Applicant discovered the existence of the Defect sometime around the month of **November 2015**, when he received the Recall Notice from Nissan, Exhibit P-1, informing him of the Defect in his vehicle;
69. After receiving the Recall Notice in November 2015, Applicant was concerned for his safety while driving his Nissan Versa and began driving slower and more cautiously;

70. Given the seriousness of the language in the Recall Notice (*“increasing the risk of a crash”*), Applicant was legitimately worried that he could be involved in an accident at any given time;
71. Consequently, Applicant not only suffered a loss of use after the recall, but also before the recall because his Nissan Versa never afforded him the security it was supposed to and which he relied upon when purchasing the vehicle;
72. In reality, whenever he drove his Nissan Versa, Applicant was always at an increased risk of a crash causing injury and/or property damage to himself and to others;
73. After receiving the Recall Notice from Nissan, Exhibit P-1, Applicant waited to receive a second letter from Nissan by January 2016, because the letter stated that *“Nissan expects parts to be available **by the end of January** and will send you a second letter asking you to bring your vehicle to a Nissan dealer for the remedy at that time”*;
74. Nissan **never sent this second letter** to Applicant, despite assuring him that they would do so *“by the end of January (2016)”*;
75. In fact, Applicant only discovered the extent of the damage to his vehicle’s front coil springs on **June 16<sup>th</sup>, 2016**, when he brought his vehicle to a Canadian Tire mechanic in Montreal to replace his winter tires for summer tires, as it appears from the Canadian Tire invoice which states: **“FRONT COIL SPRINGS BROKEN”**, Applicant disclosing **Exhibit P-13**;
76. On **June 16<sup>th</sup>, 2016**, upon receipt of the information from Canadian Tire, the Applicant immediately phoned his nearest Nissan dealership at 3500 Jean-Talon street West (the dealership now does business under the name “Nissan Gabriel Jean-Talon”);
77. The Applicant explained the situation to the service representative at the Nissan dealership and asked why he never received a second letter;
78. Applicant was initially told by the service representative at Nissan that the second letters have not gone out yet and that he would have to wait until **September 2016** to schedule an appointment to repair his front coil springs;
79. Dismayed by this response, Applicant gave the representative his Recall Notice number and informed her that Canadian Tire had already confirmed that his coil springs were broken;
80. It was the Applicant who actually had to explain to the service representative at Nissan the significant dangers of driving a vehicle with broken coil springs;

81. As a result of Applicant's plea, the service representative at Nissan gave him an appointment for **June 20<sup>th</sup>, 2016**;
82. On **June 20<sup>th</sup>, 2016**, the Applicant brought his vehicle to the Nissan dealership at 3500 Jean-Talon West for his appointment that was scheduled for 10:00 a.m. and was asked to leave his vehicle at the dealership until the repairs were completed;
83. He was not offered a replacement vehicle for the day, but was instead brought back to a location close to his domicile by the dealership's shuttle service;
84. Having not received any news throughout the day, Applicant called the Nissan dealership around 4:30 p.m. and was told that his vehicle could be picked up at 5:00 p.m., but that the shuttle service was not available to pick him up;
85. Applicant was forced to make his own way to the Nissan dealership which is approximately 6 kilometers from his domicile;
86. In all, Applicant was without his vehicle for 7 hours on June 20<sup>th</sup>, 2016, and had to trouble a relative to drive him from his domicile to the Nissan dealership at 3500 Jean-Talon West so that he can recuperate his vehicle (it is likely that other Group members may have incurred rental vehicle fees or transportation costs);
87. The Applicant's vehicle was repaired, as it appears from the Nissan invoice dated **June 20<sup>th</sup>, 2016**, Applicant disclosing **Exhibit P-14**;
88. Consequently, from **July 31<sup>st</sup>, 2013**, until **June 20<sup>th</sup>, 2016**, Nissan caused Applicant to drive his vehicle that, due to Nissan's own production issue, had front coil springs with insufficient corrosion coating and increased the risk of the Applicant being involved in a motor vehicle accident;
89. Applicant has suffered ascertainable loss as a result of Nissan's omissions and/or misrepresentations associated with the production issue, including, but not limited to: (i) overpayment for the vehicle itself; (ii) substantially lower resale values associated with his vehicle because the problems with the front coil springs have become particularly known in the industry; (iii) moral damages; and (iv) trouble and inconvenience;
90. Had Applicant been aware of the Defect, he would have likely never purchased the 2009 Nissan Versa (and certainly not paid such a high price);
91. Applicant's damages are a direct and proximate result of Nissan's misconduct;
92. In consequence of the foregoing, the Applicant is justified in claiming damages as detailed in the following paragraphs;

**(i) Applicant's claim for a reduction of his obligation due to Nissan's failure of its obligation to inform (section 228 and paragraph c of section 272 CPA)**

93. Applicant purchased his vehicle from Cité Nissan (7228821 Canada Inc.), an authorized dealer of Nissan on the date of his purchase;
94. When Applicant purchased his vehicle on **July 31<sup>st</sup>, 2013**, Nissan already had **presumed** and **actual knowledge** of the Defect (see paragraphs 33, 37 and 38 herein);
95. Nissan admits that Applicant's Nissan Versa 2009 was defective, Exhibit P-1;
96. The fact that the front suspension coil springs on Applicant's Nissan Versa 2009 may have been manufactured with an inadequate phosphorous/corrosion coating is in and of itself an **important fact**, and even more so because the Applicant lives in Quebec, where road salt in the winter is commonly used;
97. Had Applicant been made aware of this important fact in a timely fashion, he would have either never purchased this vehicle, or would have certainly contracted on different terms (for instance, not pay such a high price);
98. In sum, Nissan's reticence, with respect to an important fact that it was well aware of, influenced the Applicant to purchase a vehicle (and an additional warranty) that he would have likely never purchased;
99. Quebec consumer law is a matter of protective public order;
100. Nissan operates in the province of Quebec by unlawfully derogating from the *CPA* and is therefore in violation of section 228 *CPA*;
101. Consequently, Applicant is justified in demanding that his obligations flowing from his contract of sale be reduced, as well as punitive damages;

**(ii) Applicant's claim for punitive damages (art. 228 and 272 CPA)**

102. Nissan Defective Vehicles in question were supposedly manufactured in Mexico;
103. Nissan should not have cut corners to save on costs of important components of the Defective Vehicles, all the while putting the lives of the Applicant and Group members at risk;
104. Nissan is presumed to be aware of the Defect since May 8<sup>th</sup>, 2006, while complaints were publicly accessible on the NHTSA website since June 2007;

105. Nissan formally acknowledges the Defect on March 28<sup>th</sup>, 2011, when it sent TSB NTB11-032 to its dealers, Exhibit P-9;
106. Despite the above, Nissan continued marketing and selling the Defective Vehicles as safe and secure, shockingly even boasting about the safety of their coil springs (see publicity at Exhibits P-6, P-7 and P-10), advertising that drivers enjoy “*more secure cornering*”, when in reality, the opposite is true;
107. An October 2015 article titled: “*Oh, Snap: 218,000 Nissan Versa Models Recalled for Broken Coil Springs*”, written by automotive journalist Clifford Atiyeh, sheds lights on Nissan’s attempt to elude its obligations as a manufacturer, Applicant disclosing **Exhibit P-15:**

On the 2007-2012 Versa, the springs can crack due to a lack of phosphorous coating or bits chipping off when the spring compresses, during which road salts and other corrosives may eat away at the metal. The springs have been known to snap randomly without warning, sometimes taking tires and brake lines down with them. Nissan has found the problem on at least 356 cars **and NHTSA, since opening an investigation in May, found at least 93 owner complaints. In response, the company tried convincing the agency that the sudden noise and ride height change would be enough warning for the customer to bring in the car for service and that flat tires didn’t pose a safety risk.**

[our emphasis underlined in bold].

108. This lack of accountability on the part of Nissan is in and of itself an important reason for this Court enforce measures that will punish Nissan, as well as deter and dissuade other entities from engaging in similar reprehensible conduct to the detriment of Quebec and Canadian consumers;
109. The reality is that the Nissan’s profit margins – which is in the **billions of dollars** during the Class Period – is being adversely effected now that they are forced to recall all Defective Vehicles;
110. Worse, even as of the eve of the filing the present action, Applicant has confirmation by several Group members that not all Nissan Versa owners have received the first Recall Notice;
111. Even after mailing out the Recall Notice in November 2015, Nissan never sent a second letter “*by the end of January*” as it committed to do in the Recall Notice, Exhibit P-1;
112. It was only by chance that Applicant discovered that his front coil springs were

broken and required urgent repair, when he brought his vehicle to Canadian Tire for a tire change on June 16<sup>th</sup>, 2016;

113. After calling an authorized Nissan dealer at 3500 Jean-Talon West, Applicant was initially told that he would have to wait until September 2016 for an appointment to replace his front coil springs (10 months after receiving the Recall Notice!);
114. Applicant wonders whether Nissan would have ever sent him the second letter;
115. Nissan's conduct in the manufacturing of the Defective Vehicles, as well as its handling of the repairs of the Defect, is reprehensible and undesirable;
116. Vehicle owners should never have to wait more than 10 months (in reality Nissan was aware of the Defect for, at the least, almost 5 years before the recall) to receive instructions on how to repair a vehicle that is unsafe to drive and increases the likelihood of car accident, as well as material and corporal injuries to the driver and to bystanders;
117. The punitive damages provided for in section 272 *CPA* have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
118. Not only did Nissan violate the *CPA* by failing to inform the Applicant of an important fact, they intentionally continued advertising the Versa as "safe" and advertised that their "***priority is to help you avoid an accident in the first place***" (see the 2012 Nissan Versa English brochure, Exhibit P-10);
119. Nissan's violations were intentional, malicious, vexatious, and dangerous;
120. Nissan demonstrated through its behavior that it was more concerned about its bottom line than about the safety of Group members and others that they share the roads with;
121. Considering the whole of Nissan's conduct at the time of and after the violations, the record shows that Nissan:
  - a) displayed ignorance from May 8<sup>th</sup>, 2006, until at least November of 2015;
  - b) was careless by not sending out the second letter by January 2016 as promised (or ever to Applicant and others);
  - c) was negligent overall with respect to its obligations and consumers' rights under the *CPA* (from the date of conception of the Defective Vehicles in their Mexican factories in 2006 until the present date where second letters – and sometimes first letters – have not yet been sent);

122. In these circumstances, Applicant's claim for punitive damages justified;

**(iii) Applicant's claim for a reduction of his obligations due to the design Defect (art. 1726, 1728, 1729 and 1730 CCQ):**

123. Nissan is a professional seller;

124. The front suspension coil springs on the Applicant's 2009 Nissan Versa deteriorated prematurely in comparison with other vehicles (Nissan admits in the Recall Notice, Exhibit P-1, that Applicant's front coil springs have insufficient corrosion coating due to a production issue);

125. The Applicant used the vehicle properly (he drove the vehicle on roads);

126. Under the general rules of civil law, the defect is presumed to have existed at the time of sale (July 31<sup>st</sup>, 2013 in Applicant's case);

127. Nissan is thus presumed to be aware of the latent defect since July 31<sup>st</sup>, 2013;

128. Nissan is bound not only to restore (or reduce) the **\$12,704.74** price which Applicant paid, but also to make reparation for the injury suffered by the Applicant;

**(iv) Applicant's claim for a reduction of his obligations due to error induced by fraud (art. 1399-1401 and 1407 CCQ):**

129. Applicant's consent was vitiated by error induced by fraud on the part of Nissan (because fraud may result from silence or concealment pursuant to article 1401 CCQ);

130. Nissan concealed or was silent concerning an essential element of the contract, relating to the safety of the Defective Vehicles, which was determinant to the Applicant's consent;

131. But for Nissan's silence or concealment concerning the Defect, Applicant would have never purchased the vehicle or paid such a high price;

132. Consequently, Applicant has the right to apply for a reduction of his obligation equivalent to the damages he would be justified in claiming (in this case including the difference between his purchase price of \$12,704.74 and the amount he would have paid had Nissan not concealed the essential element, as well as the loss of value to his vehicle, among other damages referred to herein);

**2) The claims of the members of the Group raise identical, similar or related issues of law or fact:**

133. Nissan's Defective Vehicles that were sold/leased in Canada contain front coil springs that have insufficient corrosion coating, which can result in fracture of the springs. A fractured spring can damage the front tires and adversely affect the handling of the vehicle, increasing the risk of a crash;
134. In light of the foregoing, the questions of fact and law raised and the recourse sought by this Application are very similar with respect to each Group member;
135. Every Group member purchased or leased a Defective Vehicle from Nissan (as admitted by Defendant Nissan Canada in the Recall Notice, Exhibit P-1);
136. Nissan failed to mention an important fact in its representation to all Group members who are consumers within the meaning of the *CPA* (which it had knowledge of from some point between May 8<sup>th</sup>, 2006 to March 28<sup>th</sup>, 2011, the exact date to be determined by this honourable Court);
137. Nissan remained silent and/or concealed information concerning an essential element of the contract from all other Group members, including natural persons, legal persons established for a private interest, partnerships and associations or other groups not endowed with juridical personality;
138. All Group members are entitled to expect that Nissan guarantee the quality of the products it designs and markets, and that Nissan inform the public of important facts concerning the vehicles it sells;
139. Consequently, all Group members overpaid Nissan when they purchased/leased one of Nissan's Defective Vehicles;
140. By reason of Nissan's unlawful conduct, Applicant and members of the Group have suffered damages, which they may collectively claim against Nissan;
141. Each member of the Group is justified in claiming at least one or more of the following as damages:
  - Diminished value of the Defective Vehicles in terms of an overpayment for the purchase price or lease payments;
  - Lower resale value of the Defective Vehicles;
  - Loss of use of the Defective Vehicles and expenditures for rental vehicles;
  - Trouble and inconvenience;

- Moral damages; and
  - Punitive damages;
142. All of these damages to the Group Members are a direct and proximate result of Nissan's misconduct;
143. The claims of every Group member are founded on very similar facts to the Applicant's claim;
144. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the present Application;
145. The damages sustained by the Group members flow, in each instance, from a common nucleus of operative facts, namely, Nissan's misconduct with respect to the manufacturing and subsequent handling of the Defective Vehicles;
146. The recourses of the Group members raise identical, similar or related questions of fact or law, namely:
- a) Do the Defective Vehicles suffer from front coil spring defects?
  - b) Did Nissan know or should it have known about the coil spring defects, and, if so, since when?
  - c) Did Nissan send the first Recall Notice to all affected Group members?
  - d) After sending the first Recall Notice in November of 2015, did Nissan send Group members a second letter as promised in the Recall Notice? If not, why? If yes, when?
  - e) Did Nissan negligently perform its duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, sell and/or lease non-defective vehicles?
  - f) Did Nissan misrepresent the Defective Vehicles as safe or fail to adequately disclose to consumers the true defective nature of the 2007-2012 Nissan Versas?
  - g) Did Nissan fail its obligation under section 228 *CPA* to inform Group members of an important fact?
  - h) Did Nissan conceal and/or remain silent concerning an essential element of the contract (i.e. safety)?
  - i) Is Nissan responsible for all related damages (including, but not limited to: the

diminished value of the Defective Vehicles in terms of an overpayment for the purchase price or lease payments, the lower resale value of the Defective Vehicles, the loss of use of the Vehicles and expenditures for rental vehicles, moral damages and trouble and inconvenience to Group members as a result of the problems associated with the Defective Vehicles) and in what amount?

- j) Are the Group members and the Applicant entitled to a declaratory judgment stating that the front coil springs in the Defective Vehicles are defective and/or not merchantable?
- k) Should an injunctive remedy be ordered to force Nissan to notify, recall, repair and/or replace the defective front coil springs in Group members 2007-2012 Nissan Versas, which have not yet been recalled, free of charge?
- l) Should an injunctive remedy be ordered to force Nissan to send the second letter to Group members who received the Recall Notice, but who never received the second letter?
- m) Is Nissan responsible to pay punitive damages to class members and, if so, in what amount?

### **3) The composition of the group:**

- 147. The composition of the Group makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
- 148. According to Transport Canada, Exhibit P-2, **110,604** Nissan Versa vehicles (year models 2007-2012) have been recalled in Canada to date due to insufficient corrosion coating increasing the risk of a crash causing injury and/or property damage;
- 149. The number of persons included in the Group could be over 100,000 if a national class is authorized, or in the tens of thousands in the province of Quebec alone;
- 150. The names and addresses of all persons included in the Group are not known to the Applicant, however, many could be obtained by Nissan;
- 151. Group members are very numerous and are dispersed across the province, across Canada and elsewhere;
- 152. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Group member to obtain mandates and to join them in one action;

153. In these circumstances, a class action is the only appropriate procedure for all of the members of the Group to effectively pursue their respective rights and have access to justice without overburdening the court system;

**4) The class member appointed as representative plaintiff is in a position to properly represent the class members:**

154. Applicant requests that he be appointed the status of representative plaintiff;

155. Applicant is a member of the Group;

156. Applicant was flabbergasted to learn that a company of Nissan's stature would keep its customers in the dark about important facts, such as vehicle and passenger safety;

157. Applicant feels that Nissan should be held accountable for their misconduct and is taking this action so that he and the Group members can recover sums overpaid for their Defective Vehicles (amongst other damages);

158. Applicant also feels that an example should be made of how Nissan handled this situation, as to dissuade and deter other automotive companies from acting with the same carelessness and negligence when it comes to vehicle and passenger safety;

159. Having never received a second letter himself, Applicant wants to lend his voice to protect the safety of other Group members (and innocent bystanders on the road) and believes that the filing of this action will have the additional effect of: (i) encouraging Nissan to contact all affected Group members and repair the safety Defect sooner, rather than later; and (ii) raising awareness for other Nissan Versa owners (year models 2007-2012) who never received the Recall Notice to begin with (Applicant is aware of two Nissan Versa owners - 2009 and 2012 models - yet to receive the Recall Notice);

160. As for identifying other Group members, the Applicant draws certain inferences from the situation, and this based on the information provided by Transport Canada, Exhibit P-2, that more than 110,604 vehicles have been recalled to date. Applicant realizes that by all accounts, there are is an important number of consumers that find themselves in an identical situation, and that it wouldn't be useful for him to attempt to identify them given their sheer number;

161. Applicant is ready and available to manage and direct the present action in the interest of the members of the Group that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Group, as well as, to dedicate the time necessary for the present

action and to collaborate with his attorneys;

162. Applicant has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
163. Applicant has the capacity and interest to fairly and adequately protect and represent the interest of the members of the Group;
164. Applicant, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Group and to keep them informed;
165. Applicant is in good faith and has instituted this action for the sole purpose of having his rights, as well as the rights of other Group members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Nissan's misconduct;
166. Applicant understands the nature of the action;
167. Applicant's interests are not antagonistic to those of other members of the Group;
168. Applicant's interest and competence are such that the present class action could proceed fairly;

### **III. NATIONAL CLASS (SUBSIDIARILY A PROVINCIAL CLASS)**

169. Applicant wishes to represent a national class (subsidiarily a provincial class), for the following reasons:
  - a) A multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Group;
  - b) In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against Nissan. Even if the Group members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by Nissan's misconduct would increase delay and expense to all parties and to the court system;

- c) The facts and legal issues of the present action support a proportional approach to class action standing that economizes judicial resources and enhances access to justice;
- d) A search on the National Class Action Registry confirms that no other class actions have been instituted to date in any other Canadian province on behalf of the Group members;
- e) The principal purposes of most class actions for damages are: (i) compensation for victims; (ii) efficiency for victims; and (iii) the enhanced deterrence arising from the availability of class actions. If this Court authorizes a national class, Nissan would ultimately face liability towards *all* victims of their misconduct, which would deter Nissan and others from engaging in similar reprehensible conduct;

#### **IV. DAMAGES**

- 170. During the Class Period Nissan has generated **billions of dollars** while intentionally choosing to ignore the law in Quebec as well as in other Canadian provinces, by cutting corners on costs (resulting in the production of Defective Vehicles), failing to inform Group members of an important fact and neglecting to repair the Defective Vehicles in a timely fashion;
- 171. Nissan's misconduct is unconscionable and to the detriment of vulnerable Canadian consumers;
- 172. Nissan's misconduct is so malicious, oppressive and high-handed that it offends any sense of decency;
- 173. Consequently, Nissan has breached several obligations imposed on them by consumer protection and trade practice legislation in Quebec and other Canadian provinces, including:
  - a) Quebec's *Consumer Protection Act*, including sections 37, 38, 41, 53, 215, 219, 220(a), 221(g), and 228, thus rendering sections 253 and/or 272 applicable;
  - b) The *Civil Code of Quebec*, including sections 1399-1401, 1407, 1726, 1728, 1729, 1730;
  - c) Sale of Goods legislation in force in Canadian provinces outside of Quebec, notably the sections providing causes of action for breach of implied conditions of merchantability and fitness for purpose;

- d) Consumer protection and trade practice legislation in the other Canadian jurisdictions, notably the sections concerning false, misleading or deceptive representations;
174. Moreover, Nissan failed in its obligation and duty to act in good faith and with honesty in their representations and in the performance of their obligations;
175. In light of the foregoing, the following damages may be claimed solidarily against the Defendants:
- a) compensatory damages, in an amount to be determined, on account of the damages suffered; and
  - b) punitive damages, in an amount to be determined, for the breach of obligations imposed on Nissan pursuant to section 272 *CPA* as well as the consumer protection and trade practice legislation in the other Canadian jurisdictions;

#### **V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

176. The action that the Applicant wishes to institute on behalf of the members of the Group is an action in damages, injunctive relief and declaratory judgment;
177. The conclusions that the Applicant wishes to introduce by way of an Application to institute proceedings are:

**GRANT** Plaintiff's action against Defendants on behalf of all the members of the Group;

**DECLARE** that the front coil springs in the Defective Vehicles are defective and/or not merchantable;

**ORDER** the Defendants to recall all Defective Vehicles equipped with defective front coil springs, which have not yet been recalled, and to repair and/or replace said defect free of charge;

**DECLARE** the Defendants solidarily liable for the damages suffered by the Applicant and each of the members of the Group;

**CONDEMN** the Defendants to pay to each member of the Group a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay to each of the members of the Group punitive

damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

**ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Group members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;

178. The interests of justice favour that this Application be granted in accordance with its conclusions;

## **VI. JURISDICTION**

179. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, for the following reasons:
- a) There exists a real and substantial connection between the province of Quebec and the damages suffered by Applicant and Group members;
  - b) The Applicant purchased his vehicle from an authorized Nissan dealer in the district of Montreal;
  - c) A great number of the members of the Group, including the Applicant, reside in the district of Montreal;
  - d) Nissan conducts business the district of Montreal, via its authorized dealers and service locations;
  - e) The Applicant's attorneys practice their profession in the district of Montreal;

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an Application to institute proceedings in damages;

**APPOINT** the Applicant the status of representative plaintiff of the persons included in the Group herein described as:

**Group:**

All natural persons, legal persons established for a private interest, partnerships and associations or other groups not endowed with juridical personality, resident in Canada (subsidiarily Quebec), who, any time between May 8<sup>th</sup>, 2006 to November 30<sup>th</sup>, 2015 (the “**Class Period**”), purchased and/or leased one or more of the Nissan Versa Model Years 2007-2012 (the “**Defective Vehicles**”) manufactured, distributed, supplied, wholesaled and/or imported by Nissan;

(hereinafter referred to as the “**Group**”)

or any other group to be determined by the Court;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Do the Defective Vehicles suffer from front coil spring defects?
- b) Did Nissan know or should it have known about the coil spring defects, and, if so, since when?
- c) Did Nissan send the first Recall Notice to all affected Group members?
- d) After sending the first Recall Notice in November of 2015, did Nissan send Group members a second letter as promised in the Recall Notice? If not, why? If yes, when?
- e) Did Nissan negligently perform its duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, sell and/or lease non-defective vehicles?
- f) Did Nissan misrepresent the Defective Vehicles as safe or fail to adequately disclose to consumers the true defective nature of the

2007-2012 Nissan Versas?

- g) Did Nissan fail its obligation under section 228 CPA to inform Group members of an important fact?
- h) Did Nissan conceal and/or remain silent concerning an essential element of the contract (i.e. safety)?
- i) Is Nissan responsible for all related damages (including, but not limited to: the diminished value of the Defective Vehicles in terms of an overpayment for the purchase price or lease payments, the lower resale value of the Defective Vehicles, the loss of use of the Vehicles and expenditures for rental vehicles, moral damages and trouble and inconvenience to Group members as a result of the problems associated with the Defective Vehicles) and in what amount?
- j) Are the Group members and the Applicant entitled to a declaratory judgment stating that the front coil springs in the Defective Vehicles are defective and/or not merchantable?
- k) Should an injunctive remedy be ordered to force Nissan to notify, recall, repair and/or replace the defective front coil springs in Group members 2007-2012 Nissan Versas, which have not yet been recalled, free of charge?
- l) Should an injunctive remedy be ordered to force Nissan to send the second letter to Group members who received the Recall Notice, but who never received the second letter?
- m) Is Nissan responsible to pay punitive damages to class members and, if so, in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** Plaintiff's action against Defendants on behalf of all the members of the Group;

**DECLARE** that the front coil springs in the Defective Vehicles are defective and/or not merchantable;

**ORDER** the Defendants to recall all Defective Vehicles equipped with defective front coil springs, which have not yet been recalled, and to repair and/or replace said defect free of charge;

**DECLARE** the Defendants solidarily liable for the damages suffered by the Applicant and each of the members of the Group;

**CONDEMN** the Defendants to pay to each member of the Group a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay to each of the members of the Group punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

**ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Group members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;

**DECLARE** that all members of the Group that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Group that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

**ORDER** the publication of a notice to the members of the Group in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of LA PRESSE, the NATIONAL POST and the MONTREAL GAZETTE;

**ORDER** that said notice be published on the Defendants' various websites, Facebook

pages and Twitter accounts, in a conspicuous place, with a link stating “Notice to Nissan Versa Owners/Lessees (Year Models 2007-2012)”;

**ORDER** the Defendants to send an Abbreviated Notice by e-mail to each Group member, to their last known e-mail address, with the subject line “Notice of a Class Action”;

**RENDER** any other order that this Honourable Court shall determine;

**THE WHOLE** with costs including publications fees.

Montreal, June 27<sup>th</sup>, 2016

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**SIMON & ASSOCIÉS**  
Attorneys for Applicant

**SUMMONS**  
(ARTICLES 145 AND FOLLOWING C.C.P)

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**Filing of a judicial application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of Montreal.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Copy of the Recall Notice titled "Owner Notification Transport Canada 2015402", sent from Nissan Canada Inc., dated November 2015;
- Exhibit P-2:** Extract of the Transport Canada website for Transportation Canada Recall #2015402;
- Exhibit P-3:** Copy of Technical Service Bulletin #NTB15-078, sent to Nissan dealers and dated September 17<sup>th</sup>, 2015;
- Exhibit P-4:** Copy of letter sent to Nissan by the U.S. Department of Transportation, dated September 30<sup>th</sup>, 2015, confirming that the recall concerns 218,019 vehicles;
- Exhibit P-5:** Copy of the TSB sent by Nissan to its dealers (Reference: PM565), dated February 15<sup>th</sup>, 2016;
- Exhibit P-6:** Copy Nissan's French brochure titled "*Versa 2010 de Nissan*";

- Exhibit P-7:** Copy the 2008 Nissan Versa English brochure;
- Exhibit P-8:** *En liasse*, copy of consumer complaints, describing the suspension/steering issues, publicly recorded on the NHTSA website beginning June 2007;
- Exhibit P-9:** Copy of Nissan TSB NTB11-032, dated March 28<sup>th</sup>, 2011;
- Exhibit P-10:** *En liasse*, copies of the French and English versions of the 2012 Nissan Versa brochure;
- Exhibit P-11:** Copy of an extract from the enterprise's information statement from the Quebec enterprise register (CIDREQ) for Nissan Canada Inc.;
- Exhibit P-12:** Copy of the Contract of Sale ("Contrat de vente"), dated July 31<sup>st</sup>, 2013, for the purchase of a 2009 Nissan Versa (VIN: 3N1BC13E09L488317) from CITÉ NISSAN;
- Exhibit P-13:** Copy of invoice from Canadian Tire dated June 16<sup>th</sup>, 2016;
- Exhibit P-14:** Copy Nissan invoice dated June 20<sup>th</sup>, 2016, for replacement of coil springs;
- Exhibit P-15:** Copy of October 2015 article titled: "*Oh, Snap: 218,000 Nissan Versa Models Recalled for Broken Coil Springs*", written by journalist Clifford Atiyeh;

These exhibits are available on request.

### **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, June 27<sup>th</sup>, 2016

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**SIMON & ASSOCIÉS**  
Attorneys for Applicant

**NOTICE OF PRESENTATION**  
(articles 146 and 574 al. 2 N.C.P.C.)

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**TO: Nissan Canada Inc.**  
5290 Orbitor Drive  
P.O. Box 1709, Station B,  
Mississauga, Ontario, L4W 4Z5

**Nissan North America Inc.**  
1 Nissan Way,  
Franklin, Tennessee,  
37067, United States of America

**Nissan Motor Co. Ltd.**  
1-1, Takashima 1-chome  
Nishi-ku, Yokohama-shi,  
Kanagawa 220-8686, Japan

**Defendants**

**TAKE NOTICE** that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

**GOVERN YOURSELVES ACCORDINGLY.**

Montreal, June 27<sup>th</sup>, 2016

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**SIMON & ASSOCIÉS**  
Attorneys for Applicant