

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

D. TANNER

NO: 500-06-000429-080

Petitioner

-vs.-

NISSAN CANADA INC.

Respondent

**RE-AMENDED MOTION TO AUTHORIZE THE BRINGING OF A CLASS
ACTION &
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

TO THE HONOURABLE MADAM JUSTICE DANIÈLE MAYRAND OF THE
SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL,
YOUR PETITIONER STATES AS FOLLOWS:

GENERAL PRESENTATION

The Action

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

(...)

- all residents in Quebec who purchased or leased a Nissan or Infinity vehicle (the "Vehicles"), or any other group to be determined by the Court;

United States and British Columbia

2. The paragraphs to follow appear more fully from various Class Action Complaints instituted in the United States:
 - a. District Court for the Central District of California on November 30th 2007;
 - b. District Court for the Northern District of California on July 25th 2007;



- c. District Court for the Eastern District of Michigan November 27th 2007;
- d. District Court for the Eastern District of Pennsylvania on November 14^h 2007;
- e. District Court for the Eastern District of Texas on November 16th 2007;

Copies of which are attached hereto as **Exhibit R-1A** *en liasse*. A Consolidated and Amended Complaint was filed in MDL Docket Number 3:08-md-1921 in the District Court of the Middle District of Tennessee on June 29th 2008, as can be seen from a copy of said complaint, produced herein as **Exhibit R-1B**. In addition, a Motion to Dismiss this action based on the case's State law claims was heard and rejected on February 2nd 2009, as can be seen from a copy of the Memorandum of Opinion, produced herein as **Exhibit R-1C**;

- 3. Further, an action was taken in the Supreme Court of British Columbia on January 22nd 2008; a copy of which is attached hereto as **Exhibit R-2**;
- 4. In these actions, the class contends that the Respondent designed, manufactured, distributed, marketed and sold motor Vehicles under the brand names Nissan and Infinity with an odometer which inflates the represented distance travelled by a factor of at least 2.0%;
- 5. In so doing, the Respondent has deprived class members of:
 - a) the full benefit of the standard warranties;
 - b) the full benefit of any extended warranties;
 - c) the full benefit of any used warranties;
 - d) the full benefit of their allotted kilometer allowance under a lease;
 - e) a reduction in the resale value of their Vehicles
- 6. Therefore, the Class members have suffered damages as they would not have purchased the motor vehicle's with a defective odometer or would not have paid such a high price;

Canada and Quebec

- 7. Petitioner contends that the same defective and over-stating odometers have been installed and used in the Nissans and Infinitis in Canada and Quebec;
- 7.1 More specifically, the Respondent intentionally or negligently adopted a uniform, biased odometer performance standard that accelerates the odometers installed in all of their Vehicles;



8. By reason of Respondent's acts and omissions, Petitioner and the members of the group suffered damages that they wish to claim;
- 8.1 More particularly, the Respondent's scheme already has deprived (and will continue to deprive) the Plaintiff and Class Members of the benefits of their bargains by:
- i) installing faulty odometers in their Vehicles,
 - ii) shortening their warranties, thereby causing repair costs that otherwise would have been covered
 - iii) diminishing the number of kilometres allowed to be driven under their leases without penalty, thereby causing them to pay excess mileage charges, (...)
 - iv) diminishing the resale value of their Vehicles, and/or
 - v) overpayment for the purchase price of their Vehicles;
- 8.1.1 The Petitioner and Class Members have paid a certain price for Vehicles with accurate odometers and for warranties that were to last a certain number of kilometers, but were actually provided with over-registering odometers and warranties that lasted fewer kilometers than they paid for;
- 8.1.2 The Respondent has misrepresented the value of the warranties, the true number of miles of warranty protection that will be provided, and the true number of kilometers at which excess mileage lease charges will be incurred;
- 8.2 As a result of their scheme, the Respondent stands to reap, have reaped and will continue to reap financial benefits in the form of:
- a) the manufacturing cost of installing odometers in their Vehicles that accurately record the mileage driven to repair or replace the old ones,
 - b) warranty repair savings, (...)
 - c) Excess lease mileage charges,
 - d) An inflated purchase price because it included in it the value of its written warranties that were shorter than represented;
- All to the financial detriment of the Petitioner and the Class Members;

The Respondent

9. Respondent Nissan Canada Inc. is a wholly owned subsidiary of the Japanese Company Nissan Motor Company, Ltd. and the American Company Nissan North America, Inc., the whole as more fully appears from a copy of the Quebec Inspector General of Financial Institutions Report attached hereto as **Exhibit R-3A**;
10. Respondent Nissan Canada Inc. is the Canadian arm which puts the motor Vehicles Nissan and Infiniti onto the marketplace in Canada and Quebec;
- 10.1 In addition, and as can be seen from Exhibit R-3A, Nissan Canada Finance Inc. (also doing business as Infiniti Financial Services), Nissan and Infiniti's finance wing, responsible for finance arrangements, including leasing, has been amalgamated to form part of Nissan Canada Inc., as can be seen more clearly from a copy of the *Registre des Entreprises* reports, produced *en liasse* as **Exhibit R-3B**;

The Functionality of the Odometer and its Propensity Towards Over-Registration

- 10.2 It is not up for dispute that the Vehicles in question have a propensity towards over-registration of the odometer. In the U.S., those legal proceedings revolved solely on the issues of whether or not "intention" could be proven or otherwise if an odometer could be "altered" by the manufacturer in accordance with the definition given to that word under that particular federal statute (the Odometer Act). The issues of the applicability of state claims, other than in California that adopted a specific tolerance percentage, have never been fully evaluated by the court (a motion by Nissan to dismiss those state claims was rejected however). The principals of law in the present case are governed by very different statues that (1) do not require the intention to deceive, and (2) do not define an odometer as the entire system from head to toe that registers distance traveled;
- 10.3 At the present stage, the Petitioner, with limited discovery rights can show quite clearly that the Vehicles' odometers do have a propensity of over-registration based on two (2) empirical studies:
 - a) In Exhibit R-4, tests were performed on several different car makes all with new tires, but only Nissan failed, as it states:

"To find out, CBS teamed up with the Society of Automotive Engineers, the group that sets voluntary odometer standards. They used a global positioning system to track the real mileage cars traveled during 40-mile trips.

The Ford Taurus, Chevy Impala, and Toyota RAV4 all passed, but the Nissan Altima's odometer ran more than 2 percent fast."

- b) In Exhibit R-5, tests were performed on the Vehicles and 9 out of 11 over-registered by a range of between 2% to 4%, as it states:

"I performed vehicle odometer testing on a group of Nissan Altimas on January 21st and 22nd 2007. The vehicles included nine 2.5S and two 3.5SE models covering the 2004 through 2007 model years. The tests were performed on public roads under controlled and reproducible conditions. Testing revealed significant odometer overregistration on all nine Altima 2.5S models. The two Altima 3.5SE models showed odometer under-registration. A chart showing the test results is reproduced below."

- 10.4 What follows in this section are theories as to how Nissan either negligently or intentionally designed and tested their odometers which resulted in this over-registration;
- 10.5 All Nissan and Infiniti Vehicles use one of three types of odometer systems: (1) a transmission speed sensor ("TSS") system, (2) an anti-lock braking system controller area network ("ABS CAN") system, or (3) a hybrid ABS system;
- 10.3 For an odometer to measure the distance a vehicle has traveled it must monitor the rotation of the vehicles wheels. This is calculated by multiplying the number of wheel revolutions by the tire's circumference;
- 10.4 With a TSS system, the number of wheel rotations is measured by the revolutions of the output drive shaft, to which the wheels are connected, and that features a worm gear that has been mated with a pinion gear. When the car's wheels turn, so does the pinion gear. A speed sensor is attached to a pinion gear which generates an electrical pulse each time a tooth on the pinion gear passes. Therefore, the number of pulses generated by the speed sensor depends directly on the number of the teeth in the pinion gear; an increase in the number of gear teeth results in more pulses. The odometer displays one kilometer for every 5,096 electrical pulses it receives from the speed sensor;
- 10.5 With the ABS CAN system, instead of a pinion gear, it uses the wheel-speed information generated by the anti-lock braking system. To convert the vehicle speed to distance traveled a number called an "A constant" is used to account for certain inaccuracies introduced by the ABS controller. To calculate the wheel speed, the ABS uses a tire circumference figure that was set early on in the car's design process and that may be different



- from the actual tire that is eventually used for that car. Engineers have the ability to change this A constant later on to account for the difference between the tire calculation's original circumference and that which is actually put onto the Vehicles;
- 10.6 With a hybrid system, the vehicle measures speed as in an ABS CAN system, but it has a device that was designed to read electrical pulses generated by a TSS system;
- 10.7 The Respondent designed their odometers in such a way as to over-register mileage by one of two ways: (1) in TSS systems, by using a pinion gear with an inappropriate number of teeth, and (2) in ABS CAN or hybrid systems, by using an inaccurate A constant;
- 10.8 With regard to Nissan's improper selection of its number of gear teeth for a TSS system, Nissan's engineers were required to determine how many teeth were needed on the pinion gear. The exact ratio needed for gears frequently would result in a fractional number of teeth, but a gear cannot include a fractional number of teeth. Therefore, Nissan's engineers had to decide whether to round up or round down to the nearest number of teeth. The first option resulted in odometer accuracy ranging from minus 0.82 to plus 2.45 with a midpoint of plus 1.115, while the second option resulted in odometer accuracy ranging from minus 3.74 to minus 0.56, with a midpoint of minus 1.59. Nissan chose the option that led to an over-registration of 1.115 rather than an under-registration of minus 1.59;
- 10.9 With regard to Nissan's inappropriate choice of its A constant, the built-in correction calculation for the vehicle's tire size, Nissan did not design its ABS CAN or hybrid type odometer systems based on a particular tire used on a particular model, but rather averaged the minimum tire sizes and the maximum tire sizes for that family of tires, this will always create inaccuracies. In addition, it is unclear what Nissan used as its "A constant" to interact this inaccuracy, but it does mean that Nissan had the ability to control the end result as to whether or not the odometer would ultimately over or under-register;
- 10.10 Nissan's own Engineering Manual ("NEM") provides for an internal odometer tolerance of +/- 3.75%. Because of this, during the testing phase, if a vehicle showed an over-registration of between 0 to 3.75%, the testing engineers would simply note that the odometer performed within the permissible tolerance range and would not suggest to Nissan's design engineers that the design should be tweaked to make it more accurate;
- 10.11 Nissan defines their "odometer" in their Owner's Manual as the instrument on the dashboard that "is displayed when the ignition key is in the ON position" (see page 2-4), the whole as appears more fully from a copy of



extracts of the 2005 Nissan Altima Owner's Manual, produced herein as Exhibit R-6. This is consistent with the common usage of the word "odometer";

- 10.12 Nissan altered the odometers installed in their vehicles at the time Nissan built the vehicles by causing inaccurate mileage data to be sent to the odometer instruments from devices external to the odometers that, in turn, caused the odometers to over-register. For example, in Vehicles with pinion gears, Nissan set the number of teeth on the pinion gears to alter mileage data transmitted to the odometer which, in turn, caused over-registration. In Vehicles with ABS controllers or a similar electronic modules wherein the "A constant" resides, software installed by Nissan applied the "A constant" to alter mileage data transmitted to the odometer instruments which, in turn, resulted in mileage over-registration;
- 10.13 Since about 1990, electronic odometers have been fully capable of registering distance accurately, under controlled tire and test conditions. Like a calculator, an electronic odometer will calculate the correct result if it has been programmed correctly. If a Nissan had a policy of assuring that their odometers designs targeted zero error, on average, across its models and model variants, there is no technical obstacle to doing so. Deviations from zero error would then be equally divided between under-registration and over-registration, however, in actual road testing of the Vehicles it is clear that these cars incorporates a bias into its odometer designs, favouring over-registration (see Exhibits R-4 and R-5);
- 10.14 Nissan and Infinity Vehicles share common engineering practices across their model lines and variants. While the architecture of speedometer and odometer systems varies across models, the capability to target zero odometer error is common to all Nissan and Infiniti Vehicles built during the past 20 years;
- 10.15 Despite all of the above, Nissan never discloses that their odometers are inaccurate by at least 2% (and by their own admission, up to +3.75%), and instead makes the affirmative representation in their Owner's Manual that:
- "The odometer records the total distance the vehicle has been driven" (see page 2-4 of Exhibit R-6)
- This representation is materially false and misleading for the reasons as stated above;
- 10.16 Nissan cannot knowingly pretend that their odometers have zero error and charge owners and lessees as if that is the case. Nissan could modify their practices to increase odometer system accuracy, but has chosen not to. Nissan cannot benefit themselves with a range of plus 3.75% over-



registration, but yet without disclosing this fact, charge customers for extra kilometer charges at the end of their lease and for repairs to owners when they are just outside of their warranty period as if the cars' odometers were at 0.0%

Legal Causes of Action

10.17 The Petitioner specifically pleads articles 37, 215, 216, 219, 220 (c), 221 (c), 227, 228, 237 (a), 253, and 272 of the Quebec Consumer Protection Act, and section 27 (a) of the Federal Weights and Measures Act;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

11. Petitioner purchased a 2005 Nissan Altima 2.5L Special on or about October 25th 2004 for \$27,681.18 as can be seen from a copy of the sales contract and a bank draft, produced herein *en liasse* as **Exhibit R-7**;

12. Petitioner received the basic 3 year or 60,000 kilometer (whichever comes first) warranty with his vehicle and the powertrain 5 years or 100,000 kilometer (whichever comes first) warranty, as well as other specific warranties based on either the expiration of time or kilometers, whichever is first, the whole as appears more fully from a copy of the Warranty Information Booklet, produced herein as **Exhibit R-8**;

13. Respondent impliedly warranted to the Petitioner that the vehicle's odometer would accurately record the number of kilometers driven; Petitioner has discovered that the odometer does not;

13.1 In particular, the Petitioner became suspicious when he noticed a discrepancy between his GPS and his car's speedometer. The speed on his vehicle's speedometer was consistently faster than the speed that was registering on his GPS system;

13.2 In order to test his vehicle's odometer, the Petitioner looked at markers on the side of the highway and noticed that his odometer had registered more kilometres than the difference between the highway markers indicated;

13.3 This in turn, led the Petitioner to research this issue on the internet. The Petitioner then came across an article that reported such odometer over-registration in a test performed by CBS and the Society of Automotive Engineers, produced herein as **Exhibit R-4**, as well as, the existence of various class action lawsuits in the US and British Columbia (referred to in paragraphs 2 and 3 above);

- 13.4 Since the institution of the present action, the Petitioner has validated his claims made herein through empirical testing performed by a Forensic Engineer with extensive experience in automotive mechanical, electrical, and electronic systems, who after real-life testing concluded that the Respondent has a “systemic bias toward odometer over-registration”, the same conclusion that CBS and the Society of Automotive Engineers concluded, the whole as appears more fully from a copy of the report of Mike Leshner, P.E., produced herein as **Exhibit R-5**;
14. Petitioner would not have purchased the vehicle or would not have paid such a high price had he known about the defect;
15. In consequence of the foregoing, Petitioner is justified in claiming damages as outlined in paragraph 8.1 above, more specifically for having overpaid for the purchase price of his car which included specific warranties that were overstated, as well as, the reduced resale price that the Petitioner will obtain due to excess kilometers appearing on his odometer;
- 15.1 Petitioner, as an example to quantify his damages as it relates to the overpayment of his purchase price only (an expertise will be required later to determine the reduced resale value), uses the following example to justify his personal claim. The Respondent today charges \$1,185 (by using today’s value helps establish time value of money in 2004) to extend a Nissan Altima’s by an additional 3 years or 60,000 kilometers, the whole as appears from a Tableau des Prix PSP, produced herein as **Exhibit R-9**;
- 15.2 By using this table of prices as it applies to a 4 cylinder Nissan Altima (the same as the Petitioner has), we can see that Nissan values their warranty at 1.975 cents per kilometer (i.e. \$1,185 divided by 60,000 kms). This amount is built into the purchase price of the Vehicles. If we assume that the Vehicles over-register by 2%, for a 60,000 km warranty this means that a consumer loses 1,200 kilometers (i.e. they receive only 58,800 kms). If we assume that the Vehicles over-register by 3.75%, for a 60,000 km warranty this means that a consumer loses 2,250 kilometers (i.e. they receive only 57,750 kms). Therefore, the overpayment of the purchase price is at least \$23.70 (at 2%) and as high as \$44.44 (at 3.75%);

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

16. Every member of the group has either purchased or leased a Nissan or Infiniti Vehicle;



17. None of the members of the class were aware of the defect and/or the propensity of the odometer to over-register in an amount of between 2% to 3.75% at the time of purchase;
18. Each member of the group is justified in claiming for damages as outlined in paragraph 8.1 above;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

19. The composition of the group makes the application of article 59 or 67 C.C.P. impracticable for the following reasons:
- a) The number of persons included in the group is estimated at well over 1000;
 - b) The names and addresses of persons included in the group are not known to the Petitioner but the Respondent has records of this information in their possession;
 - c) All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 C.C.P. impossible;
- 19.1 The sale of Nissan and Infiniti Vehicles is widespread in Quebec and Canada;
- 19.2 Class members are numerous and are scattered across the entire province and country;
- 19.3 In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondent. Even if the class 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 the conduct of Respondent would increase delay and expense to all parties and to the court system;
- 19.4 Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgements on questions of fact and law that are similar or related to all members of the class;
- 19.5 These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;



- 19.6 In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;
20. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a.1) Did the Defendant adopt and implement a uniform odometer performance standard for all of their Vehicles?
 - a.2) Does the odometer performance standards adopted and implemented by the Defendant cause errors of odometer over-registration?
 - a) Did the Defendant knowingly or negligently fail to design the odometer to accurately record the kilometres traveled in favour of over-registration?
 - b) Did the Defendant knowingly or negligently fail to manufacture the odometer to accurately record the kilometres actually traveled in favour of over-registration?
 - b.1) Is the odometer fit for the purpose for which it is ordinarily used?
 - c) Did the Defendant fail to design and conduct tests or failed to disclose the results of such tests that would have disclosed the defect in favour of over-registration?
 - d) Did the Defendant knowingly or negligently incorporate materials and parts into the design and manufacture of the odometer that were inappropriate for its intended use?
 - e) Did the Defendant knowingly or negligently set a tolerance standard in the defective odometers that allows errors which inflate the kilometers driven?
 - f) Did the Defendant knowingly or negligently distribute, market, sell, and/or service a product that they knew or ought to have known was defective?
 - f.1) Did the Defendant violate their express conventional warranties due to the over-registration of the Vehicles' odometers?
 - f.2) Did the Defendant make false representations concerning the odometers themselves, as well as, the existence, the scope or the duration of the Vehicles' warranties?
 - f.3) Did the Defendant alter or adjust the Vehicles' odometers so as to cause it to give an inaccurate reading of the distance travelled?



- g) Were Class Members prejudiced by the Defendant's conduct, and, if so, what is the appropriate measure of these damages?
- h) Is the Defendant liable to pay compensatory, moral, punitive and/or exemplary damages to Class Members, and, if so, in what amount?

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

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

22. The action that Petitioner wishes to institute for the benefit of the members of the class is an action in liability;

23. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the class;

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

CONDEMN the Defendant to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

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

ORDER the Defendant 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 class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;



24. Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal for the following reasons:
- a) A great number of the members of the group resides in the judicial district of Montreal and in the appeal district of Montreal;
 - b) Respondent has its principal place of business in the district of Montreal;
 - c) His attorneys practice their profession in the judicial district of Montreal;
25. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the members of the group for the following reasons:
- a) He has purchased a Nissan vehicle during the class period and is a member of the class;
 - b) He understands the nature of the action;
 - c) He is available to dedicate the time necessary for an action and to collaborate with members of the group;
 - d) His interests are not antagonistic to those of other members of the group;
- 25.1 Petitioner is ready and available to manage and direct the present action in the interest of the members of the class 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 class;
- 25.2 Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;
- 25.3 Petitioner 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;
- 25.4 Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other class members, recognized and protecting so that they may be compensated for the damages that they have suffered as a consequence of the Respondent's conduct;
- 25.5 Petitioner has given instructions to his attorneys to put information about this class action on its website and to collect the coordinates of those class members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing



with a list of potential class members, which the Petitioner will request be deposited under seal;

26. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the group herein described as:

- (...)
- all residents in Quebec who purchased or leased a Nissan or Infinity vehicle (the “Vehicles”), 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.1) Did the Defendant adopt and implement a uniform odometer performance standard for all of their Vehicles?
- a.2) Does the odometer performance standards adopted and implemented by the Defendant cause errors of odometer over-registration?
 - a) Did the Defendant knowingly or negligently fail to design the odometer to accurately record the kilometres traveled in favour of over-registration?
 - b) Did the Defendant knowingly or negligently fail to manufacture the odometer to accurately record the kilometres actually traveled in favour of over-registration?
 - b.1) Is the odometer fit for the purpose for which it is ordinarily used?
- c) Did the Defendant fail to design and conduct tests or failed to disclose the results of such tests that would have disclosed the defect in favour of over-registration?

- d) Did the Defendant knowingly or negligently incorporate materials and parts into the design and manufacture of the odometer that were inappropriate for its intended use?
- e) Did the Defendant knowingly or negligently set a tolerance standard in the defective odometers that allows errors which inflate the kilometers driven?
- f) Did the Defendant knowingly or negligently distribute, market, sell, and/or service a product that they knew or ought to have known was defective?
 - f.1) Did the Defendant violate their express conventional warranties due to the over-registration of the Vehicles' odometers?
 - f.2) Did the Defendant make false representations concerning the odometers themselves, as well as, the existence, the scope or the duration of the Vehicles' warranties?
 - f.3) Did the Defendant alter or adjust the Vehicles' odometers so as to cause it to give an inaccurate reading of the distance travelled?
- g) Were Class Members prejudiced by the Defendant's conduct, and, if so, what is the appropriate measure of these damages?
- h) Is the Defendant liable to pay compensatory, moral, punitive and/or exemplary 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 the class action of the Petitioner and each of the members of the class;

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

CONDEMN the Defendant to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

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

ORDER the Defendant 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 class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

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 class 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 class in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and THE GAZETTE (...);

ORDER that said notice be available on the various Respondent's websites with a link stating "Notice to Nissan and Infiniti owners and lessees";

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

THE WHOLE with costs including publications fees.

Montreal, September 25, 2012

(s) Jeff Orenstein

CONSUMER LAW GROUP INC.
Per: Me Jeff Orenstein
Attorneys for the Petitioner