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NISSAN NORTH AMERICA, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No. CV12-08238 BRO (PJWx)

DEFENDANT NISSAN NORTH AMERICA, INC.'S RESPONSE TO OBJECTORS' OPPOSITION TO PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

Judge: Hon. Beverly Reid O'Connell
Ctrm No.: 14, Spring Street

Complaint Filed: September 24, 2012

Hearing Date: November 18, 2013
Time: 10 a.m.

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Nissan North America, Inc. ("NNA" or "Nissan") submits this response to the "Opposition to Plaintiffs' Motion for Final Approval" ("Opp.") filed by Objectors Alex Kozinski and Marcy Tiffany ("Objectors") [Dkt. #71], which it received too late to address in its Response to Objectors to Settlement [Dkt. # 73].

I. INTRODUCTION

Objectors have expanded on several arguments raised briefly in their original filing. Many of these arguments are based on erroneous assumptions and have been addressed in NNA's Response to Objections to Class Action Settlement and the declarations submitted with it [Dkt. ##73 & 74].[1] Nissan writes to address other issues that could not have been previously addressed due to the timing of Objectors' filing.

While Objectors level a number of criticisms about the settlement, in the main, their assertions flow from a false assumption that a defendant's interests in customer satisfaction and its interests in resolving litigation are somehow mutually exclusive. They are not. Nissan is proud of its technology, its commitment to customer satisfaction, and the manner in which it has approached this case. The Nissan LEAF is a great car enjoying a very high rate of customer satisfaction. Customers' experiences have been made even better by the enhanced warranty coverage provided by this settlement agreement, which provides assurances to any customer concerned about battery capacity loss (associated primarily with high ambient temperatures) and any naturally related reduction in range.

[1] These include, but are not limited to, Objectors' argument the settlement has no value based on an invalid assumption that opt-outs are entitled to the same benefit of the new warranty (Objectors' Objection to Settlement [Dkt. #50]("Obj."), at 4; Opp. at 23; *compare* DeBardelaben Decl. ¶ 15 [Dkt. #74]); their argument that vehicle range is misleading because Nissan supposedly said the battery should only be charged to 80% and "charging the battery to its full capacity is poison" (Obj. at 19-20; Opp. at 15; *compare* Brand Decl. ¶¶ 5 – 9 [Dkt. #73-6 and 75-1]); and that NNA had already decided to issue a warranty to its customer before suit was filed (Obj. at 7, 14 & 34 Opp. at 11– 12; *compare* Hayes Decl. ¶¶7-9 [Dkt. #73-8] and Menges Decl. ¶¶ 3-5[Dkt. ##73-4]).

II. THE INFORMATION AVAILABLE TO CLASS COUNSEL PERMITTED A REASONABLE EVALUATION OF THIS CASE

A. The Type of Relief Provided Made Confirmatory Discovery Sufficient to Evaluate Settlement

Objectors fault class counsel for having an inadequate factual record before settling this case. In essence, Objectors advocate a *per se* rule forbidding class settlements before expensive document and deposition discovery has occurred. This position, however, is plainly out of line with the judicial system's deeply-rooted public policy in favor of settlement. *See, e.g.*, *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) ("The initial decision to approve or reject a settlement proposal is committed to the sound discretion of the trial judge. We are not permitted to substitute our notions of fairness for those of the district judge and the parties to the agreement. This is *especially true in light of the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned*. Accordingly, we will reverse only upon a strong showing that the district court's decision was a clear abuse of discretion.") (emphasis added) (internal citations and quotation marks omitted).

Class action jurisprudence does contain certain cases in which Courts have chastised class counsel for settling cases with insufficient information to determine the class's best interests. But, as commentators have recognized, "[i]t is often advantageous from both the plaintiffs' and the defendant's perspectives to explore settlement possibilities even before an action is filed." Newberg, et al., *Newberg on Class Actions*, §11.3 (4th ed. 2002). And, of settlement before class certification, Newberg states:

> Both parties may find it desirable to compromise class action issues by adopting a mutually acceptable class wide settlement before a formal ruling on the class. The use of settlement classes can enable both parties to realize substantial savings in litigation expenses by compromising the action before formal certification.

Id. at §11.9.

Courts have frequently approved class action settlements in cases where the settlement was reached prior to or early in the discovery process. Just last year, the Ninth Circuit affirmed a District Court's approval of a class action settlement that was reached while defendant's motion to dismiss was still pending, and before any formal discovery had been conducted. *Lane v. Facebook, Inc.*, 696 F.3d 811 (9th Cir. 2012), *cert denied*, --- S.Ct. ---, 2013 WL 5878083 (U.S. 2013). In its holding, the Ninth Circuit took note of the District Court's reliance on the fact that the parties engaged in "significant investigation and informal discovery and research . . . which enabled the plaintiff class to make an informed decision with respect to settlement . . . even though formal discovery had not yet taken place." *Lane*, 696 F.3d at 820. *See also, e.g.*, *Kearney v. Hyundai Motor America*, No. SACV-09-1298 JST, 2013 WL 3287996, at *6 (MLGx) (C.D. Cal. June 28, 2013)(In approving class-wide settlement, the court noted that "discovery can be both formal and informal" and that plaintiffs' counsel's independent investigations, along with defendant's willingness to provide class counsel with requested materials armed the class with "sufficient information to make an informed decision about settlement."); *Swift v. Direct Buy, Inc.*, No. 2:11-CV-415-TLS, 2013 WL 5770633, at *7 (N.D. Ind. Oct. 24, 2013) ("[F]ormal discovery would have only taken more time and resulted in the expenditure of additional funds on both sides without achieving a more attractive settlement or any other appreciable benefit."). As the Eighth Circuit and courts around the country have long recognized, "[t]he parties to a class action are not required to incur immense expense before settling as a means to the justify [ ] settlement." *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995).

In this case, as in those discussed above, the information before class counsel was amply sufficient to allow them to be sure that class members have not been hoodwinked. Importantly, the consideration given by NNA was not just

monetary relief or a limited fund. Rather, it was the equivalent of a guarantee—a warranty that had never existed before and one that ensured a minimum level of battery capacity (regardless of whether any defect existed or not) for five years or 60,000 miles, whichever comes first. The risk of this warranty is all on NNA. NNA's obligations under that warranty are not capped, and if battery capacity issues are worse than NNA expects, NNA—not the class—bears the financial burden.

Further, it should be noted that this was not a product liability case or one about vehicle design. It was a failure-to-disclose action related to supposed misrepresentations and omissions by NNA concerning the LEAF's driving range and battery capacity. Readily available information from the LEAF's owners' manual, the disclosure form signed by LEAF purchasers and NNA's website showed that NNA provided customers with a bounty of accurate information about their vehicles and what they could expect from their batteries.

Moreover, the driving range and battery capacity of each LEAF is known by its owners, and these owners were communicating with each other and with NNA through internet forums. If widespread range or capacity issues existed, Plaintiffs' counsel would have known of it. As NNA reported publicly, and as the data discussed below confirms, reduced battery capacity complaints were focused in the hot weather state of Arizona.

The technical issues in this case were not complicated. Apart from unsupported speculation that burdensome discovery might have turned up something that would have favored the class, Objectors can point to no single step likely to produce valuable evidence necessary to evaluate the settlement—particularly considering the guarantee offered by NNA.

B. Other Automotive Class Settlements Provide Important Context for This Agreement

The present settlement did not occur in a vacuum. It occurred within the broader context of automotive class action disputes, where warranty enhancements are frequently approved as class action settlements by courts throughout the United States.[2] It also occurred within an industry where manufacturers routinely consider customer satisfaction in deciding when, and how, to address class action law suits.

Sometimes manufacturers will offer a "fix" to a perceived problem before litigation commences, thus mooting class claims. *See Contreras v. Toyota Motor Sales USA, Inc.*, No. 09-CV-06024-JSW, 2010 WL 2528844 (N.D. Cal. June 18, 2010), *aff'd in part*, 484 F. App'x 116 (9th Cir. 2012).

At other times, manufacturers will settle cases proactively, before class certification, and will (as here) make the relief immediately available to their customers, without waiting for final approval. *See, e.g., Sadowska v. Volkswagen Group of Am., Inc.*, No. CV-11-00665-BRO (AGRx) (C.D. Cal. Sept. 25, 2013) (Civil Minutes, Order on Motion for Final Approval of Settlement and Motions for an Award of Attorneys Fees, Expenses, Costs and Class Representative Incentive Awards); *see also* Dkt. #73, Ex. 1 (chart of cases where proposed settlement benefit was extended prior to preliminary or final settlement).

Still other times, manufacturers will settle cases only after protracted litigation. *See, e.g., In re Toyota Motor Corp. Unintended Acceleration Mktg, Sales Practices and Prods. Liab. Litig.*, No. 8:10ML 02151 (JVS), 2013 WL 3224585 (C.D. Cal. June 17, 2013). Of course, sometimes those manufacturers who choose to litigate win their cases and class members get nothing. *See Clemens v. Daimler-Chrysler Corp.*, 534 F.3d 1017 (9th Cir. 2008) (affirming dismissal of warranty claims and summary judgment for defendant on fraud claims); *Marcus v.*

[2] *See* Exhibit 1 attached hereto.

BMW of North America, LLC, 687 F.3d 583 (3d Cir. 2012) (vacating class certification Order, finding that District Court abused its discretion in finding that numerosity and predominance requirements were satisfied).

Whenever settlements do occur, companies invariably state that they have settled the cases in order to put their customers first. *See, e.g.*, Toyota Press Release, *Toyota Announces Settlement of Economic Loss Litigation That Provides Value to Customers*, Dec. 26, 2012, http://pressroom.toyota.com/releases/toyota+settlement+litigation+value+customers+dec26.print ("In keeping with our core principles, we have structured this agreement in ways that work to put our customers first and demonstrate that they can count on Toyota to stand behind their vehicles.") Nissan's stated desire to please its customers thus should not raise eyebrows—much less accusations that it "lies as a matter of corporate policy." (Opp. at 10.)

Here, the parties settled shortly after the case was filed, early in the litigation process. This timing conferred important benefits to the class as well as NNA. NNA reduced the chance that any putative class member might sustain out- of-pocket loss caused by any battery performance issue or any lack of consumer confidence in their vehicles. It eliminated uncertainty as to whether the class would derive anything from this action. NNA used the consideration in this case—the enhanced warranty—to demonstrate commitment to customer satisfaction and confidence in the battery. These have been good outcomes for LEAF owners and for NNA.

III. PLAINTIFFS' CASE HAS SERIOUS DIFFICULTIES

Objectors consistently overrate the strength of Plaintiffs' case and ignore the very real factors that would have very likely doomed it to failure. The obstacles to recovery are described at length in NNA's initial response to objectors and will not be repeated here. (*See* Dkt. #73.) Objectors' recent opposition to the Motion for

Final Approval serves to underscore how weak the case really is.

A. The LEAF's Performance Is Exemplary

Objectors state they own a LEAF vehicle that they purchased new in May 2011.[3] Objectors have averaged over 16,000 miles per year in use,[4] placing their vehicle well above the California (9,500 miles) and national (10,000 miles) median for LEAF vehicle use and in the top 10% of usage nationwide.[5] Nevertheless, they have lost only one of twelve bars of capacity as reflected on the vehicle's battery capacity gauge.[6] Obviously, Objectors' Nissan LEAF is performing its function of providing transportation and is merchantable as a matter of law. *See American Suzuki Motor Corp. v. Superior Court*, 37 Cal. App. 4th 1291, 1295-96 (1995); *Sheris v. Nissan North Am.*, 2008 WL 2354908 (D.N.J. June 3, 2008); *Ford Motor Co. v. Fairley*, 398 So. 2d 216, 218 (Miss. 1981).

Despite the above facts, there is no doubt that Objectors' papers voice dissatisfaction with Nissan and their LEAF. However, they make no allegation—and NNA records do not reflect—that they ever contacted Nissan to complain about (1) the range they were getting with their LEAF, (2) any charging limitations, (3) any battery capacity loss or (4) any concern that the disclosures they signed were inadequate or incomplete.[7]

The good performance of Objector's LEAF is typical. Data compiled by an independent third party demonstrates very high levels of owner satisfaction. According to Consumer Reports, the 2011 LEAF is rated "excellent" for "owner satisfaction" and "predicted reliability."[8] In fact, the reliability page for the LEAF

[3] Obj. at 1.
[4] *See* Opp. at 27.
[5] Accompanying Declaration of Gary Brand ("Brand Decl."), at ¶ 6.
[6] Opp. at 27.
[7] *See* accompanying Declaration of Robert Hankin at ¶ 5.
[8] *See* accompanying Declaration of E. Paul Cauley, Jr. ("Cauley Decl."), at ¶ 4.

shows:[9]

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Versions	Used Car Verdicts										New Car Prediction
	04	05	06	07	08	09	10	11	12	13	
Nissan Leaf	-	-	-	-	-	-	-	●	●	◓	● Much better than average
Engine Major	-	-	-	-	-	-	-	●	●	●	Based on the latest survey, we expect reliability of new models will be 60% above average
Engine Minor	-	-	-	-	-	-	-	●	●	●	
Engine Cooling	-	-	-	-	-	-	-	●	●	●	
Transmission Major	-	-	-	-	-	-	-	●	●	●	
Transmission Minor	-	-	-	-	-	-	-	●	●	●	
Drive System	-	-	-	-	-	-	-	●	●	●	
Fuel System	-	-	-	-	-	-	-	●	●	○	
Electrical System	-	-	-	-	-	-	-	●	◓	●	
Climate System	-	-	-	-	-	-	-	●	●	●	
Suspension	-	-	-	-	-	-	-	○	●	●	
Brakes	-	-	-	-	-	-	-	●	●	●	
Exhaust	-	-	-	-	-	-	-	●	●	●	
Paint/Trim	-	-	-	-	-	-	-	●	●	●	
Squeaks & Rattles	-	-	-	-	-	-	-	●	●	●	
Body Hardware	-	-	-	-	-	-	-	●	●	●	
Power Equipment	-	-	-	-	-	-	-	○	●	◓	
Audio System	-	-	-	-	-	-	-	●	●	●	

The LEAF has consistently scored well above average in virtually every measure of vehicle reliability.[10] An unsolicited email received on November 14, 2013 by counsel for NNA from class member David Silvan reflects this sentiment:

> I purchased a 2011 Nissan LEAF over two years ago and have been very happy with it. I have driven over 47,000 miles in it, using it not only for commuting but also as a family vehicle. . . . Even with the 2.5 years of active use, I have yet to see a discernible drop in my battery capacity. . . . I believe Nissan should be highly commended for their risk in being first to market with a car like this, not sued in spurious lawsuits.[11]

Moreover, Nissan's warranty data underscores the weakness of the claims in

[9] *See* Cauley Decl. ¶ 6.
[10] Cauley Decl. ¶ 6.
[11] Cauley Decl. ¶ 8.

the lawsuit. In the little over five months that have elapsed since Nissan announced the new battery capacity warranty, NNA has identified [redacted] of battery capacity loss under the battery capacity coverage.[12] [redacted] were from the hot-weather state of Arizona.[13] [redacted] have come from California.[14]

Objectors report that they have named their LEAF, "Pearl." The name is apt. The LEAF is a pearl of a car.

B. Nissan's Disclosure Clearly Informed Objectors That Usage and Age Could Reduce Battery Capacity Over Time

Objectors' Opposition raises a new attack. Neither the original nor the First Amended Class Complaint, nor their original objection, faulted the disclosure signed by LEAF them. Objectors now argue for the first time that the LEAF disclosure they signed violates the Magnuson Moss Warranty Act because it supposedly does not reveal that high vehicle use could reduce battery capacity, as opposed to the mere passage of time.

The new theory proposed by Objectors fares no better than their others. The Nissan LEAF is an electric vehicle which will not move unless a charged battery allows it to move. The more the vehicle moves, the more electricity it uses and the more times it requires recharging. The disclosure—to which Objectors have given the acronym "BAD" — describes the factors that affect battery capacity, including, specifically, vehicle usage:

> Like all lithium ion batteries, the 2011 LEAF battery will experience a reduction in the amount of electricity or charge it can hold over time, resulting in a reduction in the vehicle's

[12] Brand Decl. ¶ 4.

[13] Brand Decl. ¶¶ 4–5. [redacted]

[14] Brand Decl. ¶¶ 4–5. Considering that the state of California represents over 40% of LEAF sales in the United States, this [redacted] is quite insignificant.

> range. This is normal and expected. The rate of reduction cannot be assured, however, the battery is expected to maintain approximately 80% of its initial capacity after 5 years of normal operation and recommended care, but this is not guaranteed. This number might be higher or lower *depending on usage* or care. Factors that will affect and may hasten the rate of capacity loss include, but are not limited to: exposure to very high ambient temperatures for extended periods of time, *driving habits*, *vehicle usage*, and charging habits. (Quick Charging the vehicle more than once per day.)[15]

If the case had gone forward on a litigated basis, NNA would have shown that reasonable consumers (not just educated ones) understand that a basic relationship exists between how much a vehicle is used and the expected life of the vehicle. Vehicle warranties almost always have both time *and mileage* limitations, and this fact is not new. The Nissan LEAF, in particular, offers a warranty of repair for defects in materials and workmanship. The limits of coverage are either 36 months/36,000 miles or 60 months/60,000 miles for most vehicle components and 96 months/100,000 miles for the battery. Most consumers know from their own experience that high mileage increases vehicle wear and tear, and reduces the life of a car. That is why high mileage vehicles have lower resale values than low mileage vehicles. That is why warranties have both time and mileage limitations. Why would an electric battery be different from an engine, brake rotors, a fuel hose or any other vehicle component?[16]

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[15] *See* DeBardelaben Decl. [Dkt. #74] ¶¶ 4 & 8 (emphasis added).

[16] In addition to its glaring factual improbability, the suggested Magnuson-Moss claim has serious legal problems. The disclosure form does not qualify as a "written warranty" under the statute because it does not make an affirmation or promise that the material and workmanship of the vehicle will be defect-free or meet a specified level of performance over a specified period of time. 15 U.S.C. § 2301(6)(A). Written material that does not contain all of these elements does not qualify as a Magnuson Moss express warranty. *See Skelton v. General Motors Corp.*, 660 F.2d 311, 321-22 (7th Cir. 1981); *Rossi v. Whirlpool Corp.*, 2013 WL 5781673, at *7-8 (E.D. Cal. Oct. 25, 2013); *Viggiano v. Hansen Natural Corp.*, 2013 WL 2005430, at *13-14 (C.D. Cal. May, 13, 2013).

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IV. THE BATTERY PERFORMANCE LIMITED WARRANTY COVERAGE DOES NOT MODIFY OR NEGATE EXISTING WARRANTIES OF REPAIR

As in their original filing, the Objectors have complained that the settlement purports to modify the existing 96 month/100,000 mile warranty by "cut[ting] back on existing rights to have the battery replaced if defective for 8 years or 100,000 miles." (Opp. at 28.) Not so. The two warranties are completely different and the new warranty in no way changes the old warranty. [17] Nissan has previously explained that the original warranty covered, as is typical, only defects in materials and workmanship. The new battery capacity warranty provides *performance* coverage, meaning it promises to repair or replace the battery if capacity falls below nine bars on the battery capacity gauge regardless of why the capacity was lost. The new warranty is most likely to be used by those persons whose environment or driving habits do cause accelerated degradation of battery capacity.

Objectors have also questioned why the warranty would only require that capacity be restored to nine bars if the battery loses capacity below that level. The answer is quite basic. No reasonable person would expect a Lithium-ion battery to retain full capacity for the life of the battery based on the disclosure and other information available. Replacing a four year old battery with a brand new battery with full capacity would be providing a remedy or repair that gave consumers more than they could reasonably have expected from their battery after four years of use. So the terms of the new warranty and the settlement are perfectly rational and

[17] *See* DeBardelaben Decl. [Dkt. #74] ¶ 14 (attaching as Exhibit J, the customer letter on which the affixed warranty sticker states: "All other warranty terms, limitations, and conditions remain unchanged.").

reasonable.[18]

V. CONCLUSION

NNA did not ask to be sued, nor did it select its adversaries. Perhaps if it had been less vocal in communicating with its customers about issues of common concern, no action would have been filed at all. Nevertheless, NNA settled this case based on the same paradigm that many other motor vehicle class action lawsuits have been resolved: providing LEAF owners with assurance that they purchased an excellent vehicle on which they can count for years to come. Nissan has made good on its promises, and requests that this Court grant final approval to this settlement.

DATED: November 16, 2013 SEDGWICK LLP

By: \S\ Paul Riehle
Paul Riehle
Attorneys for
NISSAN NORTH AMERICA, INC.

[18] Nevertheless, NNA has [redacted] Obviously, NNA is doing more than it is obligated to do and should be commended for its commitment to its customers instead of excoriated as Objectors have chosen to do.

EXHIBIT 1

CASE NAME	VEHICLES INVOLVED	NO. OF CLASS VEHICLES	TYPE OF RELIEF GRANTED	POSTURE OF CASE RIGHT BEFORE SETTLEMENT
Anna Sadowska et al. v. Volkswagen Group of Am., Inc., No.11-cv-00665-BRO (AGRx) (C.D. Cal. Sept. 25, 2013).	MY 2002–2005 and MY 2006 Audi A4 (including Cariolets) and Audi A5 vehicles.	64,000	(1) warranty extension, (2) 100% reimbursement of repair or replacement costs previously paid for, (3) reimbursement program for class members who within the extended warranty period, but after expiration of original warranty, sold or traded their vehicles at a loss because of diagnosed transmission issue, (4) reimbursement program for class members who paid to repair or replace covered transmission part after the extended warranty but before date of notice.	Discovery had been performed, experts had been retained and consulted, depositions of corporate representatives had been taken, and Plaintiffs' counsel and experts reviewed number of documents produced by Defendants. Settlement was reached a year after Complaint was filed.
Kearney v. Hyundai Motor Am., 2013 WL 3287996 (C.D. Cal. June 28, 2013).	MY 2006–2008 Hyundai Sonata, MY 2007–2009 Hyundai Santa Fe, and MY 2006–2009 Hyundai Azera.	594,000	(1) sticker to affix to glove compartment door advising future owners that occupant classification systems ("OCS") has been recalibrated and explanatory cover letter, (2) provide pamphlet containing information about OCS and its operation, (3) voluntary recall to have OCS recalibrated, (4) eligibility for repurchase program.	Parties engaged in discovery during the two-year litigation. Settlement occurred before class certification or any other dispositive motions were filed.

CASE NAME	VEHICLES INVOLVED	NO. OF CLASS VEHICLES	TYPE OF RELIEF GRANTED	POSTURE OF CASE RIGHT BEFORE SETTLEMENT
In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practice, and Products Liab. Litig., 2013 WL 3224585 (C.D. Cal. June 17, 2013).	Over 15 models between 1998 and 2010	40 Million potential class members	1) cash payments totaling $250 million for diminution of resale value of certain vehicles due to the alleged defects; (2) installation by Toyota dealers of a brake-override system for certain eligible vehicles, and cash payments (totaling another $250 million) in lieu of such installation to most of the remaining subject vehicles; (3) establishment by Toyota of a Customer Support Program; and establishment by Toyota of an Automobile Safety and Education Fund. Upon final approval of the proposed settlement, Toyota will fund a Qualified Settlement Fund ("the Fund") for payments to class members in the amount of $500 million.	Discovery was nearly complete as the proposed settlement was reached. Parties engaged over 40 expert witnesses and took over 200 depositions.
In re Nissan Radiator/Transmission Cooler Litig., 2013 WL 4080946 (S.D.N.Y. May 30, 2013).	MY 2005–2010 Nissan Pathfinder, Xterra, and Frontier with automatic transmission.	764,277	(1) warranty extension, (2) repairs, and (3) reimbursement for repairs performed prior to notice.	No discovery had been conducted, motions to dismiss had been ruled upon and certain claims survived.
Henderson v. Volvo Cars of N. Am., LLC, 2013 WL 1192479 (D.N.J. Mar. 22, 2013).	2003–2005 Volvo XC90.	94,992	(1) warranty extension, (2) partial reimbursement of transmission repair or replacement costs, and (3) installation of most current TCM software or 100% reimbursement for out-of-pocket costs for TCM update.	Parties engaged in discovery, which included review of documents produced by Volvo, written discovery, depositions, and engaged and consulted experts.

CASE NAME	VEHICLES INVOLVED	NO. OF CLASS VEHICLES	TYPE OF RELIEF GRANTED	POSTURE OF CASE RIGHT BEFORE SETTLEMENT
Nguyen v. BMW of N. Am., LLC, 2012 WL 1380276 (N.D. Cal. Apr. 20, 2012).	MY 2007–2010 335i models; MY 2008–2010 135i, 535i and X6 xDrive35i Sports Activity Coupes, MY 2009 – 2010 Z4 Roadster sDRive35i vehicles.	200,000	(1) replacement of new-generation high pressure fuel pumps ("HPFP"); (2) reimbursement of out-of-pocket costs for HPFP replacement performed outside the existing HPFP recall and extended warranty, (3) towing expenses resulting from failure of HPFP, (4) rental expenses for replacement vehicles, (5) option of cash payment based on number of HPFP replacements obtained outside of the recall or a purchase credit, (6) agreement to keep existing HPFP recall, and (7) extended warranty.	Motion to dismiss had been filed.
Alin v. Honda Motor Co., LTD, 2012 WL 8751045 (D.N.J. Apr. 13, 2012).	MY 2005–2007 Honda Odyssey, MY 2002–2004 Honda R-V, MY 2004 Acura TSX.	Not disclosed.	For Odyssey subclass: (1) reimburse of out-of-pocket costs for condenser repairs performed within the 3 years/ 30,000 mile warranty, (2) provide protective screen for air conditioning condenser, and (3) reimburse $55.06 for costs of screen and labor. For Honda CR-V subclass: (1) reimburse 100% out-of-pocket expenses for compressor repair performed within 3 years/ 30,000 miles warranty, and 2) limited recovery of out-of-pocket expenses incurred outside of 3 years/30,000 miles warranty. For Acura TSX subclass: (1) reimburse 100% out-of-pocket expenses for compressor repair performed within 4 years/50,000 mile warranty, and (2) partial reimbursement for expenses incurred outside of the 4 years/ 50,000 miles warranty.	Motion to dismiss had been filed and ruled upon. During the course of discovery, the parties entered into mediation and reached an agreement on settlement terms.

CASE NAME	VEHICLES INVOLVED	NO. OF CLASS VEHICLES	TYPE OF RELIEF GRANTED	POSTURE OF CASE RIGHT BEFORE SETTLEMENT
Dewey v. Volkswagen of Am., et. al., 909 F.Supp. 2d 373 (D. N.J. 2012).	Assorted Jetta, Golf and Passat models with various features generally between 1997 and 2009	1,095,350	(1) educational preventative maintenance information for all class members, (2) inspection, modification, and repair of plenum and sunroof drain systems for certain qualifying class members, (3) monetary reimbursement for repair and vehicle damage for certain qualifying class members to be paid out of an $8 million reimbursement fund, and (4) donation of all unclaimed reimbursement funds to an educational, charitable, or research facility after five years.	Fact discovery had been conducted and was set to conclude in 2 weeks and parties were about to commence disclosure of expert reports, when they reached an agreement on settlement terms.

CASE NAME	VEHICLES INVOLVED	NO. OF CLASS VEHICLES	TYPE OF RELIEF GRANTED	POSTURE OF CASE RIGHT BEFORE SETTLEMENT
In re Volkswagen Auto Audi Warranty Extension Litig., 273 F.R.D. 349 (D. Mass. 2011).	MY 1997–2004 Audi A4 or MY 1998 – 2004 Volkswagen Passat equipped with 1.8 liter turbo engine.	479,768	(1) reimbursement for engine repair or replacement costs, (2) warranty extension, (3) one-time $25 oil change discount , and (4) education and information program designed to inform class members of risks to their engines and means to prevent those risks.	Motion to dismiss had been filed and denied by Court. Discovery had been conducted. Case was in its fourth year of litigation when parties reached settlement.
Collado v. Toyota Motor Sales, U.S.A., Inc., 2011 WL 5506080 (C.D. Cal. October 17, 2011).	MY 2006–2009 Toyota Prius installed with HID headlights.	239,670	(1) warranty extension for HID headlight parts, (2) reimbursement for HID electronic control unit repairs performed before notice, arising from failures within 5 years/ 50,000 miles of original sale or lease, which repairs occurred before notice, and repair that do not qualify for reimbursement from above, and which occurred before notice.	Motion to Dismiss had been filed. Parties reached a settlement during mediation a little over a year after the case was filed.
Vaughn v. Am. Honda Motors, Inc., 627 F.Supp.2d 738 (E.D. Tex. 2007).	MY 2002–2006 Honda and Acura vehicles or MY 2007 Honda Fit	6 Million	(1) warranty extension, (2) lease extensions, (3) lease refunds, (4) 100% reimbursement for out-of pocket repair performed within warranty, and (5) modification in design tolerance of the odometers.	Motion to dismiss had been filed. Prior to class certification hearing and parties had engaged in discovery. Parties reached settlement during mediation.
Lubitz v. DaimlerChrysler Corp., 2006 WL 3780789 (N.J. Sup. L. Dec. 21, 2006).	MY 1999–2004 Jeep Grand Cherokee.	2.8 Million	(1)f full reimbursement of prior brake repairs or replacements incurred during warranty period, and (2) free brake inspection and repairs.	Motion to dismiss had been filed and discovery had been conducted. Settlement reached during mediation.
O'Keefe v. Mercedes-Benz USA, 214 F.R.D. 266 (E.D. Pen. 2003).	MY 1998–2001 Mercedes-Benz vehicles equipped with a Flexible Service System ("FSS").	667,000	For MY 1998–1999: (1) $35 Maintenance Service Certificates, and (2) warranty enhancement to cover engine damage caused by use of conventional motor oil in FSS equipped vehicles.	Discovery and depositions had been conducted. Case was brought to settlement within 16 months.

CASE NAME	VEHICLES INVOLVED	NO. OF CLASS VEHICLES	TYPE OF RELIEF GRANTED	POSTURE OF CASE RIGHT BEFORE SETTLEMENT
Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998).	1984–1994 Chrysler minivans.	Over 3.3 Million	Replacement of rear liftgate latches with redesigned latches in the subject vehicles.	Three days after filing Complaint, parties submitted settlement to court for approval.