

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

PATRICIA WECKWERTH, PATRICIA CRUZ,
MICHELLE FALK, CYNTHIA GARRISON,
INDHU JAYAVELU, MICHAEL KNOTTS,
WALDO LEYVA, AMANDA MACRI,
DANIELLE TROTTER, and PAMELA
PRITCHETT, individually, and on behalf of a
class of similarly situated individuals,

PLAINTIFFS,

v.

NISSAN NORTH AMERICA, INC.,

DEFENDANT.

Case No. 3:18-cv-00588

Judge Eli Richardson
Magistrate Judge Alistair E. Newbern

**DECLARATION OF W. LEWIS
GARRISON, JR. IN SUPPORT OF
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT
AND MOTION FOR ATTORNEYS'
FEES, COSTS, AND SERVICE
AWARDS**

I, W. Lewis Garrison, Jr. hereby declare as follows:

1. I am a shareholder at Heninger Garrison Davis, LLC. I make this declaration in support of the unopposed Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Service Awards. I have personal knowledge of the facts stated below and, if called upon, could and would competently testify thereto.

Background

2. Heninger Garrison Davis, LLC, with co-counsel the Law Offices of Troy King, represent Plaintiffs who asserted claims in separate, but related, class actions against Nissan stemming from the design and manufacture of the allegedly defective CVT in the Class Vehicles. These actions are: (1) *Falk v. Nissan North America, Inc.*, No. 4:17-cv-04871 (N.D. Cal.); (2) *Pamela Pritchett, et al. v. Nissan North America, Inc.*, No. 2:17-cv-00736 (M.D. Ala); (3) *Knotts v. Nissan North America, Inc.*, No. 17-cv-05049 (D. Minn.); and (4) *Norman v. Nissan North*

America, Inc. and Nissan Motor Co., Ltd., No. 3:18-cv-00588 (M.D. Tenn.) (collectively, “Nissan CVT Litigation”).

3. The named Plaintiffs in the Nissan CVT Litigation were added to the instant *Norman* case, No. 3:18-cv-00588 for settlement approval via the First Amended Complaint on June 4, 2019. ECF No. 68.

4. Heninger Garrison Davis, LLC was formed over thirteen years ago and has been growing in case load, staff numbers, and attorney numbers ever since. With over twenty-three seasoned attorneys and three offices, Heninger Garrison Davis, LLC has the experience, resources, and expertise to successfully prosecute complex consumer actions. Our compensation is almost exclusively from court-awarded fees, court-approved settlements, and contingent fee agreements.

5. I was admitted to practice before courts in 1983. I am admitted to practice before the United States District Courts for the Middle, Southern, and Northern Districts of Alabama, the United States District Courts for the Northern and Middle Districts of Georgia, the United States Court of Appeals for the Third, Fourth, Fifth, Ninth, Tenth and Eleventh Circuits, and the United States Supreme Court.

6. A profile of our firm’s experience in complex class actions, and specifically in consumer protection and products liability cases, is attached as Exhibit A.

The Pritchett Case

7. Plaintiff commenced her action on October 27, 2017 in the United States District Court for the Middle District of Alabama. On November 13, 2017, Nissan moved unopposed for an extension of time to file a responsive pleading. On December 13, 2017, Nissan moved to Strike or Dismiss Plaintiff’s Class Definitions and moved to Dismiss Plaintiff’s Complaint.

8. On January 3, 2018, Plaintiff filed her First Amended Complaint. On February 12, 2018, Nissan renewed its Motion to Strike and Dismiss. On March 5, 2018, the Parties submitted a Joint Motion of Stipulated Protective Order which was granted on March 6, 2018. On March 7, 2018, Plaintiff opposed Nissan’s pending Motions. On March 21, 2018, Nissan replied in support

of its Motions. On March 28, 2018, Plaintiff moved for leave to file a Sur-Reply in Opposition to Nissan's Motion, which was granted on April 4, 2018. Finally, on November 28, 2018, Plaintiff filed a notice of supplemental authority which supported Plaintiff's Opposition to Nissan's Motions. Nissan's Motions are fully briefed and before the Court.

Pre-Suit Investigation and Discovery

9. Beginning in the middle of 2017, Heninger Garrison Davis, LLC began receiving communications from Nissan Sentra, Versa, Versa Note, Juke, and Altima owners complaining of issues with their vehicles' transmissions. Our firm diligently investigated approximately 20 of these claims prior to commencing the second earliest-filed action of the Nissan CVT Litigation, the *Pritchett* case. To date, our firm has investigated over 250 potential claims from owners of Nissan vehicles.

10. Plaintiff Pritchett purchased a 2013 Nissan Sentra and contacted Heninger Garrison Davis, LLC in the Spring of 2017. She complained that her vehicle's transmission suffered from a transmission shudder, despite several attempts to have it diagnosed and corrected.

11. Heninger Garrison Davis, LLC researched Ms. Pritchett's claim and advised her to file her suit.

12. In addition to interviewing and responding to Plaintiff Pritchett's claim, Heninger Garrison Davis, LLC, along with co-counsel, responded to several hundred inquiries from Class Members and investigated many of their reported claims. From early pre-suit investigation and continuing over the course of litigation, Class Counsel conducted detailed interviews with Class Members regarding their pre-purchase research, their purchasing decisions, and their repair histories, and developed a plan for litigation and settlement based on Class Members' reported experiences with their Class Vehicles.

13. Class Counsel also researched the alleged CVT defect and Nissan's response to it through information provided by the National Highway Traffic Safety Administration ("NHTSA"). Class Counsel reviewed and researched consumer complaints and discussions of the

alleged CVT defect in articles and forums online, in addition to various Nissan manuals and technical service bulletins (“TSBs”) discussing CVT issues. Finally, Class Counsel conducted research into the various causes of action and analyzed similar automotive actions.

14. Defendant produced thousands of pages of documents, including spreadsheets on warranty and customer complaints containing thousands of rows of data; owners’ manuals; maintenance and warranty manuals; design documents (e.g., technical drawings); internal Nissan project files with tests, investigation reports, countermeasure evaluations; TSBs; field reports; and internal Nissan emails regarding CVT issues. Class Counsel reviewed this discovery and aggressively pursued and secured supplemental document productions. Through this process, Class Counsel identified information that was instrumental in moving this case to a settlement posture and to advancing the interests of the Class during mediation.

Mediations, Settlement, and Motion for Preliminary Approval of the Settlement

15. Following the above motion practice and the exchange of thousands of pages of documents and data, the undersigned counsel and Defendant’s national lead counsel in the *Pritchett* case met in Birmingham, Alabama in December 2018 to discuss settlement. After that meeting, they agreed to try to mediate this case as well as claims in related cases concerning Nissan’s CVT transmissions.

16. On February 19, 2019, counsel for Plaintiff Pritchett, other Class Counsel, and Defendant participated in an all-day mediation before Mr. Hunter R. Hughes III, an experienced mediator, in Atlanta, Georgia, to explore resolution of claims pertaining to the Nissan Juke, Versa, and Sentra vehicles.

17. Although the Parties did not settle at the first mediation session, the Parties continued their settlement negotiations telephonically with the assistance of the mediator.

18. On April 9, 2019, the Parties conducted a second in-person all-day face-to-face negotiation in Chicago, Illinois. At the close of this second session, the Parties had agreed on the principal terms of the proposed settlement class relief. Later in April, further evolution of the

settlement terms took place in conjunction with the negotiations of the related cases concerning Nissan Altima's CVT transmissions before mediator Hughes in Atlanta, Georgia. After the Parties had agreed on the framework and material terms for settlement in Chicago, they began negotiating through telephonic conferences, via email, and with the assistance of Mr. Hughes, and ultimately agreed upon appropriate requests for service awards and Plaintiffs' attorneys' fees and expenses.

19. In May 2019, the Parties finally were able to document the formal terms of their agreement to resolve the litigation. All of the terms of the Settlement are the result of extensive, adversarial, and arms' length negotiations between experienced counsel for both sides.

20. Plaintiff Pritchett was informed and engaged throughout the mediation and settlement process.

21. On June 6, 2019, Class Counsel filed Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and supporting documentation, including the executed Settlement Agreement, which summarized the material terms of the Settlement Agreement, including the benefits to the class, attorneys' fees and expenses, class representative service awards, releases of claims, the details of the plan for notifying the class members, and the legal standards and argument requesting the Court's preliminary approval of the parties' Settlement Agreement. ECF No. 71, 74-2. The motion for preliminary approval was also supported by declarations of counsel (Cody Padgett (Capstone), Lawrence Deutsch (Berger), Gary Mason (WBM), Taylor C. Bartlett (Heninger Garrison Davis LLC), Melissa Weiner (Pearson, Simon & Warshaw, LLP), Natalie Finkelman (Shepherd, Finkelman, Miller & Shah, LLP)); a declaration of a representative of the proposed Claims Administrator, Carla Peak for KCC, LLC; and other relevant records and filings.¹

22. On June 21, 2019, this Court directed the Parties to file a joint supplemental brief to clarify, *inter alia*, a reasonable estimate of the value of the settlement benefits to the Class to

¹ On June 19, 2019, Berger, Capstone, WBM, and counsel for Nissan filed a joint status report and motion for stay of all proceedings in the *Falk* case to inform that court of Plaintiffs' preliminary approval of the Settlement to which Plaintiffs Nguyen and Park are parties. Falk, ECF No. 31].

assist the Court in evaluating the reasonableness of the requested amount of attorneys' fees. ECF No. 95. In response, the Parties submitted a joint supplemental brief wherein Plaintiffs stated that Plaintiffs' expert, Lee M. Bowron, ACAS, MAAA, conservatively estimated minimum retail value to the Class of the extended warranty and reimbursement coverage provided for by the Settlement to be \$407,122,000. ECF No. 101, p. 12.

23. On July 16, 2019, the Court granted Plaintiffs' Unopposed Motion for Preliminary Approval. ECF No. 102.

Motion for Final Approval of the Settlement Agreement

24. Class Counsel prepared their Motion for Attorneys' Fees, Costs, and Service Awards and their Motion for Final Approval of Class Settlement supported with law and Class Counsel's Declarations, all of which are being filed concurrently with this Declaration. Class Counsel also must prepare for and attend the Court's final approval and fairness hearing, scheduled for March 6, 2020. ECF No. 111. Class Counsel will expend additional hours to guide the settlement after final approval, including oversight of the settlement administration process.

Settlement Benefits and Recognition of Difficulties Associated with Litigation

25. Class Counsel, including Heninger Garrison Davis, LLC, have been responsible for the prosecution of this Action and for the negotiation of the Settlement Agreement. We have vigorously represented the interests of the Settlement Class Members throughout the course of the litigation and settlement negotiations.

26. The Settlement is an excellent result as it provides the Settlement Class with meaningful relief, including an extended two-year/24,000 miles warranty, full or partial reimbursement for prior repairs, as well as additional terms to protect Settlement Class members.

27. Plaintiffs remain convinced their case has merit, but recognize the substantial risk that comes along with continued litigation. Based on their investigation and confirmatory discovery, Plaintiffs' Counsel believe they could obtain class certification, defeat all dispositive

motions filed by Defendant, and proceed to trial on the merits. However, this Settlement proposed is an excellent result for Class Members, given the relevant relief provided as compared to the risks of litigation.

Class Counsel and Plaintiffs Have Invested Significant Time in the Prosecution of this Action and are Adequate Representatives of the Settlement Class

28. Throughout the course of investigation, pleadings, discovery, mediation, and filing of the Settlement Agreement with the Court, Class Counsel have devoted significant time and resources to the investigation, development, and resolution of this case.

29. In addition to me, the following Heninger Garrison Davis, LLC (and co-counsel) lawyers and paralegals made substantial contributions to achieving the Settlement:

- (a) Taylor C. Bartlett,
- (b) Christopher B. Hood,
- (c) Travis Lynch,
- (d) Desiree Dodd,
- (e) Troy King,
- (f) Shayla Washington,
- (g) Mary Ashton Jones.

30. The hourly rates for Heninger Garrison Davis, LLC's attorneys range from \$440/hour to \$955/hour. These rates reflect current market rates by private attorneys of similar experience, expertise, and reputation for comparable work. Heninger Garrison Davis, LLC's (and its co-counsel) total Lodestar is \$697,336.00.

31. Since the inception of the *Pritchett* case, my firm has devoted a total of 1,091.2 attorney and paralegal hours to this case, which were reasonable and necessary to prosecute the case. Specifically, our firm, with co-counsel, made the following contributions on behalf of the class: initial fact investigation and legal research; interviewing clients for pre-suit investigation, discovery, and settlement; researching and drafting Complaints; briefing Rule 12 motions; briefing

motions to strike class allegations; conducting written discovery, including holding several meet and confer negotiations and preparing a motion to compel; analyzing records and spreadsheets of information produced by Defendant; locating and vetting experts; preparing for and participating in, and traveling to numerous mediation sessions; engaging in extended settlement negotiations with Defendant's counsel; reviewing and editing preliminary and final approval papers; responding to class member inquiries; and overseeing the notice process.

32. Class Counsel have minimized duplication of services by coordinating work among all counsel. Where multiple attorneys participated, joint participation was necessary because of time constraints, the complexity of the problems, or for effective, efficient communication among several firms essential for informed, group decision-making.

33. We participated in this case on a contingency fee basis which involved risk of not prevailing and therefore not being paid for our work. On the other hand, we also understood that the law would compensate us for such risk if we prevailed. We could not take such a risk without assurances of adequate compensation for favorable results for the Class.

34. Our firm expended \$4,665.76 in unreimbursed expenses which were reasonable and necessarily for the prosecution of this case.

35. Plaintiff Pritchett made substantial contributions to the litigation, including sharing her experiences and evidence with Heninger Garrison Davis, LLC and co-counsel, reviewing pleadings, responding to extensive written discovery, assisting counsel in fact investigation necessary to develop the case and negotiate settlement terms, making her vehicle available for testing and inspection, and working with counsel to preserve evidence. Based upon the plaintiff(s) efforts and results achieved for the class, a service award of \$5000 is warranted.

36. Plaintiff Pritchett reviewed and agreed to the terms of the Settlement before it was executed.

37. Heninger Garrison Davis, LLC is not representing clients with interests at odds with the interests of the Class Members.

Conclusion

38. As a result of this litigation, all current and former owners will receive substantial benefits and received notice of a remedy for the alleged CVT defect and judder condition. Based on my experience, the Settlement is fair, reasonable, and adequate, and it treats all Class Members equitably. I ask that the Court approve the Settlement achieved on behalf of the Settlement Class.

Dated: January 24, 2020

Respectfully submitted,

/s/ W. Lewis Garrison, Jr.

W. Lewis Garrison, Jr.

Heninger Garrison Davis, LLC

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