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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA — WESTERN DIVISION

ARAM TERTERYAN, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

NISSAN MOTOR ACCEPTANCE
CORPORATION,

Defendant.

Case No. CV 16-2029-GW-KSx
Hon. George H. Wu
Ctrm. 9D – 1st Street

CLASS ACTION

ORDER

- 1) **CONDITIONALLY CERTIFYING A SETTLEMENT CLASS,**
- 2) **PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,**
- 3) **APPROVING NOTICE PLAN, AND**
- 4) **SETTING FINAL APPROVAL HEARING**

Action Filed: March 24, 2016
Trial Date: None Set

1 This matter having come before the Court on Plaintiffs’ motion for
2 preliminary approval of the proposed class action settlement of the above-captioned
3 case (the “Action”) between Plaintiffs Aram Terteryan, Marine Davtyan, and
4 Tatyana Davtyan, individually and on behalf of the Settlement Class (“Plaintiffs”),
5 and Nissan Motor Acceptance Corporation (“NMAC” or “Defendant”), as set forth
6 in the Parties’ Settlement Agreement and Release (the “Agreement,” which
7 memorializes the “Settlement”). Having duly considered the papers, THE COURT
8 HEREBY FINDS AND ORDERS AS FOLLOWS:

9 1. The Court has jurisdiction over the subject matter of the litigation, the
10 Parties, and all Settlement Class Members.

11 2. Unless defined herein, all defined terms in this Order shall have the
12 meanings ascribed to them in the Agreement.

13 3. The Court has conducted a preliminary evaluation of the Settlement as
14 set forth in the Agreement for fairness, adequacy, and reasonableness. Based on this
15 evaluation, the Court finds pursuant to Federal Rule of Civil Procedure 23(e)(B) that
16 providing notice to all Settlement Class Members is justified by the parties’ showing
17 that that Court will likely be able to (i) approve the parties’ proposal under Rule
18 23(e)(2); and (ii) certify the class for purposes of judgment on the parties’ proposal,
19 for the reasons set for the herein. The Court further finds there is cause to believe
20 that: (A) the Class Representatives and Class Counsel have adequately represented
21 the Class; (B) the proposal was negotiated at arm’s length;(C) the relief provided for
22 the Class is adequate, taking into account (i) the costs, risks, and delay of trial and
23 appeal; (ii) the effectiveness of the proposed method of distributing relief to the
24 class, including the method of processing class-member claims; (iii) the terms of the
25 proposed award of attorney’s fees, including timing of payment; and (iv) any
26 agreement required to be identified under Rule 23(e)(3), which here consists of the
27 parties’ Settlement Agreement; and (D) the proposal treats Class Members equitably
28 relative to each other.

1 4. The Court therefore finds that (i) the Agreement is fair, reasonable, and
2 adequate, and within the range of possible approval; (ii) the Agreement has been
3 negotiated in good faith at arms-length between experienced attorneys familiar with
4 the legal and factual issues of this case; (iii) with respect to the forms of notice of
5 the material terms of the Agreement to Settlement Class Members for their
6 consideration and reaction, that notice is appropriate and warranted; and (iv) that the
7 proposed plan for notice within the Agreement is reasonably calculated to provide
8 best notice practicable to the class members. Therefore, the Court grants
9 preliminary approval of the Settlement.

10 5. The Court, pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal
11 Rules of Civil Procedure, conditionally certifies, for purposes of this Settlement
12 only, the following Settlement Class: a. all persons in the United States to whose
13 cellular telephones NMAC placed one or more non-emergency Calls b. using
14 equipment that constitutes or may constitute an automatic telephone dialing system
15 or an artificial or prerecorded voice c. during the Class Period and d. who were not
16 a party to any agreement with NMAC. NMAC, any affiliate or subsidiary of
17 NMAC, any entities in which any of such companies have a controlling interest, the
18 staff of the Court, and counsel in this case are excluded from the Class.

19 6. The Court hereby appoints Aram Terteryan, Marine Davtyan, and
20 Tatyana Davtyan as Class Representatives of the Settlement Class pursuant to Rule
21 23 of the Federal Rules of Civil Procedure.

22 7. The Court appoints Kemnitzer, Barron & Krieg, LLP and Lyngklip &
23 Associates, Consumer Law Center, PLC as Class Counsel, pursuant to Rule 23 of
24 the Federal Rules of Civil Procedure. On **November 9, 2020**, in Courtroom 9D of
25 the United States Courthouse located at 350 West 1st Street, Los Angeles, CA,
26 90012, or at such other date and time later set by Court Order, this Court will hold a
27 Final Approval Hearing on the fairness, adequacy and reasonableness of the
28 Agreement and to determine whether (i) final approval of the Settlement embodied

1 by the Agreement should be granted, and (ii) Class Counsel’s application for
2 attorneys’ fees and expenses, and incentive award to Plaintiffs, should be granted,
3 and in what amount. No later than **May 5, 2020**, Plaintiff must file papers in
4 support of Class Counsel’s application for attorneys’ fees and expenses, and the
5 incentive award to the Class Representative. No later than **October 26, 2020**, which
6 is fourteen (14) days prior to the Final Approval Hearing, Plaintiff must file papers
7 in support of final approval of the Settlement and respond to any written objections.
8 Defendant may (but is not required to) file papers in support of final approval of the
9 Settlement, so long as it does so no later than **November 2, 2020**.

10 8. Pursuant to the Agreement, Kurtzman Carson Consultants, LLC is
11 hereby appointed as Claims Administrator and shall be required to perform all the
12 duties of the Claims Administrator as set forth in the Agreement and this Order.

13 9. The Court approves the proposed plan for Notice to the Settlement
14 Class (i) directly via mailed Notice to persons on the Notice List, (ii) publication
15 notice, at a minimum in a newspaper as set forth in the Agreement, and also via any
16 online banner advertising; (iii) through a toll-free telephone number; (iv) through a
17 press release; and (v) by establishing a Settlement Website at the web address of
18 www.TertiaryanTCPASettlement.com, as more fully described in the Agreement.
19 The Notice Plan, in form, method, and content, complies with the requirements of
20 Rule 23 and due process, and constitutes the best notice practicable under the
21 circumstances. The Court hereby directs the Parties and the Claims Administrator
22 to complete all aspects of the Notice Plan no later than **March 16, 2020**, in
23 accordance with the terms of the Agreement.

24 10. The Claims Administrator will file with the Court by no later than
25 **October 26, 2020**, which is fourteen (14) days prior to the Final Approval Hearing,
26 proof that Notice was provided in accordance with the Agreement and this
27 Preliminary Approval Order, as well as proof that notice was provided to the
28 appropriate State and federal officials pursuant to the Class Action Fairness Act, 28

1 U.S.C. § 1715.

2 11. Settlement Class Members who wish to either object to the Settlement
3 or request to be excluded from it must do so by the Objection Deadline and Opt-Out
4 Deadline of **May 15, 2020**, which are both sixty (60) calendar days after the
5 Settlement Notice Date. Settlement Class Members may not both object and opt out.
6 If a Settlement Class Member submits both a Request for Exclusion and an
7 objection, the Request for Exclusion will be controlling.

8 12. To submit a Request for Exclusion, Settlement Class Members must
9 follow the directions in the Notice and send a compliant request to the Claims
10 Administrator at the address designated in the Class Notice by the Opt-Out
11 Deadline. In the Request for Exclusion, the Settlement Class Member must state his
12 or her full name, address, and telephone number, and must state in writing that he or
13 she wishes to be excluded from the Settlement. No Request for Exclusion will be
14 valid unless all of the information described above is included. No Settlement Class
15 Member, or any person acting on behalf of or in concert or participation with that
16 Settlement Class Member, may exclude any other Settlement Class Member from
17 the Settlement Class; however, nothing herein shall prevent Class Members from
18 obtaining the assistance of another, such as a lawyer or family member, in preparing
19 or submitting any individual exclusion.

20 13. If a timely and valid Request for Exclusion is made by a member of the
21 Settlement Class, then that person will not be a Settlement Class Member, and the
22 Agreement and any determinations and judgments concerning it will not bind the
23 excluded person.

24 14. All Settlement Class Members who do not opt out in accordance with
25 the terms set forth in the Agreement will be bound by all determinations and
26 judgments concerning the Agreement.

27 15. To object to the Settlement, Settlement Class Members must follow the
28 directions in the Notice and file a written Objection with the Court by the Objection

1 Deadline. In the written Objection, the Settlement Class Member must state his or
2 her full name, address, current telephone number, and cellular telephone number(s)
3 that the Settlement Class Member alleges received a call from Defendant. He or she
4 must also state the reasons for his or her Objection, and whether he or she intends to
5 appear at the Fairness Hearing on his or her own behalf or through counsel. Any
6 documents that the Settlement Class Member wishes the Court to consider must also
7 be attached to the Objection. Any and all objections shall identify any lawyer that
8 represents the Settlement Class Member as to the case or such objection. No
9 Objection will be valid unless all of the information described above is included.
10 Copies of all papers filed with the Court must be simultaneously delivered to Class
11 Counsel and counsel for the Defendant. The Parties will have the right to conduct
12 discovery within the limits of Rule 26 from any objector as to the basis and
13 circumstances of his or her objection, and to assess the objector's standing.

14 16. If a Settlement Class Member does not submit a written comment on
15 the proposed Settlement or the application of Class Counsel for attorneys' fees and
16 expenses and the incentive award in accordance with the deadline and procedure set
17 forth in the Notice, and the Settlement Class Member wishes to appear and be heard
18 at the Final Approval Hearing, the Settlement Class Member must file a notice of
19 intention to appear with the Court and serve a copy upon Class Counsel and
20 Defendant's Counsel no later than the Objection/Opt-Out Deadline, and comply
21 with all other requirements of the Court for such an appearance.

22 17. Any Settlement Class Member who fails to timely file a written
23 objection with the Court in accordance with the terms of this Order, above and as
24 detailed in the Notice, and at the same time provide copies to Class Counsel and
25 Defendant's Counsel, shall not be permitted to object to the Agreement, shall be
26 foreclosed from seeking any review of the Agreement by appeal or other means,
27 shall be deemed to have waived his, her, or its objections, and shall be forever
28 barred from making any such objections in the Action. All members of the

1 Settlement Class, except those members of the Settlement Class who submit timely
2 Requests for Exclusion, will be bound by all determinations and judgments in the
3 Action, whether favorable or unfavorable to the Settlement Class. Unless approved
4 by the Court after a hearing, no payment or other consideration may be provided in
5 connection with forgoing or withdrawing an objection to this Settlement as set forth
6 in Fed. R. Civ.P. 23. Similarly, unless approved by the Court after a hearing, no
7 payment or other consideration may be provided in connection with forgoing,
8 dismissing, or abandoning an appeal from the Final Approval Order, as set forth in
9 Fed. R. Civ.P. 23.

10 18. Any request for attorney's fees and costs to be paid from the Settlement
11 Fund must be filed prior to the Final approval Hearing and be support by a motion
12 and brief in support of the requested fee. Any person who requests Attorneys' Fees
13 in connection with this the Settlement must appear at the Final Approval Hearing
14 either in person or through counsel. No party may pay Attorney's Fees, Costs or any
15 Incentive Award relating to this Settlement unless approved by the Court.

16 19. Pending the final determination of whether the Settlement should be
17 approved, all pre-trial proceedings and briefing schedules in the Action are stayed.
18 If the Settlement is terminated or final approval does not for any reason occur, the
19 stay will be immediately terminated.

20 20. If the Settlement is not approved or consummated for any reason
21 whatsoever, the Settlement and all proceedings in connection with the Settlement
22 will be without prejudice to the right of Defendant or the Settlement Class
23 Representative to assert any right or position that could have been asserted if the
24 Agreement had never been reached or proposed to the Court. In such an event, the
25 Parties will return to the *status quo ante* in the Action and the certification of the
26 Settlement Class will be deemed vacated. The certification of the Settlement Class
27 for settlement purposes, or any briefing or materials submitted seeking certification
28 of the Settlement Class, will not be considered in connection with any subsequent

1 class certification decision.

2 21. The Agreement and any and all negotiations, documents, and
 3 discussions associated with it, will not be deemed or construed to be an admission or
 4 evidence of any violation of any statute, law, rule, regulation, or principle of
 5 common law or equity, or of any liability or wrongdoing, by Defendant, or the truth
 6 of any of the claims, and evidence relating to the Agreement will not be
 7 discoverable or used, directly or indirectly, in any way, whether in the Action or in
 8 any other action or proceeding, except for purposes of demonstrating, describing,
 9 implementing, or enforcing the terms and conditions of the Agreement, this Order,
 10 and the Final Judgment and Order of Dismissal.

11 22. Counsel are hereby authorized to use all reasonable procedures in
 12 connection with approval and administration of the Settlement that are not
 13 materially inconsistent with this Order or the Agreement, including making, without
 14 further approval of the Court, minor changes to the form or content of the Notice
 15 and Claim Form, and other exhibits that they jointly agree are reasonable and
 16 necessary. The Court reserves the right to approve the Agreement with such
 17 modifications, if any, as may be agreed to by the Parties without further notice to the
 18 members of the Class.

19 23. Accordingly, the following are the deadlines by which certain events
 20 must occur:

March 16, 2020 [155 calendar days after the date of this order]	Deadline to Provide Class Notice
May 5, 2020 [50 days after the Settlement Notice Date, adjusted for the weekend]	Deadline for Plaintiff’s Motion for Attorneys’ Fees
May 15, 2020 [60 days after the Settlement Notice Date]	Deadline for Class Members to file Objections or submit Requests for Exclusion/Opt-Outs
October 26, 2020 [14 days before	Deadline for Parties to File the Following: (1) List of Class Members who Made Timely and Proper

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the Final Approval Hearing]	Requests for Exclusion; (2) Proof of Class Notice and CAFA Notice; and (3) Motion and Memorandum in Support of Final Approval, including responses to any Objections.
June 15, 2020 [90 days after the Settlement Notice Date]	Deadline for Settlement Class Members to Submit a Claim Form
November 9, 2020 at 8:30 a.m.	Final Approval Hearing

SO ORDERED.

Dated: October 11, 2019



HON. GEORGE H WU,
United States District Judge