

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

CHRISTOPHER GANN, LEANDRE BISHOP, KEVIN BURKE, ELISA CABEBE, ISRAEL CHIA, KRISTA COSTA, HILLARY DICK, JURA GERALD, SEIJI SILER-HYATTE, JEANINE INGRASSIA, ARNIKA IRELAND, MONTELL JONES, MICHAEL KANZLER, ALEXANDRA MCCULLOUGH, TEREST MIRANDA, AUTUMN PIERCE, ROBERT H. WEINBERG, LASHANDRIKA WILLIAMS, AND LAURA WINDOM, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA, INC., a California corporation,

Defendant.

CASE NO: 3:18-cv-00966

CLASS ACTION

DECLARATION OF MARK S. GREENSTONE ON BEHALF OF GREENSTONE LAW APC IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT AND AWARD OF ATTORNEYS' FEES, COSTS, EXPENSES, AND REPRESENTATIVE PLAINTIFF SERVICE AWARDS

District Judge Eli Richardson
Courtroom 874
Magistrate Judge Alistair E. Newbern
Courtroom 774

JURY TRIAL DEMANDED

I, Mark S. Greenstone, declare as follows:

1. I am the founding principal of Greenstone Law APC. I am an attorney duly licensed to practice before all courts of the State of California and am admitted *pro hac vice* to practice before this Court. I am one of Co-Lead Class Counsel, and counsel of record in *Cabebe v. Nissan North America, Inc.*, No. 3:18-cv-00144 (N.D. Cal., January 8, 2018), a class action brought on behalf of twelve of the nineteen representative plaintiffs in this matter. I submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement Agreement and Award of Attorneys' Fees, Costs, Expenses, and Representative Plaintiff Service Awards. I make this declaration based on personal knowledge. If called as a witness, I could and would testify competently as to the matters stated herein.

2. I began investigating this matter approximately three years ago in January of 2017. At that time, I was a Partner with my former firm, Glancy Prongay & Murray LLP (“GPM”). I founded Greenstone Law APC in about April of 2018. My time incurred on this matter during the period January 2017 through April 2018 while a Partner at GPM is set forth in the concurrently filed Declaration of my Co-Lead Class Counsel, Marc L. Godino. Time incurred by my firm from May of 2018 through the present is set forth in this Declaration. At all times, I and my Co-Lead Class Counsel Marc L. Godino have been the lead attorneys responsible for the case and have been personally involved in every aspect of the investigation, prosecution and resolution of Plaintiffs’ claims through the Settlement¹ as described in this Declaration.

3. During the pre-filing investigation phase, I spent months investigating the facts and underlying problems with the Class Vehicles’ continuously variable transmissions (“CVT”) including by: (1) reviewing publicly available complaints from Class Vehicle owners posted on the National Highway Safety Administration’s (“NHTSA”) website and other public internet forums; (2) interviewing potential putative class members and reviewing all of the documents and repair orders associated with their vehicles including CarFax vehicle history reports; (3) researching the history of Nissan’s initial introduction of the CVTs into the Class Vehicles and its other models and all its subsequent modifications and redesigns of the CVTs in these vehicles; (4) investigating the mechanics of how CVTs are supposed to function through independent research and by consulting with automotive experts; and (5) searching for and learning about any previously filed or/or currently pending cases against Nissan for similar or related problems in the Class Vehicles or other models. In addition, I corresponded with NNA’s counsel regarding Plaintiffs’ claims, and was one of the primary drafters of the *Cabebe* Plaintiffs’ initial complaint.

4. Subsequent to the filing of *Cabebe* in January of 2018, I was one of the primary drafters of Plaintiffs’ amended complaints and the briefing on NNA’s motion to dismiss in relation

¹ Capitalized terms herein have the same meaning as set forth in the Settlement Agreement (“SA”), Docket No. 66-1.

thereto. I flew from Los Angeles to San Francisco to personally argue at the hearing on NNA's motion to dismiss, as well as to attend the case management conference. I was also one of the primary attorneys in charge of the *Cabebe* Plaintiffs' formal discovery efforts and continued independent investigation of the case. I was personally involved in drafting the discovery served on NNA, as well as reviewing the responses and documents produced in connection with them. I also organized an outreach effort that ultimately resulted in approximately 854 putative class members reaching out to my firm and my *Cabebe* co-counsel GPM. Over the course of this matter, I personally reviewed intakes and related documentation for approximately 196 of these individuals, and conducted in-depth follow up interviews with a number of them. This extensive ongoing investigation helped to contextualize and verify information provided by NNA concerning the performance of the Class Vehicles, countermeasures taken to address CVT issues, the cost of repairing their CVTs and the like.

5. My firm has been equally involved in the settlement phase of the litigation. Leading up to mediation, I personally met with NNA's lead attorney to discuss the parameters of a proposed resolution. I flew to Atlanta, Georgia to attend the mediation that took place on April 16, 2019 and was personally involved along with my other Co-Lead Class Counsel in negotiating and drafting the settlement Term Sheet, the long form Settlement Agreement and related documents including the long form publication and post-card notices and claim form, the Consolidated Second Amended Class Action Complaint, as well as the preliminary approval briefing.

6. My firm has likewise been involved in all aspects of the case following preliminary approval. Working with Co-Lead Class Counsel, my firm participated in the drafting of the settlement website and IVR scripts, and participated in all meetings with the settlement administrator and NNA's counsel to keep abreast of the notice and administration process. My firm began to receive and respond to Class Member phone calls and emails even before the Class Notice was mailed, and in conjunction with GPM has handled over 100 such inquiries to date. I have personally spoken to many of these individuals to offer them guidance as to the terms of the Settlement and the claims process. Along with my Co-Lead Class Counsel, my firm has worked

closely with Plaintiffs' valuation expert Lee Bowron, whose declaration and report as to the value of the Warranty Extension has been submitted along with Plaintiffs' final approval briefing. My firm has participated extensively in the drafting of Plaintiffs' final approval and fee briefs and related documentation, and will remain equally involved through the conclusion of this matter. I plan to personally attend the March 6, 2020 final approval hearing along with my Co-Lead Class Counsel.

7. Throughout this litigation, my firm has provided updates to our class representatives to keep them informed of the status of the litigation and answer any questions they may have.

8. My firm has engaged in this matter on a fully contingent basis. My firm has received no compensation of any kind for my firm's work on this matter.

9. The information in this declaration regarding my firm's time and expenses is taken from time and expense printouts and supporting documentation prepared and maintained by the firm in the ordinary course of business. The time records were prepared daily or shortly thereafter by each attorney or support staff member working on the matter. The expense records are prepared from receipts, expense vouchers, check records and other documents, and are an accurate record of the expenses.

10. I am the person in the firm who oversaw and conducted the day-to-day activities of the firm, and I reviewed printouts (and supporting documentation where necessary and appropriate) in connection with the preparation of this Declaration. The purpose of this review was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as set forth herein are reasonable and were necessary for the effective and efficient prosecution and resolution of the litigation. I also believe the time and expenses are of the type that would normally be charged to a fee-paying client in the private legal marketplace.

11. Attached hereto as **Exhibit 1** is a summary of my firm's lodestar. The summary includes the names of attorneys and professional support staff who worked on this case and each timekeeper's respective hours and lodestar at current rates. The hourly rates shown in **Exhibit 1** are the usual and customary rates set by my firm for each individual. My firm has expended 824.5 hours working on this case and the total lodestar is \$614,935. The backgrounds and qualifications of the two attorneys who worked on this matter on behalf of my firm are set forth in the Firm Resume and the Resume of Susan Brown, attached hereto as **Exhibit 2**.

12. Fee awards supported by my hourly rates and corresponding lodestar have been regularly approved in class action settlements that I have overseen including the following: *Reniger, et al., v. Hyundai Motor America, et. al*, No. 14-03612 (N.D. Cal.), Docket No. 104; *Story v. Mammoth Mountain Ski Area, LLC*, No. 2:14-cv-02422 (E.D. Cal.), Docket No. 92; *Bercut, et al. v. Michaels Stores, Inc.*, No. SVC-257268 (Sonoma Cty. Super. Ct.), October 18, 2018 Final Approval Order; *Feist, et al. v. Petco Animal Supplies, Inc.*, No. 3:16-cv-01369 (S.D. Cal.), Docket No. 48; *Fisher, et al. v. Enterprise Rent-A-Car Company of Los Angeles, LLC*, No. 30-2017-00907805 (Orange Cty. Super. Ct.), January 28, 2019 Final Approval Order. Ms. Brown's hourly rate and corresponding lodestar has approved in the context of successful class action litigation as well, see *Parsons v. Kimpton Hotel & Restaurant Group, LLC*, No. 3:16-cv-05387-VC (N.D. Cal.) Docket No. 117.

13. Further, based on my knowledge of the class action plaintiff's bar nationwide, the rates charged by my firm are in line with the rates charged by other firms that handle class actions of similar size and complexity. Both of the firm's attorneys that have worked on this case have practiced for the following number of years: Mr. Greenstone—20 years; Ms. Brown—10 years. Based on the years of experience of each of the firm's attorneys that worked on this case, I believe that the hourly rates of \$600.00 to \$800.00 are reasonable.

14. The hours and lodestar incurred by my firm will increase because, the firm, along with other Co-Lead Class Counsel, is responsible for any further briefing in this case and in particular responding to objectors, obtaining any needed discovery or deposition testimony from

objectors, attending the final approval hearing, and the significant post hearing work, which includes years of claims administration and settlement implementation. If appeals are filed, Co-Lead Class Counsel will handle the appeals. On an ongoing basis, the firm will continue to be in regular contact with Class Members who contact us regarding the Settlement and its claims process, as well as the Settlement Administrator regarding the same, and will continue to oversee the inspection and repair/replacement programs, the claim process and will continue to regularly review and act on the reports provided by the Settlement Administrator, as well as address any issues as they arise. However, no additional fees will be paid for this work.

15. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in the firm's billing rates.

16. My firm has incurred \$5,292.47 in costs and expenses on this case. Those costs and expenses are summarized by category in **Exhibit 3**. The expenses were kept in the firm's books and records prepared from contemporaneous receipts, expense vouchers, check records, and other documents and are an accurate record of the costs and expenses.

17. The following is additional information regarding these expenses:

(a) Postage: \$33.35. This includes the cost of providing pre-paid postage to Class Members to facilitate them in providing relevant repair orders, invoices and the like to counsel.

(b) Auto: \$113.37. This includes the cost of driving to and from hearings and meetings with expert consultants and putative Class Members.

(c) Travel, Airfare, Hotels, Parking & Meals: \$5,145.75. This includes the cost of traveling from Los Angeles to Atlanta, Georgia to attend a mediation with the highly experienced mediator, Hunter R. Hughes. It also includes travel on two separate occasions from Los Angeles to San Francisco (where the *Cabebe* case was filed) to attend the hearing on NNA's motion to dismiss and a case management conference.

18. The out-of-pocket litigation expenses incurred by the firm in this case are reasonable in amount and were necessary for the effective and efficient prosecution of the

Litigation. In addition, I believe the expenses are of a type that would normally be charged to a fee-paying client in the private legal marketplace. Multiple courts have approved similar expenses I have incurred successfully prosecuting class action litigation. *See* paragraph 10, *supra*.

19. NNA has agreed to pay incentive awards of \$5,000 to each of the nineteen Plaintiffs named in the Lawsuits. SA, ¶ 115. These awards will be paid separately and will not reduce Settlement benefits to Class Members. *Id.* These amounts are based on time and efforts Plaintiffs expended and their commitment to the Lawsuits. Each of the Plaintiffs stepped forward to file the various Lawsuits and represent other Altima purchasers knowing that they could be subject to discovery, that the litigation could take years, that they were obligated to testify at trial, and that, in the end, their efforts might not be successful. Nonetheless, the Plaintiffs were willing to and did do everything required and without out them these cases would not have been brought and the settlement obtained. For instance, the Cabebe Plaintiffs communicated with attorneys at the firm regarding all aspects of the Lawsuits, including via phone and email. They provided valuable information necessary for drafting the initial complaint and amended complaints. In addition, those who still possessed their vehicles were willing to produce their vehicles for inspection and testing by NNA. Plaintiffs in all of the Lawsuits, Leandre Bishop, Kevin Burke, Israel Chia, Krista Costa, Hillary Dick, Jura Gerald, Seiji Siler-Hyatte, Jeanine Ingrassia, Arnika Ireland, Montell Jones, Michael Kanzler, Alexandra McCullough, Terese Miranda, Autumn Pierce, Robert H. Weinberg, Lashandrika Williams, and Laura Windom, spent time reviewing court filings, and consulting for mediation and settlement based on information provided to me by Plaintiffs' counsel and based on my knowledge of the work and contributions made by the Plaintiffs in the Lawsuits. The modest service awards are fair and reasonable.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 24th day of January, 2020, at Los Angeles, California.



Mark S. Greenstone

Exhibit 1

Greenstone Law APC Timekeeping Summary Report

Nissan Altima CVT Litigation

Through January 22, 2020

Timekeeper	Status	Hours	Rate	Lodestar	Bar Admission
ATTORNEYS:					
Mark Greenstone	Partner	691.3	\$800	\$553,040	1998
Susan Brown	Of Counsel	81.7	\$600	\$49,020	2010
TOTAL ATTORNEY		773.0		\$602,060	
NON-ATTORNEYS:					
Malia Blake	Research Analyst	51.5	\$250	\$12,875	n/a
TOTAL NON-ATTORNEYS		51.5		\$12,875	
TOTAL LODESTAR		824.5		\$614,935	

Exhibit 2

GREENSTONE LAW APC FIRM RESUME

Greenstone Law APC specializes in the prosecution of consumer and employment-related class actions. The firm's founder, Mark S. Greenstone, received his training as an associate at Sheppard, Mullin, Richter & Hampton LLP where he specialized in complex business litigation relating to investment management, government contracts and real estate.

Since 2012, Mr. Greenstone has focused on class action litigation and has been designated as class counsel in the following matters:

- *Reniger, et al. v. Hyundai Motor America*, No. 4:14-cv-03612 (N.D. Cal.) (automobile defect class action settlement on behalf of approximately 77,000 owners and lessees of 2010-2012 Hyundai Santa Fe vehicles, finally approved March 28, 2017);
- *Story v. Mammoth Mountain Ski Area, LLC*, No. 2:14-cv-02422 (E.D. Cal.) (\$3.75 million Telephone Consumer Protection Act class action settlement on behalf of approximately 37,000 class members, finally approved March 13, 2018);
- *Bercut, et al. v. Michaels Stores, Inc.*, No. SVC-257268 (Sonoma Cty. Super. Ct.) (\$4 million Fair Credit Reporting Act ("FCRA") class action settlement on behalf of approximately 120,000 class members, finally approved October 10, 2018);
- *Feist, et al. v. Petco Animal Supplies, Inc.*, No. 3:16-cv-01369 (S.D. Cal.) (\$1.2 million FCRA class action settlement on behalf of approximately 35,000 class members, finally approved November 16, 2018);
- *Fisher, et al. v. Enterprise Rent-A-Car Company of Los Angeles, LLC*, No. 30-2017-00907805 (Orange Cty. Super. Ct.) (FCRA class action settlement on behalf of approximately 8,500 class members, finally approved January 28, 2019).

Mr. Greenstone graduated Order of the Coif from the UCLA School of Law. He also received his undergraduate degree in Political Science from UCLA, where he graduated Magna Cum Laude and was inducted into the Phi Beta Kappa honor society.

Mr. Greenstone is the past and present chair of the 2018, 2019 and 2020 Cambridge Forum on Plaintiffs' Class Action Litigation and is admitted to practice in state and federal courts throughout California.

Greenstone Law APC is currently counsel of record in numerous pending class actions, including the following:

- *Elaine Hall, et al. v. General Motors, LLC*, No. 2:19-cv-10186 (E.D. Mich.)
- *Jaime Loo, et al. v. Toyota Motor Sales, USA, Inc.*, No. 8:19-cv-00750 (C.D. Cal.)
- *Nestor Mosqueda, et al. v. American Honda Motor Co., Inc.*, No. 8:19-cv-00839 (C.D. Cal.)
- *Bhupendra Khnoa, et al. v. Subaru of America, Inc.*, No. 1:19-cv-09323 (N.J. Camden)
- *Elisa Cabebe, et al. v. Nissan of North America, Inc.*, No. 4:18-cv-00144 (N.D. Cal.)
- *Jami Kidd v. Mazda Motor of America, Inc.*, No. 8:19-cv-02119 (C.D. Cal.)
- *Andre Damico, et al. v. Hyundai Motor America*, No. 8:18-cv-01276 (C.D. Cal.)
- *John Luna, et al. v. Renewal By Andersen, LLC, et al.*, No. 3:18-cv-07304 (N.D. Cal.)
- *Toni Torraca-Riano, et al. v. ATC Healthcare Services, Inc.*, No. 3:19-cv-00295 (S.D. Cal.)
- *Nicholas Neuhoff v. Walgreen Co.*, No. Civ 2000159 (Marin Cty. Super. Ct.)
- *Melanie G. San Pedro-Salcedo, et al. v. The Haagen-Dazs Shoppe Company, Inc.*, No. 5:17-cv-03504 (N.D. Cal.)
- *Patrick Conroy, et al., v. Halperns' Yes & Productions, Inc.*, No. cv-1802581 (Marin Cty. Super. Ct.)
- *Sunil Daniel, et al. v. Lennar Corp.*, No. 8:19-cv-00452 (C.D. Cal.)
- *Deborah Hubbard, et al., L'Oréal USA, Inc.*, No. 18-567952 (N.D. Cal.)
- *Jason Bosch, et al., v. Nationstar Mortgage, LLC*, No. BC722770 (Los Angeles Cty. Super. Ct.)
- *Mark Mina, et al., v. Red Robin International, Inc., et al.*, No. 2:18-cv-09472 (C.D. Cal.)
- *Jessica DeMesa, et al., v. Treasure Island, LLC*, No. 3:18-cv-05177 (D. Nev.)

SUSAN BROWN

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PROFESSIONAL EXPERIENCE

Susan Brown Legal Services - February 2019 to present

- I provide flexible, on-demand freelance legal services to busy attorneys, and representation to select clients, in employment matters, commercial litigation, consumer protection, and cross-border litigation between Canada and the U.S.

Counsel, Robins Kaplan LLP - April 2017 to January 2019

San Francisco, California

- Drafted complaint, dispositive motion briefs, mediation brief, and class certification and settlement approval brief for \$30 million class action settlement against Wells Fargo for unlawful post-payment mortgage interest charges. *Fowler v. Wells Fargo Bank, N.A.*, No. 17-CV-02092-HSG, 2018 U.S. Dist. LEXIS 142985 (N.D. Cal. Aug. 22, 2018).
- Secured a favorable ruling in the Ninth Circuit clarifying the law on false advertising claims concerning dietary supplements. *Durnford v. MusclePharm Corp.*, 907 F.3d 595 (9th Cir. 2018).
- Secured U.S. residency for Guatemalan unaccompanied child asylum seeker through Lawyers Committee for Civil Rights of San Francisco pro bono program.

Associate, Ram, Olson, Cereghino, & Kopczynski LLP - July 2013 to April 2017

San Francisco, California

- Obtained dismissals with prejudice in parallel commercial lawsuits against Canadian business owners brought by a former business partner in California. *Waziri v. Waziri*, Nos. 4:15-CV-04822 & 3:15-CV-04369 (N.D. Cal. 2015).
- As third chair on multi-party construction defect case that settled for \$1.5 million after opening statements, I drafted a successful opposition to a third-party subcontractor application to intervene, as well as numerous pre-trial motions. *2999 California Street Homeowners Association v. Axis Services Inc.*, No. CGC-14-541401 (Cal. Super. Ct. 2016).
- Represented passengers in a consumer class action alleging Uber unlawfully kept for itself a cut of a mandatory driver gratuity charge. Class settlement provided complete compensation for passengers. *Ehret v. Uber*, No. 3:14-CV-00113 (N.D. Cal. 2016).

Associate, Paliare Roland Rosenberg Rothstein LLP 2009 – 2012

Toronto, Ontario, Canada

- Represented consumers in a \$144 million charitable donation tax shelter fraud case. Drafted a successful motion for class certification and oppositions to motions for summary judgment, then served as third chair, presenting oral argument during a successful five-day motion hearing involving 14 individual and corporate defendants. *Cannon v. Funds for Canada Foundation*, 2012 ONSC 399 (Ontario Superior Court).
- Represented borrowers in a criminal interest/usury class action against a payday lender. Drafted and argued successful motions for class certification and settlement approval. *Mortillaro v. Unicash Franchising Inc.*, 2011 ONSC 923 (Ontario Superior Court).

EDUCATION

University of Toronto Faculty of Law: J.D. 2009

(Canada's top-ranked law school; ranked 19th in the world by QS Global Ranking System)

- First class honors in moot court program; recipient of Blakes, Cassels, Graydon Entrance Scholarship.

University of Toronto: M.A. English 2002

- Full academic scholarship.

University of Alberta: B.A. (Hons) English 2000, first class honors

LICENSING

- State Bar of California, January 2013.
- Law Society of Ontario, Canada, July 2010.

PRO BONO

Bar Association of San Francisco Justice and Diversity Clinic January 2013 – present

- Represent low-income San Franciscans in a variety of civil proceedings.

Lawyers Committee for Civil Rights of San Francisco 2016 – present

- Represent unaccompanied child asylum seekers in United States Citizenship and Immigration Services proceedings.

AWARDS

- Named a Super Lawyers Northern California Rising Star 2015-2019.

Exhibit 3

Greenstone Law APC Firm Expense Report

Nissan Altima CVT Litigation

Through January 22, 2020

Category of Expense	Amount
Postage	\$33.35
Auto	\$113.37
Travel Airfare	\$3,205.69
Travel Hotel	\$1,402.18
Travel Meals	\$409.88
Travel Parking	\$128.00
TOTAL	\$5,292.47