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NISSAN NORTH AMERICA, INC.

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 OAKLAND DIVISION  
18

19 MICHELLE FALK, INDHU JAYAVELU,  
PATRICIA L. CRUZ, DANIELLE TROTTER,  
20 CYNTHIA GARRISON, AND AMANDA  
MACRI, individually and on behalf of all  
21 others similarly situated,

22 Plaintiffs,

23 v.

24 NISSAN NORTH AMERICA, INC.,

25 Defendant.  
26  
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Case No. 4:17-cv-04871-HSG

**JOINT STIPULATION REGARDING  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT AND NNA'S RESPONSE  
THERE TO; ORDER; DECLARATION  
OF MICHAEL J. STORTZ**

1 Defendant Nissan North America, Inc. (“NNA”), Plaintiffs Michelle Falk, Indhu Jayavelu,  
2 Patricia L. Cruz, Danielle Trotter, Amanda Macri, and Cynthia Garrison (“Plaintiffs”), and Waldo  
3 Leyva (“Leyva”), by and through their respective undersigned counsel of record, hereby stipulate  
4 to and agree as follows:

5 WHEREAS, after filing this action on August 22, 2017, Plaintiffs filed their First  
6 Amended Complaint (“FAC”) on September 27, 2017 (Dkt. No. 19).

7 WHEREAS, NNA moved to dismiss Plaintiffs’ FAC on October 26, 2017 (Dkt. No. 35).

8 WHEREAS, following hearing on January 11, 2018, the Court took NNA’s motion to  
9 dismiss under submission (Dkt. No. 55).

10 WHEREAS, while NNA’s motion to dismiss was under submission, the parties filed and  
11 the Court granted a stipulation to permit the addition of Leyva to this action, following the  
12 Court’s ruling on NNA’s then pending Motion to Dismiss. *See* Dkt. No. 61 (Joint Stipulation to  
13 Permit Amendment of Complaint to Add Plaintiff, entered April 17, 2018).

14 WHEREAS, pursuant to the Joint Stipulation to Permit Amendment of Complaint to Add  
15 Plaintiff (“Leyva Stipulation”), “Leyva would be permitted to join this action as an additional  
16 named Plaintiff via amended complaint after the Court has ruled on [NNA’s then] pending  
17 motion to dismiss.” *Id.* at 2:6-7. Further, the parties agreed that “[i]f Plaintiffs determine to file  
18 an amended Complaint that is limited solely to adding Leyva as an additional named Plaintiff,  
19 then Defendant will not oppose such amendment.” *Id.* at 2:7-9. The parties further agreed that  
20 “Leyva may not assert any claim for relief or cause of action not asserted by the Plaintiffs in their  
21 FAC in this action.” *Id.* at 2:10-11. Finally, the parties agreed that “Leyva shall be bound by this  
22 Court’s ruling on NNA’s [then] pending motion to dismiss in this action and may not assert any  
23 claim for relief or cause of action dismissed without leave to amend.” *Id.* at 2:12-14.

24 WHEREAS, on May 16, 2018, the Court granted in part and denied in part NNA’s motion  
25 to dismiss (Dkt. No. 62) (“Order Re NNA’s MTD”).

26 WHEREAS, in the Court’s Order Re NNA’s MTD, the Court ordered Plaintiffs to file any  
27 amended complaint by June 6, 2018. *See* Order Re NNA’s MTD at 18.

28 WHEREAS, the Court further ordered that “[t]he amended complaint may not add new

1 causes of action or plaintiffs, and the scope of leave to amend extends only to the claims  
2 identified [as being dismissed with leave to amend].” *Id.*

3 WHEREAS, Plaintiffs have not yet determined whether they will seek to amend their  
4 complaint to address the claims dismissed by the Court with leave to amend, but Plaintiffs intend  
5 to amend to add Plaintiff Leyva to this action, pursuant to the Joint Stipulation to Permit  
6 Amendment of Complaint to Add Plaintiff (Dkt. No. 61).

7 WHEREAS, such proposed amendment would comply with the restriction of the Leyva  
8 Stipulation that Leyva “not assert any claim for relief or cause of action not asserted by the  
9 Plaintiffs in their FAC in this action” which would also comply with the Court’s Order that the  
10 Amended Complaint not add any new causes of action;

11 WHEREAS, Plaintiffs will be prepared to file their amended complaint by June 6, 2018,  
12 the deadline set forth in the Court’s Order Re NNA’s MTD.

13 WHEREAS, the parties have agreed that judicial economy would not be served by NNA  
14 filing an Answer to the FAC prior to the time for Plaintiffs’ to file an amended complaint on June  
15 6, 2018, and in order to also allow sufficient time for NNA to prepare its response to Plaintiffs’  
16 Second Amended Complaint, NNA shall have thirty (30) days to Answer or otherwise respond to  
17 Plaintiffs’ Second Amended Complaint.

18 WHEREAS, the schedule set forth herein will not otherwise impact any deadlines already  
19 set by the Court.

20 THEREFORE, it is hereby stipulated to and agreed as follows:

- 21 1. Plaintiffs’ shall file their Second Amended Complaint on or before June 6, 2018;
- 22 2. Plaintiffs’ Second Amended Complaint may not add new causes of action, but may  
23 add Leyva as a Plaintiff in this action;
- 24 3. Leyva is bound by the rulings set forth in the Court’s Order Re NNA’s MTD (Dkt.  
25 No. 62);
- 26 4. No other parties may be added by way of the Second Amended Complaint;
- 27 5. The scope of amendment for Plaintiffs’ Second Amended Complaint is otherwise  
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1 limited to the claims dismissed with leave to amend. Any claim dismissed from the FAC without  
2 leave to amend shall not be asserted in the Second Amended Complaint on behalf of any Plaintiff  
3 or putative class member; and

4 6. NNA's deadline to Answer or otherwise respond to the Second Amended  
5 Complaint is July 6, 2018.

6 Dated: May 30, 2018

DRINKER BIDDLE & REATH LLP

8 By: /s/ Michael J. Stortz

Michael J. Stortz

Marshall L. Baker

E. Paul Cauley, Jr. (*pro hac vice*)

Attorneys for Defendant

NISSAN NORTH AMERICA, INC.

12 Dated: May 30, 2018

WHITFIELD BRYSON & MASON LLP

14 By: /s/ Gary Mason

Gary Mason (*pro hac vice*)

Attorneys for Plaintiffs

17 Dated: May 30, 2018

CAPSTONE LAW APC

19 By: /s/ Jordan L. Lurie

Jordan L. Lurie

Attorney for Waldo Leyva

22 **Attestation Pursuant to Civil Local Rule 5-1(i)**

23 Pursuant to Civil Local Rule 5-1(i), I, Michael J. Stortz, hereby attest that I have obtained  
24 concurrence in the filing of this document from the other signatories to this document.

25 I declare under penalty of perjury under the laws of the United States of America that the  
26 foregoing is true and correct. Executed this 30th day of May, 2018 in San Francisco, California.

27 By: /s/ Michael J. Stortz

Michael J. Stortz

28 JOINT STIPULATION RE PLAINTIFFS'  
SECOND AMEND. COMPL. AND  
NNA'S RESPONSE THERETO

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**ORDER**

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Date: May 31, 2018



Hon. Haywood S. Gilliam Jr.  
UNITED STATES DISTRICT JUDGE