

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action)
SUPERIOR COURT

No: 500-06-000839-171

FRANCIS LEVESQUE

Applicant

v.

NISSAN CANADA INC.

-and-

NISSAN NORTH AMERICA, INC.

-and-

NISSAN MOTOR CO., LTD.

Defendants

**APPLICATION FOR PERMISSION TO EXAMINE THE APPLICANT
FRANCIS LEVESQUE AND TO SUBMIT RELEVANT EVIDENCE**
(Article 574 CCP)

TO THE HONOURABLE PIERRE C. GAGNON, J.S.C., THE DEFENDANTS
RESPECTFULLY SUBMIT THE FOLLOWING:

1. The Defendants Nissan Canada Inc. and Nissan North America, Inc. (collectively hereinafter referred to as "**Nissan**") hereby seek the permission of this Honorable Court to examine the Applicant Francis Lévesque and to submit the transcripts, answers to undertakings and exhibits used during the examination, if any, as relevant evidence pursuant to article 574, para. 3 of the Code of Civil Procedure, CQLR, c. C-25.01 ("**CCP**").
 - I. **The Application for Authorization to Institute a Class Action and to Appoint a Representative Plaintiff**
2. On or about January 17, 2017, Applicant Francis Lévesque filed an Application for Authorization to Institute a Class Action and to Appoint a Representative Plaintiff (the "**Application**") on behalf of the following class:

“All persons in Quebec who own or have owned, or lease or have leased, one or more of the Subject Vehicles affected by the Timing Chain Tensioning System defect asserted by this claim.”

3. In the Application, the Applicant claims, *inter alia*, that Nissan continued to install a timing chain tensioning system, a component of the power train, in the Subject Vehicles knowing that it was prone to dangerous and unavoidable premature failure (the “**Timing Chain Tensioning System**”).
4. The Applicant alleges that he and the class members purchased or leased their vehicles based on the representations allegedly made by Nissan that the Timing Chain Tensioning System would last for the useful life of the vehicle without the need for repair and replacement, and that they would not have purchased or leased the vehicles had they known about the defective Timing Chain Tensioning System.
5. As a result of the alleged defective Timing Chain Tensioning System and false or misleading representations regarding its maintenance, the Applicant claims that he over-paid for his vehicle, a 2005 Nissan Frontier that he bought in 2014, that the vehicle now has a reduced resale value, without saying how, and that he has incurred costs to replace and repair the Timing Chain Tensioning System and engine of his vehicle, without saying how much, and that he has suffered other troubles and inconveniences.

II. The Relevance and Scope of the Examination of the Applicant

6. The examination of the Applicant before the hearing of the Application is relevant to provide this Honorable Court with facts relating to:
 - a) The circumstances surrounding the purchase, maintenance and use of the vehicle by the Applicant or previous owner or owners;
 - b) The allegations that Nissan falsely represented that the Timing Chain Tensioning System would last for the useful life of the vehicle without the need for repair and replacement;
 - c) The circumstances surrounding the replacement of the Timing Chain Tensioning System and the costs allegedly incurred directly or indirectly as a result;
 - d) The Applicant’s allegations that he and other class members have suffered ascertainable loss as a result of the alleged defects affecting the Timing Chain Tensioning System, including trouble and inconvenience and injury;
 - e) The facts regarding the Applicant’s ability to properly represent the members of the proposed class, including, but not limited to, the nature of the steps taken by him leading up to and culminating in the filing of the

Application, as well as his efforts, if any, to identify other members of the proposed class.

7. The Applicant's examination regarding these subjects will help this Honorable Court in its analysis of the criteria for authorization of the Class Action pursuant to article 575 CCP, more particularly with regard to the existence of identical, similar or related questions of law or fact requirement (article 575 (1) CCP) to the appearance of right requirement (article 575 (2) CCP) and the Applicant's ability to adequately represent the members of the proposed Class (article 575 (4) CCP).
8. The undersigned attorneys estimate that the Applicant's examination should not exceed three hours.
9. Nissan suggests that these examinations be held out of court and before the hearing of the Application to Authorize the Bringing of a Class Action.
10. It is in the interest of justice and the parties that Nissan be given the permission to examine the Applicant and to file the transcripts of the examinations, the answers to the undertakings as well as the exhibits used during the examination.
11. The present Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the present Application;

GIVE PERMISSION TO the Defendants Nissan Canada Inc. and Nissan North America, Inc. to examine the Applicant Francis Lévesque out of court and before the hearing of the Application for Authorization to Institute a Class Action regarding the following subjects:

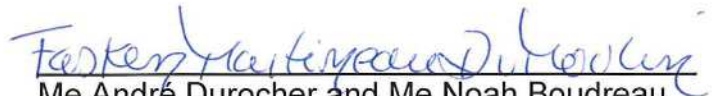
- a) The circumstances surrounding the purchase, maintenance and use of the vehicle by the Applicant and the precedent owner(s) of the vehicle;
- b) The allegations that Nissan falsely represented that the Timing Chain Tensioning System would last for the useful life of the vehicle without the need for repair and replacement;
- c) The circumstances surrounding the replacement of the Timing Chain Tensioning System and the direct and indirect costs allegedly incurred as a result;
- d) The Applicant's allegations that he and other class members have suffered ascertainable loss as a result of the alleged defects affecting the Timing Chain Tensioning System, including trouble and inconvenience and injury;

- e) The facts regarding the Applicant's ability to properly represent the members of the proposed class, including, but not limited to, the nature of the steps taken by him leading up to and culminating in the filing of the Application, as well as his efforts, if any, to identify other members of the proposed class.

AUTHORIZE the Defendants Nissan Canada Inc. and Nissan North America, Inc. to file the transcripts of the examination, the answers to the undertakings as well as the exhibits used during the examination, if any.

THE WHOLE without legal costs, unless the present Application is contested.

Montréal, this June 29, 2017.



Me André Durocher and Me Noah Boudreau

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