

RIGGS ABNEY

NEAL TURPEN ORBISON LEWIS

March 19, 2015

INFORMATION Redacted PURSUANT TO THE FREEDOM OF
INFORMATION ACT (FOIA), 5 U.S.C. 552(B)(6)FIRST CLASS AND CERTIFIED MAIL

Nissan North America, Inc.
P.O. Box 685003
Franklin TN 37068

National Highway Traffic Safety Administration
1200 New Jersey Ave SE W Building
Washington DC 20590

MAR 24 2015

Re: [REDACTED]—Breach of Contract—Demand for Payment
Intake No. [REDACTED]

To Whom It May Concern:

[REDACTED] recently contacted this law firm regarding a destroyed electrical wiring harness. [REDACTED] authorized us to write this letter on his behalf.

According to [REDACTED] the relevant facts are as follows: [REDACTED] purchased a 2014 Nissan Rogue ("Vehicle") on August 20, 2014, from Nissan North America, Inc., ("Nissan"). Prior to purchasing the Vehicle, [REDACTED] had three (3) other Nissans. [REDACTED] has been a loyal Nissan customer. [REDACTED] has sustained severe damage to the Vehicle due to no fault of his own. The Vehicle's electrical wiring has been destroyed by an animal (See enclosed picture). The animal has chewed through the plastic portion and destroyed the Vehicle's electrical wiring harness. The damage is so severe that the vehicle's WIFI is no longer operable. [REDACTED] has parked many cars where this Vehicle was parked. None of [REDACTED] other Nissans have sustained any damage of this type. The Vehicle's plastic and electrical wiring harness are made of a SOYA product. The SOYA product that Nissan uses attracts animals. This was never an issue with [REDACTED] other Nissans whose plastic and electrical wiring harnesses were not made of the SOYA product. [REDACTED] spoke to Tynan's and they quoted [REDACTED] an amount of \$3,064.21 to address all the issues (See enclosed proposal). Tynan's state that they will need to replace the all of the following: the cover Assy U120, the harness-en, and the air cleaner U600. [REDACTED] wants Nissan to honor the warranty, and, either replace the plastic and electrical wiring harness, or issue a check in the amount of \$3,064.21, immediately. [REDACTED] Vehicle is still covered under the 90,000 mile warranty. Also, Nissan should recall all vehicles and replace the wiring that contains the SOYA product that attracts animals.

If Nissan does not fix the issues with the Vehicle, or issue a check in the amount of \$3,064.21, Nissan will be in breach of warranty. Nissan would, therefore, be in breach of contract. In the State of Colorado, "[t]o prove a breach of contract claim, a plaintiff must prove: (1) the existence of a contract; (2) performance by the plaintiff or some justification for nonperformance; (3) failure to perform the contract by the defendant; and (4) resulting damages to the plaintiff." [REDACTED]. Furthermore, all parties to a contract are required to act with good faith and fair dealing toward one another. See [REDACTED] v. Capitol Hill Internal Medicine P.C., 151 P.3d 685, 690 (Colo. App. 2006). Failure to act in good faith and fair dealing is a factor in determining damages in breach of contract claims. *Id.*

50 South Steele Street, Suite 600, Denver, Colorado 80209

English Telephone: (800) 820-3369
In Denver: (303) 295-2942

Telefonos en Español: (888) 820-5978
En Denver: (303) 295-6487

NAM
3/27/15
SMD

Here, a contract was entered into by Nissan and [REDACTED] has performed his end of the bargain by making the claim for the warranty replacement. Nissan has failed to perform the contract fully because Nissan refuses to replace the issues with the Vehicle or tender a check to Mr. [REDACTED] in the amount of \$3,064.21 which Nissan is required to do under warranty (See enclosed response). [REDACTED] has been damaged under the contract because Nissan has failed to replace or tender a check in the amount of \$3,064.21 to address the issues with the Vehicle. Nissan has a duty to Mr. [REDACTED] in accordance with the warranty provided by Nissan.

Colorado law determines that "[t]he general measure of damages for contract cases is that sum which places the non-defaulting party in the position such party would have enjoyed had the breach not occurred." [REDACTED], 622 P.2d 586, 591 (Colo. App. 1980) (citing [REDACTED]). Thus, "[d]amages are awarded in contract disputes to make the non-breaching party whole." *Id.* [REDACTED] would be made whole when Nissan reimburses him in the amount of \$3,064.21 or repairs the issues with the Vehicle.

[REDACTED] therefore, demands that Nissan repair his Vehicle under the warranty, or tender a check in the amount of \$3,064.21 immediately.

Be advised, if Nissan does not repair the Vehicle under the warranty or tender a check in the amount of \$3,064.21, this Firm will further advise [REDACTED] of all legal and equitable rights and actions available to him under Colorado law, notwithstanding, and without waiving any common law or other statutory civil remedies available.

To avoid further legal action in this matter, Nissan is to promptly repair the issues with the Vehicle or tender a check in the amount of \$3,064.21 made payable to [REDACTED]. Said payment is to be mailed immediately and addressed as follows:

[REDACTED]
Aurora CO [REDACTED]

For now, [REDACTED] asks that any additional communication made by Nissan be directed to him personally at the above listed address. Alternatively, Nissan may contact this Law Firm regarding this matter at the following telephone number: (303)-385-5195. Thank you for your immediate attention to this matter.

Sincerely,

Melissa Webber

Melissa Webber, Esq.
For the Firm

Enclosures: (3)

[REDACTED] pictures of damaged vehicles

Tynan's proposal invoice number [REDACTED]

Nissan response dated March 03, 2015

MAW/GA/ist

cc: [REDACTED]

(D/s: 3/19/2015)

7014 2120 0003 7666 3525

2/25/2015

Fwd: Damages on 2014 Nissan Rogue, Case No: [REDACTED]

From: [REDACTED]
To: NissanConsumerAffairs <NissanConsumerAffairs@my-nissan-usa.com>; T5Transit <T5Transit@cs.com>; tsolutions2000 <tsolutions2000@cs.com>
Subject: Fwd: Damages on 2014 Nissan Rogue, Case No: [REDACTED]
Date: Wed, Feb 25, 2015 6:36 pm

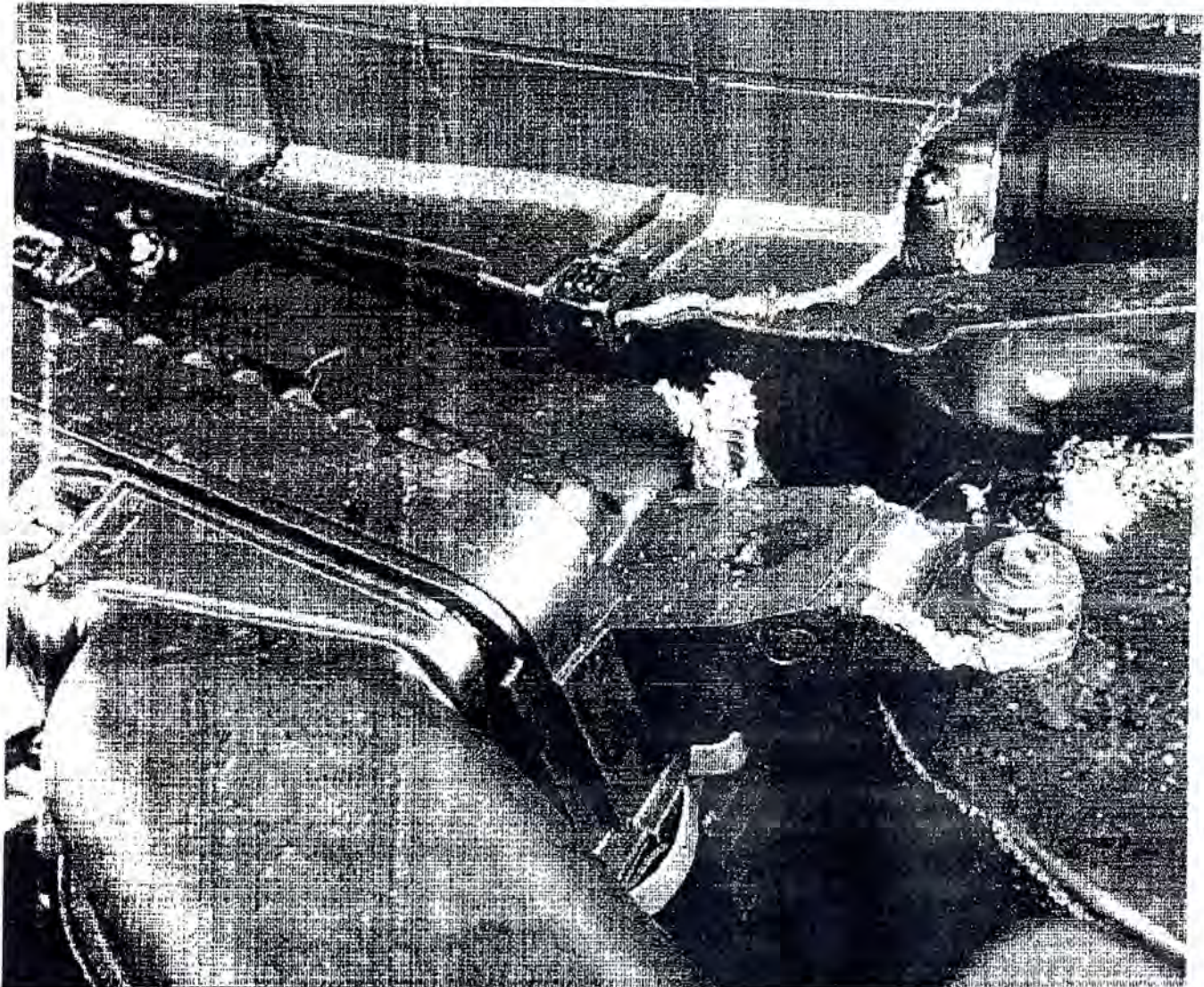
Case No: [REDACTED]
VIN # 5NIAT2MK1EC [REDACTED]

Nissan,
Attention of Charlie

This is the Pictures of the Damages.

—Original Message—

From: [REDACTED]
To: [REDACTED]
Sent: Wed, Feb 25, 2015 5:40 pm
Subject: Fwd: NoSubject



780 South Havana
(303) 341-3214
AURORA, COLORADO 80012

RETURN/REFUND POLICY: ALL RETURNED ITEMS MUST BE IN THE ORIGINAL UNOPENED BOX OR CONTAINER, MUST BE ACCOMPANIED BY THIS INVOICE AND ARE SUBJECT TO A 15% RESTOCKING CHARGE. PLEASE NOTE THAT THE DEALERSHIP WILL NOT ACCEPT RETURNS OR REFUNDS AFTER 30 DAYS. NO REFUNDS OR RETURNS ON SPECIAL ORDER PARTS OR ELECTRICAL PARTS.

ACCOUNT NO.
CASH RETAIL

QUOTE

S
H
I
B CASH RETAIL

PAGE 1 OF 1 12:37

S.E.N.		I/M NO.		T.E.R.M.		F.O.B.	
7002				CASH RETAIL		ADVISOR: JOHN	
QTY	UNIT	P.O.	PART NUMBER	DESCRIPTION	LIST	NET	AMOUNT
0			66862-4BA0A	COVER ASSY U120	52.75	52.75	52.75
0			24012-4BA0B	HARNES-EN	413.31	413.31	413.31
0			16500-4BA3A	AIR CLEAN U600	271.17	271.17	271.17
0			MISC	LABOR	1680.00	1680.00	1680.00
0			LABOR	BLOWER LAB	420.00	420.00	420.00
***** INVOICE QUOTE -				DO NOT	PAY **		

WARRANTY. ALL PARTS AND ACCESSORIES ARE SOLD BY THE DEALERSHIP AS-IS, ANY WARRANTIES ON THE PARTS OR PRODUCTS DESCRIBED ABOVE ARE THOSE OF THE MANUFACTURER OR DISTRIBUTOR OF THE PARTS OR PRODUCTS. THE DEALERSHIP HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SAME. THE DEALERSHIP NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF SAID PARTS OR PRODUCTS. CUSTOMER SHALL NOT BE ENTITLED TO RECOVER FROM THE DEALERSHIP FOR INCIDENTAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFIT OR INCOME, OR ANY OTHER INCIDENTAL DAMAGES. THIS DISCLAIMER IN NO WAY AFFECTS THE PROVISIONS OF ANY MANUFACTURER OR DISTRIBUTOR WARRANTIES.

PARTS	2,837.23
SUBLET	
FREIGHT	0.00
SALES TAX	226.98
TOTAL	\$3,064.21

CUSTOMER COPY

3/11/2015

Your inquiry to Nissan [REDACTED]

From: NissanConsumerAffairs@my-nissan-usa.com\ <nissanconsumeraffairs@my-nissan-usa.com>
<nissanconsumeraffairs@my-nissan-usa.com>

To: [REDACTED]

Subject: Your inquiry to Nissan [REDACTED]

Date: Tue, Mar 3, 2015 2:33 pm



3/3/2015

Case # [REDACTED]

VIN # 5N1AT2MK1EC [REDACTED]

Dear [REDACTED]

Thank you for allowing us an opportunity to review your concern with your 2014 Nissan Rogue.

Nissan realizes situations may occur with your Nissan vehicle that, unfortunately, fall outside of the parameters of the New Vehicle Limited Warranty provided with your vehicle. As a company interested in winning lifetime customers, Nissan apologizes for any inconvenience you may have experienced, and we are pleased you took the time to contact us regarding the situation.

Nissan carefully considered your request during a review of all of the available facts pertaining to your specific situation. Nissan is unable to offer financial assistance with the repair of the cover assembly, harness, air cleaner and A/C cover due to no fault in the material or workmanship.

If you believe Nissan has not satisfactorily addressed the issue with your vehicle, you may request further assistance through Auto Line, a special automotive third party complaint resolution program in which Nissan participates. The Auto Line program is independently operated by the Council of Better Business Bureaus, Inc. and is available to you at no charge. To request assistance, either call the BBB at **1-800-955-5100** or write to the following address:

3/11/2015

Your inquiry to Nissan [REDACTED]

**BBB Auto Line Dispute Resolution Division
Council of Better Business Bureaus, Inc.
3033 Wilson Blvd., Suite 600
Arlington, VA 22201-3843**

You will also find additional information in your vehicles New Vehicle Limited Warranty Information Booklet and Supplement to the New Vehicle Warranty Information Booklet.

Thank you again for taking the time to contact us.

Sincerely,

Nissan

Maurice
Consumer Affairs Representative
Nissan North America, Inc.

RIGGS  AB

NEAL TURPEN ORBISON LEWIS

50 South Steele Street, Suite 600
Denver, Colorado 80209

CERTIFIED MAIL®



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UNITED STATES POSTAGE

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National Highway Traffic Safety Administration
1200 New Jersey Ave SE W Building
Washington DC 20590

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