

United States v. Nissan Motor Acceptance Corp., N.A., L.L.C (M.D. Tenn.),
filed August 1, 2019

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND NISSAN MOTOR
ACCEPTANCE CORPORATION**

I. INTRODUCTION

1. This Settlement Agreement (“Agreement”) is entered into between Plaintiff, the United States of America (“the United States”), through the Department of Justice, and Defendant Nissan Motor Acceptance Corporation (“NMAC”), through its authorized representatives. The United States and NMAC are referred to herein as the “Parties.”

II. RECITALS

2. This Agreement resolves the allegations contained in the United States’ complaint in *United States v. Nissan Motor Acceptance Corp.*, filed in the United States District Court for the Middle District of Tennessee on August 1, 2019 (hereinafter “Civil Action”).
3. The Civil Action alleges that NMAC violated the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, by repossessing motor

vehicles from “SCRA-protected servicemembers”¹ without court orders.

4. This Agreement covers all repossessions occurring from January 1, 2008 through the effective date of this Agreement in connection with loans or deficiency balances originated, acquired, and/or serviced by NMAC, or any subsidiaries, predecessors, acquired companies, or successor entities.
5. The Civil Action also alleges that NMAC violated the SCRA by failing to refund, on a *pro rata* basis, lease amounts paid in advance – in the form of capitalized cost reduction (“CCR”) – by servicemembers who lawfully terminated their motor vehicle leases upon receipt of qualifying military orders. Specifically, the United States alleges that NMAC did not refund any portion of CCR amounts to servicemembers who lawfully terminated their leases.

¹ For purposes of this Settlement Agreement, the term “SCRA-protected servicemember” includes servicemembers as defined in 50 U.S.C. § 3911(1) and (2) who made a deposit or at least one installment payment before entering military service. *See* 50 U.S.C. § 3952(a). The SCRA grants additional periods of protection for reservists ordered to report for military service and persons ordered to report for induction. 50 U.S.C. § 3917. Therefore, for purposes of this Settlement Agreement, these “early alert” periods shall be included in the periods of protection for servicemembers at the time of repossession. However, since such periods are not included in the definition of “military service” in 50 U.S.C. § 3911, they are not considered military service at the time of payment of a deposit on the motor vehicle or installment on the loan.

6. CCR is an up-front monetary amount credited to the lessee of a motor vehicle based on the lessee's payment of cash, trade-in of another motor vehicle, or receipt of certain rebates or other credit provided by the manufacturer, lessor, lessor's assignee, or a third party. CCR operates to reduce the capitalized cost (which includes the vehicle's agreed-upon value, as well as other attendant costs) that forms the basis for calculating the lessee's future monthly lease payments. Therefore, CCR operates to reduce the lessee's future monthly lease payment amount.
7. NMAC contends that CCR does not constitute a lease amount paid in advance as contemplated by the SCRA, 50 U.S.C. § 3955(f), as it is not paid for a period after the effective date of the lease. Rather, NMAC contends it is a payment in the form of a down payment, retained by the motor vehicle dealer and no part of which is paid to or received by NMAC. The United States disputes these contentions.
8. This Agreement covers all lease terminations, from January 1, 2008 through the effective date of this Agreement, for leases entered into by, or assigned to, NMAC, or any subsidiaries, predecessors, acquired companies, or successor entities.

9. NMAC is a corporation incorporated in California with its headquarters located at One Nissan Way, Franklin, Tennessee, in the Middle District of Tennessee.
10. The Parties agree, and the United States believes that it is in the public's best interest, that the Civil Action should be resolved amicably and without further litigation.
11. NMAC neither admits nor denies the factual allegations and statements of law contained in the Complaint or in this Settlement Agreement. Nevertheless, to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of the United States' claims, and in consideration of the mutual promises and obligations set forth below, the Parties agree and covenant to the following material terms and conditions:

III. STATEMENT OF CONSIDERATION

12. In consideration of, and consistent with, the terms of this Agreement, the Parties will move jointly for dismissal of the lawsuit entitled *United States v. Nissan Motor Acceptance Corp.*, filed August 1, 2019 (M.D. Tenn.), as set forth in Paragraph 49, and the United States releases NMAC from any and all claims to the extent provided for in Paragraph

46. The parties agree and acknowledge that this consideration is adequate and sufficient.

IV. TERMS AND CONDITIONS

A. COMPLIANCE WITH THE SCRA AND SCRA POLICIES AND PROCEDURES

13. Within thirty (30) calendar days of the effective date of this Agreement, NMAC shall review its SCRA Policies and Procedures for Motor Vehicle Repossessions to ensure their compliance with Section 3952(a) of the SCRA, 50 U.S.C. § 3952(a). NMAC will confirm that these policies and procedures – which must apply to NMAC and NMAC’s agents – include the following provisions (and to the extent they do not, make appropriate modifications):
 - a. To determine whether the borrower² is an SCRA-protected servicemember, NMAC shall check the Defense Department’s Defense Manpower Data Center (DMDC) database, located at <https://scra.dmdc.osd.mil> , at the following times:
 - (i) no more than two (2) business days before it refers a motor vehicle loan for repossession;

² For purposes of this Agreement, the term “borrower” includes co-borrowers.

- (ii) no more than two (2) business days after it (or its agents, including contractors and vendors) obtains possession of the motor vehicle; and
- b. (iii) no more than (2) business days before it (or its agents, including contractors and vendors) disposes of the motor vehicle. If NMAC is informed via military service information received from a borrower, or via the periodic electronic check of the DMDC described above, that the borrower is an SCRA-protected servicemember, it shall neither refer the loan for repossession nor conduct the repossession itself without first obtaining a court order or a valid SCRA waiver pursuant to subparagraph (e).
- c. If NMAC discovers, from a check of the DMDC database or otherwise, after obtaining possession but before disposing of a motor vehicle, that the borrower is an SCRA-protected servicemember, it shall attempt to contact the borrower and offer to arrange to return the vehicle within twenty-four (24) hours and shall reverse on the borrower's account all of the charges resulting from the repossession. NMAC shall also update any tradeline information furnished to any consumer

reporting agency to remove repossession-related information. If NMAC cannot make contact with the borrower within twenty-four (24) hours, NMAC shall hold the vehicle at a storage location regularly used by NMAC (e.g., auction site storage) closest to the location where the vehicle was picked up until contact is made with the customer. NMAC shall make additional attempts to reach the borrower based upon contact information in its files, and shall return the vehicle within twenty-four (24) hours of a borrower's request for return, without charging any repossession-related fees. NMAC shall not sell or otherwise dispose of the vehicle until it has made all the contact attempts referenced in this subparagraph and has obtained a court order or valid SCRA waiver pursuant to subparagraph (e).

- d. If NMAC files a complaint for repossession in court and the borrower does not make an appearance in the case, NMAC will file an affidavit of military service with the court as required by Section 3931(b)(1) of the SCRA, 50 U.S.C. § 3931(b)(1). Before seeking entry of default, NMAC will search the DMDC database and review information in its possession or control to

determine if the borrower is SCRA-protected. If NMAC learns that the borrower is SCRA-protected, it will file an affidavit stating that “the defendant is in military service.”

- e. NMAC cannot rely on a servicemember’s waiver of rights under Section 3952(a) of the SCRA unless it obtains a written agreement that complies with Section 3918 of the SCRA, 50 U.S.C. § 3918. If NMAC initiates the waiver process with the servicemember, it must do so at least thirty (30) calendar days in advance of any anticipated repossession by sending a notice and a copy of the proposed waiver to the servicemember. To the extent NMAC seeks such a waiver, it shall use a notice that prominently incorporates the language and layout of the form attached as Exhibit A. If the servicemember initiates the waiver process by offering to voluntarily surrender the vehicle or indicating an intent to abandon the vehicle, NMAC shall not repossess the vehicle until it has provided a copy of the notice of the type described in Exhibit A and received a signed waiver.³

³ NMAC shall not seek to obtain waivers from servicemembers with respect to their early lease termination rights under Section 3955 of the SCRA.

- f. Upon receiving notice of impoundment by a non-related third party, NMAC may take possession of the vehicle even if the borrower is protected by the SCRA, but must comply with any applicable state laws and must not dispose of the vehicle until it has made reasonable efforts to contact the servicemember and has obtained a court order or valid SCRA waiver.⁴
14. Within thirty (30) calendar days of the effective date of this Agreement, NMAC shall develop SCRA Policies and Procedures for Motor Vehicle Lease Terminations in compliance with Section 3955 of the SCRA, 50 U.S.C. § 3955, consistent with the provisions set forth herein. These policies and procedures – which must apply to NMAC and NMAC’s agents – must include the following provisions:
- a. permitting servicemembers to terminate their motor vehicle leases during the term of the lease where:
 - i. the lessee enters military service under a call or order specifying a period of not less than 180 days (or enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives

⁴ Nothing in this Agreement shall preclude NMAC from offering greater protections to servicemembers than those afforded by the Agreement or the SCRA.

- orders extending the period of military service to a period of not less than 180 days), *see* 50 U.S.C. § 3955(b)(2)(A);
- ii. the lessee, while in military service, executes a lease and thereafter receives military orders for a permanent change of station from a location in the continental United States to a location outside the continental United States or from a location in a state outside the continental United States to any location outside that state, *see* 50 U.S.C. § 3955(b)(2)(B)(i);
or
 - iii. the lessee, while in military service, executes a lease and thereafter receives military orders to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days, *see* 50 U.S.C. § 3955(b)(2)(B)(ii);
- b. accepting terminations of leases by delivery to NMAC or NMAC's agent of written notice of termination and a copy of military orders (to include any notification, certification, or verification from the servicemember's commanding officer), or other document prepared exclusively by a branch of the military or the Department of Defense demonstrating that the lessee is

eligible for lease termination under 50 U.S.C. § 3955(b)(2), including by hand delivery, private business carrier, U.S. Mail, or e-mail, and return of the motor vehicle to NMAC or NMAC's agent;

- c. permitting eligible servicemembers to terminate their motor vehicle leases at any time after their entry into military service under the circumstances set forth in subparagraph (a)(i), or the date of their qualifying military orders as set forth in subparagraph (a)(ii) and (a)(iii), *see* 50 U.S.C. § 3955(a)(1);
- d. setting the effective date of the lease termination as the date on which the servicemember has completed both delivery of the notice of termination and return of the vehicle to NMAC or NMAC's agent, *see* 50 U.S.C. § 3955(d)(2);
- e. limiting any charges that must be paid upon termination to those permitted by Section 3955(e)(2) of the SCRA;
- f. refunding, within 30 days after the effective date of termination, all lease amounts paid in advance (including those applied as CCR) for a period after the effective date of termination, *see* 50 U.S.C. § 3955(f); and

g. designating customer service representatives who have been specifically trained on the protections of the SCRA with respect to motor vehicle leases and who are responsible for the intake of and response to servicemembers' inquiries regarding the SCRA. NMAC shall ensure that it has a telephone number, and link to a secure electronic communications channel, at which servicemembers may reach a designated SCRA customer service representative, or leave a message for such representative, who will address questions or concerns regarding the SCRA. NMAC shall also include a page on its website detailing eligibility for, and relief provided by, the SCRA, and providing the telephone number and designated electronic mail address to obtain SCRA relief or raise questions or concerns regarding such relief.

15. No later than thirty (30) calendar days after the effective date of this Agreement, NMAC shall provide a copy of the proposed SCRA Policies and Procedures required under Paragraphs 13 and 14 to counsel

for the United States.⁵ The United States shall respond to NMAC's proposed SCRA Policies and Procedures within forty-five (45) calendar days of receipt. If the United States objects to any part of NMAC's SCRA Policies and Procedures, the Parties shall confer to resolve their differences. Any dispute as to the content of the SCRA Policies and Procedures will be resolved pursuant to the provisions of Paragraphs 50-52. NMAC shall begin the process of implementing the SCRA Policies and Procedures within thirty (30) calendar days of approval by the United States.

16. If, at any time during the term of this Agreement, NMAC proposes to materially change its SCRA Policies and Procedures, it shall first provide a copy of the proposed changes to counsel for the United States. If the United States does not deliver written objections to NMAC within forty-five (45) calendar days of receiving the proposed changes, NMAC may implement the changes. If the United States makes any objections to the proposed changes within the forty-five

⁵ All materials required by this Agreement to be sent to counsel for the United States shall be sent by private business carrier (non-USPS) delivery service addressed as follows: Chief, Housing & Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 150 M Street, NE, Washington, DC 20002, Attn: DJ 216-71-2. Correspondence may also be sent via electronic mail to the U.S. Department of Justice, care of the undersigned counsel for the United States.

(45)-day period, NMAC shall not implement the specific changes to which the United States objects until the objections are resolved pursuant to the process described in Paragraph 15.

B. TRAINING

17. Within forty-five (45) calendar days of the United States' approval of the SCRA Policies and Procedures pursuant to Paragraph 15, NMAC shall provide to the United States the curriculum, instructions, and any written materials included in the training required by Paragraphs 18 and 19. The United States shall have forty-five (45) calendar days from receipt of these documents to raise any objections to NMAC's training materials, and, if it raises any, the Parties shall confer to resolve their differences. Any dispute as to the content of the training will be resolved pursuant to the provisions of Paragraphs 50-52.
18. NMAC shall provide SCRA compliance training to any employees who: (a) provide customer service to borrowers or lessees in connection with their motor vehicle loans and leases, (b) are involved in repossessing motor vehicles, or (c) have significant involvement in motor vehicle leasing, including the ability to terminate motor vehicle leases for servicemembers (hereinafter together "covered employees"), within forty-five (45) calendar days after NMAC's training program is

approved by the United States pursuant to Paragraph 17. NMAC shall provide to each covered employee: (a) training on the terms of the SCRA with respect to motor vehicle repossessions and motor vehicle lease terminations; (b) training on NMAC's SCRA Policies and Procedures (both those required pursuant to Paragraphs 13 and 14 and all others adopted by NMAC); and (c) the contact information for the SCRA customer service representatives described in Paragraph 14(g). NMAC shall also follow these training procedures for any employee who subsequently becomes a covered employee within thirty (30) calendar days of his or her hiring, promotion, or transfer.

19. During the term of this Agreement, NMAC shall provide annual SCRA training, with the same content as described in Paragraph 18, to covered employees with respect to their responsibilities and obligations under the SCRA and the SCRA Policies and Procedures.
20. The covered employees may undergo the training required by Paragraphs 18 and 19 via live training, computer-based training, web-based training, or via interactive digital media. If the training is conducted in any format other than live training, NMAC shall ensure that covered employees have the opportunity to have their questions answered by a company contact that NMAC identifies as having

sufficient SCRA knowledge to promptly address such questions within five (5) business days of the training. Any expenses associated with the training program required by Paragraphs 18 and 19 shall be borne by NMAC.

21. NMAC shall ensure that it obtains each covered employee's signature on an attendance sheet (which shall be in the form of Exhibit B attached hereto) at the training required by Paragraphs 18 and 19 acknowledging that he or she has received, read, and understands the SCRA Policies and Procedures, has had the opportunity to have his or her questions about these documents answered, and agrees to abide by them. For the duration of this Agreement, copies of those signed statements shall be provided to the United States upon request. NMAC shall also certify in writing to counsel for the United States that the covered employees have successfully completed the training required by Paragraphs 18 and 19.

C. MONETARY COMPENSATION

22. Within fourteen (14) days of the effective date of this Agreement, NMAC shall deposit \$2,937,971 into an interest-bearing escrow account for the purpose of providing compensation for the alleged violations of the Servicemembers Civil Relief Act described herein.

NMAC shall provide written verification of the deposit to the United States within three (3) business days of depositing the funds described in this Paragraph. Any taxes, costs, or other fees incurred on the escrow funds shall be paid by NMAC.

23. Within ninety (90) days of the effective date of this Agreement, the United States shall make a determination of the aggrieved persons who shall receive compensation pursuant to this Agreement and the amount that shall be paid to each of them. In no event shall the total compensation exceed \$2,937,971. NMAC shall promptly provide any additional information requested by the United States to assist the United States in making its determination.

Repossessions

24. The United States has determined that NMAC conducted 113 motor vehicle repossessions between January 1, 2008 and March 28, 2019 that violated the SCRA. The United States has previously provided the list of these repossessions to NMAC.
25. For non-SCRA compliant repossessions identified pursuant to Paragraph 24, NMAC shall notify each identified servicemember by letter (the form of which is to be approved in advance by DOJ) within sixty (60) calendar days of the United States' determination of

aggrieved persons under Paragraph 23. For repossessions where the United States determines that money is owed to a non-servicemember borrower, NMAC shall notify each identified non-servicemember borrower by letter (the form of which is to be approved in advance by DOJ) within fifteen (15) calendar days of receiving the Declaration and Release from the servicemember-borrower. NMAC shall provide the United States with samples of all letters, and receive the United States' approval of those letters, before mailing any letter required by this Paragraph, and all letters mailed pursuant to this Paragraph shall enclose the Declaration at Exhibit D, if required, and the Release at Exhibit C.

26. In order to receive any compensation for alleged repossession violations, SCRA-protected servicemembers must complete the Release at Exhibit C and the Declaration at Exhibit D. Any other owners must sign the Release at Exhibit C.
27. NMAC must deliver payment to each servicemember and co-borrower, in the amount determined by the United States pursuant to Paragraph 23, within forty-five (45) days of receiving a signed Release and (if applicable) Declaration from that servicemember or co-borrower.

28. The individuals identified by the United States pursuant to Paragraph 23 shall have two (2) years from the date of notification to provide the Release and/or Declaration.

Lease Terminations

29. NMAC and the United States have reviewed accounts for which NMAC permitted early lease termination pursuant to the SCRA from January 1, 2008 to November 30, 2018, after which time NMAC changed its policy with regard to CCR refunds.
30. NMAC must deliver payment to each servicemember and co-lessee, except for those servicemembers and co-lessees currently residing in Oregon, in the amount determined by the United States pursuant to Paragraph 23, within forty-five (45) days of the United States' determination.
31. All compensation checks may include the phrase "Settlement in Full" in the memorandum section. All compensation checks shall be accompanied by a letter (the form of which is to be approved in advance by DOJ) explaining that cashing or endorsing the check releases all claims related to the SCRA Section 3955(f) violations alleged in the complaint.

32. For any and all servicemembers and co-lessees currently residing in Oregon, NMAC shall send the servicemember and co-lessee a Release in the form attached as Exhibit C within forty-five (45) days of the United States' determination pursuant to Paragraph 23. Within thirty (30) days of receiving a properly executed copy of the Release at Exhibit C, NMAC shall issue and mail a compensation check to the servicemember or co-lessee in the amount determined by the United States pursuant to Paragraph 23. Servicemembers and co-lessees in Oregon shall have two (2) years from the date of notification to provide the Release.

General Provisions

33. NMAC shall promptly skip trace and redeliver or reissue any payment or notification that is returned as undeliverable, or that is not deposited, cashed, or returned within three (3) months of the date the initial payment is sent pursuant to Paragraphs 27, 30, and 32.
34. Servicemembers, co-lessees, and co-borrowers shall have six (6) months after issuance to cash or deposit their compensation checks. During the term of this Agreement, NMAC shall, upon the request of a servicemember, co-lessee, or co-borrower entitled to compensation, reissue any checks that are not cashed or deposited prior to their

expiration, provided, however, that the compensation checks issued pursuant to the United States' determination under Paragraph 23 shall expire no later than three years after the effective date of this Agreement.

35. The United States may, at its discretion, re-allocate any funds remaining in the escrow account three years after the effective date of this Agreement, and this re-allocation may include additional payments to aggrieved persons who have already received compensation checks. Aggrieved persons who are awarded compensation through this re-allocation shall be entitled to collect their compensation (and NMAC shall re-issue checks upon request) until the expiration of this Agreement.
36. Every 6 months during the term of this Agreement, NMAC shall provide the DOJ with an accounting of all declarations and releases received, checks issued, checks cashed or deposited (including check copies), credit entries updated, and notifications without responses or that were returned as undeliverable. NMAC shall report any uncashed checks in accordance with state unclaimed property laws.
37. NMAC shall bear all costs and expenses of distributing the compensation payments under this Agreement.

38. Any amounts remaining in the escrow account that have not been distributed to aggrieved persons within four (4) years of the date of this Agreement shall be paid to the United States Treasury in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.
39. No individual may obtain review by the Parties of the identifications made, and payments disbursed (including the amounts thereof), pursuant to Paragraphs 22-38.

D. OTHER RELIEF

40. Within sixty (60) days of the effective date of this Agreement, NMAC must request that all credit bureaus to which it reports remove all tradelines for any servicemember and any co-borrower(s) related to the vehicle that was wrongfully repossessed. Upon the request of any servicemember entitled to compensation pursuant to Paragraph 31, NMAC shall request that all credit bureaus to which it reports remove all tradelines for any servicemember and any co-borrower(s) related to the vehicle. The United States acknowledges that NMAC can only request that the credit modification be made to a credit report by a credit bureau. Further, NMAC shall not pursue, must indemnify the servicemember and his or her co-borrower(s) against any third party's

pursuing, and must refund any amounts the servicemember and his or her co-borrower(s) have paid toward any deficiency that was remaining on the loan after the repossession.

E. PAYMENT TO THE UNITED STATES TREASURY

41. Within thirty (30) calendar days of the effective date of this Agreement, NMAC shall pay a total of Sixty-Two Thousand and Twenty-Nine Dollars (\$62,029) to the United States. The payment shall be in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.

F. ADDITIONAL REPORTING AND RECORD-KEEPING REQUIREMENTS

42. For the duration of this Agreement, NMAC shall retain all records relating to its obligations hereunder, including its records with respect to all leases for which a servicemember has sought a lease termination, all records involving repossessions, and all records relating to compliance activities under this Agreement. The United States shall have the right to review and copy any such records, including electronic data, upon reasonable request during the term of this Agreement.
43. During the term of this Agreement, NMAC shall notify counsel for the United States in writing every six (6) months, beginning six (6) months after the effective date of this Agreement, of receipt of any complaint

during the preceding six (6) months claiming a violation of, or alleging facts that would constitute a violation of, the SCRA by NMAC.

NMAC shall provide a copy of any written complaint with the notification, along with the response by NMAC. Whether regarding a written or oral SCRA complaint, the notification to the United States shall include the full details of the complaint within NMAC's possession, including the complainant's name, address, and telephone number, and the full details of all actions NMAC took to resolve the complaint. NMAC shall also promptly provide the United States all information it may request concerning any such complaint. If the United States raises any objections to NMAC's actions, the Parties shall meet and confer to consider appropriate steps to address any concerns raised by the United States.

V. SCOPE OF SETTLEMENT AGREEMENT

44. The provisions of this Agreement shall apply to NMAC and any parents, subsidiaries, affiliates, predecessors, acquired companies, or successor entities doing business in the United States. It shall also apply to the officers, employees, agents, representatives, assigns, and successors-in-interest, including with respect to any repossessions or

lease terminations occurring during the period from January 1, 2008 through the effective date of this Agreement.

45. In the event that NMAC is acquired by or merges with another entity, NMAC shall, as a condition of such acquisition or merger, obtain the written agreement of the acquiring or surviving entity to be bound by any obligations remaining under this Agreement for the remaining term of this Agreement.
46. This Agreement releases only the claims for violations of Sections 3952(a) and 3955(f) of the SCRA addressed in the Complaint or identified in this Agreement. This Agreement does not release any other claims that may be held or are currently under investigation by any federal agency against NMAC or any of its affiliated entities.
47. Nothing in this Agreement will excuse NMAC's noncompliance with any currently or subsequently effective provision of law or order of a regulator with authority over NMAC that imposes additional obligations on it.

VI. IMPLEMENTATION AND ENFORCEMENT

48. The United States may review compliance with this Agreement at any time. NMAC agrees to cooperate with the United States in any reasonable review of compliance with this Agreement. Upon

reasonable notice, NMAC shall permit counsel for the United States to inspect and copy all non-privileged records pertinent to this Agreement.

49. Within fourteen (14) days after the deposit of escrow funds as set forth in Paragraph 22 or the payment to the United States as set forth in Paragraph 41, whichever is later, the Parties shall jointly move the Court for dismissal of the underlying Civil Action, subject to reinstatement as set forth in Paragraph 50.
50. The Parties agree that upon any claim of breach made by the United States, the United States may move to restore the Civil Action to the active docket of this Court for purposes of resolving such claim. In the event such a claim of breach is made by the United States, NMAC consents to and agrees not to contest the United States' motion to restore the Civil Action to the Court's active docket. Alternatively, the United States may bring a civil action for breach of this Agreement, or any provision thereof, in the United States District Court for the Middle District of Tennessee. The United States may in such action seek to have the Court impose any remedy authorized at law or equity. The Middle District of Tennessee shall serve as the exclusive jurisdiction and venue for any dispute concerning this Agreement. NMAC consents to and agrees not to contest the exercise of personal jurisdiction over it

by the United States District Court for the Middle District of Tennessee.

The Parties further acknowledge that venue in the Middle District of Tennessee is appropriate and agree not to raise any challenge on this basis.

51. If the United States believes that there has been a failure by NMAC to perform in a timely manner any act required by this Agreement, or otherwise to act in conformance with any provision thereof, whether intentionally or not, the United States shall, before taking the steps outlined in Paragraph 50, notify NMAC in writing of its concerns, and the Parties will attempt to resolve those concerns in good faith. NMAC shall have fifteen (15) days from the date the United States provides notification of any breach of this Agreement to cure the breach or to request a meet and confer to resolve any disagreement between the Parties as to the validity of the claimed failure.
52. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of, or compliance with, this Agreement prior to initiating any court action.
53. In the event the United States reinstates the Civil Action as contemplated by Paragraph 50, above, or any other civil action is commenced to remedy breach of this Agreement, the United States may

seek the following: (1) an order mandating specific performance of any term or provision in this Agreement, without regard to whether monetary relief would be adequate; (2) an award of reasonable attorneys' fees and costs incurred in bringing an action to remedy breach of this Agreement; and (3) any additional relief that may be authorized by law or equity. If the Civil Action is reinstated or any other such civil action is filed, NMAC expressly agrees not to count the time during which this Agreement is in place, or use the terms or existence of this Agreement, to plead, argue or otherwise raise any defenses under theories of claim preclusion, issue preclusion, statute of limitations, estoppel, laches, or similar defenses.

54. Failure by the United States to enforce any provision of this Agreement shall not operate as a waiver of the United States' right or ability to enforce any other provision of this Agreement.

VII. TERMINATION OF LITIGATION HOLD

55. The Parties agree that, as of the date of the dismissal of the Civil Action, litigation is not anticipated concerning the matters described in the United States' Complaint. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described

above, the Party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any Party of any other obligations imposed by this Agreement.

VIII. DURATION, EXECUTION, AND OTHER TERMS

56. This Agreement is effective on the date of signature of the last signatory to the Agreement. The Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.
57. The duration of this Agreement shall be for a period of four (4) years from the date of execution.
58. Each Party shall bear its own legal and other costs incurred in connection with this litigation, including the preparation and performance of this Agreement, except as set forth in Paragraph 53.
59. This Agreement, including the Exhibits, constitutes the complete agreement between the Parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.

60. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion. The Parties agree that each Party and its representatives have acted consistent with the duty of good faith and fair dealing.
61. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.
62. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.
63. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another party, the performance of one party's duties or obligations under this Agreement shall not be discharged or excused by the actual or alleged breach of the duties and obligations by another party.
64. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or

invalid part, term or provision shall be deemed not to be a part of this Agreement.

65. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is illegal or invalid.
66. This Agreement may be modified only with the written consent of the parties. Any modifications must be in writing and signed by the parties through their authorized representatives.
67. This Agreement is a public document. Both Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
68. This agreement is binding on the Parties and their transferees, heirs, and assigns.
69. This Agreement is governed by and shall be interpreted under the laws of the United States.

For the United States of America:

Dated: 8/1/19

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For Nissan Motor Acceptance Corporation:

Dated: 8/1/2019



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EXHIBIT A

IMPORTANT NOTICE AFFECTING MILITARY SERVICEMEMBERS

RIGHTS AND PROTECTIONS AFFORDED UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT

Attached to this notice you will find a waiver of rights and protections that may be applicable to you and your dependents pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3901, *et seq.* (the “SCRA”). The SCRA provides military personnel and their dependents with a wide range of legal and financial protections. Among other benefits and protections, the SCRA:

- Prohibits the repossession of a servicemember’s motor vehicle without a court order, as long as a deposit or at least one installment payment was made while the borrower was not in military service.
- Upon notice by the servicemember, imposes a 6% maximum rate of interest that may be charged during military service on loans incurred before the servicemember began his or her current military service.
- Postpones court actions against servicemembers under certain circumstances.
- Permits servicemembers to terminate motor vehicle and residential leases upon receipt of certain military orders requiring deployment or relocation.

If you choose to sign the attached waiver, Nissan Motor Acceptance Corporation (“NMAC”) will have the option to proceed with a repossession of your motor vehicle without the protections of the SCRA. If you do not sign this waiver, NMAC will be required to provide you the protections of the SCRA if you took out your loan and made a downpayment on the motor vehicle, or at least one payment on the loan, when you were not in military service. Additionally, if NMAC takes you to court to repossess your motor vehicle, the court may take steps to ensure that a judgment is not entered against you if you are unable to appear.

This waiver applies only to your SCRA rights related to motor vehicle repossessions; you are not waiving any other SCRA protections that you may have. Before waiving these important statutory rights, you should consult an attorney

regarding how best to exercise your rights or whether it is in your interest to waive these rights under the conditions offered by NMAC.

For More Information:

- **CONSULT AN ATTORNEY:** To fully understand your rights under the law, and before waiving your rights, you should consult an attorney.
- **JAG / LEGAL ASSISTANCE:** Servicemembers and their dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. A military legal assistance office locator for all branches of the Armed Forces is available at <http://legalassistance.law.af.mil/content/locator.php>
- **MILITARY ONESOURCE:** "Military OneSource" is the U.S. Department of Defense's information resource. Go to <http://www.militaryonesource.com>.

EXHIBIT B

EMPLOYEE TRAINING ATTENDANCE SHEET

I acknowledge that on [INSERT DATE], I attended training regarding SCRA compliance and NMAC's SCRA Policies and Procedures. I have read and understand these documents and have had my questions about these documents and the SCRA answered. I understand my legal responsibilities and shall comply with those responsibilities.

Print Name	Signature	Job Title
Print Name	Signature	Job Title

EXHIBIT C

RELEASE

In consideration for the parties' agreement to the terms of the Settlement Agreement resolving the United States' allegations in *United States v. Nissan Motor Acceptance Corp.*, filed August 1, 2019 (M.D. Tenn.), and NMAC's payment to me of \$ [AMOUNT], I, [BORROWER'S NAME], hereby release and forever discharge all claims, arising prior to the date of this Release, related to the facts at issue in the litigation referenced above and related to the alleged violation of [Section 3955(f) OR Section 3952(a)] of the Servicemembers Civil Relief Act, that I may have against NMAC and all related entities, parents, predecessors, successors, subsidiaries, and affiliates and all of its past and present directors, officers, agents, managers, supervisors, shareholders, and employees and its heirs, executors, administrators, successors or assigns.

Executed this _____ day of _____, 20__.

SIGNATURE: _____

PRINT NAME: _____

EXHIBIT D

DECLARATION

I, [INSERT NAME], do hereby declare and state as follows:

1. I owned a vehicle obtained through a loan with Nissan Motor Acceptance Corporation, Loan Number [LOAN NUMBER] that was repossessed.
2. I obtained the loan on or about [LOAN FUNDING DATE].
3. On or about [REPOSSESSION DATE], I **WAS** either:
 - i. on a covered period of military service; **OR**
 - ii. a member of a reserve component (Reserves or National Guard) and had received orders to report for a covered period of military service.

4. Please consider the following additional information in support of this Declaration:

I confirm that the foregoing is true and correct.

Executed this _____ day of _____, 20__.

SIGNATURE: _____

PRINT NAME: _____

APPENDIX REGARDING MILITARY SERVICE

As used in this Declaration, a “covered period of military service” is any of the following:

- a) Full-time active duty with the armed forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard);
- b) A period of active service with the National Guard: i) authorized by the President or the Secretary of Defense; ii) longer than thirty (30) consecutive days; iii) under orders issued under Section 502(f) of Title 32 of the United States Code; and iv) for the purpose of responding to a national emergency declared by the President and supported by federal funds;
- c) Active service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration; or
- d) A period of time during which I was a servicemember absent from duty on account of sickness, wounds, leave, or other lawful cause.

If you have any additional questions about whether your service constitutes a “covered period of military service” for purposes of this declaration, please contact the Department of Justice at 202-514-4713 and reference the Nissan SCRA motor vehicle case.