

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

THE TAXIS FOR ALL CAMPAIGN, a nonprofit organization, DR. SIMI LINTON, an individual, UNITED SPINAL ASSOCIATION, a nonprofit organization, 504 DEMOCRATIC CLUB, a nonprofit organization, DISABLED IN ACTION, a nonprofit organization,

Plaintiffs,

-against-

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION, a charter mandated agency, and DAVID YASSKY, in his official capacity as chairman and commissioner of the New York City Taxi and Limousine Commission,

Defendants.

No. 11-cv-0237 (GBD)

**EXPERT DECLARATION OF PAUL V. SHERIDAN IN SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY JUDGMENT**

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I, Paul V. Sheridan, declare:

1. I submit this Declaration in support of Plaintiffs' Motion for Partial Summary Judgment. I am an expert witness retained by Plaintiffs in this matter. The facts stated below are based on my personal knowledge, and if called as a witness I would testify competently to them.

I. SUMMARY OF OPINIONS

2. The Nissan NV200 Taxi is a van.
3. The Nissan NV200 Taxi is a van under relevant regulatory standards.
4. The Nissan NV200 Taxi is a van under relevant industry standards.
5. The Nissan NV200 Taxi is considered a van by both the domestic American automotive market, and international markets, including Asia and Europe.

II. PROFESSIONAL BACKGROUND

A. Background and Qualifications in Automotive Engineering and Vehicle Classification

6. I earned an Associate of Science (AS) degree in Physical Sciences from Orange County Community College in Middletown, New York, in 1974. In 1978, I earned a Bachelor of Science (BS) degree in Mathematics and Physics from the State University of New York at Albany. I also hold a Master of Business Administration (MBA) from Cornell University's Johnson Graduate School of Management, which I earned in 1980. In 2010 I earned an Associates of Arts (AA) degree in Mathematics and Computer Applications. A true and correct copy of my current curriculum vitae is attached as **Exhibit A**.

7. I am knowledgeable about vehicle classification and categorization. I am particularly knowledgeable about the classification of vans and mini-vans. My expertise on this subject derives from, among other things, the fact that for eleven years, I was a Product Planning Manager and an Engineering Programs Manager at Vehicle Operations for the Chrysler

Corporation. In that capacity I oversaw product management for several vans and mini-vans including the Dodge Caravan, Plymouth Voyager, and Chrysler Town & Country mini-van vehicles.

8. While at Chrysler, I won the Chairman's "To Be the Best" award from Chief Executive Officer Lee A. Iacocca. I was awarded the Chairman's award for my contributions to automotive component planning and systems engineering.

9. At Chrysler I was also assigned to the Mini-van Operations Platform Group. While assigned to the Mini-van Operations Platform Group, my general duties included but were not limited to:

- General business and product management of existing and future mini-van models. This role included co-authoring the *Chrysler Mini-van Product Plan* and presentation of that plan to the highest levels of Chrysler management.
- Close work on vans and mini-van products with internal Chrysler divisions including engineering, legal, manufacturing, design, marketing, sales, customer relations, procurement, international planning, finance, consumer research, and regulatory affairs.
- Close work on vans and mini-vans with external organizations such as suppliers, market research companies, consumer research companies, consulting companies and advertising agencies.
- Additional specific responsibilities included work on van and mini-van body components, chassis systems, exterior ornamentation, product complexity and logistics. Van and mini-van work for this division also included extensive domestic and international work on competitive products engineering analysis,

federal regulatory compliance planning, as well as analysis and systems planning for van and mini-van engine and transmission systems.

10. I also have experience in automotive product and engineering management with automotive companies other than Chrysler, and I have professional experience outside Chrysler with automotive product and engineering management specifically with respect to vans and mini-vans. In addition to my experience at Chrysler, I was a Product Planning Analyst and a Powertrain Systems Planner for the Ford Motor Company for four years. My responsibilities at Ford included general automotive business planning, program management, vehicle production planning, automotive product planning, and power train planning.

11. I have direct professional experience with, and understanding, of federal automotive regulations with respect to vans and mini-vans, as well as several other vehicles and vehicle types. At Ford, I was also responsible for documentation of regulatory compliance with both the Environmental Protection Agency and the Department of Transportation.

12. I held several Board of Director positions with automotive aftermarket companies. I was nominated by the University of Michigan, and served as a powertrain and chassis panelist on the Delphi Automotive Forecast of automotive trends in the technology, advanced materials, and marketing forecast reports.

13. I have worked as a General Automotive Safety Management Expert in various litigation matters for seventeen years. I have provided expert testimony and reports in product liability cases and accident reconstruction litigation.

14. I have been featured in the national news media as a transportation safety expert for The Wall Street Journal, ABC News 20/20, ABC News Primetime, among others.

B. Prior Testimony and Fee Rate

15. I have testified as both fact and expert witness by affidavit, and I have given live testimony both at deposition, and at trial for several large and complex automotive product liability lawsuits. I was initially certified as an expert by a federal court as a General Automotive Safety Management Expert in *Mohr v. DaimlerChrysler* in 2005. I have also acted as an expert in automotive issues in courts around the country including, but not limited to, *Ahlberg v. DaimlerChrysler* (Iowa District Court), *Kline v. Lomans Auto Group* (New Jersey State Court) and *Jones v. Chrysler Group* (mediation settlement, Texas State Court).

16. In recognition of the status of Disability Rights Advocates as a non-profit public interest firm, I will waive my expert fees in this matter and provide my time pro bono for all work other than deposition or trial testimony. For depositions or other testimony, my fees will be at the rate of \$450 per hour.

III.ASSIGNMENT

17. My assignment is to assess whether or not the Nissan NV200 qualifies as a van. To comprehensively and accurately complete this assignment, I reviewed the specifications of the Nisan NV200 vehicle in detail. I also reviewed the specifications of the variation of the NV200 to be used as the Taxi of Tomorrow. I compared these specifications to relevant well-known industry standards to ascertain whether the NV200 and the NV200 Taxi variation vehicle, in fact constitute vans and warrant classification as vans. I also reviewed a voluminous amount of industry publications, industry journalism commentary, and literature produced by Nissan dealerships to determine how the NV200 is classified by the technical and marketing communities within the automotive industry as well as by Nissan itself. I analyzed newspaper coverage of the Nissan NV200 and spoke with dealers in the automotive market to determine how the lay, consumer market, classifies the NV200. I also looked at documents drafted by

Nissan in the Taxi of Tomorrow Request for Proposal and negotiation process to analyze the variation of the NV200 to be used as a taxi and to determine how Nissan itself classified that variation of the NV200 vehicle.

18. In order to complete my assignment, I also read the first supplemental amended complaint in this action, as well as defendants' answer to the same, and I am familiar with the allegations therein. I have also read the prior District and Circuit Court opinions in this case. I also have read the rough transcripts of the David Klahr and Ashwini Chhabra depositions.

IV. FINDINGS

19. My finding is that the NV200 in all its forms (including the NV200 New York City taxi) is a van. The NV200, the NV200 Taxi, the so-called "Taxi of Tomorrow", and the NV200 Cargo Van are all variations of the same vehicle. All are vans. The NV200 Taxi is a van under all relevant regulatory standards. The NV200 Taxi is considered a van by both the technical side of the automotive market and the sales and marketing constituents of the automotive industry. The NV200 Taxi is considered a van by both general and commercial (fleet) consumers in the automotive marketplace. The NV200 Taxi was conceived of, engineered to be, developed as, and categorized as a van by its manufacturer Nissan.

A. General Characteristics of a Van

20. My years of professional experience including passenger car, van, and light truck product development, as well as my extensive review of regulations defining vans, lead me to conclude that the term "van" refers to a vehicle with the following characteristics: 1) The body fully encloses the driver and cargo compartments; 2) The vehicle has a box like shape; 3) There is a sliding door on the side panel or panels; 4) There is a rear door that can access the main compartment of the vehicle (both passenger and cargo compartments of the vehicle); 5) The

vehicle has an integral structure, meaning that the vehicle is built as a unibody, rather than on a separate chassis and frame; 6) The front body section of the vehicle (the hood) is short.

21. Other characteristics sometimes cited are: 7) The vehicle has folding or removable seats and 8) the vehicle has a Gross Vehicle Rating of less than 8,500 Gross Vehicle Weight Rating (GVWR) and 9) Additionally, the vehicle may be designed to carry people or cargo, but is derived from a vehicle primarily designed to carry cargo.

22. A mini-van also fits these criteria. The term mini-van is primarily a marketing term. Technologically, a mini-van is not distinguishable from a van. A mini-van is simply a small van. Manufacturers commonly use modifying terms to describe their vans, such as a mini-van, maxivan, ecovan, vanogen, or vanette for commercial marketing purposes. These terms are used in the industry primarily for marketing vehicles of the same type at different sizes. Vans described with these modifiers are still classified as vans.

23. All versions of the NV200 Taxi that I am aware of – including the NV200 vehicle purpose-built to be a New York City taxi – fulfill the requirements to be categorized as a van. This is confirmed not only by my analysis of relevant documents, but also by the testimony of David Klahr and Ashwini Chhabra.

24. I understand that Defendants may believe that such options as a sun/ moon roof, windows on the rear side panels, or changes in the interior seating and cargo area layout somehow warrant a different classification of the taxi version of the NV200 from the base NV200 vehicle. Industry standard is that these kinds of modifications do not warrant a different classification. In the van market, vehicles such as the Honda Odyssey, the Dodge Caravan, and the Toyota Sienna, just to name a few, have all been put on the market with and without sunroofs, more or fewer rear panel windows, and with various alterations in the interior space.

They are all still vans under any relevant industry or regulatory definition. Many vehicles in the van market have variations in lighting, windows, and interior space (to name a few) and are available with many such options, but all versions of these vehicles are still vans.

25. Defendants also seem to be making the argument that adding the exterior taxi indicator light and the interior equipment to make the vehicle function as a taxi somehow makes the version of the NV200 to be used as a taxi, a non-van. This is not the industry understanding. The base vehicle and the versions of that base vehicle outfitted for particular purposes, with no exception known to me, are classified in the same vehicle category. If such functional and aesthetic modifications were to change the classification of the vehicle, the results would be absurd. For example, were Defendants' vehicle classification analysis correct, the Ford Crown Victoria sedan, would somehow cease to be a sedan by virtue of being painted yellow and used as a taxi. Defendants' analysis is not correct because functional modifications to a base vehicle like this do not change the basic structure and construction of the vehicle. It is the structure and construction which defines the vehicle classification, and without changes to the basic construction and structure of a base vehicle, versions of a base vehicle belong in the same class as the base vehicle.

B. Physical Characteristics of the NV200 Taxi

26. One of the most important documents in my review of this vehicle was the 2013 NV200 Compact Cargo Body Builder's Guide ("*Nissan Body Builders' Guide*") which was published by Nissan and created by Nissan engineers to aid automotive technicians in repairing, servicing, modifying, for converting, the 2013 model of the NV200. Attached hereto as **Exhibit B**, is the 2013 NV200 Nissan Body Builders' Guide for the NV200. The Nissan Body Builders' Guide is also available at <http://www.nissan-techinfo.com/refgh0v/og/BBG/2013-Nissan-NV200-Cargo-Van-BBG.pdf> (last updated June 2013).

27. A body builders' guide is a standard document in the automotive industry that many companies create for every model, year, and make on the market. The document is free of charge to the public. It is a definitive guide that provides every measurement and specification for every aspect of a vehicle, from body dimensions down to bolts and fuses, that a mechanic or engineer could require. Because the Body Builders' Guide is a complete and authoritative description of a vehicle that is created and maintained by the vehicle designer and manufacturer, it is a document that can be relied on as an accurate, objective, and complete description of the vehicle.

28. The NV200 to be used as the New York City taxi was based on the NV200 compact cargo van. Vehicle Supply Agreement at p. 3, Bates number NYCE2013-0006973 (Definitions section: “ ‘Base Vehicle’ Shall mean the Nissan NV200.”); *Id* at p. 12, Bates number NYCE2013-0006982 (“ ‘Taxi Cab Vehicle’ Shall mean the Nissan Taxi motor vehicle based on the Base Vehicle for sale in the US, incorporating the Differentiated Parts to meet NYC’s unique styling requirements, and sold by authorized dealers to Qualified Purchasers.”); Vehicle Supply Agreement at Appendix B, Bates number NYCE2013-0007044 (“Base Vehicle content of Taxi of Tomorrow will be the Nissan NV200 SV Trim which is the highest content version of NV200”).

29. Because the NV200 is the “Base Vehicle” for the NV200 Taxi, the body builders' guide for the NV200 is a reliable and informative source of information about what the basic characteristics of the NV200 Taxi are.

1. The Characteristics of the Nissan NV200 and the NV200 Taxi demonstrate that the NV200 Taxi is a Van

30. I have conducted an in depth review of the NV200's vehicle specifications, including those in the *Nissan Body Builders' Guide*. I have also reviewed the transcripts of the depositions

of Ashwini Chhabra and David Klahr regarding the characteristics of the version of the NV200 that will be used as the New York City taxi. My review of these transcripts, the *Nissan Body Builders' Guide* as well as my test drive of the NV200 itself, and my examination of photographs of, and commentary on, this vehicle (and the version of this vehicle to be used as the New York City taxi) lead me to the following conclusions:

31. First, the NV200 fully encloses the driver and cargo compartments or “load carrying area.” See *Nissan Body Builders' Guide* at p. 44 entitled “Passenger Compartment”; *Nissan Body Builders' Guide* at p. 48 entitled “Cargo Area”. Testimony from Defendants’ witnesses confirms that the NV200 Taxi also has this feature. Klahr 30(b)(6) Tr. at 96:16-19 (testimony that the NV200 Taxi fully encloses the driver and cargo compartments); Chhabra Tr.. at 18:22-25 and 19:1-6 (testimony that the NV200 Taxi fully encloses the driver and cargo compartments).

32. Second, the NV200 Taxi Has a Box Like Shape. The photographs of the NV200 Taxi, such as the one taken from the City’s own website (*below*), illustrate the vehicle’s box-like shape.



See Taxi of Tomorrow – Staff Presentation on Rules Adoption, NYC TAXI AND LIMOUSINE COMMISSION, 5, http://www.nyc.gov/html/tlc/downloads/pdf/tot_staff_presentation.pdf

(last visited Aug. 12, 2013) (herein after “*Staff Presentation on Rules Adoption*”).

33. Third, the NV200 has sliding doors on both side panels. *See NV200 Compact Cargo Specifications*, NISSAN COMMERCIAL VEHICLES, <http://www.nissancommercialvehicles.com/nv200-compact-cargo/specs> (last visited Aug. 12, 2013) (herein after “*NV200 Compact Cargo Specifications*”). Testimony from Defendants’ witnesses confirms that the NV200 Taxi also has this feature. Klahr 30(b)(6) Tr. at 53:13-18 (testimony that the NV200 taxi has sliding doors on both panels); Chhabra Tr. at 15:24-25, 16:1-7 (testimony that the NV200 Taxi has sliding doors on both panels). Defendants’ admissions also confirm that the NV200 Taxi will have sliding doors. Defendants’ Am. Responses to Plaintiffs’ Second Request for Admissions, Request No. 36.

34. The Mayor and the TLC commissioner have also touted the benefits of sliding doors on both side panels. According to Defendants’ public statements, this feature will minimize collisions with bike riders. *See Notice of Promulgation of Rules*, NYC TAXI AND LIMOUSINE COMMISSION, 3, Bates number NYCE2013-0007083 to NYCE2013-0007103 http://www.nyc.gov/html/tlc/downloads/pdf/newly_passed_rules_tot_rules_2013.pdf (last visited Aug. 12, 2013) (herein after “*Notice of Promulgation of Rules*”).

35. Fourth, the NV200 Taxi has a back door which opens to allows access to the vehicle. The photograph below illustrates the vehicles’ large open rear doors. Large open rear doors like this are consistent with the design of vans manufactured for the domestic van market.



See Staff Presentation on Rules Adoption, 13, at p.7.

The NV200 Taxi's rear doors feature a 40-60 split, designed to facilitate opening in cramped urban settings. *See NV200 Compact Cargo Specifications* at p. 7. In fact, the accessible version of the NV200 Taxi relies on this back door to be the entrance for persons in wheelchairs. *See Nissan to Create Integrated Mobility Solution for NV200 Taxi with Braunability Partnership*, NISSAN NEWS (Mar. 27, 2013), <http://nissannews.com/en-US/nissan/usa/channels/us-united-states-nissan-2013-nyias/releases/nissan-to-create-integrated-mobility-solution-for-nv200-taxi-with-braunability-partnership>.

36. Fifth, the NV200 has an integral enclosure, known as a “unibody” design. *Nissan Body Builders' Guide* at p. 125. An integral enclosure means that the vehicle is not constructed with a body that is attached to a separate frame, but rather is built as a unibody structure. This structure is particular to vans and distinguishes vans from other kinds of vehicles like Sport Utility Vehicles, and Sedans. Testimony from Defendants' witnesses confirms that the NV200 Taxi also has this feature. Klahr 30(b)(6) Tr. at 52:25-53:1-6, 122:6-14 (testimony that the NV200 taxi has a unibody design). Defendants' admissions also confirm that the NV200 taxi will be a unibody design vehicle. Defendants' Am. Response to Plaintiffs' Second Request for Admissions, Request No. 35.

37. Sixth, the NV200 Taxi has a “short” hood. *See, Nissan Body Builders' Guide* at p. 56. The NV200 Taxi will also have this feature.

38. Seventh, the NV200 is rated well below 8,500 Gross Vehicle Weight Rating (“GVWR”). GVWR is the maximum recommended weight of the vehicle including all passengers, cargo, fuel, and incidentals. The NV200 Taxi weighs in at 4,751 GVWR. *See Nissan Body Builders' Guide* at p. 38. Testimony from Defendants' witnesses also confirms that the

NV200 Taxi will have a GVWR of less than 10,000. Klahr 30(b)(6) Tr. at 56:2-13 (stating that the NV200 will have a GVWR of less than 6000). Defendants' admissions also confirm that the NV200 Taxi will have a GVWR of less than 6000. Defendants' Am. Response to Plaintiffs' Second Request for Admission, Request No. 51.

2. The Vehicle Identification Plate Affixed to the Vehicle Categorizes the NV200 as a Van.

39. In compliance with NHTSA regulations, every motor vehicle in America carries a metal plate with a Vehicle Identification Number (VIN). A VIN is a 17-character sequence, of which the first 11 characters designate specific characteristics of the vehicle, such as manufacturer, engine type, and body type. The final six digits are the individual vehicle's serial number. The seventh character in the VIN denotes body type. Often this metal plate is located near the drivers' side door.

40. For the Nissan NV200, the seventh character in the VIN is a K. *Nissan Body Builders' Guide* at p. 33. K as the seventh character of the VIN is auto industry code for "cargo van".

41. Nissan also includes an 18-digit Model Variation code on the same plate, which contains information on aspects of the vehicle such as transmission, axles, and body type. In the Model Variation code, the first character stands for body type.

42. The first character for the Nissan NV200 is Y. *Nissan Body Builders' Guide* at p. 34. Y as the first character of the model verification code is auto industry code for "cargo van."

43. These classifications mean that at the product design phase, Nissan classified the NV200 as a van.

C. The Alterations to Internal Configuration, Accessories or Aesthetics Made To The Taxi of Tomorrow NV200 Do Not Make It a Different Vehicle from the NV200 Compact Cargo Van

44. There are several versions of the NV200, but each version retains the basic characteristics which qualify all NV200 vehicles as vans.

45. The most basic NV200 is the NV200 Cargo Van. There is no debate that this vehicle is a van. Defs Answer ¶ 48. This van does not have seats in the rear area and appears to be designed to carry larger amounts of cargo. This is the basic, most pared down, version of the NV200. The NV200 selected for use as the Taxi of Tomorrow retains the intrinsic qualities of the NV200 which qualify it as a van. *See generally*, Nissan Best and Final Offer, at Bates Number NYC_00006612 (stating that the NV200 taxi retains “the intrinsic NV200 product attributes . . .”).

46. All other versions of the NV200, including those designed for passenger use like the NV200 Taxi, are derived from this original Compact Cargo Van. *E.g.*, Vehicle Supply Agreement at Appendix B (“base vehicle content of Taxi of Tomorrow will be the Nissan NV200 SV Trim which is the highest content version of NV200.”); Nissan Best and Final Offer at Bates Number NYC_00006612 (“NV200 is currently under development for the Americas as a small and efficient commercial van in multiple configurations.”)

47. The varying versions of the NV200 are similar to the Ford Crown Victoria, which also came in several versions, with a number of different options, accessories and configurations. The Crown Victoria was produced as (i) a taxi fleet car, (ii) a police cruiser (the Police Interceptor), and (iii) a premium private passenger vehicle. There were differences between these versions, including some mechanical differences which were designed to adapt each vehicle to its specific market. For example, the police interceptor vehicle came with a metal divider between the front and back seat to facilitate police work. But, installation of that divider in these sedans did not change the classification of this vehicle as a sedan. In fact, each of these

versions of the Crown Victoria sedan with different amenities, remained a sedan. Options adopting a vehicle to a specific functionality do not change the nature of the vehicle classification.

48. The NV200 similarly comes in several versions adopted for different functions and fleets. For example, one version of the NV200 which is also a taxi, and also a van, is the NV200 in use as the accessible black taxi in London. *See Nissan NV200 London Taxi: In Detail*, NISSAN NEWS (Aug. 6, 2012), <http://nissannews.com/en-US/nissan/usa/releases/nissan-nv200-london-taxi-in-detail>. The NV200 London taxi was also custom built with many features specifically added for the London taxi market, however none of those additions or modifications change the fundamental nature of that vehicle as a van. The photograph below illustrates the NV200 vehicle to be used as the London Black Taxi.



See Nissan NV200 London Taxi: In Detail, NISSAN NEWS (Aug. 6, 2012), <http://nissannews.com/en-US/nissan/usa/releases/nissan-nv200-london-taxi-in-detail>.

49. Similarly, there is a third version of the NV200 that has also been sold in Asia as an accessible van. Nissan has sold this accessible NV200 cargo van for use as an accessible taxi in Japan since 2010. *See, Nissan to Provide NV200 Vanettes to Earthquake-affected Areas in Japan*, NISSAN MOTOR COMPANY NEWS RELEASES (Aug. 3, 2011), http://www.nissanglobal.com/EN/NEWS/2011/_STORY/110803-01-e.html.

50. In the Spring of 2013, Nissan announced that it was partnering with Federal Express to develop and test a “100% Electric Nissan e-NV200 Compact Van.” *See, Nissan and FedEx Express Expand Collaborative Testing of the 100% Electric Nissan e-NV200 Compact Van to Singapore*, NISSAN MOTOR COMPANY NEWS RELEASES (Apr. 12, 2013), http://www.nissanglobal.com/EN/NEWS/2013/_STORY/130412-01-e.html. The photograph below, taken from the same announcement, illustrates the version of the NV200 van developed for use by the Federal Express Fleet.



Like the fleet NV200 to be used as the Taxi of Tomorrow, this Fed Ex fleet NV200 retains the core characteristics defining the NV200 as a van, while still adapting to the particular use demanded by the specific fleet in question.

51. The NV200 Taxi to be used as the “taxi of tomorrow” is not structurally distinguishable from these award winning vans globally.¹ The NV200 Taxi to be used as the taxi of tomorrow features several aesthetic modifications that do not change the fundamental nature of the vehicle. The various modifications to the NV200 Taxi include interior layout, personalized temperature controls for passengers, uniform paint job outside, a taxi meter, and other functional and design modifications to enable the NV200 Taxi vehicle to serve as a taxi in New York. *See Vehicle Supply Agreement, NISSAN TAXI MARKETING N.A., LLC AND THE CITY OF NEW YORK (Oct. 9, 2012) (herein after “Vehicle Supply Agreement”).*

52. The NV200 Taxi to be used as the New York City replacement taxi is not distinguishable from the NV200s adopted for commercial, consumer, fleet, or taxi use in other markets. There is no major structural difference between the NV200 Federal Express vehicle, the NV200 Taxis in Japan and England, and the NV200 Taxi to be used in New York City. Just as the NV200 in all other forms and forums is regarded as a van, my expert opinion is that the NV200 vehicle to be used in New York City is also a van.

53. The New York City taxi fleet NV200’s functional design modifications do not change the fact that the base vehicle itself has two sliding side doors, a unibody construction, a short hood, a box like shape, a GVWR under 8500, and a rear door with access to the vehicle. These fundamental qualities of the vehicle mean the vehicle qualifies as a van.

D. Applicable Regulations Demonstrate That the NV200 Taxi is a Van

54. Several federal agencies categorize vehicles. The NV200 qualifies as a van under all federal regulations where such a category exists.

¹ The NV200 Taxi has a body that is 7.9 inches longer than the models sold in global markets but my expert opinion based on my extensive knowledge of automotive construction is that a 7.9 inch body extension of this manner is not a significant structural change to the vehicle.

1. EPA Regulations

55. The Environmental Protection Agency (EPA) is charged with, among other tasks, ascertaining and publicizing vehicle gas mileage. The EPA tracks gas mileage to enforce emission standards set by the Department of Transportation (DOT). This fuel efficiency data also allows consumers to make informed comparisons between similar vehicles, and to determine which vehicles are subject to the “Gas Guzzler Tax” 49 C.F.R. § 600.513–91, from which certain categories of vehicles, such as mini-vans, sport utility vehicles, and pickups trucks, are exempt. To achieve these objectives, the EPA must place vehicles in the following categories:

- Passenger Cars
 - Two Seaters
 - Minicompact Cars
 - Subcompact Cars
 - Compact Cars
 - Midsize Cars
 - Large Cars
 - Small Station Wagons
 - Midsize Station Wagons
 - Large Station Wagons
- Light Trucks
 - Small Pickup Trucks
 - Standard Pickup Trucks
 - Vans

- Mini-vans
- Sport Utility Vehicles
- Special Purpose Vehicles

40 C.F.R. § 600.315-08

a. The NV200 Taxi is a Van Under EPA Regulations

56. The EPA defines *van* as “a light-duty truck having an integral enclosure, fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.” 40 C.F.R. § 86.1803-01. Under this regulation, the Nissan NV200 qualifies as a van because “[t]he vehicle structure is a unibody design,” fully enclosing the driver compartment and load carrying device. *See, Nissan Body Builders’ Guide* at p. 125. Testimony from Defendants’ witnesses confirms that the NV200 Taxi also has this feature. Klahr 30(b)(6) Tr. at 52:25-53:1-6, 122:6-14 (testimony that the NV200 Taxi has a unibody design). Defendants’ admissions also confirm that the NV200 Taxi will be a unibody design vehicle. Defendants’ Am. Response to Plaintiffs’ Second Request for Admissions, Request No. 35.

57. The NV200 also qualifies as a van under the EPA regulations because it is constructed such that the driver and the former “load carrying” area (now passenger seating) fully encloses the driver compartment and the load carrying area. *See, Nissan Body Builders’ Guide* at p. 44 and *Nissan Body Builders’ Guide* at p. 48.

58. As Nissan’s initial response to the City’s Taxi of Tomorrow indicates, the NV200 New York taxi interior configuration similarly transforms the former cargo area into passenger seating, but this does not change the fact that the underlying NV200 New York Taxi vehicle was originally designed to carry cargo and was therefore the enclosed “load carrying area.”

NYC_00006340.

59. The NV200 also qualifies as a van under the EPA regulations because it has a short hood; the foremost body section of the NV200 protrudes only 29.3 inches ahead of the leading edge of the windshield. *See Nissan Body Builders' Guide* at p. 56. As discussed *infra*, the NV200 Taxi will also have a short hood.

60. Under the EPA regulations, the distance from the foremost edge of the windshield to the front of the hood distinguishes the NV200, and other similar vans, from many other vehicles types. For example, the distance from the leading edge of the windshield to the foremost body section of the NV200 is shorter than that of most pickup trucks, sedans, station wagons and SUVs. The EPA definition of Van also notes that for vehicles that qualify as vans under this regulation “the distance from the leading edge of the windshield to the foremost body section of vans is typically shorter than that of pickup trucks and SUVs.” 40 C.F.R. § 600.002.

61. The EPA as an agency also confirms that it classifies the Nissan NV200 as a van because the EPA places the NV200 in the class of “Van, Cargo Types” under the “Light Duty Trucks and Medium Duty Passenger Vehicles” in its “Low Greenhouse Gas Emitting/EISA 141 Compliant Light Duty Vehicles Model Year 2013” list. *See Low Greenhouse Gas Emitting/EISA 141 Compliant Light Duty Vehicles Model Year 2013*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (July 2013), <http://www.epa.gov/otaq/climate/documents/420b13019c.pdf>.

b. The NV200 Also Qualifies as a Mini-van Under EPA Regulations

62. The NV200 also qualifies as a mini-van under EPA regulations. The EPA defines mini-van as “a light truck which is designed primarily to carry no more than eight passengers, having the integral enclosure fully enclosing the driver, passenger, and load-carrying compartments, and rear seats readily removed, folded, stowed, or pivoted to facilitate cargo carrying. A mini-van typically includes one or more sliding doors and a rear liftgate. Mini-vans

typically have less total interior volume or overall height than full sized vans and are commonly advertised and marketed as ‘mini-vans.’” 40 C.F.R. § 600.002.

63. The NV200 qualifies as a mini-van under these EPA regulations first, because the NV200 Taxi is designed to carry no more than four passengers, falling well under the eight passenger cap for mini-van under the EPA regulations.² *See Vehicle Supply Agreement*, at p. 11, Appendix B, *Vehicle Specifications Section*, Bates number NYCE2013-0007044; *See also*, Defendants’ Am. Responses to Plaintiffs’ Second Request for Admissions, Request Nos 22 & 52.

64. Second, the NV200 qualifies as a mini-van under these EPA regulations because it features sliding doors on the side panels. *See NV200 Compact Cargo Specifications* at p. 6; *see also* Nissan NV200 Brochure, *2013 NV200 Compact Cargo*, NISSAN COMMERCIAL VEHICLES, <http://www.nissancommercialvehicles.com/media/pdf/2013-Nissan-NV200-Cargo-Brochure.pdf> (last visited Aug. 13, 2013) (herein after “*Nissan NV200 Brochure*”). Testimony from Defendants’ witnesses confirms that the NV200 taxi also has this feature. Klahr 30(b)(6) Tr. at 53:13-18 (testimony that the NV200 taxi has sliding doors on both panels); Chhabra Tr. at 15:24-25, 16:1-7 (testimony that the NV200 taxi has sliding doors on both panels). Defendants’ admissions also confirm that the NV200 taxi will have sliding doors. Defendants’ Am. Responses to Plaintiffs’ the Second Request for Admissions, Request No. 36.

2. The Department of Transportation and The National Highway Traffic Safety Administration Regulations

65. The Department of Transportation (DOT) classifies vehicles in order to ensure that vehicles are safe and efficient for their intended use. The National Highway Traffic Safety

² The original cargo NV200 was primarily designed to carry no more than one passenger.

Administration (NHTSA), a subsidiary of the DOT, classifies vehicles in order to set and enforce the Corporate Average Fuel Economy (CAFE) standards. The vehicle classifications used by NHTSA are:

- Automobile
- Passenger automobile
- Non-passenger automobile
- Heavy-duty vehicle
- Heavy-duty pickup trucks and vans
- Heavy-duty vocational vehicle
- Truck tractors

49 C.F.R. § 523.3-9

66. There is also a small set of narrower vehicle categories, such as pickup truck, recreational vehicle, and van. 49 C.F.R. §523

67. NHTSA is responsible for carrying out vehicle safety programs. It tests vehicles for safety and informs the public of the results through vehicle rankings and a 5-star rating system on its Safercar.gov website. To allow consumers to make relevant comparisons between similar vehicles, Safercar.gov divides vehicles into four classes:

- Sedans and Wagons
- Trucks
- SUVs
- Vans

See 2011-Newer Vehicle Ratings, SAFERCAR.GOV, <http://www.safercar.gov/Vehicle+Shoppers/5-Star+Safety+Ratings/2011-Newer+Vehicles> (last visited Aug. 13, 2013).

a. The NV200 is a Van Under The Department of Transportation and The National Highway Traffic Safety Administration Regulations

68. The DOT and NHTSA define a van as “a vehicle with a body that fully encloses the driver and a cargo carrying or work performing compartment. The distance from the leading edge of the windshield to the foremost body section of vans is typically shorter than that of pickup trucks and sport utility vehicles.” 49 C.F.R. § 523.2. The Nissan NV200, in every respect, fits the definition of a van by the Department of Transportation (DOT) and the National Highway Traffic Safety Administration (NHTSA).

69. The NV200 is a van under DOT and NHTSA regulations first because the body of which fully encloses the driver and a cargo carrying or work performing compartment. *See Nissan Body Builders’ Guide* at p. 44 and 48 (entitled “Passenger Compartment” and “Cargo Area” respectively). Testimony from Defendants’ witnesses confirms that the NV200 Taxi also has this feature. Klahr 30(b)(6) Tr. at 96:16-19 (testimony that the NV200 Taxi fully encloses the driver and cargo compartments); Chhabra Tr. at 18:22-25, 19:1-6 (testimony that the NV200 Taxi fully encloses the driver and cargo compartments).

70. Second the NV200 qualifies as a van for the purposes of DOT and NHTSA regulations because the distance from the leading edge of the windshield to the foremost body section of the NV200 is shorter than that of pickup trucks and sport utility vehicles. *See* 40 C.F.R. § 600.002 (as analyzed *supra*). The NV200 Taxi will also have a short hood.

71. NHTSA and the DOT also classify the NV200 as a van on its safercar.gov vehicle safety rating website which lists the NV200 as a Van. The NV200 is not listed in any of the other available categories: Sedans & Wagons, Trucks, or SUVs. *See 2011-Newer Vehicle Ratings, SAFERCAR.GOV*, <http://www.safercar.gov/Vehicle+Shoppers/5->

Star+Safety+Ratings/2011-Newer+Vehicles (last visited Aug. 13, 2013). This website also lists the name of the Nissan NV200 as “2013 Nissan NV200 VAN FWD.” *Id.*

b. The NV200 Also Qualifies as a Mini-van under DOT and NHTSA Regulations

72. The DOT and NHTSA use four categories of vans differentiated by size: mini-van, small, midsize, and large. A mini-van is defined as a “[u]nibody van: The body and frame are one integral unit.” *ANSI D16.1-2007 §2.2.14, Manual on Classification of Motor Vehicle Traffic Accidents, 7th Edition, AMERICAN NATIONAL STANDARD (2007), <http://www-nrd.nhtsa.dot.gov/Pubs/07D16.pdf>* (incorporated by reference into the Code of Federal Regulations.)

73. The Nissan NV200 qualifies as a van (under the category of mini-van) because it has a unibody design, with the body and frame being one integral unit. *See Nissan Body Builders’ Guide* at p. 125 (“The vehicle structure is a unibody design.”) Testimony from Defendants’ witnesses confirms that the NV200 Taxi also has this feature. Klahr 30(b)(6) Tr. at 52:25-53:1-6, 122:6-14 (testimony that the NV200 taxi has a unibody design). Defendants’ admissions also confirm that the NV200 Taxi will be a unibody design vehicle. Defendants’ Am. Response to Plaintiffs’ Second Request for Admissions, Request No. 35.

3. Federal Motor Carrier Safety Administration Regulations

74. The Federal Motor Carrier Safety Administration (FMCSA), is another subsidiary of the DOT whose mission is to prevent commercial motor vehicle accidents. The FMCSA and NHTSA together contribute to, and enforce, the Federal Motor Vehicle Safety Standards. The Federal Motor Safety Standards divide vehicles into four size-dependent categories:

- Passenger cars

- Trucks and multipurpose passenger vehicles, with GVWR of 10,000 pounds or less
- Trucks and multipurpose passenger vehicles, with GVWR of more than 10,000 pounds
- Buses

See 49 C.F.R. § 571.208 S3-S4.1-4.

75. There is no “Van” category under these FMCSA rules.

4. American National Standard Institute, Inc. Regulations

76. The American National Standard Institute (ANSI) coordinates a group of standards-developing organizations that create voluntary and consensus-based national standards for vehicle safety. The ANSI are incorporated by reference into the Federal Motor Vehicles Standards. ANSI publishes a Manual on Classification of Motor Vehicle Traffic Accidents which categorizes vehicles in the following groups:

- Automobile
- Van
 - Cargo Van
 - Passenger Van
- Other automobile
- Utility vehicle
 - Mini
 - Small
 - Midsize
 - Full-size

- Large
- Bus
 - Van-based bus
 - Small bus
 - Large bus
 - School bus
 - Other bus
- Motorcycle
 - Moped
- Various Trucks
- Other motor vehicle
- Low Speed Vehicle

See ANSI D16.1-2007, Manual on Classification of Motor Vehicle Traffic Accidents, 7th Edition, AMERICAN NATIONAL STANDARD (2007), <http://www-nrd.nhtsa.dot.gov/Pubs/07D16.pdf> (herein after “ANSI D16.1-2007” followed by the appropriate section number).

77. The ANSI also divides vans – both passenger and cargo – into primary size categories:

- Mini-van
- Small
- Midsize
- Large

See ANSI D16.1-2007 2.2.14.

- a. **The NV200 is a Van Under The American National Standard Institute, Inc. Regulations**

78. Under ANSI a van is “a motor vehicle consisting primarily of a transport device which has a gross vehicle weight rating (GVWR) of 10,000 pounds or less and is basically a ‘box on wheels’ that is identifiable by its enclosed passenger and/or cargo area, step-up floor, and relatively short (or non-existent) hood.” *See* ANSI D16.1-2007 2.2.14.

79. ANSI sub-classifies *Vans* into four primary size categories, one of which is “mini-van.” Under these rules, a mini-van is defined as a “[u]nibody van: The body and frame are one integral unit.” *See* ANSI D16.1-2007 2.2.14. The NV200 qualifies as a mini-van under ANSI standards because it is a unibody construction vehicle where the frame and body of the vehicle are one unit that fully encloses the driver compartment and the cargo carrying area. *See Nissan Body Builders’ Guide* at p. 44 and p. 48. Testimony from Defendants’ witnesses confirms that the NV200 Taxi also has this feature. Klahr 30(b)(6) Tr. at 52:25-53:1-6, 122:7-14 (testimony that the NV200 taxi has a unibody design). Defendants’ admissions also confirm that the NV200 Taxi will be a unibody design vehicle. Defendants’ Am. Response to Plaintiffs’ Second Request for Admissions, Request No. 35.

80. The NV200 also constitutes a van under ANSI standards because, as the photograph *infra* at paragraph 32 illustrates, the vehicle is basically a “box on wheels,” with an approximately rectangular cargo compartment.

81. The NV200 is also a van under ANSI standards because at 4,751 GVWR, it is rated below 10,000 GVWR (Gross Vehicle Weight Rating, or the maximum recommended weight of the vehicle including all passengers, cargo, fuel, etc.). *See “NV200 Compact Cargo Specifications” at p. 6.* Testimony from Defendants’ witnesses also confirms that the NV200 Taxi will have a GVWR of less than 10,000. Klahr 30(b)(6) Tr. at 56:2-13 (stating that the NV200 will have a GVWR of less than 6000). Defendants’ admissions also confirm that the

NV200 Taxi will have a GVWR of less than 6000. Defendants' Am. Responses to Plaintiffs' Second Request for Admissions, Request No. 51.

82. The NV200 is also a van under ANSI standards because the NV200 has a step up floor. According to Nissan Commercial Vehicles, the NV200 has a front step-in height of 14.8 inches and a sliding side door step-in height of 19.2 inches. *See "NV200 Compact Cargo Specifications"* at p. 6.

83. The NV200 is also a van under ANSI standards because the NV200 has a relatively short hood. *See Nissan Body Builders' Guide* at p. 56. The NV200 Taxi will also have a short hood.

5. Federal Highway Administration Regulations

84. The Federal Highway Administration (FHWA) uses a vehicle classification system geared towards improving construction, maintenance, and preservation of highways. *See FHWA Vehicle Types*, FEDERAL HIGHWAY ADMINISTRATION <http://www.fhwa.dot.gov/policy/ohpi/vehclass.htm> (last modified Apr. 5, 2011) (hereinafter "*FHWA Vehicle Types*").

85. The FHWA's vehicle classification scheme relies primarily on the number of axles, tires, and units and divides vehicles into the following groups:

- Motorcycles
- Passenger Cars
- Other Two-Axle, Four-Tire Single Unit Vehicles
- Buses
- Various classifications of trucks based on the number of axles, tires, and units

See "FHWA Vehicle Types".

86. Like the FMCSA, the FHWA does not have a separate category for “van”. *See “FHWA Vehicle Types”.*

a. The NV200 is a Van Under Federal Highway Administration Regulations

87. Under the Federal Highway Administration (FHWA) a van would fall into the category of “Other Two-Axle, Four-Tire Single Unit Vehicles.” This category is defined as “All two-axle, four-tire, vehicles, other than passenger cars.”

88. The FHWA defines passenger cars as “All sedans, coupes, and station wagons manufactured primarily for the purpose of carrying passengers.” Neither the NV200 nor the NV200 taxi is a sedan, or station wagon. Defendants’ Am. Responses to Plaintiffs’ Second Set of Requests for Admissions, Request No. 46

89. As classified by the FHWA, the NV200 taxi is a van because it has two axles, four tires, and is a single-unit vehicle. *See “FHWA Vehicle Types”*; *see also*, Defendants’ Responses to Plaintiffs’ Second Set of Requests for Admissions, Request No. 35, 42 and 43.

90. The NV200 also falls within the definition of van for FHWA purposes because it was developed primarily as a cargo vehicle, and was not primarily developed for the purpose of carrying passengers. This is true for the NV200 Taxi as well. The NV200 Taxi is based on the NV200 Compact Cargo. Vehicle Supply Agreement at Bates number NYCE2013-0006973 (Definitions section: “ ‘Base Vehicle’ Shall mean the Nissan NV200.”); *Id* at Bates number NYCE2013-0006982 (“ ‘Taxi Cab Vehicle’ Shall mean the Nissan Taxi motor vehicle based on the Base Vehicle for sale in the US, incorporating the Differentiated Parts to meet NYC’s unique styling requirements, and sold by authorized dealers to Qualified Purchasers.”); Vehicle Supply Agreement at Appendix B, Bates number NYCE2013-0007044 (“Base Vehicle content of Taxi of Tomorrow will be the Nissan NV200 SV Trim which is the highest content version of

NV200”). The additions to the NV200 which allow it to carry passengers do not alter the fact that the vehicle was originally developed primarily for the transport of cargo.

91. Numerous publications by Nissan confirm that the NV200 was developed by Nissan primarily to transport cargo, and later added non-structural modifications to allow the vehicle to function for other purposes. Attached hereto at **Exhibit C** is a list of Nissan publications that I reviewed where Nissan explicitly refers to this vehicle as a small van or cargo van.

E. The NV 200 is Widely Considered a Van

1. Nissan, The Manufacturer and Designer of the Vehicle, Refers To, Categorizes and Markets the NV200 as a Van

92. I have reviewed extensive literature published and distributed by Nissan as well as many documents submitted by Nissan during the Taxi of Tomorrow negotiation process. According to Nissan’s own documents, Nissan treats the NV200 as a van for all purposes including awards, vehicle repair, consumer marketing, relevant market competition and submission to the Taxi of Tomorrow vehicle contest.

93. First, the Nissan itself classified the vehicle it proposed for the New York City taxi as a van. This is evidence by the fact that in Nissan’s initial response to the City’s request for proposal on the taxi of tomorrow project, Nissan itself referred to the proposed NV200 Taxi, as a van. NYC_00006327; *See also* NYC_0006352 (categorizing the body style of the proposed NV200 taxi as “Mini-van.”)

94. Likewise, during the negotiations on the NV200 as the taxi of tomorrow, Nissan North American referred to the Base NV200 Vehicle as a van. *See*, Pricing Narrative at NYC_00006405 (“NV200 SV Grade (upper grade) Van Key Content”). Likewise, reference to the proposed Nissan NV200 taxi as a van continued through Nissan’s “Best and Final Offer.” NYC_00006612 and NYC_00006616 (“NV200 is a new format of small van that . . .”).

95. Nissan also classifies the other versions of the NV200 it builds as a van. Nissan introduced the NV200 as a van at the Tokyo Motor Show in 2007. *See Nissan revealed highly innovative small van concept NV200*, AUTOMOTIVE INTELLIGENCE NEWS (July 23, 2007), <http://www.autointell.net/News-2007/July-2007/Jul-4/july-25-07-p8.htm>.

96. Nissan promoted the NV200 as a promising contender in the small van market. *See NV200: Nissan's New Small Versatile People Carrier and Van*, NISSAN COMMERCIAL VEHICLES (Feb. 24, 2009), http://www.nissan-global.com/EN/NEWS/2009/_STORY/090224-01-e.html.

97. Nissan refers to the NV200 as a van in its European markets. *See NV200: Nissan's New Small Versatile People Carrier and Van*, NISSAN COMMERCIAL VEHICLES (Feb. 24, 2009), http://www.nissan-global.com/EN/NEWS/2009/_STORY/090224-01-e.html.

98. Nissan refers to the NV200 as a van in its Asian markets. *See Nissan Releases New-generation NV200 Vanette Compact Van*, NISSAN MOTOR COMPANY NEWS RELEASES (May 19, 2009), http://www.nissan-global.com/EN/NEWS/2009/_STORY/090519-01-e.htm.

99. Nissan publicized the NV200's Best Commercial Delivery Van and Van of the Year awards in 2010. *See 2013 Nissan NV200 Compact Cargo Press Kit*, NISSAN OFFICIAL MEDIA NEWSROOM, <http://nissannews.com/en-US/nissan/usa/presskits/2013-nissan-nv200-press-kit> (last visited Aug. 14, 2013).

100. The NV200 commercial cargo vehicle was named Van of the Year in 2010 by Professional Van and Light Truck Magazine. Defendants' Am. Response to Plaintiffs' Second Request for Admissions, Request No. 14

101. When the NV200 debuted in the United States in 2013, Nissan publicized it as a van. *See 2013 Nissan NV200 Compact Cargo Van Joins Innovative Nissan Commercial Lineup*, NISSAN OFFICIAL MEDIA NEWSROOM (Feb. 7, 2013), <http://nissannews.com/en->

US/nissan/usa/channels/us-united-states-nissan-cv/releases/2013-nissan-nv200-compact-cargo-van-joins-innovative-nissan-commercial-vehicle-lineup.

102. Nissan consistently refers to the NV200 as a cargo van, a small van, a compact van, a vanette, or a van in press releases. Attached hereto at **Exhibit D** is a list of Nissan press releases I reviewed where Nissan refers to this vehicle as a cargo van, small van, vanette, or a van.³

103. Nissan placed the NV200 in the “Commercial Vans and Trucks” section of its website. *See NV200 Compact Cargo*, NISSAN COMMERCIAL VEHICLES, <http://www.nissancommercialvehicles.com/nv200-compact-cargo> (last visited Aug. 14, 2013).

104. Nissan refers to the NV200 as a van in its 2013 Press Kit. *See 2013 Nissan NV200 Compact Cargo Press Kit*, NISSAN OFFICIAL MEDIA NEWSROOM, <http://nissannews.com/en-US/nissan/usa/presskits/2013-nissan-nv200-press-kit> (last visited Aug. 14, 2013).

105. Nissan markets the NV200 as a van. *2013 NV200 Compact Cargo*, NISSAN COMMERCIAL VEHICLES, <http://www.nissancommercialvehicles.com/media/pdf/2013-Nissan-NV200-Cargo-Brochure.pdf> (last visited Aug. 13, 2013).

106. Nissan dealers market the NV200 as a van. Nissan dealerships regularly describe vehicles they sell in writing, and display that writing on their website. Nissan dealerships write-ups repeatedly refer to the Nissan NV200 as a van, small van, or cargo van:

107. Attached hereto as **Exhibit E** is a list of Nissan Dealer write ups on the NV200 where the vehicle is referred to, and described, as a van.

³ The terms “compact van” “small van” “vanette” and “mini van” are all used in the automotive industry to describe a vehicle that is in the same class, but smaller than others vehicles of its type. These terms do not indicate that the vehicle is a different class of vehicle altogether, but rather indicate that the van and the minivan, for example, are both vans.

2. The NV200 is Considered a Van in the Automotive Marketplace

108. Based on my extensive professional knowledge of the automotive industry as well as my review of industry publications, I conclude that the NV200 is considered a van by the Automotive Industry.

109. The NV200 was declared Van of the Year by *Professional Van & Light Truck Magazine*, a UK-based publication. See, *Appendix: Nissan 2010 Awards List 2010*, NISSAN GLOBAL, http://www.nissan-global.com/EN/NEWS/2010/_STORY/101230-01-01.pdf (last visited Aug. 14, 2013).

110. The NV200 was named International Van of the Year 2010 by International Truck-of-the-Year, an independent organization of professional transport journalists from 23 countries. See, *Nissan's NV200 Is Elected International Van of the Year*, INTERNATIONAL TRUCK-OF-THE-YEAR AWARD, <http://www.van-of-the-year.com/> (last visited Sept. 5, 2010).

111. The NV200 received the Star Model and Best commercial delivery van award at the 2010 Beijing Auto Show. See, *Appendix: Nissan 2010 Awards List 2010*, NISSAN GLOBAL, http://www.nissan-global.com/EN/NEWS/2010/_STORY/101230-01-01.pdf (last visited Aug. 14, 2013).

112. German company Universal Design gave both its 2011 Universal Design Award and 2011 Universal Design Consumer Favorite Award to the Nissan Vanette Taxi. See, *Double Win For Nissan NV200 Vanette Taxi at the Universal Design Awards*, NISSAN MOTOR COMPANY NEWS RELEASES (Mar. 2, 2011), http://www.nissanglobal.com/EN/NEWS/2011/_STORY/110302-02-e.html.

113. The Vanette Taxi in Japan was based on the NV200 and included accessibility features such as a sliding rear ramp. Nissan stated that the van was a public transportation solution for Japan's elderly and disabled population. See, *Nissan Introduces New NV200 Vanette*

Taxi, NISSAN EUROPE NEWSROOM,

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDEQFjAB&url=http%3A%2F%2Fwww.newsroom.nissan-europe.com%2Fdownload%2Fmedia%2Farticles%2Fpdf%2F33128_10_5.aspx&ei=8kLUvLIIaLoigKXn4CoCw&usg=AFQjCNHotRzCwo6gyAvC_iYd1tkhNYsPhg&bvm=bv.50768961,d.cGE (last visited Aug. 14, 2013).

114. The NV200 is also considered a van by the domestic American automotive industry. The NV200 is in fact categorized as a van by all of the following:

- Kelley Blue Book
- Automobile Magazine
- Automotive Intelligence News
- Autoweek
- Car and Driver
- Motor Trend
- The National Automobile Dealers Associations and
- Consumer Reports

115. Kelley Blue Book is an automotive vehicle evaluation company. It has for over 80 years reported market value prices for new and used automobiles of all types. Kelley Blue Book is also used for automobile appraisal nationwide. For new automobiles, Kelley Blue Book provides information about a make's suggested retail price (MSRP) and a vehicle's New Car Blue Book Value (what other buyers are paying for a new car). For used cars Kelley Blue Book provides retail value, trade-in value, and private party value. It obtains retail pricing by collecting information about actual retail sales.

116. The Kelley Blue Book is one of the most visited automobile related websites on the internet.

117. The Kelley Blue Book categorizes the NV200 in its “Trucks and Vans” section. It labeled the two NV200 packages as “S Van 2D” and “SV Van 2D”. *KELLEY BLUE BOOK 370* (2013).

118. Edmunds, a company founded in 1966, is also an authoritative source of market information for the automotive industry. Edmunds provides information on prices for new and used vehicles as well as a database of national and regional incentives and rebates, dealer and inventory listings, vehicle test drive reviews, and advice on all aspects of car purchases and ownership.

119. Edmunds labels the NV200 a “mini-van” and a “compact cargo van” and its full review of the vehicle repeatedly calls it a van. *See, 2013 Nissan NV200*, EDMUNDS.COM, <http://www.edmunds.com/nissan/nv200/2013/> (last visited Aug. 14, 2013).

120. The National Automotive Dealers Association is a membership organization that is known as the voice of the automotive dealer industry. It is a reliable source for information about how the automotive market views different vehicles.

121. The National Automobile Dealers Association (NADA) Guide calls the Nissan NV200 a “van”. Its review of the vehicle calls it a “compact cargo van”. *See, Expert Reviews of the NV200*, NADA GUIDES, <http://www.nadaguides.com/Cars/2013/Nissan/NV200/expert-reviews> (last visited Aug. 14, 2013).

122. Chevrolet, which will be selling a rebadged version of the Nissan NV200 (a process sometimes termed “badge engineering”) beginning in the fall of 2014, consistently refers to it as a van and calls the vehicle “the all-new Chevrolet City Express Cargo Van”. *See, The All-*

New Chevrolet City Express Van, CHEVROLET, <http://www.chevrolet.com/city-express-small-van.html> (last visited Aug. 14, 2013).

123. The NV 200 is also considered a van by persons in the automotive market who are not full time automobile professionals. Discussion in the consumer marketplace consistently refers to the NV200 vehicle as a van.

124. Automotive magazines, such as Automobile Magazine, Automotive Intelligence News, Automotive News, Autoweek, Car and Driver, Motor Trend, the website The Truth About Cars, and WardsAuto, regard the Nissan NV200 as a van. Attached hereto as **Exhibit F** is a list of articles in automotive publications which refer to the NV200 as a van.

125. Consumer magazines such as Consumer Reports and Consumer Guide Automotive categorize the Nissan NV200 as a van. *See, 2013 Nissan NV200 Review*, CONSUMER GUIDE AUTOMOTIVE, <http://www.consumerguide.com/nissan/nv200> (last visited Aug. 14, 2013); *See also, Nissan NV200*, CONSUMERREPORTS.ORG, http://www.consumerreports.org/content/onlocation/new_car_preview/models/featured_models/mini-vans/Nissan_NV200.html (last visited Aug. 14, 2013).

126. The New York Times called the NV200, specifically including the NV200 Taxi version of the NV200 a “van” or a “mini-van” in at least 30 articles spanning several years. Attached hereto as **Exhibit G** is a list of New York Times articles referring to the Nissan NV200 as a van.

V. LIST OF SUPPORTING DOCUMENTATION

In addition to my education and training, my decades of experience in the automotive industry, and my specific knowledge of vehicle production and classification, I have also relied on the documents listed in **Exhibit H** in forming the opinions I articulate herein.

VI. CONCLUSION

For the foregoing reasons, I conclude that the NV200 Taxi is a van under all regulatory and market definitions of that term.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on:

August 27, 2013

in ITHACA, NEW YORK



Paul Sheridan