**IN THE UNITED STATES DISTRICT COURT**

**FOR THE MIDDLE DISTRICT OF TENNESSEE**

**NASHVILLE DIVISION**

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| PATRICIA WECKWERTH, PATRICIA CRUZ, MICHELLE FALK, CYNTHIA GARRISON, INDHU JAYAVELU, MICHAEL KNOTTS, WALDO LEYVA, AMANDA MACRI, DANIELLE TROTTER, and PAMELA PRITCHETT, individually, and on behalf of a class of similarly situated individuals,<br><br>PLAINTIFFS,<br><br>v.<br><br>NISSAN NORTH AMERICA, INC.,<br><br>DEFENDANT. | Case No. 3:18-cv-00588<br><br>Judge Eli Richardson<br>Magistrate Judge Alistair E. Newbern<br><br>Date: March 6, 2020<br>Time: 1:30 p.m.<br>Courtroom: 874 |

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARDS**

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Plaintiffs Patricia Cruz, Michelle Falk, Cynthia Garrison, Indhu Jayavelu, Michael Knotts, Waldo Leyva, Amanda Macri, Danielle Trotter, Patricia Weckwerth, and Pamela Pritchett (the "Class Representatives"), on behalf of themselves and on behalf of a preliminarily certified Settlement Class[1] of current and former owners and lessees of 2013-2017 Nissan Sentra, 2014-2017 Nissan Versa Note, and 2012-2017 Nissan Versa vehicles equipped with a Continuously Variable Transmission or "CVT" ("Class Vehicles"), submit this Memorandum in support of their Motion for Attorneys' Fees, Costs and Class Representative Service Awards. The Class Representatives request that the Court award: (1) attorneys' fees of $6,500,000 to Class Counsel, (2) out-of-pocket litigation costs and expenses of $100,000 to Class Counsel, and (3) service awards totaling $50,000, in the amount of $5,000 to each Class Representative.

## INTRODUCTION

The Class Representatives and Class Counsel achieved a settlement on behalf of approximately 2.967 million Class Members that provides a $407 to $547 million-dollar benefit to the Class. (*See* Declaration of Lee Bowron, ACAS, MAAA ("Bowron Decl.,"), ¶ 4, Ex. 2)[2]. Under the settlement, all owners and lessees of a Class Vehicle will receive a 24 month / 24,000-mile extended warranty. The settlement also provides full or partial reimbursement for out-of-pocket expenses related to replacement or repair of the CVTs for qualifying Class Members if the repairs are done within the extended warranty period, vouchers for certain former owners toward the purchase or lease of a new Nissan or Infiniti vehicle, and an Expedited Resolution Process for any future warranty claims related to transmission design, manufacturing or performance, that preserves the right to file a lawsuit for those who do not receive vehicle repurchases. This excellent settlement is the result of Class Counsel's diligent work in this case and was achieved only after hard-fought negotiations mediated by Hunter R. Hughes III, a nationally well-known mediator for class actions.

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[1] Unless otherwise defined herein, capitalized terms are defined in Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, filed simultaneously.

[2] The value of the extended warranty to the class ranges from $407,122,000 to $547,767,000, with a point estimate of $477,445,000. *Bowron Decl.*, Ex. 2.

Defendant does not oppose this motion for an award of fees, costs, and service awards. If the Court grants the motion, the requested fees, costs and service awards will be paid by Defendant, not by Class Members or from a common fund. Awarding the negotiated fees in full will not affect the benefits for Class Members and will fairly compensate Class Counsel for their work in this case, as confirmed under the prevailing percentage-of-the-benefit method for calculating fees as well as a lodestar crosscheck. Class Counsel's request should be granted.

## BACKGROUND

### I. Facts and Procedural History

#### A. Overview of the Litigation

The Settlement will resolve the claims bought by Plaintiffs in separate, but related, class actions against Nissan stemming from the design and manufacture of the allegedly defective CVT in the Class Vehicles. These actions are: (1) *Falk v. Nissan North America*, Inc., No. 4:17-cv-04871 (N.D. Cal.); (2) *Pamela Pritchett, et al. v. Nissan North America, Inc.,* No. 2:17-cv-00736 (M.D. Ala); (3) *Knotts v. Nissan North America, Inc*., No. 17-cv-05049 (D. Minn.); and (4) *Norman v. Nissan North America, Inc. and Nissan Motor Co., Ltd*., No. 3:18-cv-00588 (M.D. Tenn.) (collectively, "Nissan CVT Litigation"). The named Plaintiffs in the related cases were added to the instant *Norman* case, No. 3:18-cv-00588 for settlement approval. A more extensive summary of the events in the Nissan CVT Litigation is being provided in the Motion for Final Approval of Class Action Settlement, but a brief overview is included below.

The earliest-filed action, the *Falk* action, was filed on August 22, 2017 in the Northern District of California against Defendant, alleging the CVTs in the Class Vehicles cause the vehicles to shudder, judder, hesitate, fail to accelerate and abruptly decelerate, creating an unreasonable safety risk and requiring the transmission to be replaced prematurely (these allegations are collectively referred to as the "Alleged CVT Failures"). (Declaration of Lawrence Deutsch ("Deutsch Decl.") ¶ 10, Declaration of Gary E. Mason ("Mason Decl.") ¶ 9.)[3] The *Falk* action, after two amended complaints were filed, included

[3] The Falk Plaintiffs are also represented by four firms that made contributions to the Litigation:

seven named Plaintiffs representing a nationwide class as well as classes in California, New York, Colorado, Massachusetts, Ohio, and Illinois and covering 2012-2017 Nissan Sentra vehicles. The *Falk* Plaintiffs defeated Nissan's motion to dismiss, from the First Amended Complaint, several state consumer protection statute claims, express warranty claims, implied warranty claims, and Magnuson-Moss Warranty Act claims, with the Court dismissing without prejudice only Plaintiff Jayavelu's Ohio Consumer Sales Practices Act claim and her individual Implied Warranty claim. (Deutsch Decl. ¶ 14, Mason Decl. ¶ 13.) Thereafter, the *Falk* Plaintiffs filed their Second Amended Complaint adding Plaintiff Leyva, who had filed an overlapping complaint on September 11, 2017 in the United States District Court for the Central District of California entitled *Leyva v. Nissan North America, Inc*., Case No. 5:17-cv-01870 FMO. (Deutsch Decl. ¶ 15, Mason Decl. ¶ 14.) The Second Amended Complaint also included amended allegations for Plaintiff Jayavelu's Ohio Consumer Sales Practices Act and implied warranty claims. The parties had fully briefed Defendant's motion to dismiss Plaintiffs' Second Amended Complaint at the time the parties reached the Settlement. The Court terminated the motion as moot, without prejudice to refiling should the Settlement not become effective. (Deutsch Decl. ¶ 16, Mason Decl. ¶ 15.) The *Falk* Plaintiffs simultaneously engaged in discovery which is discussed in further detail below.

In *Pritchett*, Plaintiffs Pamela Pritchett, U Can Rent, LLC, Atlantic Driving School, and Marco Lashin commenced their action on October 27, 2017 in the United States District Court for the Middle District of Alabama. (Declaration of W. Lewis Garrison, Jr. ("Garrison Decl.").)

On December 13, 2017, Nissan moved to Strike or Dismiss the Class Definitions and moved to Dismiss the Complaint. *Id.* On January 3, 2018, Plaintiffs filed their First Amended Complaint which added two Plaintiffs: Lakeland Atlantic Driving School and Marco Lashin (who own a 2014 Nissan Versa Note). *Id.* at ¶ 6. On February 12, 2018, Nissan renewed its Motion to Strike and Dismiss. *Id.*

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Migliaccio & Rathod LLP ("Migliaccio & Rathod"), Parker Waichman LLP ("Parker Waichman"), Kantrowitz Goldhammer & Graifman, P.C. ("KGG") and Bronstein Gewirtz & Grossman ("BGG"). Their involvement is set forth in the Deutsch and Mason Declarations.

On March 5, 2018, the parties submitted a Joint Motion of Stipulated Protective Order which was granted on March 6, 2018. *Id.* On March 7, 2018, Plaintiffs opposed Nissan's pending Motions. *Id.* On March 21, 2018, Nissan replied in support of its Motions. *Id.* On March 28, 2018, Plaintiffs moved for leave to file a Sur-Reply in Opposition to Nissan's Motion which was granted on April 4, 2018. On September 24, 2018, Plaintiffs Atlantic Driving School and Marco Lashin dismissed their claims without prejudice. *Id.* Finally, on November 28, 2018, Plaintiffs filed a notice of supplemental authority which supported their Opposition to Nissan's Motions. *Id.* Nissan's Motions were fully briefed and before the court when the parties negotiated this settlement. *Id.*

The *Knotts* action was commenced on November 7, 2017, in the District of Minnesota, on behalf of a nationwide class and a Minnesota class of owners and lessees of 2012 and 2013 Nissan Versa vehicles, alleging express warranty claims, implied warranty claims, and violations of Minnesota consumer protection statutes. (Declaration of James C. Shah ("Shah Decl.") ¶ 7.) On January 5, 2018, Nissan filed a Motion to Dismiss and Motion to Strike or Dismiss the Class Allegations in *Knotts* ("Motions"). *Id*. at ¶ 8. Plaintiff Knotts filed his Opposition to the Motions on February 14, 2018, and Nissan filed its replies in support of the Motions on February 27, 2018. *Id*. at ¶ 9. The court held oral argument on the Motions on March 30, 2018. On October 10, 2018, the court issued a decision granting in part and denying in part the Motion to Dismiss and denying, in its entirety, the Motion to Strike or Dismiss Class Allegations. Specifically, the Court permitted the following claims to proceed: (1) breach of implied warranty; (2) unjust enrichment; and (3) claims under the Minnesota Consumer Fraud Statutes; specifically, Minnesota Deceptive Trade Practices Act. Minn. Stat. § 325D.44 et seq., deceptive trade practices (injunctive relief and attorneys' fees). *Id*. at ¶ 10. Additionally, the court granted Knotts leave to amend his claims asserted under the Minnesota False Advertising Statute, which he elected to do by filing an Amended Complaint on November 9, 2018. *Id*. at ¶ 11. The parties negotiated and entered into a protective order in January 2019. *Id*. at ¶ 12. Nissan moved to dismiss the amended Minnesota False Advertising Statute, which motion was fully briefed and argued on February 6, 2019.

Finally, the *Norman* action (now known as the *Weckwerth* action) was commenced on June 26, 2018 in the Middle District of Tennessee, where Nissan North America, Inc. is headquartered, covering a

nationwide class of owners and lessees of 2013-2017 Nissan Versas, Notes, and Jukes. Plaintiff Weckwerth also sued Nissan Motor Co., Ltd. ("Nissan Japan"), the Japanese parent company, and achieved a discovery and tolling agreement whereby Nissan Japan agreed to be subject to discovery in exchange for a dismissal without prejudice. (Deutsch Decl. ¶¶ 17-18, Mason Decl. ¶¶ 17-18, Declaration of Cody R. Padgett ("Padgett Decl.") at ¶ 12.)

In total, Class Counsel filed eight complaints and fully briefed nine motions to dismiss, in addition to the extensive discovery, investigation, and settlement negotiations described below.

**B. Class Counsel Engaged in Extensive Investigation and Significant Discovery**

Both before and after these actions were filed, Class Counsel vigorously investigated the Alleged CVT Failures. To that end, Plaintiffs retained William Mark McVea, a mechanical engineer specializing in power transmission devices. (Deutsch Decl. ¶ 27, Mason Decl. ¶ 26.)

From early pre-suit investigation and continuing over the course of litigation, Class Counsel responded to several hundred inquiries from Class Members and investigated many of their reported claims. Certain Plaintiffs made their vehicles available for physical inspection during the discovery process. Class Counsel also conducted detailed interviews with Class Members regarding their pre-purchase research, their purchasing decisions, and their repair histories, and developed a plan for litigation and settlement based on Class Members' reported experiences with their Class Vehicles. (Deutsch Decl. ¶¶ 21-25, Mason Decl. ¶¶ 21-25.)

Before Nissan began producing documents, Class Counsel researched the alleged CVT defect and Nissan's response to it through information provided by the National Highway Traffic Safety Administration ("NHTSA"). They reviewed and researched consumer complaints and discussions of the alleged CVT defect in articles and forums online, in addition to various Nissan manuals and Technical Service Bulletins discussing the alleged defect. Finally, they conducted research into the various causes of action and analyzed similar automotive actions. (Deutsch Decl. ¶¶ 25-26, Mason Decl. ¶¶ 24-25, Padgett Decl. ¶¶ 16-17.)

During the discovery phase, Class Counsel in the *Falk* case also responded to extensive written discovery propounded to Plaintiffs. Specifically, Class Counsel, working closely with Plaintiffs, prepared

responses and objections to 41 requests for production and 18 interrogatories for each of the *Falk* Plaintiffs. (Deutsch Decl. ¶ 30, Mason Decl. ¶ 30.)

In addition to the above investigation, Class Counsel in the *Falk* case served discovery on the Defendant, including propounding fifty-three Requests for Production seeking emails among Nissan employees, emails between Nissan North America and Nissan Japan, and emails between Nissan and its transmission supplier, JATCO, regarding incidents of transmission problems. *Id*. Thereafter, Counsel conducted eight meet and confer conferences and served a detailed Motion to Compel. *Id*. at ¶ 31. In response, Defendant produced over 17,000 pages of documents, which were reviewed and analyzed by all Class Counsel, including spreadsheets on warranty and customer complaints containing thousands of rows of data; owners' manuals; maintenance and warranty manuals; design documents (e.g., technical drawings); internal Nissan project files with tests, investigation reports, countermeasure evaluations; technical service bulletins ("TSBs"); field reports; and internal Nissan emails regarding the Alleged CVT Failures. (Deutsch Decl. ¶ 33, Mason Decl. ¶ 33, Shah Decl. ¶ 13.) Class Counsel reviewed this discovery and aggressively pursued and secured supplemental document productions. Through this process, Class Counsel identified information that was instrumental in moving this case to a settlement posture and to advancing the interests of the Class during mediation.

**C. Mediation Leading to Settlement**

Following the above motion practice and the exchange of thousands of pages of documents and data, on February 19, 2019, counsel for Plaintiffs and Defendant participated in an all-day mediation before Mr. Hunter R. Hughes III, an experienced mediator, in Atlanta, Georgia, to explore resolution of claims pertaining to the Nissan Juke, Versa, and Sentra vehicles. (Deutsch Decl. ¶¶ 34-35, Padgett Decl. ¶¶ 18-19, Mason ¶¶ 34-35, Shah Decl. ¶ 14, Weiner Decl. ¶ 14, Garrison Decl. ¶ 16.) Mr. Hughes is a "a nationally-respected and experienced class action neutral." *See Al's Pals Pet Care v. Woodforest Nat'l Bank,* NA, 2019 WL 387409, at *1 (S.D. Tex. Jan. 30, 2019); *see also, e.g., Moyle v. Liberty Mut. Ret. Benefit Plan*, 2018 WL 1141499, at *7 (S.D. Cal. Mar. 2, 2018); *Bert v. AK Steel Corp.,* 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008).

Although the Parties did not settle at the first mediation session, the Parties continued their settlement negotiations telephonically with the assistance of the mediator. On April 9, 2019, the Parties conducted a second in-person all-day face-to-face negotiation in Chicago, Illinois. At the close of this second session, the Parties had agreed on the principal terms of the proposed class relief. Later in April, further evolution of the settlement terms took place in conjunction with the negotiations of the related cases concerning Nissan Altima's CVT transmissions before mediator Hughes in Atlanta, Georgia. After the Parties had agreed on the framework and material terms for settlement in Chicago, they began negotiating through telephonic conferences, via email, and with the assistance of Mr. Hughes, and ultimately agreed upon an appropriate request for service awards and Plaintiffs' attorneys' fees and expenses. In May 2019, the Parties finally were able to document the formal terms of their agreement to resolve the litigation. All of the terms of the Settlement are the result of extensive, adversarial, and arms' length negotiations between experienced counsel for both sides. (Deutsch Decl. ¶¶ 36-38, Padgett Decl. ¶¶ 20-22, Mason ¶¶ 36-38, Shah Decl. ¶¶ 15-19, Weiner Decl. ¶¶ 15-19, Garrison Decl. ¶¶ 17-19.)

### D. Preliminary Approval and Claims Status

On June 6, 2019, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval"), wherein Plaintiffs sought an order: (1) granting preliminary approval of the Settlement and finding that it warrants sending notice to the Class; (2) certifying a class for settlement purposes and appointing Plaintiffs as Class Representatives and Plaintiffs' counsel, Whitfield, Bryson & Mason, LLP; Berger Montague PC; Capstone Law APC; Heninger Garrison Davis, LLC; Shepherd, Finkelman, Miller & Shah, LLP; and Pearson, Simon & Warshaw, LLP as Class Counsel; (3) approving the Parties' proposed method of giving Class Members notice of the proposed Settlement; (4) directing that notice be given to Class Members in the proposed form and manner; and (5) setting a hearing on whether the Court should grant final approval of the Settlement, enter judgment, award attorneys' fees and expenses to Plaintiffs' counsel, and grant service awards to Plaintiffs. On July 16, 2019, the Court granted the Motion for Preliminary Approval and directed the filing of the instant Motion by January 24, 2020. (Preliminary Approval Order, ECF No. 102.) The Final Fairness Hearing is scheduled for March 6, 2020. (ECF No. 111.)

Following the Court's Preliminary Approval Order, the Claims Administrator sent, by U.S. First Class Mail, approximately 2.89 million Class Notices to Class Members. (Declaration of Lana Lucchesi ("Lucchesi Decl.") ¶ 11.) As of today, a total of 822 individuals have opted out of the settlement class, and 16 have lodged objections to the Settlement, representing only 0.028% and 0.0005% of the Settlement Class, respectively. (*See* Lucchesi Decl. ¶¶ 7, 17-18; ECF Nos. 112-119, 123-124, 128, 137.) Only one of the objections concern the requested attorneys' fees. No objections concern the requested expenses, or service awards at issue in this Motion. The opt out and objection deadline is February 7, 2020, after which Class Counsel will submit supplemental briefing addressing objections.

Class Counsel also prepared this Motion and is concurrently filing the Motion for Final Approval of the Class Action Settlement and may file a supplemental brief responding to objections. Class Counsel expects that it will expend 200 hours after the filing of this Motion delivering services to Class Members.

## II. Settlement Benefits

Class Counsel negotiated a Settlement with significant and practical benefits for Class Members, the terms of which are summarized as follows:

### A. Extended Warranty

For all current owners and lessees of Class Vehicles, the Settlement provides an extension of the time and mileage limits for powertrain coverage under the applicable New Vehicle Limited Warranty for Class Vehicles. This warranty extension applies to the transmission assembly and Automatic Transmission Control Unit ("ATCU"), by adding 24 months or 24,000 miles, whichever occurs first ("Extended Warranty"), after the original powertrain coverage in the New Vehicle Limited Warranty (60 months or 60,000 miles, whichever occurs first) has expired. (Settlement Agreement ¶¶ 42, 43.) The Extended Warranty will be subject to the terms and conditions of the original Nissan New Vehicle Limited Warranty. (Settlement Agreement ¶ 56.) Notably, Defendant's financial obligations to the Class under the Extended Warranty are not capped; how much Defendant will pay for warranty repairs will depend on the extent to which Class Members experience problems with their CVTs going forward, assuring that the remedy is scaled to the scope of the problems that may be experienced.

### B. Reimbursement of Costs

The Settlement also provides that Defendant will reimburse Class Members for the portion of the costs for parts and labor paid by Class Members for replacement of, or repairs to, the transmission assembly or ATCU, if the repairs were made after the expiration of the original warranty but within the durational limits of the new Extended Warranty.[4] Costs for parts and labor actually paid by the Class Member will be reimbursed 100% if the repair was performed by an authorized Nissan dealer (Settlement Agreement ¶ 57(A)) and up to $4,750 if the repair was performed by a non-Nissan automotive repair facility. (Settlement Agreement ¶ 57(B).)

The Settlement also provides relief to Class Members who did not pay for a transmission repair within the Warranty Extension Period, but who present to the Settlement Administrator appropriate contemporaneous documentation showing that a Nissan dealer, within the Warranty Extension Period, diagnosed and recommended a repair to the transmission assembly or ATCU of the Class Vehicle. In this scenario, the Class Member is entitled to reimbursement of all costs incurred for parts and labor (subject to the $4,750 cap mentioned above for repairs by a non-Nissan automotive repair facility) if the Class Member provides the appropriate documentation that they obtained the recommended repair or replacement by January 30, 2020, or prior to the Class Vehicle exceeding 90,000 miles, whichever occurs first. (Settlement Agreement ¶ 58.)

### C. Voucher Payment

For former owners of Class Vehicles, the Settlement provides that Defendant will issue a $1,000 voucher toward the purchase or lease of a single new Nissan or Infiniti vehicle per Class Vehicle that had two or more replacements or repairs to the transmission assembly (including torque converter and/or valve body) and/or ATCU during the period of their ownership, as reflected in Nissan warranty records. (Settlement Agreement ¶¶ 12, 60.) The voucher may be used in combination with other types of valid discount offers, rebates, and incentives.

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[4] To be eligible for reimbursement, Class Members must submit a claim and appropriate documentation, created at or near the time of the qualifying repair or replacement and as part of the same transaction, establishing that that they have paid for repairs and/or replacement of the transmission assembly or ATCU. (Settlement Agreement ¶ 13, 79.)

No Class Member will be entitled to receive more than 5 vouchers. The voucher must be used within nine months of the Effective Date and is not transferrable. Class Members who are eligible for both reimbursement of out-of-pocket costs and a voucher for the same Class Vehicle must select the remedy they prefer and may not receive both benefits. (Settlement Agreement ¶¶ 62, 63.)

### D. Expedited Resolution Process Through the Better Business Bureau for Future Claims of Breaches of Warranty Related to Transmission Defects

The Settlement also provides an expedited resolution process through the BBB Auto Line for any future warranty claims related to transmission design, manufacturing or performance based solely on events that occur after the Notice Date of November 1, 2019, and preserves the right for Class Members to file a lawsuit for those who do not receive repurchases (also known as buybacks). (Settlement Agreement ¶ 20, Ex. A). This free BBB process does not bind any Class Member unless Nissan is required to repurchase their vehicle or Nissan makes a written offer to repurchase the Class Vehicle; however, all BBB decisions will be binding on Nissan, and Nissan will not have a right to appeal.

## III. Argument

Class Counsel seek an award of attorneys' fees, expenses, and service payments for each Class Representative. Such terms were separately negotiated once the principal terms for the Class were agreed upon as set forth in the Settlement Agreement. The requested amounts are modest compared to the $407 million to $547 million-dollar value of this Settlement, and they are reasonable under the legal standard applicable to assessing counsel fees, expenses, and representative service awards under Federal Rule of Civil Procedure 23(h).

## IV. Legal Standard

Rule 23(h) of the Federal Rules of Civil Procedure provides that, "[i]n a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). In the Sixth Circuit, reasonableness is the ultimate standard for setting fees, and it is the courts' affirmative responsibility to ensure "that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Rawlings v. Prudential-Bache Props*, 9 F.3d 513, 516 (6th Cir. 1993); *accord Moulton v. U.S. Steel Corp*., 581 F.3d 344, 352 (6th Cir. 2009). When

assessing the reasonableness of an award, courts in the Sixth Circuit consider the following factors: (1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides. *Moulton*, 581 F.3d at 352 (citing *Bowling v. Pfizer, Inc*., 102 F.3d 777, 780 (6th Cir. 1996)).

Trial courts have discretion to award fees based on either (1) a percentage-of-the-benefit calculation, or (2) a lodestar/multiplier approach. *Rawlings*, 9 F.3d at 516. Under the percentage-of-benefit method, the court determines a percentage of the settlement to award class counsel. *See In re Telectronics Pacing Sys. Inc*., 137 F. Supp. 2d 1029, 1041 (S.D. Ohio 2001). In the "lodestar/multiplier approach," "the court calculate[s] the reasonable number of hours submitted multiplied by the attorneys' reasonable hourly rates," which the Court then increases using a "multiplier" to account for, inter alia, the costs and risks involved in the litigation. *Id*. at 1042. "In the Sixth Circuit, it is within the discretion of the district court to decide which method to use in a given case." *Lonardo v. Travelers Indem. Co*., 706 F.2d 766, 789 (N.D. Ohio 2010) (citing *In re Sulzer Orthopedics Inc*., 398 F.3d 778, 922 (6th Cir. 2005)).

The percentage method is commonly used in common benefit cases within the Sixth Circuit. *See Manners v. Am. Gen. Life Ins. Co*., No. Civ. A 3-98-0266, 1999 WL 33581944, at *29 (M.D. Tenn. Aug. 10, 1999) ("The preferred approach to calculating attorneys' fees to be awarded in a common benefit case is as a percentage of the class benefit"); *See In Re Se. Milk Antitrust Litig*., Master File No. 2:08-MD-1000, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013) ("[T]he trend in the Sixth Circuit is towards adoption of a percentage of the fund method in common fund cases") (internal quotation omitted); *In re Skelaxin* (Metaxalone Antitrust Litig.), No. 2:12-cv-83, 2014 WL 2946459, at *1 (E.D. Tenn. June 30, 2014) (observing trend and adopting percentage of the fund approach); MANUAL FOR COMPLEX LITIGATION (Fourth) § 14.121, at 187 (2004) (noting that courts have re-embraced the percentage method after a "period of experimentation with the lodestar method."). When used in cases where the common benefit includes non-monetary relief, the value of the non-monetary common benefits may be demonstrated by expert testimony or other evidence. *See Manners*, 1999 WL 33581944, at *9 (finding

that "Settlement will provide a minimum of $169 million in economic value to the Class" based on $130.3 million valuation of policy benefits by plaintiffs' actuarial experts, plus $38.7 million to fund a dedicated claims resolution process); *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2010 WL 3341200, at *9 (W.D. Ky. 23, 2010) (estimating value of future credit monitoring portion of benefits at $7 million based on projected 30% of 2.4 million class members accepting free credit monitoring at a cost of $37 per person). While "a percentage of the class recovery . . . is the favored method of calculating attorneys' fees in class action cases[,]" courts may also use the lodestar method as a "cross-check . . . to evaluate whether the request is fair." *Salinas v. U.S. Xpress Enterprises, Inc*. Here, the fees and expenses requested by Class Counsel should be awarded because they are reasonable under both the percentage method or a lodestar/multiplier approach.

## V. The Requested Fees and Expenses Are Fair, Reasonable, and Appropriate in Light of the Results Obtained

Class Counsel should be awarded the requested fees and expenses because they are supported by weighing all six *Moulton* factors, considering the effort expended by Class Counsel in achieving this substantial result for Class Members. *See* Fed. R. Civ. Proc. 23(h) (permitting the Court to award fees "authorized by ... the parties' agreement." Fed. R. Civ. P. 23(h)).

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The five firms appointed as Class Counsel who have primarily prosecuted this Litigation are simultaneously submitting supporting declarations setting forth their hours expended, lodestar, and the amount of expenses incurred:[5]

| | Hours | Lodestar | Expenses |
|---|---|---|---|
| Capstone | 1749.4 | $928,041.00 | $31,981.79 |
| Berger Montague | 1630.9 | $985,958.45 | $39,358.60 |
| WBM | 1400.19 | $469,840.25 | $22,743.51 |
| SFMS | 616.6 | $405,697.00 | $14,267.84 |
| PSW | 559.7 | $396,511.50 | $12,601.26 |
| HGD | 1091.2 | $697,336.00 | $4,665.76 |
| KGG | | $125,812.00 | $5,905.22 |
| BGG | | $55,571.00 | $1,314.96 |
| Migliaccio & Rathod | | $33,378.00 | $2,500.00 |
| **Total** | **7047.99** | **$4,098,145.20** | **$135,338.94** |

**A. Based on the Value of the Benefits Rendered to the Class, the Requested Fee Falls Within the Range of Percentage Fees Considered Reasonable and Fair by Courts Within the Sixth Circuit.**

The award for attorneys' fees Class Counsel seeks represents just 1.36%[6] of the conservative valuation of the Settlement benefits to the Class, which is well below the range courts in the Sixth Circuit and nationwide have deemed reasonable for attorneys' fee awards.

Courts often consider the value of the settlement benefits offered to Class Members when assessing the reasonableness of fees under either the percentage method or lodestar approach. *See, e.g., Manners*, 1999 WL 33581944, at *29 (valuing minimum settlement value at $169 million, including $130.3 million in policy benefits and $38.7 million paid into claims resolution fund, then awarding $19.5

[5] The contributions of KGG, BGG, and Migliaccio & Rathod are described in the Declaration of Gary E. Mason, at ¶ 56.

[6] This figure based on Mr. Bowron's point estimate of $477,445,000. Using Mr. Bowron's valuation range of $407,122,000 and $547,767,000, the requested award is between 1.597% and 1.187% of his valuation of the extended warranty and replacement coverage.

million for fees and expenses (or 11.5% of settlement value) as reasonable under percentage approach); *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, 2010 WL 3341200, at *9 ($3.5 million fee request representing 20% of total value of settlement benefits, which included $6.5 million of funds available to class members and estimated $7 million cost of future credit monitoring, was reasonable as compared with benchmark ranges of 20-30% of total fund in common fund cases); *O'Keefe v. Mercedes-Benz United States, LLC*, 214 F.R.D. 266, 305-307 (E.D. Pa. 2003) (valuing extended warranty coverage at approximately $20 million and applying a percentage method to determine fees); *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 171 (D. Mass. 2015) (valuing benefits conferred at $101,148,498, including over $18 million for repairs and $8 million for reimbursements, along with over $73 million for the extended warranty based on "the price a class member would have paid for such a service absent settlement", then applying lodestar approach); *Alin v. Honda Motor Co*., No. 08-4825, 2012 WL 8751045, at *19 (D.N.J. Apr. 13, 2012) (valuing the settlement benefit at over $38 million based on replacement costs of item for all class vehicles covered by the warranty and applying lodestar approach). When evaluating attorneys' fee awards under the percentage method, courts in this Circuit regularly cite 20 to 50 percent as a reasonable range for attorneys' fees in common fund cases. *See In re Southeastern Milk Antitrust Litig*., 2013 WL 2155387, at *3 (E.D. Tenn. May 17, 2013) (recognizing that a fee request of one-third of the recovery "is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *Gokare v. Fed. Express Corp*., 2013 WL 12094887, at *4 (W.D. Tenn. Nov. 22, 2013); *In re Broadwing, Inc. ERISA Litigation*, 252 F.R.D. 369, 380 (S.D. Ohio); *New England Health Care Employees Pension Fund v. Fruit of the Loom*, 234 F.R.D. 627, 633 (W.D. Ky. 2006); *Wise v. Popoff*, 835 F. Supp. 977, 980 (E.D. Mich. 1993).

Here, the result achieved on behalf of the Class has been conservatively valued at between $407 million and $547 million by Plaintiffs' expert, Lee M. Bowron, ACAS, MAAA, an actuary who specializes in pricing and valuing extended service contracts and warranty extensions. (*See* Bowron Decl. ¶ 2 and Ex. 1.) The Nissan CVT Litigation involves approximately 1.678 million Nissan Sentra and Versa vehicles with an average CVT replacement cost of approximately $3,250. As previewed in the parties' joint supplemental briefing to answer the Court's questions regarding Plaintiffs' Unopposed

Motion for Preliminary Approval, Class Counsel engaged Mr. Bowron to provide the Court with a conservative value to assist it in determining whether the anticipated requested attorneys' fees in the Settlement is likely to be approved as fair, reasonable, and adequate. Based on the number of Class Vehicles, the average CVT replacement cost, the failure rate and other information, Mr. Bowron conservatively calculates the value to the Class of the key portion of the Settlement—the extended warranty and reimbursement coverage—to be between $407,122,000 and $547,767,000, with a point estimate of $477,445,000. (*See* Bowron Decl. ¶ 4 and Ex. 2.) This figure does not include the value of the other components of the Settlement, including vouchers for certain former owners, an expedited resolution process for future transmission claims, and the costs of notice and settlement administration. Moreover, to date, the Claims Administrator has received 10,297 claims for the reimbursement component of the settlement alone. (Lucchesi Decl. ¶ 16). This figure shows that class members with reimbursable expenses for qualifying repairs are responding and electing to participate in the Settlement. Overall, Class Counsel's request for $6.5 million in attorneys' fees, which amounts to 1.36%[7] of the valuation, then, is fair and reasonable as it falls far below the attorneys' fees ranging between 20 to 50 percent of funds awarded by courts in the Sixth Circuit and nationwide.

Moreover, "[t]he overall value of the settlement to the class is further illustrated by the relative lack of objections from class members to the requested fees." *See In re Se. Milk*, 2013 WL 2155387, at *3 (under first factor, reasonableness of fee was supported where no objections to the settlement and only 3 objections to fees were received from over 7,000 class members). Here, the amount of fees and expenses that would be requested was included in the Notice to Class Members and publicly available on the settlement website.[8] This Court has already ordered that the proposed Notice Program, direct mailing of the Summary Notice, and publication of the Long Form Notice, Settlement Agreement and exhibits, and the Court's Order on the settlement website constitutes due and sufficient notice of the Settlement and

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[7] This figure based on Mr. Bowron's point estimate of $477,445,000. Using Mr. Bowron's valuation range of $407,122,000 and $547,767,000, the requested award is between 1.597% and 1.187% of his valuation of the extended warranty and replacement coverage.

[8] http://www.sentraversacvtsettlement.com/frequently-asked-questions.aspx#a19 (last visited December 29, 2019).

this Order to all persons entitled thereto, and is in full compliance with the requirements of FED. R. CIV. P. 23(c), applicable law, and due process." (Preliminary Approval Order ¶ 6, ECF 102.) Significantly, only 0.028% of the class is opting out and 0.0005% is objecting. (Lucchesi Decl. ¶¶ 17-18, and ECF Nos. 112-119, 123-24, 128, 137.) Only one of the objections concerns the requested attorneys' fees, and none concern the requested expenses. Thus, evaluation of this factor weighs heavily in favor of awarding Class Counsel their requested fees. *See In re Se. Milk*, 2013 WL 2155387, at *3; *Manners*, 1999 WL 33581944, at *29; *Huguley*, 128 F.R.D. at 87. Moreover, Defendant also does not object to the requested fees and expenses, which were separately negotiated only after agreement on the material terms of relief to the Class, and the amount that is awarded by the Court will be paid by Defendant without affecting any benefits rendered to the Class. (*See* Deutsch Decl. ¶¶ 38, 40; Shah. Decl. ¶ 23, Lucchesi Decl. ¶ 11-14.) The Settlement Agreement provides that "the Parties negotiated and agreed to the amount of Attorneys' Fees and Expenses . . . for which Class Counsel could apply," and that Defendant "agree not to oppose any applications for Attorneys' Fees and Expenses of $6,500,000 or less for fees and $100,000 or less for expenses by Class Counsel." (Settlement Agreement ¶ 114-15.)

### B. The Value of the Fee Based Upon a Lodestar Cross-Check

Courts may use the lodestar method as a "cross-check" on the reasonableness of the requested fee. When doing so, the Court calculates the lodestar (the hours reasonably expended on the litigation multiplied by reasonable hourly rates), and then calculates a "multiplier" by comparing the lodestar to the amount of fees requested. *See, e.g., In re Cardinal Health, Inc. Sec. Litig*., 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007); *In re Broadwing*, 252 F.R.D. at 381. Because a reasonable multiplier above the lodestar accounts for factors such as the contingency risk of the litigation and the quality of the work performed, the multiplier reflects reasonableness of the fee. *See New York State Teacher's Retirement Sys. v. Gen. Motors Co*., 315 F.R.D. 226, 243-44 (E.D. Mich. 2016). Courts within the Sixth Circuit regularly approve lodestar multipliers of up to 4.5 and have approved multipliers as high as 10.78. *See, e.g., Manners*, 1999 WL 33581944, at *31 (M.D. Tenn. Aug. 10, 1999); *In Re Se. Milk*, 2013 WL 2155387, at *4.

Here, Class Counsel already has spent 7047.99 combined hours on this litigation. (*See* Deutsch Decl. ¶¶ 49-51, Padgett Decl. ¶ 36, Mason Decl. ¶¶ 50-52, Shah Decl. ¶ 34, Weiner Decl. ¶¶ 33-35,

Garrison Decl. ¶ 31.) As detailed in the Padgett, Deutsch, Mason, Shah, Weiner, and Garrison Declarations, these hours were reasonable and necessary to prosecuting the claims of the Class Representatives and the Class Members, relating to such tasks as interviewing clients for pre-suit investigation, discovery, and settlement; researching and drafting Complaints; briefing (and defeating) Rule 12 motions; conducting written discovery, including holding eight meet and confer negotiations and preparing a motion to compel; analyzing records and spreadsheets of information produced by Defendant; locating and vetting experts; preparing for and participating in numerous mediation sessions; engaging in extended settlement negotiations with Defendant's counsel; drafting preliminary approval papers; responding to class member inquiries, and overseeing the notice process.

At reasonable and customary rates, the hours worked by Class Counsel results in a lodestar figure of $4,098,145.20. (*See* Deutsch Decl. ¶¶ 49-51, Padgett Decl. ¶¶ 36-39, Mason Decl. ¶¶ 50-52, Shah Decl. ¶ 34, Weiner Decl. ¶¶ 33-37, Garrison Decl. ¶ 30.) Measured against the requested fee of $6.5 million, the current lodestar multiplier is therefore 1.58. Even without accounting for future work, the modest multiplier requested here reflects and reinforces the reasonableness of the requested fees, as it is substantially lower than multipliers approved as reasonable in other cases within the Sixth Circuit. *See, e.g., Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944, at *31. Accordingly, the lodestar cross-check confirms the reasonableness of the requested $6.5 million fee.

**C. Class Counsel Undertook this Litigation on a Contingency Fee Basis**

The risk of receiving little or no recovery is a major factor consistently weighed by the courts in determining attorneys' fees. When counsel brings a putative class action on a contingency fee basis, counsel assumes "a substantial risk of non-payment for legal work and reimbursement of out-of-pocket expenses advanced." *In Se. Milk*, 2013 WL 2155387, at *5. In considering a fee award, the "[f]ailure to make any provision for risk of loss may result in systemic undercompensation of plaintiffs' counsel in a class action case, where . . . the only fee that counsel can obtain is, in the nature of the case, a contingent one." *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569 (7th Cir. 1992); *see also Blum v. Stenson*, 465 U.S. 886, 902 (1984) (Brennan, J., concurring) (noting "the risk of not prevailing, and therefore the risk of not recovering any attorneys' fees, is a proper basis on which a district court may award an upward

adjustment to an otherwise compensatory fee"). Weighing this factor "accounts for the substantial risk an attorney takes when he or she devotes substantial time and energy to a class action despite the fact that it will be uncompensated if the case does not settle and is dismissed." *Lonardo*, 706 F. Supp. 2d at 796.

By pursuing Plaintiffs' and the Class' claims litigation on a contingent basis, Class Counsel assumed a significant risk that the litigation would yield no recovery and leave counsel entirely uncompensated for their time and out-of-pocket expenses. (*See* Deutsch Decl. ¶ 53, Padgett Decl. ¶ 42, Mason Decl. ¶ 54, Shah Decl. ¶ 34, Weiner Decl. ¶ 4, Garrison Decl. ¶ 33.) The three lawsuits covered by this Settlement posed a number of risks from their inception. First, such lawsuits, pending in three different jurisdictions against a sophisticated automotive manufacturer defendant, would continue to demand significant attorneys' time and expenses – as well as court resources. Second, Defendant would have argued (1) that no defect exists, or that, even if defects did exist, that the technological complexities of and changes to the design and manufacturing of the Class Vehicles preclude the existence of one common defect suitable for class treatment as alleged by Plaintiffs; (2) that the Class Vehicles are already covered under their 5 year / 60,000 mile powertrain warranty and that no implied warranties apply; (3) that the alleged defect does not constitute a safety hazard; (4) that Defendant never had a duty to disclose information about the transmission problems to Class Members; and (5) that damages are not provable. Indeed, as discussed above, the class vehicles were sold with a 5 year / 60,000-mile powertrain warranty that covered transmission repairs. Defendant would also likely argue that individual issues as to liability and damages prevail over common issues.

Notably, in a similar automotive defect action against Nissan, Judge Klausner of the United States District Court for the Central District of California denied class certification regarding a similar CVT issue in a different set of class vehicles. *Torres v. Nissan N. Am. Inc.,* 2015 WL 5170539 (C.D. Cal. Sept. 1, 2015). The court held that the claims in the action, including the omissions and warranty claims, could not be certified due individualized issues. *Id.* While Plaintiffs respectfully disagree with *Torres* and can distinguish the claims and procedural posture in this case, it nevertheless presented significant risk to Plaintiffs' counsel in pursuing the instant case on a contingency basis.

Defendant would be expected to raise all or some of these arguments throughout each stage of the litigation, posing risks that (1) the Court would deny class certification or narrow the scope of the proposed classes, (2) the Sixth Circuit would overrule any class certification order in response to a petition for interlocutory appeal, (3) the Court could exclude one or more of Plaintiffs' experts or (4) the Court could dismiss some or all of Plaintiffs' claims at summary judgment, pre-trial evidentiary motions, or during or after the presentation of evidence at trial.

Despite these risks, Class Counsel has devoted 7047.99 hours to the Nissan CVT Litigation and incurred $135,338.94 of reasonable and necessary out-of-pocket expenses. Because the fee in this matter is entirely contingent, Class Counsel shouldered a substantial risk that it could recover nothing for its efforts. Nevertheless, as supported by the Padgett, Deutsch, Mason, Shah, Weiner, and Garrison Declarations, Class Counsel devoted substantial time and money to the vigorous and ultimately successful prosecution of the Nissan CVT Litigation for the benefit of the Class Members. Thus, the contingent nature of the Class Counsel's representation strongly favors approval of the requested fee.

**D. Complexity of the Litigation**

The complexity and novelty of the factual and legal issues presented, and the settlement negotiations necessary to resolve those issues, are factors to be considered in the approval of a fee request. *See Sulzer Hip Prosthesis & Knee Prosthesis*, 268 F. Supp. 2d 907, 939 (N.D. Ohio June 12, 2003). From the outset, the cases comprising this Nissan CVT Litigation involved complex issues as to liability, causation, and class certification as described *supra*, Argument, Part III.C. Moreover, the facts underlying Plaintiffs' claims involved complicated engineering and design issues and presented significant discovery challenges given the involvement of a foreign parent corporation and a third-party supplier operating outside of the United States. The arguments Defendant would be expected to make have been successfully employed in other automobile defect class actions to defeat class certification or defeat automobile owners' claims on summary judgment. *See, e.g., Philips v. Ford Motor Co.*, No. 14-02989, 2016 WL 7428810 at *17 (N.D. Cal. Dec. 22, 2016) (finding that plaintiffs failed to present a compelling damages model supporting a class-wide determination regarding Ford's alleged omission of a "systemic defect" in the vehicle's electronic steering system); *Smith v. Ford Motor Co.*, 749 F. Supp. 2d 980, 991-

92 (N.D. Cal. 2010) (granting defendant's motion for summary judgment and finding alleged ignition-lock defect not a safety risk); *Coba v. Ford Motor Co*., No. 12-1622-KM, 2017 WL 3332264 (D.N.J. Aug. 4, 2017) (similar).

The liability case here centered on vehicles designed and manufactured in close coordination with Defendant's foreign parent company, Nissan Japan, and a transmission designed and manufactured by a third-party supplier. Despite the complications caused by essential discovery residing in the possession of foreign entities and/or third parties, Class Counsel addressed these discovery challenges by, for example, negotiating a discovery and tolling agreement whereby Nissan Japan, Defendant's foreign parent entity, agreed to be subject to discovery in exchange for a dismissal without prejudice.

As with all litigation, however, there was no guarantee that Plaintiffs would prevail. Class Counsel effectively crafted complaints sufficient to withstand Defendant's well-researched and comprehensive motion to dismiss, anticipated the hurdles Plaintiffs would face prosecuting their claims through class certification and trial, found competent expert advice and obtained critical evidence necessary to prove Plaintiffs' claims, all of which contributed to positioning the cases for a favorable settlement. This complexity factor thus also strongly supports Class Counsel's fee and expense request.

**E. Public Policy Favors the Requested Award**

"Adequate compensatory fee awards in successful class actions promote private enforcement of and compliance with important areas of" law. *See In re Broadwing*, 252 F.R.D. at 381 (citing *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985)). Therefore, "[e]ncouraging qualified counsel to bring inherently difficult and risky but beneficial class actions . . . benefits society." *In re Cardizem CD Antitrust Litig*., 218 F.R.D. 508, 534 (E.D. Mich. 2003). Here, Class Counsel pursued several separate actions in three jurisdictions with multiple plaintiffs representing a nationwide class and seven state sub-classes. As described *supra* Argument Part. III.C, D., Class Counsel prosecuted the related cases comprising the Nissan CVT Litigation to provide Class Members with a significant recovery in the form of extended warranties, reimbursement of repair costs, and vouchers to compensate former owners due to the alleged defect. Awarding the requested fee will continue to encourage highly qualified counsel to undertake time-consuming, labor-intensive, and expensive class action litigation—at

substantial monetary risk—to vindicate the rights of other vehicle owners and lessees who otherwise might have no practical means of redress against large multinational and foreign corporations that manufacture and design the vehicles that consumers rely on in their daily work and personal activities. This factor of public policy therefore supports the requested fee award.

### F. Class Counsel Are Skilled Class Action Practitioners Who Litigated Against Experienced Defense Counsel

Class Counsel submit that they have significant legal expertise, which was brought to bear in successfully prosecuting this class action and in securing the Settlement. All Class Counsel prepared declarations supporting this Motion, and included their firm resumes in doing so. (*See* Deutsch Decl. ¶¶ 5-9 and Ex. A, Padgett Decl. ¶¶ 31-34 and Ex. 1, Mason Decl. ¶¶ 4-6 and Ex. A, Shah Decl. ¶¶ 39-44 and Ex. C, Weiner Decl. ¶¶ 40-46, Garrison Decl. ¶¶ 4-6 and Ex. A). It is clear from the materials that Class Counsel has substantial expertise and decades of success nationwide in class actions and other forms of complex civil litigation on behalf of consumers.

#### 1. Berger Montague, PC

Berger Montague, PC ("Berger Montague") is a full-spectrum class action and complex civil litigation firm, with nationally known attorneys highly sought after for their legal skills. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of antitrust, securities, mass torts, civil and human rights, whistleblower cases, employment, and consumer litigation. In numerous precedent-setting cases, the firm has played a principal or lead role, and has also recovered over $30 billion dollars for its clients and the classes they have represented.) (*See* Deutsch Decl. ¶¶ 5-9 and Ex. A.)

The National Law Journal, which recognizes a select group of law firms each year that have done "exemplary, cutting-edge work on the plaintiffs' side," has selected Berger Montague in 12 out of 14 years (2003-05, 2007-13, 2015-16) for its "Hot List" of top plaintiffs'- oriented litigation firms in the United States in 12 out of 14 years. In 2018 and 2019 and , the National Law Journal recognized Berger Montague as for its "Elite Trial Lawyers" list in 2018 and 2019 after reviewing more than 300 submissions for this award. The firm has also achieved the highest possible rating by its peers and

opponents as reported in Martindale-Hubbell and was ranked as a 2019 "Best Law Firm" by U.S. News - Best Lawyers.

As part of its established and wide-ranging experience in class-action litigation generally, Berger Montague has successfully obtained a number of favorable class action settlements providing relief to automobile owners and lessees. *See, e.g., Batista v. Nissan N. Am., Inc*., No. 14-24728-RNS (S.D. Fla. June 29, 2017), ECF No. 191 (finally approving class action settlement alleging CVT defect); *Davis v. General Motors LLC,* No. 8:17-cv-2431 (M.D. Fla. 2017) (as co-lead counsel, obtained settlement alleging defects in Cadillac SRX headlights); *Yeager v. Subaru of America, Inc.*, No. 1:14-cv-04490 (D.N.J. Aug. 31, 2016) (finally approving class action settlement alleging damages from defect causing cars to burn excessive amounts of oil); *Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc*., No. ATL-1461-03 (N.J. Sup. Ct. 2007) (as co-lead counsel, obtained settlement for nationwide class alleging damages from defectively designed timing belt tensioners); *In Re Volkswagen and Audi Warranty Extension Litigation*, No. 07-md-1790-JLT (D. Mass. 2007) (obtained settlement valued at $222 million for nationwide class, alleging engines were predisposed to formation of harmful sludge and deposits leading to engine damage); *Parker v. American Isuzu Motors, Inc*., No. 030903496 (Pa. Ct. Com. Pl., Phila. Cty.) (as sole lead counsel, obtained settlement including up for damages resulting from accidents caused by faulty brakes); *Burgo v. Volkswagen of America, Inc. d/b/a Audi of America, Inc*., No. HUD-L-2392-01 (N.J. Sup. Ct. 2001) (as co-lead counsel, obtained settlement, while the decision on class certification was pending, for proposed class members alleging damages arising from defective tires prone to bubbling and bulging).

**2. Capstone Law APC**

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With over twenty seasoned attorneys, Capstone Law has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions. (Padgett Decl. ¶¶ 31-34 and Ex. 1.)

One of the largest California firms to prosecute aggregate actions on a wholly contingent basis, Capstone Law, as lead or co-lead counsel, has obtained final approval of sixty class actions valued at over $200 million dollars. Recognized for its active class action practice and cutting-edge appellate work,

Capstone Law's recent accomplishments have included three of its attorneys being honored as 2014 California Lawyer's Attorneys of the Year ("CLAY") in the employment practice area for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014).

Capstone Law has an established practice in automotive defect class actions and has obtained favorable appellate decisions and ultimate final approval of numerous class action settlements providing relief to automotive consumer owners/lessees during the last five years. *See Falco v. Nissan N. Am. Inc*., No. 13-00686-DDP (C.D. Cal. July 16, 2018), ECF No. 341 (finally approving settlement after certifying class alleging timing chain defect on contested motion); *Vargas v. Ford Motor Co*., No. CV12-08388 AB (FFMX), 2017 WL 4766677 (C.D. Cal. Oct. 18, 2017) (finally approving class action settlement involving transmission defects for 1.8 million class vehicles); *Batista v. Nissan N. Am., Inc*., No. 14-24728-RNS (S.D. Fla. June 29, 2017), ECF No. 191 (finally approving class action settlement alleging CVT defect); *Chan v. Porsche Cars N.A., Inc*., No. 15-02106-CCC (D.N.J. Oct. 6, 2017), ECF No. 65 (finally approving class action settlement involving alleged windshield glare defect); *Klee v. Nissan N. Am., Inc*., No. 12-08238-AWT (PJWx), 2015 WL 4538426, at *1 (C.D. Cal. July 7, 2015) (settlement involving allegations that Nissan Leaf's driving range, based on the battery capacity, was lower than was represented by Nissan); *Asghari v. Volkswagen Grp. of Am*., Inc., No. 13-cv-02529-MMM-VBK, 2015 WL 12732462 (C.D. Cal. May 29, 2015) (class action settlement providing repairs and reimbursement for oil consumption problem in certain Audi vehicles); *Aarons v. BMW of N. Am., LLC*, No. CV 11-7667 PSG (CWX), 2014 WL 4090564 (C.D. Cal. Apr. 29, 2014), objections overruled, No. CV 11-7667 PSG CWX, 2014 WL 4090512 (C.D. Cal. June 20, 2014) (class action settlement providing up to $4,100 for repairs and reimbursement of transmission defect in certain BMW vehicles).

**3. Whitfield Bryson & Mason, LLP**

WBM is dedicated to representing plaintiffs in class actions, mass torts, and individual cases in courts throughout the United States. Founded in January 2012, the firm was created by a merger of three firms each of which had been representing plaintiffs for decades. The firm has offices in Washington, D.C.; Raleigh, North Carolina; Nashville, Tennessee; and Madisonville, Kentucky, and WBM attorneys have extensive experience litigating in this Court and the Fourth Circuit. (*See* Mason Decl. ¶¶ 4-6 and Ex.

A.)

WBM has served as lead counsel or co-lead counsel in numerous auto defect class, including *Berman et. al. vs. General Motors, LLC*, No. 2:18-CV-14371 (S.D. Fla. 2019) (national settlement for repairs, reimbursement of costs incurred, and a warranty extension for certain Chevrolet Equinoxes and GMC Terrains that suffered from excessive oil consumption; valued at a minimum of $42.3 million); *In re General Motors Corp. Speedometer Prods. Liability Litig*., MDL 1896 (W.D. Wash. 2007) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective speedometers), *Lubitz v. Daimler Chrysler Corp.*, No. L-4883-04 (Bergen Cty. Super. Ct, New Jersey 2006) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective brake system; creation of $12 million fund; seventh largest judgment or settlement in New Jersey in 2006), *Baugh v. Goodyear,* Civil Action No. 00-L-1154 (Cir. Ct. Madison Cty. (Illinois, 2002) (class settlement of claims that Goodyear sold defective tires that are prone to tread separation when operated at highway speeds; Goodyear agreed to provide a combination of both monetary and non-monetary consideration to the Settlement Class in the form of an Enhanced Warranty Program and Rebate Program)

WBM's attorneys have frequently served as lead counsel or co-lead counsel or performed other leadership roles in class actions of national significance. For example, WBM currently serves as Co-Lead Counsel in the Hill's Pet Food MDL,[9] Co-lead Counsel in the Lumber Liquidators Durability MDL,[10] Co-Lead Counsel in the Pella Windows & Doors MDL[11] and, in the Chinese Drywall MDL,[12] served as Co-Chair of the Science and Expert Committee, Co-Chair of the Insurance Committee, and a member of the trial team for the bell-weather trials. WBM has significant experience in data breach cases, and it is

[9] *In Re: Hill's Pet Nutrition, Inc. Dog Food Products Liab. Litig.*, MDL No. 2887 (D. Kansas).

[10] *In re: Lumber Liquidators Chinese-Manufactured Flooring Durability Marketing and Sales Practice Litig.*, MDL No. 2743 (N.D. Va.)

[11] *In Re: Pella Corporation Architect and Designer Series Windows Marketing, Sales Practices and Products Liab. Litig.*, MDL No. 2514 (D.S.C.)

[12] *In re: Chinese Manufactured Drywall Products Liability Litig.*, MDL No. 2047, No. 2:09-md-02047 (E.D. La.).

currently serving as Liaison Counsel in the Office of Personal Management (OPM) data breach litigation,[13] currently represents 14 bell-weather plaintiffs in the Marriott data breach litigation,[14] and previously served as Co-Lead counsel in In Re: Department of Veterans Affairs (VA) Data Theft Litigation, MDL No. 1796, No. 1:06-mc-00506 (D.D.C.) and In re Google Buzz Privacy Litig., No. 10-cv-00672-JW (N.D. Cal., filed Feb. 17, 2010).

**4. Shepherd, Finkelman, Miller & Shah, LLP**

SFMS is an established law firm with an international reach and reputation. The firm focuses on delivering the highest level of service possible to our clients throughout the world. The firm has been at the forefront of automotive defect class action litigation and has a deep bench of litigators, engineering consultants and project managers that work efficiently and effectively to achieve significant results. As a result of their national reputations, SFMS's lawyers are regular speakers at conferences and seminars regarding class actions. Information about SFMS can be found at www.sfmslaw.com and a copy of SFMS's firm resume is attached as Exhibit C to the Declaration of James Shah.

One of the firms' founders, James C. Shah, presented the appellate arguments in a significant automotive defect case, arguing on behalf of plaintiff in *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168 (9th Cir. 2010), where the court reversed a denial of class certification and held that there is no requirement that a majority of class members' vehicles manifested the results of the defect. SFMS had led the fight as Lead Class Counsel against vehicles manufacturers in numerous cases *throughout the United States*, including: *In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation*, MDL No. 2540 (D.N.J.) ($60 million common fund settlement of claims involving defective diesel emissions control technology); *Q+Food v. Mitsubishi Fuso Truck of America, Inc*., 3:14-cv-06046 (D.N.J.) ($17.5 million common fund settlement of claims involving defective diesel emissions control technology); *In re: Ford Motor Co. Spark Plug and 3-Valve Engine Products Liability Litigation*, 1:12-md–02316 (N.D. Oh.) (nationwide settlement of engine defect claims); *In re: Michelin North America, Inc. PAX System*

[13] *In Re: U.S. Office of Personnel Management Data Security Breach Litig.*, MDL 2664 (D.D.C).

[14] *In re: Marriott International Inc., Customer Data Security Breach Litig.*, MDL No. 19-md-2879 (D. Md).

*Marketing and Sales Practices Litigation*, MDL No. 1911 (D. Md.) (nationwide settlement of vehicle defect claims); *Chandran v. BMW of North America, LLC, et al.,* Case No. 2:08-CV-02619 (D.N.J.) (nationwide settlement of tire defect claims); *In re Land Rover LR3 Tire Wear Prods. Liab. Litig.,* MDL No. 2008 (C.D. Cal.) (nationwide settlement of alignment defect claims); *Henderson, et al. v. Volvo Cars of N.A., LLC*, 2:09-cv-04146 (D.N.J.) (nationwide settlement of defective transmission claims); *Riaubia v. Hyundai Motor America, Inc*., 2:16-cv-05150-CDJ (E.D.PA) (nationwide settlement of defective Smart Trunks).

Additionally, SFMS is currently serving as Co-Lead Class Counsel in several pending cases, including: *BK Trucking Co. v. Paccar Engine Co*., et al., No. 1:15-cv-02282-RMB-AMD (D.N.J.) (defective diesel emissions control technology); *T.J. McDermott Transportation Co., Inc. v. Cummins, Inc. et al*, 2:14-cv-04209-MCA-LDW (defective diesel emissions control technology); and *Patlan v. BMW of North America, Inc*., 2:18-cv-09456-CCC-MF (D.N.J.)(defective blower motors).

SFMS's attorneys have frequently served as lead counsel or co-lead counsel in trying significant complex class actions as well as led qui tam cases of national significance, including most recently, in *United States ex rel. Arnstein and Senousy v. Teva Pharmaceuticals USA, Inc*., No. 1:13-cv-03702-CM-OTW (S.D.N.Y.) ($54 million dollar settlement of claims that "speaker programs" were used to pay physician speakers unlawful compensation).[15] SFMS has also tried three class action trials in the past several years, including: *Bowerman, et al. v. Field Asset Services, LLC*, Case No. C13-00057 WHO (N.D. Ca. 2017); *Healthcare Strategies, Inc., et al v. ING Life Insurance and Annuity Company*, Case No. 3:11-cv-00282 (WGY) (D. Conn. 2013); and *CGC Holding Company, LLC, et al. v. Sandy Hutchens, et al*., Civil Action No. 11-cv-01012-RBJ (D. Col. 2017)).

[15] *See also Rodman v. Safeway Inc*., 3:11-cv-03003 (N.D. Ca.) ($43 million judgment on behalf of class); *In re: LG Front Load Washing Machine Class Action Litig*., 2:08-cv-00051 (D.N.J.) (nationwide settlement of washing machine defect claims); *D'Andrea v. K. Hovnanian, et al*., L-734-06 (Sup. Ct. NJ) ($21 million common fund settlement of claims involving defective HVAC systems); *Koertge, et al. v. LG Electronics USA, Inc*., No. 2:12-cv-6204 (D.N.J.) (nationwide settlement of stereo defect claims); *Leiner v. Johnson & Johnson Consumer Companies, Inc*., 15-cv-5876 (N.D. Ill.) (nationwide settlement of false advertising claims).

### 5. Pearson, Simon & Warshaw, LLP

Pearson, Simon & Warshaw, LLP ("PSW") is an AV-rated civil litigation firm with offices in Los Angeles, San Francisco and Minneapolis. The firm specializes in complex litigation, including state coordination cases and federal multi-district litigation. Its attorneys have extensive experience in antitrust, securities, consumer protection, and unlawful employment practices. The firm handles national and multi-national class actions that present cutting edge issues in both substantive and procedural areas. PSW attorneys understand how to litigate difficult and large cases in an efficient and cost-effective manner, and they have used these skills to obtain outstanding results for their clients, both through trial and negotiated settlement. They are recognized in their field for excellence and integrity, and are committed to seeking justice for their clients. Information about PSW can be found at www.pswlaw.com and a copy of PSW's firm resume is attached as Exhibit A to the Declaration of Melissa S. Weiner.

Melissa S. Weiner, partner in the Minneapolis office of PSW has been working diligently on behalf of the Class in this matter. Ms. Weiner has litigated a diverse body of class actions—including consumer protection, product defect, intellectual property, food litigation, automotive, false advertising and Fair Credit Reporting Act.

Ms. Weiner currently chairs the Plaintiffs' Executive Committee ("PEC") in *In Re Santa Fe Natural Tobacco Company Marketing & Sales Practices and Products Liability Litigation*, 1:16-md-02695-JB-LF (D.N.M.), a case involving the false and deceptive marketing of tobacco products. In that role, she is solely responsible for leading and directing pretrial matters, including the delegation of common benefit work responsibilities to PEC members. She had a substantial role in strategizing and preparing the opposition to the motion to dismiss and was lead in arguing that motion, resulting in a 249-page order favorable to the plaintiffs. Additionally, Ms. Weiner leads all strategy related to class certification. Ms. Weiner has been named class counsel—and achieved significant results for consumers in deceptive labeling and product defect cases, including: *Frohberg v. Cumberland Packing Corp.*, No. 1:14-cv-00748-KAM-RLM (E.D.N.Y.); *Martin et al. v. Cargill, Inc.*, Civil No. 1:14-cv-00218-LEKBMK (D. Haw.); *Gay v. Tom's of Maine, Inc.*, 0:14-cv-60604-KMM (S.D. Fla.); *Baharestan v. Venus Laboratories, Inc. d/b/a Earth Friendly Products, Inc.*, 315-cv-03578-EDL (N.D. Cal.); *Barron v.*

*Snyder's-Lance, Inc.*, 0:13-cv-62496-JAL (S.D. Fla.).

Ms. Weiner also helped worked to effectuate a settlement in In re IKO Roofing Shingles Products Liability Litigation, Court File No. 09-md-2104 (C.D. Ill.), a multidistrict litigation on behalf of consumers who purchased IKO shingles which allegedly over time began to deteriorate, causing damage to the underlying structures on which the shingles were installed. The plaintiffs overcame the defendants' motion to dismiss as well as motion for summary judgment, and prevailed in two appeals before the Seventh Circuit.

Ms. Weiner was appointed to the plaintiffs' steering committee ("PSC") in *In Re Samsung Top-Load Washing Machine Marketing, Sales Practices & Product Liability Litigation*, 5:17-md-02792 (W.D. Okla.), a nationwide class action regarding a design defect in 2.8 million top loading washing machines, which resulted in a nationwide settlement. Ms. Weiner was also appointed to the PSC in *In Re Windsor Wood Clad Window Product Liability Litigation*, 16-MD-02688 (E.D. Wis.), a nationwide class action regarding allegedly defective windows. Ms. Weiner assisted lead counsel in successfully resolving the action.

PSW's partners have held leadership roles in numerous significant cases. *See* Ex. A. PSW's leadership experience in the largest and most complex cases demonstrates that it has the resources needed to litigate actions effectively and expeditiously. For example, the firm recently served as co-lead counsel in *In re Credit Default Swaps Antitrust Litigation* (S.D.N.Y.), which settled claims against a dozen of the world's largest banks for a total of $1.8 billion; *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D. Cal.), an international cartel case that settled for over $473 million; and *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation* (N.D. Cal.), which settled damages claims for $208 million, and which the firm took to trial—where it prevailed—on claims seeking injunctive relief. PSW attorneys currently serve as Class Counsel in *Trepte v. Bionaire, Inc.*, Los Angeles County Superior Court, Case No. BC540110, a settled certified class action alleging that the defendant sold defective space heaters. The complaint alleges that defendant breached the warranty and falsely advertised the safety of the heaters due to design defects that cause the heaters to fail. As a result of the failure, the heaters may spark, smoke and catch fire. PSW reached a significant result on behalf of the class. Additionally, in

*Hart v. Central Sprinkler Corporation*, Los Angeles County Superior Court, Case No. BC176727, PSW attorneys served as class counsel in a consumer class action arising from the sale of nine million defective fire sprinkler heads. This case resulted in a nationwide class settlement valued at approximately $37.5 million.

**6. Heninger Garrison Davis, LLC**

HGD was formed over thirteen years ago and has been growing in case load, clients represented, staff numbers, and attorney numbers ever since. With over twenty-three seasoned attorneys in three offices, HGD has the experience, resources, and expertise to successfully prosecute complex consumer actions. Federal and State courts routinely appoint its attorneys to serve as leaders in national litigation. Many serve as directors and officers of local, state, and national bar organizations.

HGD's lawyers focus on complex consumer class actions, pharmaceutical and medical device mass torts, multi district litigation, business torts, patent litigation, and single event litigation. HGD's most senior lawyers began practicing more than 35 years ago and are still practicing with HGD today. HGD's attorneys spend considerable time litigating consumer class actions and many have been appointed class counsel by State and Federal Courts nationwide. Currently, several of its lawyers are sitting as members of leadership groups in nationwide multi district litigations. HGD's active and past case list is attached as Exhibit A to the Garrison Declaration.

**7. Defendant's Counsel**

Courts also consider the quality of opposing counsel when evaluating services provided by plaintiffs' counsel. *See In re Se. Milk*, 2013 WL 2155387, at *4 ("Class counsel have efficiently and competently managed their enormous tasks and have vigorously and effectively prosecuted the case on behalf of the class. They have also been opposed by equally experienced and highly competent counsel for defendants and have achieved an excellent result for their clients."); *Dick v. Sprint Commc'ns Co., L.P.*, 297 F.R.D. 283, 301 (W.D. Ky. 2014) ("Counsel for both sides are skilled attorneys who brought extensive experience and knowledge to their motion practice, the fairness hearing, and the bargaining table."). Here, Defendant is represented by highly qualified counsel. Defendant's lawyers are from three large national law firms, Drinker, Biddle & Reath, LLP; Baker, Donelson, Bearman, Caldwell &

Berkowitz, PC; and Bradley Arant Boult Cummings LLP, well-known for their vigorous advocacy in defending complex civil actions and in class action lawsuits. Defense counsel mounted formidable opposition in this Litigation, including Rule 12 motions; vigorously contested discovery negotiations; and months of negotiation over settlement terms. Class Counsel largely defeated Defendant's Rule 12 motions, and the ability of Class Counsel to achieve such a favorable settlement in the face of determined, skilled opposition attests to the quality of Class Counsel's work. Accordingly, this factor of the skill of defense counsel also strongly favors the requested fee award.

### G. The Court Should Approve Class Counsel's Request for Expenses

"Class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document productions, consulting with experts and consultants, travel and other litigation-related expenses." *In re Countrywide*, 2010 WL 3341200, at *12 (quoting *In re Cardizem*, 218 F.R.D. at 535); *see In re Broadwing*, 252 F.R.D. at 382 (awarding requested expenses as "reasonable and necessary expenses, including photocopying, postage, travel, lodging, filing fees and Pacer expenses, long distance telephone, telecopier, computer database research, deposition expenses, and expert fees and expenses"). Here, Class Counsel respectfully requests that the Court reimburse only 74% of the expenses actually incurred. Class Counsel seek reimbursement of $100,000 for their expenses, the amount agreed to by Defendants and communicated to Class Members through the Notice Plan, although out-of-pocket expenses incurred total $135,338.94. (*See* Deutsch Decl. ¶ 54, Padgett Decl. ¶ 43, Mason Decl. ¶ 55, Shah Decl. ¶ 36, Weiner Decl. ¶¶ 36, Garrison Decl. ¶ 34.) These include costs and expenses for filing fees, postage, research fees, subpoena fees, service of process, expert fees, mediation fees, and travel expenses associated with court appearances and mediation. Class Counsel incurred these charges with no guarantee of reimbursement. All these charges were fair, reasonable, and incurred for the benefit of the Class. Class Counsel seeks reimbursement for only $100,000 (74% of actual expenses totaling $135,338.94), which Defendant agreed to pay, and which therefore should be awarded.

### H. Service Awards of $5,000 to Each of the Ten Class Representative Are Appropriate

Class Representatives Patricia Cruz, Michelle Falk, Cynthia Garrison, Indhu Jayavelu, Michael Knotts, Waldo Leyva, Amanda Macri, Danielle Trotter, Patricia Weckwerth, and Pamela Pritchett request service awards of $5,000 each for their contributions to the Litigation. Payment of a service award to the putative class representative is appropriately awarded as compensation for named Plaintiff's undertaking the risk and expense of litigation to advance the class' interests. *In re Cardizem CD Antitrust Litig*., 218 F.R.D. at 535 (noting that service payments "are common in class actions"). Such awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and to recognize their willingness to act as private attorneys general." *In re Se. Milk*, 2013 WL 2155387 at *8 (quoting *Rodriguez v. West Publ'g Corp*., 563 F.3d 948, 958-59 (9th Cir. 2009)); *see Thornton v. E. Tex. Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) ("[T]here is something to be said for rewarding those [plaintiffs] who protest and help to bring rights to [others]").

In evaluating requests for service awards, district courts in the Sixth Circuit consider, *inter alia*, the actions the named plaintiff have taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the named plaintiff expended in pursuing the litigation. *See Gascho v. Glob. Fitness Holdings, LLC*, No. 2:11-CV-436, 2014 WL 1350509, at *27 (S.D. Ohio Apr. 4, 2014), *report and recommendation adopted*, No. 2:11-CV-00436, 2014 WL 3543819 (S.D. Ohio July 16, 2014), *aff'd*, 822 F.3d 269 (6th Cir. 2016). Service awards that are paid separately from the benefits rendered to the Class also indicates reasonableness of the award. *See Paxton v. Bluegreen Vacations Unlimited*, No. 3:16-CV-523, 2019 WL 2067224, at *3 (E.D. Tenn. May 9, 2019).

Here, all of these factors support the requested awards. The Class Representatives made substantial contributions to the litigation, including sharing their experiences and evidence with Class Counsel, reviewing pleadings, responding to extensive written discovery, assisting counsel in fact investigation necessary to develop the case and negotiate settlement terms, making their vehicles available for testing and inspection. The Class Representatives worked with Class Counsel to preserve

evidence. Moreover, the Class Representatives reviewed and agreed to the terms of the Settlement before it was executed. (*See* Deutsch Decl. ¶¶ 39, 55; Padgett Decl. ¶¶ 23, 45; Mason Decl. ¶¶ 39, 56; Shah Decl. ¶¶ 17, 45; Weiner Decl. ¶¶ 17, 45; Garrison Decl. ¶¶ 20, 36.) As a direct result of the Class Representatives' efforts and their willingness to pursue this action, substantial benefits have been achieved on behalf of the Class. These requested service payments have received no objections and are within the range of awards granted in other complex litigation in this Circuit. *See, e.g.*, *Gascho*, 2014 WL 1350509, at *26 (gathering cases approving awards from $2,500 to 55,000); *In re Regions Morgan Keegan Sec., Derivative & ERISA Litig*., No. 2:09-MD-2009-SMH, 2014 WL 12808031, at *6 (W.D. Tenn. Dec. 24, 2014) (awarding $10,000 each to two named plaintiffs); *Paxton*, 2019 WL 2067224, at *3 (awarding $5,000 to each of two named plaintiff as amounts "within what other courts have found proper.").

Thus, service awards of $5,000 to each of the ten Class Representatives, totaling $50,000, are justified and reasonable, and should be awarded.

## VI. Conclusion

Based on the foregoing, Class Counsel respectfully requests that the Court grant Class Counsel's requested awards of: (1) $6,500,000 in attorneys' fees; (2) $100,000 in expenses; and (3) $50,000 in service awards, in the amount of $5,000 each to Class Representatives Patricia Cruz, Michelle Falk, Cynthia Garrison, Indhu Jayavelu, Michael Knotts, Waldo Leyva, Amanda Macri, Danielle Trotter, Patricia Weckwerth, and Pamela Pritchett.

Dated: January 24, 2020 Respectfully submitted,

/s/ Cody R. Padgett

Raúl Pérez
Tarek H. Zohdy
Cody R. Padgett
Trisha K. Monesi
**CAPSTONE LAW APC**
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Tel.: (310) 556-4811

Fax: (310) 943-0396
Email: Raul.Perez@capstonelawyers.com
Tarek.Zohdy@capstonelawyers.com
Cody.Padgett@capstonelawyers.com
Trisha.Monesi@capstonelawyers.com

Lawrence Deutsch
Russell D. Paul
Jeffrey Osterwise
**BERGER MONTAGUE PC**
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel.: (215) 875-3000
Fax: (215) 875-4604
Email: ldeutsch@bm.net
rpaul@bm.net
josterwise@bm.net

Caroline Ramsey Taylor
John C. Whitfield
**WHITFIELD BRYSON & MASON, LLP**
518 Monroe Street
Nashville, TN 37208
Telephone: (615) 921-6500
Facsimile: (615) 921-6501
caroline@wbmllp.com
john@wbmllp.com

Gary E. Mason
**WHITFIELD BRYSON & MASON, LLP**
5101 Wisconsin Ave., NW
Suite 305
Washington, D.C. 20016
T: (202) 429-2290
F: (202) 429-2294
gmason@wbmllp.com

Natalie Finkelman
James C. Shah
**SHEPHERD, FINKELMAN, MILLER & SHAH, LLP**
35 East State Street
Media, PA 19063
T: (610) 891-9880
F: (866) 300-7367
nfinkelman@sfmslaw.com
jshah@sfmslaw.com

Melissa S. Weiner
**PEARSON, SIMON & WARSHAW, LLP**
800 LaSalle Avenue, Suite 2150
Minneapolis, MN 55402
T: (612) 389-0601
F: (612) 389-0610
mweiner@pswlaw.com

Taylor C. Bartlett
W. Lewis Garrison, Jr.
Christopher B. Hood
**HENINGER GARRISON DAVIS, LLC**
2224 1st Ave North
Birmingham, AL 35203
T: (205) 308-0790
F: (205) 326-3332
taylor@hgdlawfirm.com
wlgarrison@hgdlawfirm.com
chood@hgdlawfirm.com

Nicholas A. Migliaccio
Jason S. Rathod
**MIGLIACCIO & RATHOD, LLP**
412 H Street N.E., Ste. 302
Washington, DC 20002
T: (202) 470-3520
F: (202) 800-2730
nmigliaccio@classlawdc.com
jrathod@classlawdc.com

Daniel Calvert, Esq.
Catherine S. Blackshear, Esq.
**PARKER WAICHMAN, LLP**
27300 Riverview Center Boulevard
Suite 103
Bonita Springs, Florida 34134
T: (239) 390-1000
F: (239) 390-0055
dcalvert@yourlawyer.com
cblackshear@yourlawyer.com

Gary S. Graifman, Esq.
Jay I. Brody, Esq.
**KANTROWITZ GOLDHAMER & GRAIFMAN, P.C**.
747 Chestnut Ridge Road, Suite 200
Chestnut Ridge, New York 10977
T: (845) 356-2570
F: (845) 356-4335
ggraifman@kgglaw.com
jbrody@kgglaw.com

Shimon Yiftach (SBN 277387)
Peretz Bronstein
**BRONSTEIN, GEWIRTZ & GROSSMAN**
1925 Century Park East, Suite 1990
Los Angeles, CA 90067
T: (424) 322-0322
F: (212) 697-7296
shimony@bgandg.com
peretz@bgandg.com

*Attorneys for Plaintiffs*