IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MINERVA MARTINEZ, SANDRA SCOTT, CARL GRAHAM, ANNE PARYS, DAVID ORTIZ, SEAN CHAMBERS AND TIFFANY JAMES, individually, and on behalf of a class of similarly situated individuals, Plaintiffs, v. NISSAN NORTH AMERICA INC., a Delaware corporation, Defendant.	Case No.: 3:22-cv-00354 District Judge Eli J. Richardson Courtroom 5C

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

I. Facts and Procedural History 2

A. Brief Overview of the Litigation and Settlement Negotiations 2

B. Preliminary Approval and Claims Status 4

II. Settlement Benefits 4

A. Extended Warranty 5

B. Reimbursement for Out-of-Pocket Costs 5

C. Voucher Payments 6

III. Argument 6

IV. Legal Standard 6

V. The Requested Fees and Expenses Are Fair, Reasonable, and Appropriate in Light of the Results Obtained 8

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 9

B. The Value of the Fee Based Upon a Lodestar Cross-Check 12

C. Class Counsel Undertook this Litigation on a Contingency Fee Basis 13

D. Complexity of the Litigation 14

E. Public Policy Favors the Requested Award 15

F. Class Counsel Are Skilled Class Action Practitioners Who Litigated Against Experienced Defense Counsel 16

1. Berger Montague PC 16

2. Capstone Law APC 17

3. Pearson Warshaw, LLP 18

4. Miller Shah, LLP 20

5. Maddox & Cisneros, LLP 21

6. Defendant's Counsel 23

G. The Court Should Approve Class Counsel's Request for Expenses 23

H. Service Awards of $5,000 to Each of the Class Representative Are Fair and Reasonable 24

VI. CONCLUSION 25

TABLE OF AUTHORITIES

FEDERAL CASES

Aarons v. BMW of N. Am., LLC, No. CV 11-7667 PSG (CWX), 2014 WL 4090564 (C.D. Cal. Apr. 29, 2014) 18

Alin v. Honda Motor Co., No. 08-4825, 2012 WL 8751045 (D.N.J. Apr. 13, 2012) 10

Asghari v. Volkswagen Grp. of Am., Inc., No. 13-cv-02529-MMM-VBK, 2015 WL 12732462 (C.D. Cal. May 29, 2015) 18

Bateman Eichler, Hill Richards, Inc. v. Berner, 472 U.S. 299 (1985) 15

Blum v. Stevens, 465 U.S. 886 (1984) 13

Bowling v. Pfizer, Inc., 102 F.3d 777 (6th Cir. 1996) 7

Coba v. Ford Motor Co., No. 12-1622-KM, 2017 WL 3332264 (D.N.J. Aug. 4, 2017) 11, 15

Dick v. Sprint Commc'ns Co., L.P., 297 F.R.D. 283 (W.D. Ky. 2014) 24

Gascho v. Glob. Fitness Holdings, LLC, No. 2:11-CV-436, 2014 WL 1350509 (S.D. Ohio Apr. 4, 2014) 26

Gokare v. Fed. Express Corp., 2013 WL 12094887 (W.D. Tenn. Nov. 22, 2013) 10

Huguley v. General Motors Corp., 128 F.R.D. 81 (E.D. Mich. 1989), aff'd, 925 F.2d 1464 (6th Cir. 1991) 7, 12

In re Cardinal Health, Inc. Sec. Litig., 528 F. Supp. 2d 752 (S.D. Ohio 2007) 12

In re Cardizem, 218 F.R.D. 508 (E.D. Mich. 2003) 15, 24, 25

In re Cont'l Ill. Sec. Litig., 962 F.2d 566 (7th Cir. 1992) 13

In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig., No. 3:08-MD-01998, 2010 WL 3341200 (W.D. Ky. 23, 2010) 8, 10, 24

In re Regions Morgan Keegan Sec., Derivative & ERISA Litig., No. 2:09-MD-2009-SMH, 2014 WL 12808031 (W.D. Tenn. Dec. 24, 2014) 26

In Re Se. Milk Antitrust Litig., Master File No. 2:08-MD-1000, 2013 WL 2155387 (E.D. Tenn. May 17, 2013) ..... passim

In re Skelaxin (Metaxalone Antitrust Litig.), No. 2:12-cv-83, 2014 WL 2946459 (E.D. Tenn. June 30, 2014) 8

In re Southeastern Milk Antitrust Litig., 2013 WL 2155387 (E.D. Tenn. May 17, 2013) 10

In re Sulzer Orthopedics Inc., 398 F.3d 778 (6th Cir. 2005) 8

In re Telectronics Pacing Sys. Inc., 137 F. Supp. 2d 1029 (S.D. Ohio 2001) 7, 8

In re Volkswagen & Audi Warranty Extension Litig., 89 F. Supp. 3d 155 (D. Mass. 2015).....10

Klee v. Nissan N. Am., Inc., No. 12-08238-AWT (PJWx), 2015 WL 4538426 (C.D. Cal. July 7, 2015).....18

Lonardo v. Travelers Indem. Co., 706 F.2d 766 (N.D. Ohio 2010).....8, 13

Manners v. Am. Gen. Life Ins. Co., No. Civ. A 3-98-0266, 1999 WL 33581944 (M.D. Tenn. Aug. 10, 1999).....8, 9, 12, 13

Moulton v. U.S. Steel Corp., 581 F.3d 344 (6th Cir. 2009).....7

New England Health Care Employees Pension Fund v. Fruit of the Loom, 234 F.R.D. 627 (W.D. Ky. 2006).....10

New York State Teacher's Retirement Sys. v. Gen. Motors Co., 315 F.R.D. 226 (E.D. Mich. 2016).....12

O'Keefe v. Mercedes-Benz United States, LLC, 214 F.R.D. 266 (E.D. Pa. 2003).....10

Paxton v. Bluegreen Vacations Unlimited, No. 3:16-CV-523, 2019 WL 2067224 (E.D. Tenn. May 9, 2019).....26

Philips v. Ford Motor Co., No. 14-02989, 2016 WL 7428810 (N.D. Cal. Dec. 22, 2016).....15

Rawlings v. Prudential-Bache Props, 9 F.3d 513 (6th Cir. 1993).....7

Rodriguez v. West Publ'g Corp., 563 F.3d 948 (9th Cir. 2009).....25

Smith v. Ford Motor Co., 749 F. Supp. 2d 980 (N.D. Cal. 2010).....15

Sulzer Hip Prosthesis & Knee Prosthesis, 268 F. Supp. 2d 907 (N.D. Ohio June 12, 2003).....14

Thornton v. E. Tex. Motor Freight, 497 F.2d 416 (6th Cir. 1974).....25

Wise v. Popoff, 835 F. Supp. 977 (E.D. Mich. 1993).....10

STATE CASES

Iskanian v. CLS Transportation Los Angeles, LLC, 59 Cal. 4th 348 (2014).....18

FEDERAL STATUTES

Fed. R. Civ. P. 23(h).....7, 9

Fed. R. Civ. Proc. 23(h) 9

SECONDARY AUTHORITIES

Manual for Complex Litigation (Fourth) § 14.121 (2004) 8

Plaintiffs Minerva Martinez, Sandra Scott, Carl Graham, Anne Parys and David Ortiz ("Altima Plaintiffs"), and Sean Chambers and Tiffany James ("Sentra-Versa Plaintiffs") (collectively, "Class Representatives"), on behalf of themselves and on behalf of a preliminarily certified Settlement Class of current and former owners and lessees of 2017-2018 Nissan Altima vehicles and model year 2018-2019 Nissan Sentra, Versa, and Versa Note vehicles (collectively, the "Class Vehicles"), submit this Motion for Attorneys' Fees, Costs and Class Representative Service Awards. The Class Representatives request that the Court award: (1) $3,478,291.07 in attorneys' fees, (2) $21,708.93 for out-of-pocket litigation expenses to Class Counsel, and (3) service awards of $5,000 to each Class Representative (for a total of $35,000).

INTRODUCTION

The Class Representatives and Class Counsel achieved a settlement on behalf of approximately 2,003,819 Class Members. The extended warranty component of the settlement alone provides a $251,000,000 to $338,900,000 benefit to the Class. *See* Declaration of Lee M. Bowron, Ex. I ("Bowron Report"), at p. 3))[1]. Mr. Bowron's declaration and expert report are being filed concurrently herewith.

This settlement directly addresses and wholly resolves the underlying claims in Plaintiffs' complaint. ECF 1. Specifically, under the settlement, all owners and lessees of a Class Vehicle will receive a 24 month / 24,000-mile extended warranty. The settlement also requires Nissan North America, Inc. ("Nissan" or "Defendant") to reimburse Class Members who submit documented claims for costs paid by the Class Member for the repair/replacement of the transmission assembly or automatic transmission control unit ("ATCU")[2]. Current and former owners of Class Vehicles who had two or more replacements or repairs to the transmission assembly or ATCU during their ownership experience are also eligible for a Voucher in the amount of $1,000 for either a purchase or lease of a single new Nissan or Infiniti vehicle. This excellent settlement is the result of Class Counsel's diligent work and was achieved only after hard-fought negotiations with the assistance of Hunter R. Hughes III, a mediator nationally

[1] The value of the extended warranty to the Class ranges from $251,000,000 to $338,900,000 with a point estimate of $294,902,000.

[2] Provided the repairs were made after the expiration of the original warranty but within the durational limits of the new Extended Warranty.

recognized for his work in class actions.

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 by a lodestar crosscheck. Class Counsel's request should be granted.

I. Facts and Procedural History

A. Brief Overview of the Litigation and Settlement Negotiations

This class action lawsuit was originally filed on December 29, 2021, in the United States District Court for the Southern District of California (No. 3:21-cv-02146-L-DEB). After meeting and conferring with Nissan's counsel regarding Nissan's current state of incorporation, the initial lawsuit was dismissed without prejudice and refiled in the instant jurisdiction, Nissan's current state of incorporation. *See* Declaration of Melissa S. Weiner in Support of Plaintiffs' Motion for Final Approval of the Class Action Settlement and Motion for Attorneys' Fees, Costs, and Service Awards ("Weiner Decl.") ¶ 13.

This case is similar to other CVT lawsuits that have been filed, some of which have been resolved in this district.[3] Both before and after this action was filed, Plaintiffs thoroughly investigated and researched the CVT as implemented and equipped in the Class Vehicles. This investigation enabled Plaintiffs' Counsel to evaluate Plaintiffs' claims regarding the functioning of these CVTs. *See*, *generally*, *id.* ¶¶ 11-12. Plaintiffs researched materials and information provided by the National Highway Traffic Safety Administration (NHTSA) concerning consumer complaints about the CVTs in the Class Vehicles. *Id.* Additionally, they reviewed and researched consumer complaints and discussions of transmission problems in articles and forums online, in addition to various manuals and technical service bulletins

[3] The allegations in the instant lawsuit are substantially similar to those in the *Weckwerth* and *Stringer* matters, both of which received approval of settlements in this district. *See Weckwerth* Approval Order; No. 3:18-cv-00588, ECF No. 181(Order and Judgment Granting Final Approval of Class Action Settlement and Award of Attorneys' Fees, Costs, Expenses and Representative Service Awards); *Stringer* Preliminary Approval Order, No. 3:21-cv-00099, ECF No. 75; *Gann v. Nissan North America, Inc.*, No. 3:18-cv-00966, ECF No. 130(Order and Judgment Granting Final Approval of Class Action Settlement and Award of Attorneys' Fees, Costs, Expenses and Representative Service Awards); *see also Falk v. Nissan North America, Inc.*, No. 4:17-cv-04871 (N.D. Cal.).

("TSBs") discussing the alleged defect. *Id.* Furthermore, Plaintiffs obtained and reviewed discovery from Nissan including spreadsheets with thousands of rows of data, including warranty and sales data, information about the transmissions in the Class Vehicles, and the costs of the necessary repairs for the alleged CVT failures. *Id* at ¶12.

In addition, prior to filing and over the course of litigation, Counsel responded to numerous drivers of CVT-equipped Nissan Vehicles who contacted Plaintiffs' Counsel to report problems with their CVTs. Plaintiffs' Counsel also conducted detailed interviews with Class Members regarding their pre-purchase research, purchasing decisions, and repair histories, reviewed repair invoices and other documents and developed a plan for litigation and settlement based in part on Class Members' reported experiences with their Class Vehicles and with Nissan dealers. *Id.* at ¶ 11.

The Parties agreed to an early mediation with Mr. Hunter R. Hughes III, Esq., an experienced mediator who also mediated the *Weckwerth* and *Stringer* matters.[4] *Id.* ¶ 14. In April 2022, the Parties' counsel traveled to Atlanta, Georgia, to conduct an in-person mediation before Mr. Hughes. In preparation, the parties exchanged additional information and each prepared and submitted detailed submissions to Mr. Hughes. Plaintiffs' counsel conducted additional research regarding the scope of the alleged defect, the contours of the prospective classes, and research into the claims of the putative class representatives and class members alike. *Id.* Following a full day, in-person mediation, including hard-fought and arms'-length negotiations, an agreement in principle was reached and a term sheet was signed as an interim step soon thereafter. *Id.* With the case settled in principle, following the mediation, via telephone and email, the parties continued to engage in settlement discussions to resolve the fine details of the Settlement Agreement, the release(s), and claims administration. *Id.* ¶ 15.

All of the terms of the Settlement were (1) the result of extensive good-faith and hard-fought negotiations between knowledgeable and skilled counsel; (2) entered into after extensive factual investigation and legal analysis; and (3) in the opinion of experienced class counsel, fair, reasonable, and adequate. Counsel believes the Settlement Agreement is in the best interests of the Settlement Class

[4] *See Weckwerth v. Nissan North America, Inc. and Nissan Motor Co., Ltd.*, No. 3:18-cv-00588 (M.D. Tenn.).

Members and should be approved by the Court. *Id.* ¶¶ 15.

B. Preliminary Approval and Claims Status

On August 1, 2022, 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, Pearson, Simon & Warshaw, LLP (as of January 1, 2023, Pearson Warshaw, LLP); Miller Shah, LLP; Capstone Law APC; Berger Montague PC; and Maddox & Cisneros, 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 August 17, 2022, the Court granted the Motion for Preliminary Approval (Preliminary Approval Order, ECF No. 31.) Following the entry of the Preliminary Approval Order, the Claims Administrator sent, by U.S. First Class Mail, approximately1,482,295 Class Notices to Class Members. (Declaration of Lana Cooper re Notice Procedures ("Cooper Decl.") ¶ 10.) The Administrator also re-sent 54,045 Class Notices with an updated address. (*Id.* at ¶¶ 12, 13.) Significantly, to date, only 13 of the 2,003,819 Class Members, or 0.00065% percent, have chosen to opt out and only 1 has submitted a purported, unsigned objection. Cooper Decl. ¶¶ 18, 19.

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, if any. Based on their work in connection with the prior settlements (described above), Class Counsel expects that they will expend hundreds, if not thousands, of hours after the filing of this Motion delivering services to Class Members, including counseling class members about their claims and resolving any contested claims issues with Nissan's counsel. Weiner Decl. ¶ 16.

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/lessees of Class Vehicles, Nissan agrees to extend the time and mileage durational limits for powertrain coverage under the applicable New Vehicle Limited Warranty for Class Vehicles, to the extent it applies to the transmission assembly and ATCU, by 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. *See* Declaration of Melissa Weiner in Support of Motion for Preliminary Approval, ¶ 12; ECF No. 22-2 (Settlement Agreement) ¶ 50. The Extended Warranty will be subject to the terms and conditions of the original Nissan New Vehicle Limited Warranty. Settlement Agreement, ¶ 51. Notably, Nissan's financial obligations to the Class under the Extended Warranty are not capped; how much Nissan will pay for warranty repairs will depend on the extent to which Class Members will experience problems with their CVTs going forward. The extended warranty component of the settlement has a value of between $251,000,000 and $338,900,000. (*See* Bowron Report. at p. 3).

B. Reimbursement for Out-of-Pocket Costs

Nissan will reimburse Class Members for either all or a portion of the costs for parts and labor actually paid by the Class Member for replacement of, or repairs to, the transmission assembly or automatic transmission control unit ("ATCU") if the repairs were made after the expiration of the original warranty but within the durational limits of the new Extended Warranty. 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 ¶ 52) and up to a cap of $5,000 if the repair was performed by a non-Nissan automotive repair facility (*id.*). To be eligible for reimbursement, Class Members will be required to submit a claim with 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 out of pocket for parts and labor for qualifying repairs and/or replacement of the transmission assembly or ATCU. *Id.* ¶ 53.

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 of a Nissan Diagnosis establishing 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 (subject to the $5,000 cap set forth above for repairs by a non-Nissan automotive repair facility) if the Class Member obtains the repair and provides the appropriate documentation that he or she obtained the recommended repair or replacement within 90 days of the Notice Date and prior to the Class Vehicle exceeding 90,000 miles, whichever occurs first. *Id.* ¶ 53.

C. Voucher Payments

Current and former owners of Class Vehicles who had two (2) or more replacements or repairs to the transmission assembly (including the valve body and torque converter) or ATCU during their ownership experience (as reflected by NNA warranty records) are eligible for a Voucher in the amount of $1,000 for either a purchase or lease of a single new Nissan or Infiniti vehicle. *Id.* ¶ 55.

No Class Member will be entitled to receive more than 5 vouchers. *Id.* ¶ 57. The voucher must be used within 9 months of the Effective Date and is not transferrable. *Id.* ¶¶ 55, 40. 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. *Id.* ¶ 58.

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. Weiner Decl. ¶ 14. The requested amounts are modest compared to the $251,000,000 to $338,900,000 value of this Settlement's extended warranty component, 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 attorneys' fees and expenses requested by Class Counsel should be awarded because they are reasonable under both the percentage method and 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 $3,500,000 in 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)).

///

As detailed further below and in Class Counsel's supporting declarations, the hours expended, lodestar, and amount of expenses incurred are:

Firm	Hours	Lodestar	Expenses
Pearson Warshaw, LLP	396.0	$338,989.50	$4,333.15

Miller Shah, LLP	289.4	$219,712.50	$5,851.87
Capstone Law APC	587.2	$369,145.00	$5,940.72
Berger Montague	637.5	$308,249.50	$5,319.38
Maddox & Cisneros, LLP	587.2	$216,250.00	$263.81
Milberg Coleman Bryson Phillips Grossman	9.9	$5,969.00	$0.00
TOTAL		**$1,458,315.50**	**$21,708.93**

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 1.18%[5] 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 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

[5] This is figure based on Mr. Bowron's point estimate of $294,902,000. Using Mr. Bowron's valuation range of $251,000,000 and $338,900,000 , the requested award is between 1.03% and 1.39% of his valuation of the extended warranty and replacement coverage.

$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 items 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 Litig*., 252 F.R.D. 369 (S.D. Ohio 2006*); 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 $251,000,000 and $338,900,000 by Plaintiffs' expert, Lee M. Bowron, ACAS, MAAA, an actuary who specializes in pricing and valuing extended service contracts and warranty extensions. (*See* Bowron Report generally.) The Settlement involves approximately 1,002,168 Class Vehicles, and the average retail price cost of the extended warranty is $294.

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 $251,000,000 and $338,900,000, with a point estimate of $294,902,000.(*See* Bowron Report at p. 3) This figure does not include the value of the other components of the Settlement, including vouchers, and the costs of notice and settlement administration. Class Counsel's request for $3,478,291.07 in attorneys' fees, which amounts to 1.03% to 1.39% of value of the settlement's extended warranty component, 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 since December 15, 2022.[6] 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 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 ¶¶ 1-19, ECF 31.) Significantly, while the deadline to opt-out or object is still a month away, to date, only 13 of the 2,003,819 Class Members, or 0.00065% percent, have chosen to opt out and only 1 has lodged an "objection" to the Settlement. Cooper Decl. ¶¶ 18, 19. The Parties will address the substance of any objections after the deadline for objections has been reached, pursuant to the schedule set in the Court's Preliminary Approval order.

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. They attorneys' fees and costs 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.

///

[6] http://www.altimasentraversacvtsettlement2022.com.

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 over 2507.2 combined hours on this litigation. (*See* Cisneros Decl. ¶ 20, Deutsch Decl. ¶ 20, Finkelman Decl. ¶ 20, Weiner Decl. ¶ 25, Zohdy Decl. ¶ 21, and Milberg Decl. ¶ 9.) As detailed in counsel's declarations, these hours were reasonable and necessary to prosecute the claims of the Class Representatives and the Class Members, relating to such tasks as interviewing clients for pre-suit investigation, discovery, including review and analysis of documentation and information related to the technical differences in transmissions in the various Nissan models, the number of vehicles for each Nissan model in the settlement, and warranty-related information for each Nissan model, such as the number of warranty claims made, paid, and rejected and amounts paid, aggregated by model and model year, and interviewing Nissan engineer Chris Brown[7]; researching and drafting Complaints; analyzing records and spreadsheets of information produced by Defendant; preparing for and participating in mediation; engaging in extended settlement negotiations with Defendant's counsel; drafting preliminary approval papers; and overseeing the notice process.

At reasonable and customary rates, the hours worked by Class Counsel results in a lodestar figure

[7] Chris Brown has been with Nissan North America, Inc., since January of 2002. Mr. Brown first served as an Engineer and promoted to an Engineering Manager for Field Quality Investigations in September 2015. Among other things, Mr. Brown's department coordinated investigations related to CVT issues and recommended countermeasures.

of $1,458,315.50. (*See* Cisneros Decl. ¶ 20, Deutsch Decl. ¶ 20, Finkelman Decl. ¶ 20, Weiner Decl. ¶ 25, Zohdy Decl. ¶ 21, and Milberg Decl. ¶ 9.) Measured against the requested award of $3,478,291.07 for fees, the current lodestar multiplier is therefore 2.39. Even without accounting for future work, including the preparation of the instant motions and upcoming settlement approval related tasks, as well as the great deal of post-settlement work required on behalf of class members seeking assistance regarding claims submissions, 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 $award.

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 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. This is because the litigation posed a number of risks. For example, Defendant would almost certainly 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 powertrain warranty and that there are no applicable implied warranties ; (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 probable.

Defendant would raise all or some of these arguments throughout each stage of the litigation, posing significant 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, in connection with pre-trial evidentiary motions, or during or after the presentation of evidence at trial.

Despite these risks, Class Counsel has devoted over 2507.2 hours of time on the litigation and incurred $21,708.93 of reasonable and necessary out-of-pocket expenses. (*See* Cisneros Decl. ¶ 20, Deutsch Decl. ¶ 20, Finkelman Decl. ¶ 20, Weiner Decl. ¶ 25, Zohdy Decl. ¶ 21, and Milberg Decl. ¶ 9.) Because the fee in this matter is entirely contingent, Class Counsel shouldered a substantial risk that it could recover nothing for its efforts. Nevertheless, Class Counsel devoted substantial time and money to the vigorous and ultimately successful prosecution of the 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 them, 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, this litigation involved complex issues as to liability, causation, and class certification as described *supra*. 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).

As with all litigation, there was no guarantee that Plaintiffs would prevail. Class Counsel effectively crafted a well-researched complaint, anticipated the hurdles Plaintiffs would face prosecuting their claims through class certification and trial, and obtained critical evidence necessary to prove Plaintiffs' claims, all of which contributed to positioning the cases for a favorable settlement. This complexity factor 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).

Class Counsel pursued the instant case to provide Class Members with a significant recovery in the form of extended warranties, reimbursement of repair costs, and vouchers. 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 for 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 and Local Counsel prepared declarations supporting this Motion, and included their firm resumes in doing so. (*See* Cisneros Decl. ¶ 2, Deutsch Decl. ¶ 2, Finkelman Decl. ¶ 2, Weiner Decl. ¶ 2, Zohdy Decl. ¶ 2, and Coleman Decl. ¶ 3.) 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 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 nationwide for its skill and experience in major complex litigation, including in 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 recovered over $30 billion dollars for its clients and the classes they have represented.) (*See* Deutsch Decl. ¶¶ 2-5 and Ex. 1.) 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, 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 (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 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 thirty seasoned attorneys, Capstone Law has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions. (*See* Zohdy Decl. ¶¶ 2-6 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 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) (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 (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 (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. Pearson Warshaw, LLP

Pearson Warshaw, LLP ("Pearson Warshaw") 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. Pearson Warshaw attorneys understand how to litigate difficult and large cases in an efficient and cost-effective manner, are recognized in their field for excellence and integrity, and are committed to seeking justice for their clients. Information about Pearson Warshaw can be found at www.pwfirm.com, and a copy of Pearson Warshaw's firm resume is attached as Exhibit 1 to the Declaration of Melissa S. Weiner filed concurrently herewith.

Melissa S. Weiner, partner in the Minneapolis office of Pearson Warshaw 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. Ms. Weiner has also 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, along with co-counsel, negotiated a related class action settlement providing relief to owners/lessees of Nissan vehicles in *Weckwerth, et al. v. Nissan North America, Inc*., Case No. 3:18-cv-00588 (M.D. Tenn, Mar. 10, 2020) (finally approving settlement on behalf of millions of Nissan drivers with alleged transmission defects). Ms. Weiner, as co-lead counsel, also helped to effectuate a landmark $21 million settlement in *In Re Fairlife Milk Products Marketing And Sales Practices Litigation*, Northern District of Illinois, MDL No. 2909, on behalf of a class of purchasers of fairlife-brand milk products who were allegedly subjected to false and misleading representations regarding the treatment of the dairy cows. Likewise, she was appointed to the plaintiffs' steering committee ("PSC") in *In Re Samsung TopLoad 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, and 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.

Pearson Warshaw's partners have held leadership roles in numerous significant cases, including serving 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 (which the United States Supreme Court Affirmed 9-0, *NCAA v. Alston*, 141 S.Ct. 2141 (2021)).

4. Miller Shah, LLP

Miller Shah, LLP 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, Miller Shah's lawyers are regular speakers at conferences and seminars regarding class actions. Information about Miller Shah can be found at www.millershah.com a copy of the firm resume is attached as Exhibit 1 to the Finkelman Declaration.

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. Miller Shah lawyers have 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 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, Miller Shah is currently serving as Co-Lead Class Counsel in several pending cases, including: *Patlan v. BMW of North America, Inc*., 2:18-cv-09456-CCC-MF (D.N.J.) (defective blower motors) and *Clark, et al., v. American Honda Motor Co*., Inc., No. 2:20-cv-03147-AB-MRW (C.D.Cal.) (deceleration defects).

Miller Shah'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-CMOTW (S.D.N.Y.) ($54 million dollar settlement of claims that "speaker programs" were used to pay physician speakers unlawful compensation).[8] Miller Shah attorneys have 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)).

5. Maddox & Cisneros, LLP

Established in 1975 by founding Partner, Robert C. Maddox, Maddox & Cisneros, LLP's practice focuses on litigation and trial work in civil matters representing clients in state and federal courts, including single plaintiff, joinder, and class action claims against negligent manufacturers and suppliers of consumer products. Maddox & Cisneros handles complex construction defect cases both on a class action basis and joinder actions, securities cases, personal injury cases, and other consumer protection matters.

In relation to automotive class action settlements, Maddox & Cisneros recently served as co-class counsel in the *Wylie, et al. v. Hyundai Motor America,* No. 8:16-cv-02102-DOC (C.D. Cal. Mar. 02,

[8] *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).

2020) (finally approving settlement on behalf of hundreds of thousands of Hyundai drivers with alleged transmission defects). Maddox & Cisneros has also served as co-counsel in the following class actions: *George v. Uponor Corp*., Case No. CIV. 12-249 ADM/JJK, 2015 WL 5255280 (D. Minn. Sept. 9, 2015) (representing homeowners throughout the country, Nevada excluded, with defective plumbing components in their residence, namely Uponor yellow brass fittings); *In re Wirsbo Non-F1807 Yellow Brass Fittings*, Case No. 2:08-CV-1223-NDF-MLC, 2015 WL 13665077 (D. Nev. Oct. 26, 2015) (representing homeowners throughout the state of Nevada with defective plumbing components in their residence, namely Uponor yellow brass fittings); *Verdejo v. Vanguard Piping Systems*, Case No. BC448383 (Cal. Superior Court Sept. 2014) (resolved claims surrounding defective plumbing fittings installed in homes throughout Nevada, California, and the United States against Vanguard Piping Systems). Maddox & Cisneros has served as class counsel in numerous construction defect cases in Nevada. In Nevada, our firm has recovered more that $225 Million on behalf of Nevadans victimized by faulty construction.

Maddox & Cisneros has further appeared before and argued cases in the California Superior Court, the Nevada District Court, the Nevada Supreme Court and the Ninth Circuit Court of Appeals. Significant appellate decisions successfully argued by our firm include: *Wardleign v. Second Judicial Dist. Court*, 111 Nev. 345, 891 P.2d 1180 (1995)(addressing issues surrounding discovery of attorney-client privilege in homeowners' association meetings and minutes); *McKeeman v. General Am. Life Ins. Co*., 111 Nev. 1042, 899 P. 2d 1124 (1995)(reversing trial court's dismissal of claims for proceeds under a life-insurance policy); *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000)(discussion of economic loss doctrine and strict products liability on claims preceding NRS Chapter 40); *Burch v. District Court*, 118 Nev. 438, 49 P.3d 647 (2002)(finding terms of homebuyers' warranty an unconscionable adhesion contract); *Desert Fireplaces Plus, Inc. v. Eighth Judicial Dist. Court*, 120 Nev. 632, 97 P.3d 607 (2004)(tolling statutes of limitation as to dissolved corporation); *Webb v. Shull*, 270 P.3d 1266, 2012 Nev. LEXIS 22, 128 Nev. Adv. Rep. 8 (Nev. 2012)(no showing of mental state required for application of treble damages from a finding seller failed to disclose defects in the sale of a home); *Vanguard Piping Sys. v. Eighth Judicial Dist. Court* (Nev. 2013) 309 P.3d 1017, 129 Nev. Adv. Rep. 63

(2014)(Vanguard defendants compelled to produce their insurance policies despite pending appeal contesting jurisdiction); *Barrett v. The Eight Judicial District Court*, 130 Nev. Adv. Rep. 65 (August 7, 2014)(NRS Chapter 40 Notice not required prior to the filing of a "fourth-party" complaint against a supplier); and *High Noon at Arlington Ranch Homeowners Ass'n v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 402 P.3d 639 (Nev. 2017)(Associations have representational standing to represent unit owners who purchase their units after the litigation commences).

6. Defendant's Counsel

Courts 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, Faegre Drinker Biddle & Reath, LLP, well-known for its vigorous advocacy in defending complex civil actions and in class action lawsuits. Defense counsel mounted formidable opposition in this litigation and would have vigorously fought class certification and the merits of the underlying claims had the parties not reached settlement. 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 $21,708.93 for their expenses, an amount encompassed within the amount communicated to Class Members through the Notice Plan. (*See* Cisneros Decl. ¶ 20, Deutsch Decl. ¶ 20, Finkelman Decl. ¶ 20, Weiner Decl. ¶ 25, Zohdy Decl. ¶ 21, and Milberg Decl. ¶ 9.) These include costs and expenses for filing fees, postage, research fees, service of process, expert fees, mediation fees, and travel expenses. Class Counsel incurred these charges with no guarantee of reimbursement. These charges were fair, reasonable, and incurred for the benefit of the Class, and Class Counsel's request for payment of $21,708.93 in costs should therefore be awarded.

H. Service Awards of $5,000 to Each of the Class Representative Are Fair and Reasonable

The Class Representatives 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's 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]"). Courts in this District have approved similar awards. *See Weckwerth* Approval Order; No. 3:18-cv-00588, ECF No. 181(Order and Judgment Granting Final Approval of Class Action Settlement and Award of Attorneys' Fees, Costs, Expenses and Representative Service Awards); *Gann v. Nissan North America, Inc.*, No. 3:18-cv-00966, ECF No. 130 (Order and Judgment Granting Final Approval of Class Action Settlement and Award of Attorneys' Fees, Costs, Expenses and Representative Service Awards).

In evaluating requests for service awards, district courts in the Sixth Circuit consider, *inter alia*, the actions the named plaintiffs 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*, 2014 WL 1350509, at *27 (S.D. Ohio Apr. 4, 2014), *report and recommendation adopted*, 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 seven Class Representatives (Minerva Martinez, Sandra Scott, Carl Graham, Anne Parys, David Ortiz, Sean Chambers and Tiffany James) reviewed pleadings; assisted counsel in fact investigation necessary to develop the case and negotiate settlement terms; and reviewed and agreed to all terms of the Settlement before it was executed. (*See* Cisneros Decl. ¶ 24, Deutsch Decl. ¶ 24, Finkelman Decl. ¶ 24, Weiner Decl. ¶ 28, and Zohdy Decl. ¶ 25.) 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 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 each to the seven Class Representatives ($35,000.00 total) are justified and reasonable, and they should be awarded.

VI. CONCLUSION

Accordingly, Class Counsel respectfully request that the Court grant Class Counsels' requested awards of: (1) $3,478,291.07 in attorneys' fees, (2) $21,708.93 for out-of-pocket litigation expenses to Class Counsel, and (3) service awards of $5,000 to each Class Representative (for a total of $35,000).

Dated: January 12, 2023

Respectfully submitted,

/s/ Gregory F. Coleman

Gregory F. Coleman
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC
800 South Gay Street Suite 1100
Knoxville, TN 37929
T: 865-247-0080
F: 865-522-0049
gcoleman@milberg.com

Melissa S. Weiner (*pro hac vice*)
PEARSON WARSHAW, LLP
328 Barry Avenue South, Suite 200
Wayzata, MN 55391
T: 612-389-0600
F: 612- 389-0610
mweiner@pwfirm.com

Tarek H. Zohdy (*pro hac vice*)
Cody R. Padgett (*pro hac vice*)
Laura E. Goolsby (*pro hac vice*)
CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
T: 310-556-4811
F: 310- 943-0396
Tarek.Zohdy@capstonelawyers.com
Cody.Padgett@capstonelawyers.com
Laura.Goolsby@capstonelawyers.com

Norberto J. Cisneros, Esq. (*pro hac vice*)
Barbara McDonald, Esq.
MADDOX & CISNEROS, LLP
3230 S. Buffalo Drive, Suite 108
Las Vegas, NV 89117
T: 702-366-1900
F: 702-366-1999
ncisneros@mic-law.com

James C. Shah (*pro hac vice*)
Natalie Finkelman Bennett (*pro hac vice*)
MILLER SHAH LLP
1845 Walnut Street, Suite 806

Philadelphia, PA 19103
T: 866-540-5505
F: 866-300-7367
jcshah@millershah.com
nfinkelman@millershah.com

Lawrence Deutsch (*pro hac vice*)
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
T: 215-875-3062
F: 215- 875-4604
ldeutsch@bm.net

Attorneys for Plaintiffs and the Class

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused a copy of the foregoing to be served upon the following counsel of record by the Court's ECF system, this MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, and CLASS REPRESENTATIVE SERVICE AWARDS, on the 12th day of January, 2023.

John S. Hicks
BAKER DONELSON, BEARMAN, CALDWELL & BERKOWITZ, P.C.
211 Commerce Street, Suite 800
Nashville, Tennessee 37201
jhicks@bakerdonelson.com

E. Paul Cauley, Jr.
S. Vance Wittie
FAEGRE DRINKER BIDDLE & REATH LLP
1717 Main Street, Suite 5400
Dallas, Texas 75201
paul.cauley@faegredrinker.com
vance.wittie@faegredrinker.com

Bradley J. Andreozzi
320 S. Canal Street, Suite 3300
Chicago, Illinois 60606
bradley.andreozzi@faegredrinker.com

Attorneys for Defendant Nissan North America, Inc.

/s/ Gregory F. Coleman
Gregory F. Coleman