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

PLAINTIFFS' RESPONSE IN SUPPORT OF
FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Plaintiffs[1] submit this Response in support of the Motion for Final Approval of Class Action Settlement[2] (ECF No. 48, "Motion for Final Approval") and Motion for Attorneys' Fees, Costs/Expenses, and Class Representative Service Awards (ECF No. 50, "Motion for Attorneys' Fees"). This Response provides an update regarding the response to the Motion for Final Approval and Motion for Attorneys' Fees, rebuts the six purported objections to the Settlement and updates the Court regarding the attorney time spent administering the Settlement. Of the six purported objections, two have since been withdrawn (Gregory J. Capello and Da'Lisa Lynette Bennett confirmed they intended to opt out of the Settlement, and *not* object, *see* Section III.A below), and the remaining four fit into the following three categories:

Category[3]	Purported Objector Name(s)
Length of Warranty Extension	Mark David Nieto
Reimbursement for Incidental/Consequential Damages	Patricia Robbins, Duane Cox
Settlement Eligibility Requirements	Eric Vinson

For the reasons set forth in greater detail below, the Court should overrule all objections, and issue an order approving the Settlement and awarding the attorneys' fees, costs, and service awards in full.

[1] "Plaintiffs" collectively refers to Minerva Martinez, Sandra Scott, Carl Graham, Anne Parys and David Ortiz ("Altima Plaintiffs"), and Sean Chambers and Tiffany James ("Sentra-Versa Plaintiffs").

[2] All capitalized terms used herein are the same as those used in the Settlement Agreement, ECF No. 22-2.

[3] For illustrative purposes, the chart above groups each Class Member's *principal* grievance by major category of objection. Although these Class Members may have had multiple such grievances to the Settlement, in the interest of avoiding repetition, the Plaintiffs believe it is more efficient to respond to each category of objection raised than to repeat their responses to each individual Class Member's multiple overlapping objections.

II. THE RESPONSE TO THE SETTLEMENT OF THE CLASS IS EXCELLENT AND SUPPORTS FINAL APPROVAL

The objection and opt-out deadline expired on February 13, 2023. Only 0.06%[4] of Class Members have requested exclusion ("opted out") and 0.0002%[5] have objected.[6] Such a small number of objections and opt outs, particularly for a settlement class of this size, demonstrates in itself the fairness, adequacy, and reasonableness of the Settlement. *Whitford v. First Nationwide Bank*, 147 F.R.D. 135, 141 (W.D. Ky. 1992) ("[t]he small number of objectors is a good indication of the fairness of the settlement") (citing *Laskey v. Int'l Union*, 638 F.2d 954 (6th Cir. 1981)); *McGee v. Continental Tire N. Am., Inc.*, No. CIV. 06-6234(GEB), 2009 WL 539893 (D.N.J. Mar. 4, 2009) (75 opt outs from a class of 285,998 shows that "the Class [ ] strongly favors approval of the Settlement"); *Yaeger v. Subaru of Am.*, No. 14-4490-JBS, 2016 WL 4541861, at *14 (D.N.J. Aug. 31, 2016) (finding favorable class reaction where 28 class members objected out of 665,730 class notices or 0.005% and 2,328 individuals (or 0.35%) opted out); *McLennan v. LG Electronics USA, Inc.*, No. 2:10-CV-03604 WJM, 2012 WL 686020, at *6 (D.N.J. Mar. 2, 2012) (107 opt-outs out from a class of 418,411 favored approval of settlement); *Skeen v. BMW of N. Am.*, No. 13-

[4] The Settlement Administrator received 1,334 requests for exclusion. *See* Second Supplemental Declaration of Lana Cooper RE: Exclusion Requests, ECF No. 71. Of these, 5 requests did not include a signature; 2 requests did not include a signature or a VIN; 2 requests did not include a VIN; and 51 requests reflect a VIN that is not a Class Vehicle included in the Class List. *Id.* The Settlement Administrator will include the total valid number of requests for exclusion in a Supplemental Report to be filed in advance of the Final Approval Hearing. While the validity of the aforementioned 60 requests for exclusions remain questionable, Plaintiffs nonetheless count the total 843 requests for exclusion in calculating this percentage. As more fully set forth in Plaintiffs' Motion for Final Approval, there are 2,003,819 Class Members. *See* Motion for Final Approval, ECF No. 49 at p. 9, n.3.

[5] As discussed more fully herein, six purported objections to the Settlement were received. *See* Declaration of Melissa S. Weiner filed concurrently herewith ("Weiner Decl."), ¶ 4. Two of which have since been withdrawn. *See Id.* ¶ 5; *see also* Section III.A below. While the validity of the remaining objections remains questionable, Plaintiffs nonetheless count the four remaining objections in calculating this percentage.

[6] Notably, there were no objections to the Motion for Attorneys' Fees. *See* Weiner Decl. ¶ 6; *see also* Section IV below.

1531-WHW, 2016 WL 4033969, at *8 (D.N.J. July 26, 2016) (finding favorable class reaction when 123 out of 186,031 recipients of class notices opted out, and 23 submitted objections).

Indeed, "[a] certain number of . . . objections [and opt-outs] are to be expected in a class action . . . If only a small number are received, the fact can be viewed as indicative of the adequacy of the settlement," and "[a] court should not withhold approval of a settlement merely because some class members object." *In re Skechers Toning Shoe Prods. Liab. Litig.*, No. 3:11-MD-2308-TBR, 2013 WL 2010702, at *7 (W.D. Ky. May 13, 2013) (citations omitted). Here, "[t]hat the overwhelming majority of class members have elected to remain in the Settlement Class, without objection, constitutes the 'reaction of the class,' as a whole, and demonstrates that the settlement is 'fair, reasonable, and adequate.'" *In re Cardizem CD Antitrust Litig*., 218 F.R.D. 508, 527 (E.D. Mich. 2003) (citation omitted).

The opt out and objection rates in this case are extremely low, just as they have been in other automotive settlements approved by federal courts, including in this Court against Defendant Nissan North America, Inc. *See, e.g., Weckwerth v. Nissan North America, Inc.*, No. 3:18-cv-00588 (M.D. Tenn.), Dkt. No. 181 (Order Granting Final Approval) (0.028%, 822 opt outs, 2,967,384 class members); *Norman v. Nissan North America, Inc.*, No. 3:18-cv-00534 (M.D. Tenn.), Dkt. No. 123 (Order Granting Final Approval) (0.025%, 59 opt outs, 237,099 class members); *Stringer v. Nissan North America, Inc.*, No. 3:21-cv-00099 (M.D. Tenn.), Dkt. No. 126 (Order Granting Final Approval) (0.047%, 1,716 opt outs, 3,678,041 class members); *Gann v. Nissan North America, Inc.*, No. 3:18-cv-00966 (M.D. Tenn.), Dkt. No. 130 (Order Granting Final Approval) (0.058%, 1,589 opt outs, 2,722,194 class members); *Batista v. Nissan North America, Inc.*, No. 1:14-cv-24728-RNS, Dkt. No. 191 (Order Granting Final Approval) (0.032%, 94 opt outs, 289,267 class members) (S.D. Fla. June 29, 2019); *see also Eisen v. Porsche Cars N. Am.*,

No. 11-09405-CAS, 2014 WL 439006, at *5 (C.D. Cal. Jan. 30, 2014) (0.1% opt out rate; "Although 235,152 class notices were sent, 243 class members have asked to be excluded, and only 53 have filed objections to the settlement."); *Milligan v. Toyota Motor Sales, U.S.A., Inc*., No. C 09-05418 RS, 2012 WL 10277179, at *7 (N.D. Cal. Jan. 6, 2012) (finding favorable reaction where 364 individuals opted out [0.06%] and 67 filed objections [0.01%] following a mailing of 613,960 notices); *Browne v. Am. Honda Motor Co*., No. 09-06750-MMM, 2010 WL 9499072, at *14 (C.D. Cal. July 29, 2010) (finding favorable class reaction where, following a mailing of 740,000 class notices, 480 (0.065%) opted out and 117 (0.016%) objected).

By granting preliminary approval (*see* ECF No. 31), this Court has already determined that the Settlement Agreement is fair, reasonable and adequate, subject to consideration of objections. With only four objections—or 0.0002% of the Settlement Class—all lacking in merit as described below, the Court's preliminary assessment has been separately endorsed by the Settlement Class. Accordingly, this Court should grant final approval.

III. THE COURT SHOULD OVERRULE THE FOUR OBJECTIONS TO THE SETTLEMENT

In any litigation involving a large class, an absence of objections would be "extremely unusual." *See In re NASDAQ Market-Makers Antitrust Litig*., 187 F.R.D. 465, 478 (S.D.N.Y. 1998) (observing that "[i]n litigation involving a large class, it would be 'extremely unusual' not to encounter objections."). Here, only four individuals—out of 2,003,819—have objected to the Settlement. The objections can be classified into three distinct categories: (1) complaints about the sufficiency of the extended warranty (*i.e*., that it should cover more miles or years); (2) complaints that the Settlement should reimburse incidental or consequential damages (*i.e.*, a down payment on a new car or repairs from an accident); and (3) complaints about the eligibility requirements of the Settlement (*i.e.*, the CVT Defect arose after the 84,000-mile limit).

A. Two Objections Have Been Withdrawn

After further consideration and clarification by Settlement Class Counsel, Gregory J. Capello (who did not file his letter with the Court, *see* Weiner Decl. Ex. A)[7] and Da'Lisa Lynette Bennett (*see* ECF No. 66) have withdrawn their purported objections. *See* Weiner Decl. ¶ 5, Exs. C (Capello), D (Bennett). Indeed, these two individuals sought to opt out of the Settlement rather than object. *Id*. As such, the Court need not consider these purported objections and Class Counsel respectfully requests that the Court find that these two individuals are opt outs.

B. The Court Should Overrule the Objection to the Length of the Extended Warranty

Mark David Nieto submitted an objection (*see* ECF No. 64) to the Settlement arguing that the extended warranty is insufficient and does not cover repairs far enough into the future. As a general matter, this type of objection amounts to little more than second-guessing of the parties' determination that the Settlement benefit of a warranty extension of 24 months or 24,000 miles to 84 months or 84,000 miles total is fair in light of the allegations in the complaint and the risks of further litigation. This cannot serve as a basis for sustaining the objection, since Mr. Nieto could simply have opted out if he falls outside of the coverage period. *See Alin v. Honda Motor Co*., No. 08-4825, 2012 WL 8751045, at *15 (D.N.J. Apr. 13, 2012) ("It was reasonable to exclude older, more traveled vehicles from coverage, and these objectors are free to opt out of the settlement and pursue new litigation if they so desire."). Indeed, Mr. Nieto's issue with the Settlement is prospective in nature; his vehicle—a 2019 Nissan Sentra SV with only 14,412 miles on it—does not currently present any of the alleged symptoms of the CVT Defect. Mr. Nieto argues that

[7] Although moot given the withdrawal, it is Plaintiffs' position that Mr. Cappello's purported objection is improper under the terms of the Settlement because he did not file it with the Court. *See* Settlement Agreement ¶¶ 87-88 ("Any Class Member who intends to object to the fairness, reasonableness, and/or adequacy of the Settlement (an "Objection") **must file a written Objection with the Court** and mail a copy to the Settlement Administrator." (emphasis added)).

because of his low mileage he is part of a "subset of the Class…who won't benefit from the proposed settlement" because he does not expect to have a CVT problem before the time limit of the Extended Warranty runs out. ECF No. 66 at 1.

There is nothing unusual about extending warranty coverage to a reasonable length, as "[o]ther courts have upheld similar class action settlements which place age and mileage restrictions" for benefits. *See Sadowska v. Volkswagen Grp. of Am.*, No. 11-00665, 2013 WL 9600948, at *6 (C.D. Cal. Sep. 25, 2013) (overruling objection that extended warranty benefit for CVT offered by the settlement is insufficient). This is because "negotiating a cut-off at some point was necessary and is reasonable because settlement is the result of compromise." *In re Nissan Radiator/Transmission Cooler Litig.*, No. 10-CV-7493-VB, 2013 WL 4080946, at *12 (S.D.N.Y. May 30, 2013). Further, "it is not the role of the Court to determine where the cut-off should be and impose that line on the parties." *Id.* Indeed, a settlement necessarily "involves some line-drawing, and full compensation is not a prerequisite for a fair settlement." *Asghari v. Volkswagen Grp. of Am., Inc*., No. CV1302529MMMVBKX, 2015 WL 12732462, at *28 (C.D. Cal. May 29, 2015) (internal quotations deleted); *Aarons v. BMW of N. Am., LLC*, No. 11-7667-PSG, 2014 WL 4090564, at *12 (C.D. Cal. Apr. 29, 2014) (explaining that all limits on compensation are "by their nature somewhat arbitrary" but approving the mileage cut-off for compensation given that it "was the product of arms'-length negotiation"). Here, the Settlement terms were negotiated after mediation and months of negotiations and in full consideration of the litigation risks and the millions of consumers receiving a meaningful benefit under the Settlement. *See* ECF No. 31, Order Granting Preliminary Approval of Settlement, at 3.

Fundamentally, a "[s]ettlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate

and free from collusion." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1027 (9th Cir. 1998). Moreover, the Settlement must be evaluated by "[w]eighing the uncertainty of relief against the immediate benefit provided in the settlement." *In re Wireless Tel. Fed. Cost Recovery Fees Litig*., 396 F.3d 922, 933 (8th Cir. 2005).

There is a reason similar settlement benefits have been approved in this Court and several courts across the country: they are fair and offer significant value to a large number of Class Members. Specifically, the vehicle age and mileage extension in the Settlement is substantially similar to that approved in an automotive settlement involving Nissan vehicles equipped with CVT transmissions in *Batista v. Nissan North America, Inc.* In *Batista*, as here, the settlement provided a twenty-four (24) month or twenty-four thousand (24,000) miles warranty extension (whichever occurs first). The district court in *Batista* found that the "benefits to the Settlement Class constitute fair value given in exchange for the release of the claims of the Settlement Class . . . [and that] the consideration to be provided under the Settlement is reasonable considering the facts and circumstances of [the] case, the types of claims and defenses asserted in the lawsuit, and the risks associated with the continued litigation of these claims." *See also Weckwerth v. Nissan North America, Inc.*, No. 3:18-cv-00588, Dkt. No. 181 (Order Granting Final Approval); *Stringer v. Nissan North America, Inc.*, No. 3:21-cv-00099, Dkt. No. 126 (Order Granting Final Approval); *Gann v. Nissan North America, Inc.*, No. 3:18-cv-00966, Dkt. No. 130 (Order Granting Final Approval); *Norman v. Nissan North America, Inc.*, No. 3:18-cv-00534, Dkt. No. 123 (Order Granting Final Approval).

Similarly, in *Collado v. Toyota Motor Sales, U.S.A., Inc*., Nos. CV-10-3113-R, 2011 WL 5506080, at *2 (C.D. Cal. Oct. 17, 2011), the district court rejected objections that the settlement's two-year, 20,000-mile warranty extension was unfair, stating that "there has to be some reasonable

limit to the warranty period, as any longer warranty period would defeat the purpose of a limited warranty." And in *Nissan Radiator*, the court held that objections to the 10–year/100,000–mile warranty extension cut-off were "not a basis for finding the settlement is unfair or unreasonable." 2013 WL 4080946, at *11. As the court in *Nissan Radiator* held, "negotiating a cutoff at some point was necessary." *Id*. at *12.

The benefits of extended warranties as settlement consideration have been recognized by numerous courts. *See Klee v. Nissan N. Am., Inc*., No. 12-8238 AWT, 2015 WL 4538426, at *8 (C.D. Cal. July 7, 2015) (extended warranty was fair settlement consideration because it was directed at repairing the alleged harm and noting that other courts had approved extended warranties with age and mileage restrictions as settlement considerations); *Eisen*, 2014 WL 439006, at *8 (C.D. Cal. Jan. 30, 2014) (approving settlement agreement with an extended warranty and noting that "it is significant that the Settlement Agreement provides extended warranty coverage that exceeded the warranties provided" at the time of purchase).

Accordingly, the Court should overrule all objections to the sufficiency of the warranty extension as it is fair and reasonable.

C. The Court Should Overrule the Objections Arguing that the Settlement Should Reimburse Incidental or Consequential Damages

Patricia Robbins (*see* ECF No. 65)[8] and Duane Cox (*see* ECF No. 67)[9] have complained that the Settlement is deficient because it does not include their own preferred remedies and benefits; *i.e.*, these individuals have proposed to amend the Settlement to include additional perks

[8] It is Plaintiffs' position that Ms. Robbins' purported objection is improper under the terms of the Settlement because she did not include the mileage of her vehicle. *See* Settlement Agreement ¶¶ 87-88 ("(v) **current odometer mileage of the vehicle(s)**…" (emphasis added)).

[9] It is Plaintiffs' position that Mr. Cox's purported objection is improper under the terms of the Settlement because he did not include the mileage of his vehicle. *See* Settlement Agreement ¶¶ 87-88 ("(v) **current odometer mileage of the vehicle(s)**…" (emphasis added)).

and benefits, each suited to the individual's specific needs and desires. But "the issue here is whether the relief provided in the settlement, taken as a whole, is adequate and reasonable, not whether something more lucrative might make the settlement more favorable to Class Members or certain Class Members." *Elkins v. Equitable Life Ins. of Iowa*, No. 96-296, 1998 WL 133741, at *30 (M.D. Fla. Jan. 27, 1998). Accordingly, in evaluating the Settlement's overall benefit to the Class Members as a whole, the Court should deny these individualized objections that would not inure to the benefit of the entire Class.

Ms. Robbins and Mr. Cox argue that the Settlement is inadequate because it does not compensate Class Members for alleged incidental and consequential damages. These objections must be overruled, as the Settlement cannot be found unfair or unreasonable simply because the negotiated deal does not compensate Class Members for consequential damages such as lost productivity, time, and frustration—highly individualized alleged damages. *See Mendoza v. Hyundai Motor Co., Ltd.*, No. 15-CV-01685-BLF, 2017 WL 342059, at *10 (N.D. Cal. Jan. 23, 2017) ("[T]he Court finds that a class settlement is not capable of resolving every possible consequential damages claim that a Class Member may wish to pursue"); *Milligan*, 2012 WL 10277179, at *7 ("The settlement also does not provide compensatory damages for those class members who suffered incidental losses…Objectors who raised these concerns could have simply opted out of the Settlement."). Here, Ms. Robbins suggests that she should be compensated for certain costs, including "Gas for my friends vehicle," totaling $930.96 related to her vehicle—a 2018 Nissan Altima—breaking down and a $5,000.00 down payment on a new vehicle. *See* ECF No. 65 at 1. Mr. Cox suggests that he should be compensated for accident repair costs totaling $7,098.00 that he believes are a result of the manifestation of the alleged CVT Defect. *See* ECF No. 67 at 6. Neither of these individualized situations should impact the approval of the Settlement.

That some class members may not be fully compensated for their alleged consequential damages is not grounds for finding a settlement unfair. *See Browne*, 2010 WL 9499072, at *18 ("While the proposed settlement does not perfectly compensate every member of the class, it is unlikely that any settlement of the claims of a class of more than 740,000 members would achieve such a result"); *Glass v. USB Finan. Svcs.*, No. 06-cv-4068, 2007 WL 221862, at *6 (N.D. Cal. Jan. 26, 2007) ("Settlements by their very nature are not intended to provide full compensation for the claimed losses and consequently cannot be calculated with the same precision as actual damages"). The Settlement is meant to benefit the many Class Members who do not wish to file an individual action in court, including those who do not have strong individual claims but who would still benefit from the relief it provides. *See Eisen*, 2014 WL 439006, at *7 (citing cases overruling objections because "class members could have opted out if they objected to the benefits offered by the settlement."); *Aarons*, 2014 WL 4090564, at *13 (overruling objections that the settlement did not provide adequate compensation for certain categories of Class Members because "[t]o the extent those individuals believe the settlement to be unfair, they could have opted out of the class.").

In short, these objectors simply demand to "have a better deal," which is not the basis for a valid objection. *See Perez v. Asurian*, 501 F. Supp. 2d 1360, 1382 (S.D. Fla. 2007) (holding that objections based on a desire to have a better deal cannot be sustained). A handful of class members requesting additional benefits is not grounds for finding a settlement unfair. *See Browne*, 2010 WL 9499072, at *18 ("While the proposed settlement does not perfectly compensate every member of the class, it is unlikely that any settlement of the claims of a class of more than 740,000 members would achieve such a result.").

Accordingly, the Court should overrule all objections seeking reimbursement of incidental or consequential damages.

D. The Court Should Overrule the Objection Regarding the Eligibility Requirements for Reimbursement for Repairs Under the Settlement

Eric Vinson (who did not file his letter with the Court, *see* Weiner Decl. Ex. B)[10] has asked for the Settlement's mileage cap on reimbursement for repairs that would have been covered had the Extended Warranty been in place be expanded so that he may be compensated $6,000.00. Indeed, this type of objection amounts to little more than second-guessing of the parties' determination that a warranty extension of 24 months or 24,000 miles to 84 months or 84,000 miles total is fair in light of the risks of further litigation.

As discussed in Section III.B above, there is nothing unusual about extending warranty coverage to a reasonable length (*see Sadowska*, 2013 WL 9600948, at *6), and that "negotiating a cut-off at some point was necessary and is reasonable because settlement is the result of compromise." *Nissan Radiator*, 2013 WL 4080946, at *12. Mr. Vinson's position that the mileage limit should be increased by exactly the number of miles that would allow him to obtain reimbursement for his vehicle repairs (an additional 25,000 miles, a nearly 30% increase) is self-serving.[11] Indeed, a settlement necessarily "involves some line-drawing, and full compensation is

[10] It is Plaintiffs' position that Mr. Vinson's purported objection is improper under the terms of the Settlement because he did not file it with the Court. *See* Settlement Agreement ¶¶ 87-88 ("Any Class Member who intends to object to the fairness, reasonableness, and/or adequacy of the Settlement (an "Objection") **must file a written Objection with the Court** and mail a copy to the Settlement Administrator." (emphasis added)). It is worth noting that Mr. Vinson signed his letter with "Esq." indicating he is an attorney.

[11] Indeed, Mr. Vinson closes his letter with a request that he be compensated $6,000.00, not that the mileage cap be raised for the greater benefit of the Settlement Class. His mention-in-passing of the insufficiency of the voucher should be overruled. The voucher benefit was specifically negotiated as part of the Settlement. Former owners who do not believe that the voucher is helpful to them, and do not have reimbursable repair expenses, were of course free to opt out of the Settlement. In negotiating a Settlement, Class Counsel attempted to secure relief for

not a prerequisite for a fair settlement." *Asghari*, 2015 WL 12732462, at *28 (internal quotations deleted); *see also Aarons*, 2014 WL 4090564, at *12 (explaining that all limits on compensation are "by their nature somewhat arbitrary" but approving the mileage cut-off for compensation given that it "was the product of arms'-length negotiation").

Here, the Settlement terms were negotiated after months of negotiations and in full consideration of the litigation risks and the millions of consumers receiving a meaningful benefit under the Settlement. *See* ECF No. 31, Order Granting Preliminary Approval of Settlement, at 3. Given the overwhelmingly positive response of the Class to the Settlement, this purported objection does not reflect the position of the Class generally. *See* Section II above.

Accordingly, the Court should overrule all objections to the eligibility requirements of the Settlement as it is fair and reasonable.

IV. UPDATE REGARDING ATTORNEY TIME

As noted above, there were no objections to the Motion for Attorneys' Fees. *See* Weiner Decl. ¶ 6. As an update thereto, Plaintiffs' Counsel has continued to work diligently on this matter, including but not limited to administering the Settlement, communicating with Class Members and defense counsel, monitoring and working with the Settlement Administrator, and providing necessary updates to the Court. *See* Weiner Decl. ¶ 7. As such, Plaintiffs' Counsel provides the following updated time and expense numbers for the Court's review:

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the largest percentage of Class Members, taking into account the inherent need for compromise in order to achieve a favorable result. Settlements are by definition the product of compromise, and the possibility "that a settlement could have been better . . . does not mean the settlement presented was not fair, reasonable or adequate." *Hanlon*, 150 F.3d at 1027. Moreover, the Court cannot impose a "better settlement," as the Court "does not have the power to alter the terms of the proposed settlement." *Yaeger*, 2016 WL 4541861, at *17. The Court's duty is to "approve the settlement, taking all relevant facts and circumstances into account" or "reject the proposed settlement and put the case back on the litigation track." *Id*.

	As Reported in the Motion for Attorneys' Fees (case inception through January 6, 2023)	From January 6, 2023 through February 28, 2023	Total from case inception through February 28, 2023
Hours	2,507.2	191.6	2,698.8
Lodestar	$1,458,315.50	$128,612.50	$1,586,928.00
Fee Request[12]	$3,478,291.07	-	$3,458,232.09
Multiplier	2.39	-	2.18
Cost Reimbursement Request[12]	$21,708.93	$20,322.79	$41,767.91
Class Representative Service Award Request	$5,000 to each Class Representative (for a total of $35,000)	No Change	$5,000 to each Class Representative (for a total of $35,000)

See Weiner Decl. ¶ 8.

For the reasons set forth in the Motion for Attorneys' Fees, Plaintiffs respectfully request that the Court award: (1) $3,458,232.09 in attorneys' fees, (2) $41,767.91 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).

V. CONCLUSION

Based on the foregoing, the Court should overrule the objections and enter the proposed Order Granting Final Approval of the Class Action Settlement.

Dated: March 6, 2023

Respectfully submitted,

/s/ *Melissa S. Weiner*

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[12] The Settlement Agreement allows for a total request for both attorneys' fees and costs of $3,500,000.00. *See* Settlement Agreement ¶ 107.

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