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 similarly situated individuals, Plaintiffs, v. NISSAN NORTH AMERICA, INC., Defendant.	Case No. 3:22-cv-00354 **CLASS ACTION** District Judge Eli J. Richardson

NISSAN NORTH AMERICA, INC.'S MEMORANDUM OF LAW IN RESPONSE TO OBJECTIONS TO FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

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Defendant Nissan North America, Inc. ("NNA") respectfully submits this Memorandum of Law in response to the few Class Member objections to the proposed class action Settlement and in support of final approval of the Settlement.[1]

I.

INTRODUCTION

The proposed Settlement is the product of arm's length negotiations between experienced counsel and provides benefits to the Settlement Class comparable to CVT settlements this Court has approved in the past.[2] The Court preliminarily approved the Settlement on August 17, 2022, and set a February 13, 2023 deadline for objections and opt-outs. ECF # 31. The fairness hearing is scheduled for March 20, 2023, at 1:00 p.m. ECF # 36.

The Settlement will provide Class Members with immediate and valuable benefits in the form of: (1) an extension of the time and mileage limits for powertrain coverage under Nissan's New Vehicle Limited Warranty for the continuously variable transmission ("CVT") assembly (including the valve body and torque converter) and Automatic Transmission Control Unit on all Class Vehicles (the "Warranty Extension" or "Extended Warranty"); (2) full or partial reimbursement for costs of parts and labor for Class Members who paid for qualifying repairs that would have been covered by the Warranty Extension; (3) a Voucher towards the purchase or lease of a new Nissan or Infiniti vehicle for all current and former owners of Class Vehicles who meet

[1] This Memorandum of Law incorporates by reference the definitions in the Settlement Agreement, and all terms herein shall have the same meaning as set forth in the Settlement Agreement.

[2] *See Stringer v. Nissan N. Am., Inc.*, No. 3:21-cv-00099 (M.D. Tenn.), ECF # 126, Order and Judgment Granting Final Approval of Class Action Settlement (Mar. 23, 2022); *Gann v. Nissan N. Am., Inc.*, No. 3:18-cv-00966 (M.D. Tenn.), ECF # 130, Order and Judgment Granting Final Approval of Class Action Settlement (Mar. 10, 2020); *Weckwerth v. Nissan N. Am., Inc.*, No. 3:18-cv-00588 (M.D. Tenn.), ECF # 181, Order and Judgment Granting Final Approval of Class Action Settlement (Mar. 10, 2020); *Norman v. Nissan N. Am., Inc.*, No. 3:18-cv-00534 (M.D. Tenn.), ECF # 123 Order and Judgment Granting Final Approval of Class Action Settlement (Mar. 10, 2020).

the requirements of the Settlement Agreement; and (4) an expedited resolution program for any future warranty claims related to transmission design, manufacturing, performance or repair based on events that occur after the Notice Date.

The proposed Settlement is particularly beneficial to Class Members in light of NNA's strong legal defenses and the considerable risks faced by Plaintiffs if this litigation were to continue. While individual transmission issues will undoubtedly be experienced by some consumers—this is inevitable given that the two million members of the Settlement Class have driven the more than one million Class Vehicles billions of miles—Plaintiffs would not have prevailed in showing a uniform problem with the CVT that would have allowed them to maintain a nationwide or multi-state class in litigation, much less prevailed on the merits in a class action lawsuit. Indeed, absent the Settlement, the Class faced the very real prospect of recovering nothing at all, and continued litigation would have consumed substantial resources of the Parties and the Court and taken years to resolve. The Settlement provides immediate, tangible benefits to the Class and eliminates the significant litigation risk of no recovery at all.

Nothing in the objections by a few individual Class Members suggests that the proposed Settlement should not receive final approval. The objectors do not raise any substantial doubts as to the fairness, reasonableness, and adequacy of the proposed Settlement to the Settlement Class as a whole, and this Court should overrule the objections and grant final approval to the Settlement. Indeed, only four Class Members filed objections with the Court, and two Class Members mailed statements to the Settlement Administrator that were not sent to the Court and are facially deficient if intended as objections (which is unclear). Moreover, NNA is informed by Class Counsel that two of the Class Members (Da'Lisa Bennett, who filed an objection and Greg Cappello, who sent the Settlement Administrator a non-filed letter) have elected to withdraw their objections, as shown

in Declarations from these individuals being filed by Class Counsel. But even counting the non-filed and the subsequently withdrawn objections for a total of six "objections" results in an objection rate of only 0.00031% of the Settlement Class.[3] Moreover, only 0.06% of the Settlement Class have opted out.[4] Stated differently, 99.93% of the Settlement Class have elected to remain Class Members without objecting to the Settlement—an overwhelming percentage that weighs strongly in favor of final approval.

II.

LEGAL STANDARD

Approval of a class action settlement is within the discretion of the district court. *Does 1–2 v. Déjà Vu Servs., Inc.*, 925 F.3d 886, 894 (6th Cir. 2019); *Fidel v. Farley*, 534 F.3d 508, 513 (6th Cir. 2008). In exercising that discretion, the court should consider "the federal policy favoring settlement of class actions." *Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 632 (6th Cir. 2007); *see also Ford Motor Co. v. Mustangs Unlimited, Inc.*, 487 F.3d 465, 468 (6th Cir. 2007). To approve a class settlement, the district court must conclude that it is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(1); *Gen. Motors Corp.*, 497 F.3d at 631.[5]

"The settlement process depends on compromise." *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 350 (6th Cir. 2009). Indeed, "[t]he very essence of a settlement is compromise, a yielding of

[3] Notice of the proposed Settlement was mailed to 1,954,169 Class Members and, according to the records of the Settlement Administrator, reached 1,879,449 Class Members, or 96% of the Class. *See* Cooper Decl., ECF # 53, at pp. 3-4 ¶¶ 6-14.

[4] The Settlement Administrator received 1,334 requests for exclusion, of which 1,248 were timely and valid. *See* Cooper Second Suppl. Decl., ECF # 71, at p. 2, ¶ 3. Requests for exclusion were required to be postmarked by February 13, 2023. *Id.*

[5] The reasons for approval of the Settlement are addressed in Plaintiffs' Motion for Final Approval, filed on January 12, 2023, ECF # 48, and supporting brief, ECF # 49, and will be further addressed in Nissan's Response to Motion for Final Approval, to be filed on March 10, 2023.

absolutes and an abandoning of highest hopes." *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 322 (N.D. Cal. 2018) (quoting *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)). A settlement should not be rejected merely because it fails to satisfy every member of the class or provide everything that every class member might have wanted. *See Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 293 (6th Cir. 2016) ("A court may not withhold approval simply because the benefits accrued from the [class action consent] decree are not what a successful plaintiff would have received in a fully litigated case.") (quoting *Williams v. Vukovich*, 720 F.2d 909, 922 (6th Cir. 1983)); *Manners v. Am. Gen. Life Ins. Co.*, No. Civ. A. 3–98–0266, 1999 WL 33581944, at *19 (M.D. Tenn. Aug. 11, 1999) (noting that courts should "bear[] in mind that compromise is the essence of settlement").

Objectors face a "heavy burden" of showing that the preliminarily approved Settlement is not fair, reasonable, and adequate. *Johnson v. W2007 Grace Acquisition I, Inc.*, No. 13-2777, 2015 WL 12001269, at *8 (W.D. Tenn. Dec. 4, 2015); *Levell v. Monsanto Rsch. Corp.*, 191 F.R.D. 543, 550 (S.D. Ohio 2000) (citing *Williams*, 720 F.2d at 921). As discussed below, the objections, filed by only four of the nearly two million Class Members, fail to meet that burden. While a few Class Members may wish that the Parties had negotiated a deal that addressed their personal preferences or provided them with greater perks or benefits, the objections raise no concerns that should stand in the way of final approval of the deal that the Parties negotiated, which provides real, tangible, and important benefits to the Settlement Class.

III.

ARGUMENT

A. The Small Percentage of Objectors Supports Final Approval.

Federal courts recognize that a certain number of objections are to be expected in a class action and that it would in fact be extremely unusual for a court not to encounter objections in a

class action of this size. *Garner Props. & Mgmt., LLC v. City of Inkster*, No. 17-cv-13960, 2020 WL 4726938, at *10 (E.D. Mich. Aug. 14, 2020); *Gokare v. Fed. Express Corp.*, No. 2:11-cv-2131, 2013 WL 12094870, at *6 (W.D. Tenn. Nov. 22, 2013); *Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 197 (S.D.N.Y. 2012) (citing *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 527 (E.D. Mich. 2003)). Here, the small percentage of objections—*less than one thousandth of one percent*—reflects the fairness, reasonableness, and adequacy of the Settlement.

The Middle District of Tennessee and other courts in the Sixth Circuit hold that a "small amount of opposition strongly supports approving the [class action] Settlement." *Manners*, 1999 WL 33581944, at *22; *see also In re Regions Morgan Keegan Sec., Deriv. & ERISA Litig.*, No. 2:09-md-2009, 2014 WL 12808031, at *4 (W.D. Tenn. Dec. 24, 2014) ("If only a small number of objections are received from a large class, that fact can be viewed as indicative of the adequacy of the settlement."); *Whitford v. First Nationwide Bank*, 147 F.R.D. 135, 141 (W.D. Ky. 1992) ("The small number of objectors is a good indication of the fairness of the settlement.") (citing *Laskey v. Int'l Union, Union Auto., Aerospace & Agr. Implement Workers of Am. (UAW)*, 638 F.2d 954, 957 (6th Cir. 1981)).

An objection rate of only 0.00031% of the Settlement Class (even counting the two facially deficient, non-filed letters and the subsequently withdrawn objections) is a vanishingly small number. Courts in the Sixth Circuit (as elsewhere) have readily granted final approval to settlements with objection percentages much higher than that in the instant case. *See, e.g.*, *Olden v. Gardner*, 294 F. App'x 210, 2017 (6th Cir. Sept. 18, 2008) (79 objections out of approximately 11,000 class members—or 0.71%); *Sheick v. Auto. Component Carrier LLC*, No. 09-CV-14429, 2010 WL 4136958, at *22 (E.D. Mich. Oct. 18, 2010) (objection from only 0.61% of the class "indicates broad support for the settlement among Class Members").

Here, as mentioned, only 0.00031% of the Settlement Class have objected to the Settlement and only 0.06% have submitted timely and valid exclusion requests. The reaction of the Settlement Class provides compelling evidence of the Settlement's fairness, reasonableness, and adequacy. *See Cardizem*, 218 F.R.D. at 527 ("[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.'") (citation omitted). Accordingly, the fact that a few Class Members have objected should not dissuade the Court from finding that the proposed Settlement is fair, reasonable, and adequate, and granting final approval.

B. The Objectors Misunderstand the Court's Role.

A few objectors request that the Court order NNA to take certain steps, such as reimburse the objector for the down payment on a new car or for repair costs incurred by the objector's daughter in accidents, or issue an extended warranty with a higher time limit or mileage cap. *See* Objection of Patricia Robbins, ECF # 65 (seeks reimbursement of down payment on new car); Objection of Duane Cox, ECF # 67 (states that "I am not saying that Nissan is at fault" but asks Court to enter judgment for repair cost from daughter's accidents); Objection of Da'Lisa Lynette Bennett, ECF # 66 (since withdrawn) (proposes that any vehicle with CVT issues be repaired or replaced for free if under 100,000 miles). These objections reflect a misunderstanding of the Court's role at the fairness hearing, as there is no evidentiary foundation or legal basis for the Court to order NNA to comply with such requests.

The issue before the Court is whether this Settlement is fair, reasonable and adequate for the Settlement Class. The Court's role is not to rewrite the Settlement Agreement to suit the objectors. *In re S. Ohio Corr. Facility*, 24 F. App'x 520, 528 (6th Cir. Dec. 26, 2001) (noting that it is "well established" that a court "is not permitted to alter the terms" of the settlement agreement)

(quoting *Brown v. Cnty. of Genesee*, 872 F.2d 169, 173 (6th Cir. 1989)); *Yaeger v. Subaru of Am.*, No. 14-cv-4490, 2016 WL 4541861, at *17 (D.N.J. Aug. 31, 2016) (court "does not have the power to alter the terms of the proposed settlement," but rather must "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.").

C. A Number of Objections Are Deficient on Their Face.

As noted, two letters sent to the Settlement Administrator are deficient on their face if intended as objections; they were not filed with the Court and fail to provide information required by the Preliminary Approval Order.[6] *See* Hicks Decl., Exs. A-B (providing copies of the non-filed letters). One of these senders of a non-filed objection, Gregory J. Capello (Hicks Decl. Ex. A), has since withdrawn the purported objection. Two of the filed objections are facially deficient as well. See ECF # 67 (Duane Cox objection fails to provide vehicle mileage or VIN); ECF # 65 (Patricia Robbins objection fails to provide vehicle mileage). These deficiencies alone justify overruling these objections. However, these objections also fail on the merits. NNA has considered the points raised in all of the purported objections, including those subsequently withdrawn, and responds to the arguments raised, in the following sections.

D. The Objections Lack Merit.

Even beyond their small number, the objections reflect the idiosyncratic opinions of individual objectors or their subjective belief that the Settlement should provide them with more benefits, and fail to undermine the fairness, reasonableness, and adequacy of the Settlement. To be sure, settlements necessarily entail a considerable amount of compromise, and no settlement

[6] *See* Preliminary Approval Order, ECF # 31, at ¶ 17 (requiring objections to be filed with the Court to be considered and listing information to be provided by Class Members to state an objection, including vehicle VIN and current odometer mileage); *see also* Settlement Agreement ¶¶ 87-88 (same).

will meet with unanimous approval of class members or provide every benefit that every class member might want.

While most of the few objections focus on the Warranty Extension, these objections demonstrate that individual objectors are simply seeking a better deal for themselves, based on the fact that their own vehicles have already exceeded the mileage limits set forth in the Warranty Extension or based on their own specific driving patterns. For the reasons discussed below, these objections lack merit; fail to undermine the fairness, reasonableness, and adequacy of the proposed Settlement; and should not dissuade the Court from granting final approval.

1. Objectors Who Want a Longer Warranty Extension.

Two objectors wish the Warranty Extension benefit had been expanded to a greater mileage.[7] *See* Objection of Da'Lisa Lynette Bennett, ECF No. 66 (states that difficulty shifting in her Class Vehicle started after 90,000 miles and proposes that any vehicle under 100,000 miles with CVT issues be repaired or replaced by NNA free of charge) (objection subsequently withdrawn); unfiled letter of Eric Vinson, Hicks Decl. Ex. B (states that transmission failed at 107,000 miles and that the mileage limit for reimbursement for qualifying repairs under the Settlement should be raised to 110,000 miles). The fact that these objectors did not experience transmission problems until their vehicles' mileage was well beyond the mileage limits of the proposed Warranty Extension demonstrates that the Class Vehicles are operating well beyond the point in time when the risk of paying for repairs shifts to the consumer, even with the Warranty Extension benefit provided by the Settlement. These objections fail to show that the Settlement is not fair, reasonable, and adequate, as the Warranty Extension provides a significant benefit to the

[7] The Settlement will extend the powertrain coverage for the transmission under the New Vehicle Limited Warranty by 24 months and 24,000 miles for all Class Vehicles. The effect of that extension is that the Extended Warranty will run to 84 months and 84,000 miles, whichever occurs first.

Settlement Class. Indeed, the Court has previously granted final approval to four settlements in which NNA also agreed to a 24-month or 24,000-mile extension of the time and mileage limits for powertrain coverage under Nissan's New Vehicle Limited Warranty for the CVT. *See Stringer v. Nissan N. Am., Inc.*, No. 3:21-cv-00099 (M.D. Tenn.), ECF # 126, Order and Judgment Granting Final Approval of Class Action Settlement (Mar. 23, 2022); *Gann v. Nissan N. Am., Inc.*, Case No. 3:18-cv-00966, ECF No. 130 (final approval order) (Mar. 10, 2020); *Weckwerth v. Nissan N. Am., Inc.*, Case No. 3:18-cv-00588, ECF No. 181 (final approval order) (Mar. 10, 2020); *Norman v. Nissan N. Am., Inc.*, Case No. 3:18-cv-00534, ECF No. 123 (final approval order) (Mar. 10, 2020).

In all four cases, the Court found that "[t]he 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 was reasonable, "particularly in light of the complexity, expense and duration of the litigation and the risks involved in establishing liability and damages." *Id.*, Final Approval Orders at ¶¶ 5, 6, 11. Similarly, in *Batista v. Nissan North America, Inc.*, the Southern District of Florida granted final approval to a settlement with a 24-month or 24,000-mile Warranty Extension for the CVT transmission. *See* Case No. 1:14-cv-24728, ECF Nos. 191, 156 ¶ 48 (S.D. Fla. June 29, 2017) (finding that the benefits to the settlement class were fair, reasonable and adequate and that the proposed settlement merited final approval).

These objectors simply seek better deals for themselves, based on their own specific circumstances. While two objectors complain that the mileage limitation is unfair to individuals like them who drive *more* miles, because their vehicles will exceed the mileage limitation before expiration of the time limitation, another objector complains that the Warranty Extension time limitation is unfair to individuals like him who drive *fewer* miles because their vehicles will exceed the time limitation before reaching the mileage limitation. *See* Objection of Mark David Nieto,

ECF # 64 (owns model year 2019 Class Vehicle with only 14,412 miles, has never had a CVT problem, and states the Settlement is unfair to low mileage drivers because they may not have a CVT problem within the time limit of the Extended Warranty). These objections are without merit, and could be observations about any warranty with time and mileage limits—just like the original warranty that came with the Class Vehicles. High mileage drivers knew their original warranty would be capped when they reached the mileage limit of the warranty, and low mileage drivers knew their original warranty would be capped when they reached the time-in-service limit of the warranty. The Warranty Extension provides an extension of both limits, but the type of warranty remains the same as that which came with the vehicles. Individual driving patterns may differ, but the Warranty Extension provides an identical benefit for all Class Members and therefore, treats all Class Members equitably.

"All parts will wear out sooner or later and thus have a limited effective life." *Abraham v. Volkswagen of Am., Inc.*, 795 F.2d 238, 250 (2d Cir. 1986). Time and mileage limitations are necessary and appropriate in connection with a settlement involving repairs to a depreciating asset with a limited useful life. Accordingly, courts have repeatedly held that time and mileage limitations are fair in settlements of automotive class actions. *See, e.g.*, *Oliver v. BMW of N. Am., LLC*, No. 17-12979, 2021 U.S. Dist. LEXIS 43290, at *22 (D.N.J. Mar. 8, 2021) (approving settlement providing extended warranty of 3 years or 34,000 miles on coolant pumps in class vehicles, and noting that extended warranties are "somewhat common in the automotive practice, and ha[ve] been held reasonable by several courts"); *Mendoza v. Hyundai Motor Co.*, No. 15-cv-01685, 2017 U.S. Dist. LEXIS 9129, at *22-24 (N.D. Cal. Jan. 23, 2017) (approving settlement providing extended warranty of 20,000 miles on engines in class vehicles); *Collado v. Toyota Motor Sales, U.S.A., Inc.*, No. CV-10-3124-R, 2011 WL 5506080, at *2 (C.D. Cal. Oct. 17, 2011)

(approving settlement providing two-year, 20,000-mile warranty extension); *see also Nguyen v. BMW of N. Am. LLC*, No. C 10–02257, 2012 WL 1380276, at *2 (N.D. Cal. Apr. 20, 2012) (finding that "real value is provided by the Settlement because BMW agreed to extend its warranty . . . [to] 8 years or 82,000 miles."); *Alin v. Honda Motor Co.*, No. 08-4825, 2012 WL 8751045 at *15 (D.N.J. Apr. 13, 2012) ("The parties weighed the obligation to cover those damages against the reality that Honda cannot act as a perpetual insurer for all compressor breakdowns, and they ultimately settled on a sliding scale that ends at eight years and 96,000 miles. It was reasonable to exclude older, more traveled vehicles from coverage[.]").

Given the strength of NNA's defenses, it was reasonable for Class Counsel to compromise as to the limit of the Warranty Extension. After all, the more trouble-free miles a vehicle has provided, the weaker the claims as to that vehicle. The more miles the vehicle was driven without incident, the less likely the trier of fact would find that the vehicle was not merchantable, or that NNA breached any express warranty, acted contrary to any representation regarding the vehicle, or failed to disclose a material fact. Thus, it was reasonable for the parties to negotiate a Settlement that places a reasonable limit on the Warranty Extension.

The possibility that a longer warranty extension might have been preferred by a few Class Members based on their personal driving patterns does not mean the Settlement is not fair, reasonable, or adequate for the Settlement Class as a whole. *See Manners*, 1999 WL 33581944, at *25 ("[t]he issue is not whether the proposed settlement could have offered *different* or even more generous relief; the only question is whether the benefits *actually being offered* are fair, reasonable and adequate. If they are, the settlement should be approved.") (emphasis in original); *see also Asghari v. Volkswagen Grp. of Am., Inc.*, No. CV 13-02529, 2015 U.S. Dist. LEXIS 188824, at *80 (C.D. Cal. May 29, 2015) ("[T]he fact that some class members will not obtain

relief does not compel the conclusion that the settlement is unreasonable or unfair."); *In re TD Ameritrade Acct. Holder Litig.*, Nos. C 07–2852 SBA & C 07–4903 SBA, 2011 WL 4079226, at *9 (N.D. Cal. Sept. 13, 2011) ("The possibility that the Settlement does not provide for a payout to every conceivable [class member] who in some way may have been affected by the data breach does not establish that the Settlement is unfair or unreasonable."). A settlement is "not a wish-list of class members that the Defendants must fulfill." *Bowling v. Pfizer, Inc.*, 143 F.R.D. 141, 169 (S.D. Ohio 1992).

The Warranty Extension substantially benefits owners of Class Vehicles by paying in full for qualifying repairs of Class Vehicles that experience issues beyond the time and mileage limitations of the current New Vehicle Limited Warranty. Through the Warranty Extension, NNA has shifted to itself the risk of paying for repairs for an additional two years or 24,000 miles. *See Oestreicher v. Alienware Corp.*, 544 F. Supp. 2d 964, 972 (N.D. Cal. 2008) ("[T]he purpose of a warranty is to contractually mark the point in time during the useful life of a product when the risk of paying for repairs shifts from the manufacturer to the consumer."). The Warranty Extension provides important value to the Settlement Class, and the Court should overrule the objections of objectors who simply wish that the warranty had been extended even more.

2. Objectors Who Sold Their Class Vehicles.

Two Class Members complain that they will not enjoy the benefits of the Extended Warranty because they have sold their Class Vehicles. *See* Objection of Patricia Robbins, ECF # 65 (traded in Class Vehicle to purchase a non-Nissan vehicle, "which makes me ineligible to receive the benefits of the settlement."); non-filed letter of Gregory J. Cappello (since withdrawn), Hicks Decl. Ex. A (traded in Class Vehicle with transmission problems and lost "thousands"). While the Settlement does provide benefits to former owners, such as reimbursement for qualifying repair costs incurred during their ownership, or a voucher toward a new Nissan or

Infiniti vehicle for former owners who qualify, the main benefit of the Settlement is the Warranty Extension. Any Class Member who felt that the Settlement did not provide adequate benefits because he or she had sold the Class Vehicle and would not be able to use the Extended Warranty (or for any other reason) was free to opt out of the Settlement and not be bound by the negotiated resolution.

These two Class Members also complain that the Settlement does not reimburse them for the alleged lost value when they elected to sell their Class Vehicle rather than repair the transmission. Claims for diminution of value often rely on speculation and are difficult to prove, and courts do not allow such claims to derail the settlement process. *See, e.g.*, *Yaeger,* 2016 WL 4541861, at *15 (overruling objection that settlement failed to compensate for alleged diminution of value because "evidence of diminished value of a particular vehicle, given the multiple variables determining market value, may be difficult to obtain and to prove").

In addition, diminished value claims could not properly be tried on a class-wide basis, because the alleged failure of a class member to sell his or her vehicle for "fair value" would turn on individualized issues such as the actual condition of the vehicle at the time of sale. *See Haag v. Hyundai Motor Am.*, 330 F.R.D. 127, 132 (W.D.N.Y. 2019) (diminished-value claims defeated commonality of class claims regarding brake defect where no basis existed to infer that the entire class would have obtained a common lower purchase price had the alleged defect been disclosed); *Marshall v. Hyundai Motor Am.*, 334 F.R.D. 36, 56-57 (S.D.N.Y. 2019) (applying *Haag* and reaching same result). Class Counsel were justified in focusing on the tangible benefits provided by the Settlement, rather than dubious loss-in-value claims. *See Asghari v. Volkswagen Group of Am., Inc.*, No. CV 13-02529, 2015 U.S. Dist. LEXIS 188824, at *75 (C.D. Cal. May 29, 2015) ("Considering the attendant difficulty of proving and recovering such damages on a classwide

basis, the court believes plaintiffs' decision not to pursue such damages as part of the settlement was neither unfair nor unreasonable."); *Vaughn v. Am. Honda Motor Co.*, 627 F. Supp. 2d 738, 749 (E.D. Tex. 2007) ("It does not make the settlement unfair or unreasonable that the class has to release speculative claims for diminution in value.").

3. Class Member Who Objects to the Voucher.

As mentioned, Class Member Eric Vinson states in his non-filed letter (Hicks Decl., Ex. B) that he would like the mileage cap of the Warranty Extension to be raised by an additional 25,000 miles so that he could be reimbursed $6,000 for repair costs incurred after his vehicle had been driven more than 107,000 miles. Mr. Vinson also mentions in passing that he has no interest in the $1,000 Voucher that the Settlement offers to qualifying current and former owners of Class Vehicles toward the purchase or lease of a new Nissan or Infiniti vehicle. The primary benefit of the Settlement is the Extended Warranty, made available automatically to all Class Members for their Class Vehicles. The Voucher is an additional benefit available to qualifying Class Members. The preference of some qualifying Class Members not to use the Voucher does not mean that the benefit lacks value. *See Garst v. Franklin Life Ins. Co.*, No. 97-C-0074, 1999 U.S. Dist. LEXIS 22666, at *74 (N.D. Ala. June 25, 1999) ("Similarly flawed is the objectors' assertion that [the settlement's discount component] is worthless because they may not wish to use it... This opportunity has value."); *Manners*, 1999 WL 33581944, at *24 ("[The] fact that some class members might not use settlement relief to obtain discounted products does not warrant disapproval of settlement."). In any event, any Class Members who believed the Voucher benefit, together with the other benefits of the Settlement, was insufficient had the option to opt out of the Settlement and not be bound by the negotiated resolution.

4. Objectors Who Seek To Submit Claims For Incidental Expenses.

Duane Cox states that he wants "to submit a claim" for repair costs incurred when his daughter, for whom he purchased the Class Vehicle, had two accidents. *See* ECF # 67. He states that although he does not know whether NNA is at fault, he would like the Court to enter judgment in his favor for the total repair costs. Patricia Robbins asks to be reimbursed for all costs associated with her vehicle's transmission failure, including "Gas for my friend's vehicle" and the down payment to purchase a new car. *See* ECF # 65. These Class Members seem to misunderstand the role of an objection, and their "narrow focus" on their own "personal situation" ignores the fact that "the proposed settlement must be analyzed in terms of the relief provided to the entire Class." *Manners*, 1999 WL 33581944, at *25.

A class settlement is not inadequate merely because it cannot compensate individual class members for highly individualized alleged incidental expenditures or consequential damages. *See Mendoza v. Hyundai Motor Co.*, No. 15-cv-01685, 2017 U.S. Dist. LEXIS 9129, at *26-27 (N.D. Cal. Jan. 23, 2017) ("[A] class settlement is not capable of resolving every possible consequential damages claim that a Class Member may wish to pursue"); *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) ("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."). These Class Members have elected to stay in the Settlement Class but complain about the Settlement. Certainly, they have every right to do so. Yet none of the objectors has provided any basis for concluding that a substantially better result would be obtained through continued litigation if the Settlement is rejected. Indeed, the greater likelihood is that the class (if one could even be certified for trial) would recover nothing at all.

IV.

CONCLUSION

For the foregoing reasons, the Court should overrule the objections, determine that the Settlement is fair, reasonable an adequate, and grant final approval of the Settlement.

Dated: March 6, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF, as listed below.

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