IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICENTE SALCEDO, GERALD LINDEN, and BRIAN MERVIN, individually and on behalf of all others similarly situated, Plaintiffs, vs. SUBARU OF AMERICA, INC., a New Jersey Corporation, and SUBARU CORPORATION, a Japanese Corporation, Defendants.	Civil Action No.: 17-8173(JHR)(AMD) **CLASS ACTION**

NOTICE OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

PLEASE TAKE NOTICE that at the Final Fairness Hearing scheduled for June 5, 2019 at 11:00 a.m., Plaintiffs will move to have the Court enter the proposed order submitted herewith that will grant their unopposed motion seeking (1) the payment of $625,000 to Plaintiffs' counsel for the payment of their attorneys' fees and reimbursement of expenses, and (2) the payment of service

awards in the amount of $3,500 each for Plaintiffs Vincente Salcedo, Gerald Linden, and Brian Mervin ($10,500 in total).[1]

PLEASE TAKE FURTHER NOTE that Plaintiffs will rely on the Memorandum of Law, Declaration of Matthew D. Schelkopf, and other related materials in support of this motion.

PLEASE TAKE FURTHER NOTE that Defendants do not oppose this motion.

Dated: March 22, 2019

Respectfully submitted,

By: /s/ *Matthew D. Schelkopf*

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[1] Plaintiffs will also request that the Court enter an order granting final approval to the settlement and dismissing this action with prejudice. A motion seeking that relief will be filed separately.

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CERTIFICATE OF SERVICE

I, Matthew D. Schelkopf, hereby certify that the foregoing **NOTICE OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS** was filed on this 22nd day of March, 2019, using the Court's CM/ECF system, thereby electronically serving it on all counsel of record in this case.

/s/ Matthew D. Schelkopf
Matthew D. Schelkopf

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICENTE SALCEDO, GERALD LINDEN, and BRIAN MERVIN, individually and on behalf of all others similarly situated, Plaintiffs, vs. SUBARU OF AMERICA, INC., a New Jersey Corporation, and SUBARU CORPORATION, a Japanese Corporation, Defendants.	Civil Action No.: 17-8173(JHR)(AMD) **CLASS ACTION**

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

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I. INTRODUCTION

After litigating this case since October 12, 2017, on a wholly contingency fee basis – and after successfully negotiating a settlement that creates substantial benefits for a class of current and former owners and lessees of approximately 65,000 Subaru vehicles – Plaintiffs now seek an Order that provides for Defendants Subaru of America, Inc. and Subaru Corporation to pay (a) $625,000 to Plaintiffs' counsel for the payment of their attorneys' fees and reimbursement of expenses, pursuant to Section XIII(1) of the Settlement Agreement (the "SA"), and (b) $3,500 to each of the three named Plaintiffs as Service Awards pursuant to Section XIII(2) of the SA.[1]

The parties negotiated at arms' length and reached agreement regarding these provisions only after they had agreed upon all other material terms of the SA. Significantly, these payments – if approved – will not reduce or impact the settlement consideration made available to the Class pursuant to the SA.

Consistent with the terms of the SA, Defendants do not oppose these requests by Plaintiffs, and agree to pay them if approved by the Court. (*See* SA § XIII(1)-(2).) In addition, the Plaintiffs' ability to request these amounts of

[1] The SA was submitted with Plaintiffs' Unopposed Motion for Preliminary Approval, and is set forth at ECF No. 29-3. The capitalized terms used in this Memorandum are defined in Section II of the SA.

attorneys' fees, expenses and service awards was contained in the notice that was provided to Settlement Class Members pursuant to the notice program, and is posted on the settlement website.[2]

As discussed below, given the amount of work performed by Plaintiffs' counsel, the outstanding results achieved and other applicable factors, the fee and expense requests are reasonable and should be approved. The service awards requested by Plaintiffs are also well within the range of those awards approved by this Court, and are warranted here to recognize the substantial time and effort Plaintiffs committed to this case, which was indispensable to its successful resolution. Plaintiffs respectfully request that the Court enter the proposed Order submitted herewith granting each of these requests.

II. FACTUAL BACKGROUND

A. Plaintiffs' Allegations and Pre-Litigation Investigation.

This class action lawsuit was commenced on October 12, 2017. (ECF No. 1.) It was filed after an extensive pre-suit investigation by Plaintiffs' counsel that began in approximately October of 2016. This investigation included, *inter alia*, speaking with class members, reviewing documents and repair orders provided by class members, reviewing Subaru engine designs in conjunction with automotive

[2] *See* http://www.enginebearings.settlementclass.com (last visited Mar. 22, 2019).

experts, and investigating potential claims.

The named Plaintiffs are residents of California, Michigan, and New Jersey. (ECF No. 17 at ¶¶ 12, 24, 35.) Between 2013 and 2015, these Plaintiffs purchased Settlement Class Vehicles. (*Id.* at ¶¶ 13, 25, 36.) Each Plaintiff experienced an engine defect that resulted in catastrophic engine failure. (*Id.* at ¶¶ 15-20, 27-31, 38-40.) The Complaint sought class certification for a Nationwide Class, (*Id.* at ¶ 92), and for sub-classes for residents of California, Michigan, and New Jersey, (*Id.* at ¶ 93.) It asserted claims for violations of the California, Michigan, and New Jersey consumer fraud statutes, California's warranty statutes, and also sought recovery under the Magnuson-Moss Warranty Act, for breach of express warranty, breach of the implied warranty of merchantability, and breach of the duty of good faith and fair dealing. (*Id.* at ¶¶ 101-182.)

The Complaint described in detail the precise nature of the alleged defects in the engines that resulted in catastrophic engine failure. (*Id.* at ¶¶ 57-82.) The Complaint explained that the presence of metal particulate within the engine oil lubrication channels caused a condition known as oil starvation, which caused excessive and frequent contact between the engine bearings. (*Id.* at ¶¶ 65-67.) Plaintiffs alleged that Defendants were aware of this engine defect, but failed to disclose it to consumers. (*Id.* at ¶ 88.) The Complaint recited numerous consumer complaints about the alleged defect made to the National Highway Traffic Safety

Administration. (*Id.* ¶ at 85.)

B. History of the Litigation.

The initial complaint was brought by Plaintiff Vincente Salcedo against Subaru of America, Inc., and Subaru Corporation, as defendants. (*Id.*) Defendants then moved to dismiss Plaintiff's complaint. (ECF No. 6.) A separate action was filed by Michael Augustine against Defendants on December 14, 2017 in this Court, captioned *Augustine v. Subaru of Am., Inc.*, No. 2:17-cv-13099 (D.N.J.).

Plaintiffs then filed a First Amended Complaint on January 11, 2018, and added Plaintiffs Gerald Linden and Brian Mervin. (ECF No. 10.) After discussions with counsel in the *Augustine* Action, a motion for consolidation of the two cases was filed along with a motion to appoint Joseph G. Sauder and Matthew D. Schelkopf as Interim Lead Counsel, Gray S. Graifman and Thomas P. Sobran as Executive Committee Counsel, and Bruce Greenberg as Liaison Counsel, which the Court granted. (ECF Nos. 12, 16.) Plaintiffs Salcedo, Linden, and Mervin filed a consolidated complaint on March 9, 2018. (ECF No. 17.) On April 18, 2018, the Court was advised that the Plaintiffs and Defendants had reached a settlement in principle. (ECF No. 20.)

The Parties commenced confirmatory discovery, including the production of documents, immediately thereafter. The Parties first negotiated and agreed upon a Discovery Confidentiality Order, which was filed with the Court and approved by

Magistrate Judge Donio on May 18, 2018. (ECF No. 23.) Plaintiffs' counsel then requested documents from Defendants necessary to assess the nature of the alleged defect and to ensure that the settlement in principle was in the best interests of the class, and that the relief offered pursuant to the settlement would fully and finally resolve the alleged defect for Plaintiffs and the class.

Defendants responded to this written discovery, and produced over 3,300 pages of documents, including: vehicle service and warranty history for each of the named Plaintiffs; Technical Service Bulletins; owners' manuals and warranty manuals for each of the Settlement Class Vehicles; warranty claims data for the Settlement Class Vehicles; and documents identifying Defendants' internal investigation, analysis, and conclusions. Plaintiffs also took the 30(b)(6) deposition of a Subaru engineer on June 6, 2018.

As noted above, Plaintiffs' counsel also dissected and analyzed the nature of the defect independently. In addition, Plaintiffs' counsel interviewed multiple non-party witnesses and responded to inquiries from putative class members. As of the date of this filing, hundreds of putative class members have directly contacted Plaintiffs' counsel.

C. Settlement Negotiations.

Counsel for the Parties discussed the possibility of resolving this litigation shortly after consolidation. This eventually resulted in several meetings between

counsel, including mediation on April 12, 2018 before the Honorable Dennis M. Cavanaugh, U.S.D.J. (Ret.), ultimately resulting in a class-wide settlement. The terms of this settlement have since been memorialized in the Settlement Agreement. All of the terms of the Settlement Agreement are the result of extensive, adversarial, and arm's-length negotiations between experienced counsel for both sides. Significantly, before the Settlement Agreement was executed, Plaintiffs' counsel took the 30(b)(6) deposition of a Subaru designee to confirm that the proposed settlement class relief is fair, reasonable, and adequate.

D. Terms of the Settlement Agreement.

If approved, the settlement will provide substantial benefits to the following Class: All residents of the continental United States who currently own or lease, or previously owned or leased, a Settlement Class Vehicle originally purchased or leased in the continental United States, including Alaska. Excluded from the Settlement Class are Subaru of America ("SOA"), Subaru Corporation ("SBR"), SOA's employees, SBR's employees, employees of SOA's and/or SBR's affiliated companies, SOA's and SBR's officers and directors, dealers that currently own Settlement Class Vehicles, all entities claiming to be subrogated to the rights of Settlement Class Members, issuers of extended vehicle warranties, and any Judge to whom the Litigation is assigned.

The valuable benefits made available pursuant to the Settlement Agreement

squarely address the issues raised in this litigation. As set forth more fully below, Subaru has agreed to cover repairs as needed to correct the alleged defect during an extended warranty period of eight (8) years or one hundred thousand (100,000) miles, whichever comes first (the "Extended Warranty"). This Extended Warranty is more than twice the length of Subaru's New Vehicle Limited Warranty, and a significant increase over Subaru's Powertrain Limited Warranty. This Extended Warranty will cover Qualifying Repairs performed by an Authorized Subaru Dealer.[3]

Settlement Class Members who sold or traded in a Settlement Class Vehicle with a Qualifying Failure prior to obtaining a repair are also eligible for payment as part of the Settlement. In order to make such a claim, the Settlement Class Member simply needs to submit a Claim Form that reflects that they presented the Settlement Class Vehicle to an Authorized Subaru Dealer with a Qualifying Failure, that they subsequently sold or traded in the Settlement Class Vehicle with an unrepaired Qualifying Failure within the Extended Warranty period and prior to the Notice Date, and that they received less than fair market value by comparing the prevailing Kelly Blue Book value at the time of the transaction, up to a

[3] Certain vehicle conditions or modifications will exclude Settlement Class Vehicles from receiving repairs under the terms of the Extended Warranty, such as any modifications to the Engine Control Unit and "piggyback" devices designed to intercept and later ECU signals. (SA ¶ II(ll).)

maximum of $4,000.

Moreover, subject to reasonable proofs and conditions, Subaru has also agreed to reimburse all Settlement Class Members for 100 percent of all out-of-pocket expenses they incurred for any out-of-pocket expenses (parts and labor) that they actually paid to an Authorized Subaru Dealer for the cost of a Qualifying Repair performed during the Extended Warranty period. The same is true for Independent Repair Shops, as long as the Settlement Class Vehicle was first presented to an Authorized Subaru Dealer (as required by Subaru's warranty) and the repair was conducted two days prior to the Notice Completion Date. Reimbursements for Qualifying Repairs made during the Extended Warranty at an Independent Repair Shop are subject to the following reasonable caps:

Repair	**Reimbursement Amount Cap**
Shortblock Replacement with No Additional Component Replacements	$3,500
Shortblock Replacement with Turbocharger Replacement or Turbocharger Rebuild	$4,500
Shortblock Replacement with Cylinder Head and Camshaft Replacement (No Turbocharger Replacement or Rebuild)	$5,500
Shortblock Replacement with Cylinder Head, Camshaft, and Turbocharger Replacement or Turbocharger Rebuild	$6,500

For any repairs performed by Independent Repair Shops, Defendants do not warrant or guarantee those repairs and, should any such repairs fail after a

Settlement Class Member has made a claim under the Settlement, the Settlement Class Member will not be entitled to submit an additional claim.

Subaru has also agreed, subject to reasonable proofs and conditions, to reimburse all Settlement Class Members for towing costs and rental car expenses (up to $45 per day for a maximum of two (2) days) incurred as a result of a Qualifying Repair, if the repair required more than two full days in a single repair period.

Any reimbursement payments made to Settlement Class Members will be via checks, which will be distributed within 60 days of receipt of a Claim, or within 60 days of the Effective Date, whichever is later. The Settlement Agreement also gives Subaru the right to augment the settlement at its discretion to provide further benefits to Settlement Class Members, and to provide goodwill benefits to Settlement Class Members as it sees fit.

Subaru has agreed to not oppose Class Counsel's attorneys' fees and expenses request in the aggregate amount of up to $625,000. Subaru has also agreed to not oppose service awards of $3,500 to each of the three (3) named Plaintiffs, for a total of $10,500. Plaintiffs will seek Court approval of these payments before the deadline for Settlement Class Members to file objections. Significantly, these obligations to pay Class Counsel's Court-approved fees and

expenses and the service awards will not reduce or otherwise have any effect on the benefits the Settlement Class will receive

E. Notification to Settlement Class Members.

The Settlement Agreement contains a comprehensive notice plan, to be paid for and administered by Subaru. And during the claims administration process, Class Counsel has the right to monitor the process to ensure that Subaru is acting in accordance with the Settlement Agreement.

Settlement Class Members will be notified by direct mail. Subaru will identify Class Members through its records and verify and update the information via R.L Polk – a third party that maintains and collects the names and addresses of automobile owners – and will send the notice to them by first-class mail. If a forwarding address is provided for a Settlement Class Member, Subaru will re-mail one additional time. For those notices for which a forwarding address is not provided, Subaru will perform an advanced address search (e.g., skip trace) and re-mail any undeliverable notice to the extent any new and current address is located. In addition, Subaru will set up a dedicated website that will include the notice, claim form, settlement agreement, and other relevant documents. Class Counsel will also provide a link to the settlement website on their law firm's website. As noted above and in the Settlement Agreement, Subaru has agreed to pay the costs of notice and other settlement administration costs.

Subaru has stated that the notices would be sent by February 14, 2019. (ECF No. 36.) For those Settlement Class Members seeking reimbursement for Qualifying Repairs already undertaken, those Settlement Class Members must submit a Claim Form within ninety (90) days of the Notice Date. Subaru has also agreed to provide notice of the settlement to the appropriate state and federal officials, as required by the Class Action Fairness Act, 28 U.S.C. § 1715.

The Settlement Agreement clearly delineates the process and procedure in the event that Subaru rejects a claim for full reimbursement of out-of-pocket expenses. Subaru will provide notice of its decision to the claimants and provide them with 30 days to cure any defect. Should Subaru again reject the claim, Subaru will advise the claimants of the right to a Second Review. The claimants may then accept Subaru's decision, or request the Second Review by sending the requisite form within thirty (30) days of receipt of this notice of right to Second Review. If that does not resolve the dispute, claimants may submit their claims to the Better Business Bureau, whose findings will be final and binding on both parties.

The Settlement Agreement also accounts for any Settlement Class Members who wish to object or exclude themselves from the settlement. Any such request must be made online or postmarked within 45 days after the mailing of notice. The Settlement Agreement requires that any objection or opt-out request contain sufficient information to reasonably demonstrate that the submission is made by a

person who actually has standing as a Settlement Class Member.[4]

As will be detailed in a forthcoming report from Defendants, notification to Settlement Class Members has been completed.

F. The Preliminary Approval Order and Response by Settlement Class Members.

As mentioned above, on September 28, 2018, the Court issued an order that granted preliminary approval to the parties' settlement, authorized the proposed notification to the class, and set the final approval hearing for February, 20 2019 at 2:30 p.m.[5] (ECF No. 32.) Consistent with the SA, Settlement Class Members currently have until April 8, 2019 to object to or opt-out of the settlement. Those Settlement Class Members who do not opt-out have until May 22, 2019 to submit claims. While the deadline for objections and opt-outs has not yet passed, Class Counsel not aware of any Settlement Class Members who have objected to the terms of the proposed settlement and there have been no requests for exclusion.

[4] If one thousand (1,000) Class Members opt out of the Settlement, the parties have the right – but not the obligation – to terminate the settlement. Within seven (7) days prior to the final approval hearing, Subaru is to provide the Court and Class Counsel with a complete exclusion list.

[5] At the request of counsel for Defendants, the Court rescheduled the final approval hearing for June 5, 2019 so Defendants could effectuate notice. (ECF No. 37.)

III. ARGUMENT

Rule 23(h) of the Federal Rules of Civil Procedure provides that in a class action settlement, "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "The awarding of fees is within the discretion of the Court, so long as the Court employs the proper legal standards, follows the proper procedures, and makes findings of fact that are not clearly erroneous." *In re Philips/Magnavox TV Litig.*, No. 09-3072 (CCC), 2012 WL 1677244, at *15 (D.N.J. May 14, 2012) (citing *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 727 (3d Cir. 2001)). In the class action settlement context, the Court is "required to clearly articulate the reasons that support its fee determination." *Henderson v. Volvo Cars of N. Am., LLC*, No. 09-4146 (CCC), 2013 WL 1192479, at *14 (D.N.J. Mar. 22, 2013) (citations omitted).

Pursuant to that rule and the SA, Plaintiffs now apply for a total fee and expense award of $625,000.00, which accounts for both the attorneys' fees for all of the law firms representing Plaintiffs (who have amassed a collective lodestar of $489,483.50), and the reimbursement of $5,221.49 in their cumulative litigation expenses. Plaintiffs also request Court approval of an additional $3,500.00 to be distributed as service awards to each of the three Representative Plaintiffs.

These requests are reasonable considering the work performed and the results achieved, and are consistent with similar awards recently approved by this Court. The SA is the product of strenuous and efficient efforts by Plaintiffs' Counsel through difficult phases of investigation, discovery, and adversarial litigation, in a case involving complex issues of fact and law. In addition, these fees, costs and service awards will be paid separately from – and in addition to – the benefits made available to the Settlement Class. For the reasons that follow, these requests should be approved.

A. The Fee Request Should be Evaluated Under the Lodestar Method.

In class action settlements, "[a]ttorneys' fees are typically assessed through the percentage-of-recovery method or through the lodestar method." *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006) (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005)). Under the lodestar method, the district court "determines an attorney's lodestar by multiplying the number of hours he or she reasonably worked on a client's case by a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer." *Gunter v. Ridgewood Energy Corp.*,

223 F.3d 190, 195 n.1 (3d Cir. 2000).[6] In undertaking this approach, the Court is "is not required to engage in this analysis with mathematical precision or 'bean-counting'" and "may rely on summaries submitted by the attorneys" without "scrutinize[ing]every billing record." *Henderson,* 2013 WL 1192479, at *15 (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 306-07)).

The lodestar method "has appeal where . . . the nature of the settlement evades the precise evaluation needed for the percentage of recovery method." *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 590 (D.N.J. 2010) (citations omitted), *rev'd on other grounds*, *Dewey v. Volkswagen Aktiengesellscahft*, 681 F.3d 170 (3d Cir. 2012). It is "designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that a percentage-of-recovery method would provide inadequate compensation." *Welch & Forbes, Inc. v. Cendant Corp. (In re Cendant Corp. Prides Litig.)*, 243 F.3d 722, 732 (3d Cir. 2001) (quoting *Krell v. Prudential Ins. Co. of Am. (In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions)*, 148 F.3d 283, 333 (3d Cir. 1998)). Which one of these two methodologies to use "will

[6] The percentage-of-recovery methodology, on the other hand, "is favored in common fund cases," and is calculated by applying "a certain percentage to the settlement fund." *Milliron v. T-Mobile United States*, 423 Fed. Appx. 131, 135 (3d Cir. 2011).

rest within the district court's sound discretion." *Charles v. Goodyear Tire & Rubber Co*., 976 F. Supp. 321, 324 (D.N.J. 1997).

While either methodology will confirm the reasonableness of the fee requested here, Plaintiffs respectfully submit that the Court should use the lodestar method in this case. *See In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at *16-17 (determining fees based on the lodestar method); *Dewey,*728 F. Supp. 2d at 593 ("[I]f the settlement's value is certain, the Court can use the percentage-of-recovery method to calculate attorneys' fees, but if the value is too uncertain, then the Court must use the lodestar method."); *Monteleone v. Nutro Co.*, No. 14-801 (ES) (JAD), 2016 WL 3566964, at *2 (D.N.J. June 30, 2016) (finding lodestar appropriate in statutory fee-shifting cases involving the New Jersey Consumer Fraud Act).

B. Class Counsel's Lodestar Figure is Reasonable.

The lodestar method involves two initial steps. The first step is to determine the appropriate hourly rate, based on the attorneys' usual billing rate and the "prevailing market rates" in the relevant community. *See In re Schering-Plough/Merck Merger Litig.*, No. 09-1099(DMC), 2010 WL 1257722, at *17 (D.N.J. Mar. 26, 2010) (citations omitted). The second step is to assess whether the billable time was reasonably expended. *Id.* "Time expended is considered 'reasonable' if the work performed was 'useful and of a type ordinarily necessary

to secure the final result obtained from the litigation.'" *Id*. at *54-55 (quoting *Public Interest Research Group of N.J., Inc. v. Windall*, 51 F.3d 1179, 1188 (3d Cir. 1985)). The lodestar figure is "presumptively reasonable" where it arises from a reasonable hourly rate and a reasonable number of hours. *Planned Parenthood of Cent. New Jersey v. Attorney General of the State of New Jersey*, 297 F.3d 253, 265 n.5 (3d Cir. 2002) (citations omitted).[7] Here, fact that the fees were vigorously negotiated between the parties also supports also supports approval of Plaintiffs' request. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("Ideally, of course, [class] litigants will settle the amount of a fee.").

The accompanying Declaration of Matthew D. Schelkopf recounts the time and expenses incurred by the law firms of Sauder Schelkopf LLC, Lite DePalma Greenberg, LLC, Kantrowitz Goldhamer & Graifman, P.C., and Thomas P. Sobran, P.C (collectively, "Plaintiffs' counsel"). Plaintiffs' counsel billed their time at their current billing rates charged to their clients,[8] and all of the billable

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[7] The final step in the lodestar analysis, discussed *infra,* is to determine whether to increase or decrease the lodestar amount by applying a lodestar multiple. *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *18.

[8] The hourly billable rates of Plaintiffs' counsel used to calculate these lodestar values are entirely consistent with hourly rates routinely approved by this Court in complex class action litigation. Indeed, the Court's final approval and fee approval petition in *Yaeger v. Subaru of Am., Inc.*, No. 1:14-cv-4490-JBS-KMW, ECF No. 109 at ¶ 3 (D.N.J.) approved the billing rates of Sauder Schelkopf attorneys and found the hours billed to be reasonable. In addition, the Court in *Henderson* found that Sauder Schelkopf attorneys' "billing rates to be appropriate

time was necessary to secure the results obtained. From inception until March 1, 2019, the combined lodestars for Plaintiffs' counsel is $489,483.50.[9] They have also collectively incurred $5,221.49 in unreimbursed expenses. All of these fees and expenses will be paid from the $625,000.00 amount requested.

C. The *Gunter* Factors Confirm the Reasonableness of the Fee Request.

In addition to determining the method of calculating the fee award, the court is obliged to ensure that the fee awarded is reasonable. *In re Cendant Corp. Litig.*, 264 F.3d 201, 283 (3d Cir. 2001). In *Gunter v. Ridgewood Energy Corp.*, the Third Circuit provided a series of non-exhaustive factors for district courts to consider in this regard:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms

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and the billable time to have been reasonably expended." 2013 WL 1192479, at *16; *see also In re Merck & Co. Vytorin ERISA Litig.*, No. 08-CV-285 (DMC), 2010 WL 547613, at *13 (D.N.J. Feb. 9, 2010) (approving rates between $250 and $835 per hour); *McGee v. Cont'l Tire N. Am., Inc.*, No. 06-6234 (GEB), 2009 WL 539893, at *18 (D.N.J. Mar. 4, 2009) (approving hourly rates of $ 495 and $600).

[9] Because this reported time does not include any of the billable time after March 1, 2019, it does not account for the work performed by Plaintiffs' counsel subsequent to that date, or for the future work that will be associated with claims and settlement administration. *See In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at *17 (observing, in analyzing a fee request, that the submitted figures did not include time and expenses incurred by counsel subsequent to the submission of that motion); *Yaeger*, No. 1:14-cv-04490, ECF No. 109 ¶ 3; *Henderson,* 2013 WL 1192479, at *15, n.11 (same).

> and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

Gunter, 223 F.3d 190, 195 n.1.[10] In addition to these factors, the Third Circuit has listed three other factors that may be relevant: "(1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations; (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained; and (3) any 'innovative' terms of settlement." *In re AT&T Corp. Secs. Litig*., 455 F.3d 160, 165 (3d Cir. 2006) (internal citations omitted).

These factors "need not be applied in a formulaic way…and in certain cases, one factor may outweigh the rest." *In re Insurance Brokerage Antitrust Litig*., 579 F.3d at 280. District courts are to engage in "robust assessments of the fee award reasonableness factors when evaluating a fee request." *Id.* (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 302 (3d Cir. 2005)).

As set forth below, each of the *Gunter* factors support the fee request here.

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[10] These *Gunter* factors were cited and applied by the Third Circuit in reviewing whether a percentage of the total recovery fee was reasonable. *See In re Insurance Brokerage Antitrust Litig.*, 579 F.3d 241, 279-80 (3d Cir. 2009).

1. The Size of the Fund Created and the Number of Persons Benefitted.

The SA in this case makes available substantial relief. There are approximately 65,000 Class Vehicles that were sold and leased throughout the United States. All of these Settlement Class Members will be entitled to the relief described above, and can be assured of immediate and certain relief under the terms of the SA.

2. The Presence or Absence of Substantial Objections by Members of the Class.

As discussed above, the deadline by which class members may object to the SA – including Plaintiffs' request for attorneys' fees – is April 8, 2019. While this fee petition is being filed before the expiration of the objection period, no objections have been received.[11]

The dearth of objections support approval of the requested fee. *See Reinhart v. Lucent Techs., Inc.*, 327 F. Supp. 2d 426, 435 (D.N.J. 2004) ("[T]he Court concludes that the lack of a significant number of objections is strong evidence that the fees request is reasonable."); *see also Weber v. Gov't Emples. Ins. Co*., 262 F.R.D. 431, 451 (D.N.J. 2009) ("The Court relies upon the representations of Class

[11] Plaintiffs reserve the right to address any objection(s) that may be filed in their motion seeking final approval of the settlement, and will also be prepared to address any questions or concerns the Court may have about any such objection at the Final Approval Hearing on June 5, 2019.

Counsel, the lack of objection to the reasonableness of the lodestar calculation, and its own experience in fee applications in other class actions of similar duration, scope, and complexity, to conclude that these claimed hours and rates are correct and reasonable.").

3. The Skill and Efficiency of the Attorneys Involved.

The "single clearest factor reflecting the quality of class counsels' services to the class are the results obtained." *In re Safety Components Sec. Litig.*, 166 F. Supp. 2d 72, 96 (D.N.J. 2001). Related factors include "'the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.'" *McCoy v. Health Net, Inc*., 569 F. Supp. 2d 448, 476 (D.N.J. 2008) (quoting *Mehling* v. *New York Life Ins. Co.*, 248 F.R.D. 455, 465 (E.D. Pa. 2008)). The goal of this *Gunter* factor is to ensure "that competent counsel continue to undertake risky, complex and novel litigation" for the benefit of large numbers of class members who might otherwise lack reasonable access to justice. *Gunter*, 223 F.3d at 198.

The results obtained in this case, described fully in Section II(D) is in large measure a reflection of the tenacity with which Plaintiffs' counsel prosecuted this litigation. Plaintiffs' counsel has achieved enormous benefits for Settlement Class

Members. Plaintiffs' counsel also respectfully submits that their submissions to the Court in this case were of high quality. As such, this factor supports the fee request.

4. The Complexity and Duration of the Litigation.

This complex class action litigation has lasted nearly two years and has required extensive work by Plaintiffs' counsel (including pre-complaint factual investigation, discovery, and mediation before the Honorable Dennis M. Cavanaugh (Ret.)) to result in a successful conclusion. Several courts have recognized that "any class action presents complex and difficult legal and logistical issues which require substantial expertise and resources." *Stalcup v. Schlage Lock Co.*, 505 F. Supp. 2d 704, 707 (D. Colo. 2007); *see also McCoy*, 569 F. Supp. 2d at 477. The amount of compensation sought by the Class Counsel is reasonable when assessed in light of these factors. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (district court did not abuse its discretion in concluding that – in light of legal issues, duration of the case, discovery, and the necessity of resorting to mediation to reach a final settlement – the matter was complex).

5. The Risk of Nonpayment.

Class Counsel brought this litigation on a purely contingency fee basis and the risk of non-recovery was sufficiently substantial to justify the instant fee request. *See O'Keefe v. Mercedes-Benz United States, LLC*, 214 F.R.D. 266, 309

(E.D. Pa. 2003) ("Any contingency fee includes a risk of non-payment. That is why class counsel will be paid a percentage that is several times greater than an hourly fee in this case."). Indeed, in *In re Ins. Brokerage Antitrust Litig.*, this Court observed that "Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees." No. 04-5184 (CCC), 282 F.R.D. 92, 122 (D.N.J. 2012) (citations omitted). In addition, there is no question that Defendants are financially stable and able to pay claims made under the settlement. *See O'Keefe*, 214 F.R.D. at 309 (observing that "[t]his factor more properly addresses the concern that class counsel risks non-payment after securing class recovery because of the precarious financial position of the defendant" and stating "[Mercedes] is financially stable and no one has questioned its ability to pay. This factor is not relevant in this case.").

6. The Amount of Time Devoted to the Case by Class Counsel.

In terms of the sheer amount of genuine labor involved on the part of the Plaintiffs, there were over 764 hours of contingent work performed by Class Counsel in litigating this matter. Plaintiffs received and reviewed discovery from Defendants related to the allegations in the Complaint and conducted their own independent investigation. This commitment of time and effort clearly supports the fee request.

7. The Awards in Similar Cases.

A review of similar cases demonstrates that the fee request here is reasonable and appropriate, and on the low-end of similar automotive class action settlements. *See*, *e.g.*, *Bang v. BMW of N. Am., LLC*, No. 2:15-cv-6945 (MCA)(SCM), ECF No. 121 (D.N.J. Sept. 11, 2018) (approving requested $3.022 million fee and expense award); *Yaeger*, No. 2:15-cv-06945, ECF No. 109 (approving a requested $1.5 million fee and expense award); *Davitt v. Honda N. Am.*, No. 2:13-cv-00381-MCA-JBC, ECF No. 71 (D.N.J. May 8, 2015) (approving a requested $1.5 million fee and expense award); *Henderson,* 2013 WL 1192479, at *19-20 (approving a requested $3 million fee and expense award); *McGee*, *supra* ($2,274,983.70 in fees and expenses, representing a multiplier, justified in a consumer class action); *O'Keefe* v. *Mercedes-Benz USA*, 214 F.R.D. 266, 304 (E.D. Pa. 2003) ($4,896,783.00 in fees justified in class action involving allegedly defectively design rear lift-gate latch); *Weiss v. Mercedes-Benz of N. Am*., 899 F. Supp. 1297, 1304 (D.N.J. 1995) (attorneys' fee award of $11,250,000.00 was fair and reasonable in class action settlement involving allegations of violation of Lanham Act and New Jersey Consumer Fraud Act in connection with alleged vibration in automobile's steering system). Accordingly, this and the other *Gunter* factors strongly support granting the requested fee.

D. The Requested Fees Are Reasonable Under a Cross-Check.

"Regardless of the method chosen, [the Third Circuit has] suggested it is sensible for a court to use a second method of fee approval to cross-check its initial fee calculation." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). The purpose of doing a lodestar cross-check is "to insure that plaintiffs' lawyers are not receiving an excessive fee at their clients' expense." *Gunter*, 223 F.3d at 199.

Under the "cross-check" method, the Court multiplies the hourly rates by the applicable hours to get a lodestar amount. The lodestar multiplier is then obtained by dividing the proposed fee award by the lodestar amount. *In re Insurance Brokerage Antitrust Litig.*, 579 F.3d at 280; *Schwartz v. Avis Rent a Car Sys., LLC*, No 11-4052 (JLL), 2016 WL 3457160, at *12 (D.N.J. June 21, 2016) ("Next, the Court divides the proposed fee award by the calculated lodestar figure, which provides a number known as the 'multiplier.'").

In this case, the lodestar "cross-check" confirms the propriety of the fee sought. Class Counsel are reporting their lodestar using a method by which hours expended by each attorney are multiplied by the attorney's hourly rate. Based on these figures, the requested fee amount ($625,000) yields a 1.28 multiplier of Plaintiffs' counsel's actual lodestar ($489,483.50). If the additional $5,221.49 in

total expenses are included in this calculation, the requested multiplier is reduced to 1.26.

Courts routinely find in complex class action cases that a multiplier of one to four of counsel's lodestar is fair and reasonable. *See Boone v. City of Phila.*, 668 F. Supp. 2d 693, 714 (E.D. Pa. 2009). *Accord, In re Prudential*, 148 F.3d 283, 341 (3d Cir. 1998) (quoting 3 Herbert Newberg & Alba Conte, *Newberg on Class Actions*, Section 14.03 at 14-5 (3d ed. 1992)). The Third Circuit has observed that it has "approved a multiplier of 2.99 in a relatively simple case." *Milliron v. T-Mobile United States*, 423 Fed. Appx. 131, 135 (3d Cir. 2011) (citing *Cendant PRIDES*, 243 F.3d at 742); *see also In re Schering-Plough Corp. Enhance ERISA Litig.,* No. 08-CV-1432, 2012 WL 1964451, *8 (D.N.J. May 31, 2012) (stating that a multiplier of 1.6 "is an amount commonly approved by courts of this Circuit") *McLennan v. LG Electronics USA, Inc.*, No. 10-cv-03604, 2012 WL 686020, at *10 (D.N.J. Mar. 2, 2012) (finding a multiplier of 2.93 appropriate where, *inter alia*, "[c]lass counsel prosecuted this matter on a wholly contingent basis, which placed at risk their own resources, with no guarantee of recovery"); *McCoy v. Health Net, Inc.,* 569 F. Supp. 2d 448, 479 (D.N.J. 2008) (finding a multiplier of almost 2.3 to be reasonable); *Henderson,* 2013 WL 1192479, at *16-19 (approving a lodestar multiple of 1.13). The 1.26 multiplier sought here is at the low end of the acceptable range, is reasonable, and should be approved.

E. Plaintiffs' Counsel's Expenses Should be Approved.

There is little question that "[c]ounsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action." *Schuler v. Medicines Co.*, No. 14-1149(CCC), 2016 WL 3457218, at *11 (D.N.J. June 24 2016) (quoting *In re Safety Components Int'l Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001)). *Accord, In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. at 125 (recognizing the same principle, and approving an expense request of $394,192.76).

In this case, Plaintiffs' Counsel have incurred $5,221.49 in properly documented expenses for the common benefit of Class Members. The requested expenses will be paid from the total $625,000 fee and expense request. Plaintiffs' counsel put forward these necessary out-of-pocket costs without assurance that they would ever be repaid. The requested amount is therefore reasonable and should be approved. *See, e.g., In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *19 (approving expenses that were "adequately documented and reasonably and appropriately incurred in the prosecution of the case."); *In re Datatec Sys. Sec. Litig.*, No. 04-CV-525 (GEB), 2007 WL 4225828, at *9 (D.N.J. Nov. 28, 2007) (approving "costs associated with experts, consultants, investigators, legal research, mediation, meals, hotels, transportation, word

processing, court fees, mailing, postage, telephone, telephone, and the costs of giving notice.").

F. The Requested Service Awards Should be Approved.

The service provided by the Plaintiffs in this action should not go without financial recognition. While service as a representative plaintiff is not a profit-making position, the law recognizes that it is appropriate to make modest payment in recognition of the services that such plaintiffs perform in successful class litigation. *See, e.g.*, *J/H Real Estate*, 951 F. Supp. 63, 66 (E.D. Pa. 1997); *In re GNC Shareholder Litig.*, 668 F. Supp. 450, 451 (W.D. Pa. 1987).

The SA here recognizes this principle by providing service award payments of $3,500 to each of the three Representative Plaintiffs. These Representative Plaintiffs were the principal catalysts to achieving this result for the Class. They participated in numerous conferences and meetings with their attorneys, searched for and produced documents to their attorneys that were relevant to their claims in the litigation, and stayed abreast of significant developments in the case. And like Plaintiffs' fee and expense request, these service awards will be paid separate from the consideration in the SA, and will not reduce the recovery to any Settlement Class Member. *See In re LG/Zenith Rear Projection TV Class Action Litig.*, No. 06-5609 (JLL), 2009 WL 455513, at *9 (D.N.J. Feb. 18, 2009) (approving service award that "will not decrease the recovery of other class members.").

Consistent with the law and the terms of the SA, it is appropriate to make these payments to the Plaintiffs. *See Bredbenner v. Liberty Travel, Inc.*, No. 09-905 (MF), 2011 WL 1344745, at *23-24 (D.N.J. Apr. 8, 2011) (approving service award payments of $10,000 to each of the named plaintiffs); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. at 125 (approving service awards totaling $85,000 – which amounted to $5,000 to each of the class representatives). Recently, in a similar consumer automobile case, Judge Simandle approved service awards of $3,500 each to a total of nine class representatives. *Yaeger*, No. 1:14-cv-04490, ECF No. 109 (approving $3,500 service award to each of nine class representatives for a total of $31,500); *see also Henderson*, 2013 WL 1192479, at *19 (approving service awards between $5,000 to $6,000 each of six class representatives). Judge Arleo also recently approved service awards of $3,500 each to a total of eight class representatives. *Bang*, No. 2:16-cv-06945(MCA)(SCM), ECF No. 121. Plaintiffs respectfully request that the Court approve the requested service awards here.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court award Plaintiffs' counsel the payment of $625,000 in attorneys' fees and expenses, and approve the payment of $3,500 in service awards to each of the three Representative Plaintiffs. A proposed order granting this requested relief is submitted herewith.

Dated: March 22, 2019

Respectfully submitted,

By: /s/ *Matthew D. Schelkopf*

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Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I, Matthew D. Schelkopf, hereby certify that the foregoing **PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR UNOPPOSED MOTION FOR ATTORNEYS'FEES, EXPENSES AND SERVICE AWARDS** was filed on this 22nd day of March, 2019 using the Court's CM/ECF system, thereby electronically serving it on all counsel of record in this case.

/s/ Matthew D. Schelkopf
Matthew D. Schelkopf

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICENTE SALCEDO, GERALD LINDEN, and BRIAN MERVIN, individually and on behalf of all others similarly situated, Plaintiffs, vs. SUBARU OF AMERICA, INC., a New Jersey Corporation, and SUBARU CORPORATION, a Japanese Corporation, Defendants.	Civil Action No.: 17-8173(JHR)(AMD) **CLASS ACTION**

DECLARATION OF MATTHEW D. SCHELKOPF IN SUPPORT OF PLAINTIFFS' UNOPPOSSED MOTION FOR ATTORNEYS' FEES, EXPENSES AND SERVICE AWARDS

I, Matthew D. Schelkopf, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a member in good standing of the bar of the Commonwealth of Pennsylvania, and I am admitted to this Court and am counsel for Plaintiffs and the Settlement Class. I respectfully submit this declaration in further support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses and Service Awards. The following is based on my personal knowledge, and if called upon to do so, I could and would competently testify to the statements set forth below.

2. I am a partner at Sauder Schelkopf LLC. My firm is a four attorney

firm located in Berwyn, Pennsylvania representing plaintiffs in consumer fraud class actions, product liability, and other complex class action litigations in Pennsylvania, New Jersey, and across the United States. I obtained my J.D. from Widener University in 2002.

3. Since 2010, I have been selected by Pennsylvania Super Lawyers as a Rising Star (a distinction held by the top 2.5% of attorneys in PA) and then a Pennsylvania Super Lawyer, as chosen by their peers and through the independent research of Law & Politics. In 2012, The American Lawyer Media, publisher of The Legal Intelligencer and the Pennsylvania Law Weekly, named me as one of the "Lawyers on the Fast Track" a distinction that recognized thirty-five Pennsylvania attorneys under the age of 40 who show outstanding promise in the legal profession and make a significant commitment to their community. I was also selected as a Top 40 under 40 by the National Trial Lawyers in 2012-2015.

4. I have an extensive background in litigation on behalf of consumers, and I am currently serving as lead or co-lead counsel in many class actions in federal courts across the country, including automotive defect cases similar to this one. This experience, coupled with the experience of our co-counsel, enabled our firms to undertake this matter and to successfully combat the resources of Defendants and their capable and experienced counsel.

LODESTAR

5. As of March 1, 2019, all counsel in this litigation has collectively spent approximately 764 hours working on this case, for a total lodestar amount of $489,483.50.

6. The hourly rates of Sauder Schelkopf attorneys ranged from $350 per hour for associate work, and $650 per hour for partner work.

7. The hourly rates of Lite DePalma employees ranged from $250 per hour for paralegal work, and $800 per hour for partner work.

8. The hourly rates of Kantrowitz, Goldhamer & Graifman, P.C. attorneys ranged from $225 per hour for paralegal work, $615 per hour for senior associate work, to $850 per hour for partner work.

9. The hourly rates of Thomas P. Sobran of Thomas P. Sobran, P.C. was $750 for partner work.

10. Due to the amount of privileged information contained in the hourly billing records, those detailed records are not attached here, but can be provided in camera should this Court wish to review them.

11. Class Counsel made significant efforts toward the efficient allocation of work between them. Partners in the firms coordinated their work assignments on a regular basis to prevent unnecessary duplication of work across the firms.

12. Having the firms serving as Class Counsel work on the case together

added substantial value to the case, as borne out by the ultimate relief achieved for the Class. Class Counsel were able to work together to develop sophisticated and effective strategies for pursuing the claims of Plaintiffs and the Classes.

13. Moreover, the arrangement between the Class Counsel firms also reflects the reality of large consumer protection class actions where, because of the great risk involved, multiple firms with national practices work together to spread the risk.

14. The work performed in this case was reasonable and necessary to the prosecution and settlement of this case. Class Counsel conducted a significant factual investigation during the prosecution of this action. Because of their comprehensive evaluation of the facts and law, Class Counsel was able to settle this case for a very substantial sum. Class Counsel provided Class Members with substantive and certain relief much sooner than if litigation of this matter had continued.

15. As settlement administration is ongoing, and based on my experience in previous consumer protection class actions, the lodestar figures reported herein will meaningfully increase by the time the settlement is completely and finally administered.

COUNSEL'S EXPENSES

16. This litigation required Class Counsel to advance costs. Where corporate defendants and their attorneys are well funded, as was true here and in most national consumer protection cases, this type of litigation can prove to be expensive and risky. Because the risk of advancing costs in this type of litigation is significant, doing so is often cost prohibitive to many attorneys.

17. As of March 1, 2019, counsel in this litigation collectively expended costs of approximately $5,221.49, including the cost of mediation. These expenses are reflected in the books and records of each firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred. All of the expenses incurred were reasonable and necessary to the prosecution of this case.

18. On behalf of Plaintiffs and all counsel in this litigation, I respectfully request that the Court award the requested attorneys' fees and costs.

I declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Dated: March 22, 2019

/s/ Matthew D. Schelkopf
Matthew D. Schelkopf

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICENTE SALCEDO, GERALD LINDEN, and BRIAN MERVIN, individually and on behalf of all others similarly situated, Plaintiffs, vs. SUBARU OF AMERICA, INC., a New Jersey Corporation, and SUBARU CORPORATION, a Japanese Corporation, Defendants.	Civil Action No.: 17-8173(JHR)(AMD) **CLASS ACTION**

[PROPOSED ORDER] GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

WHEREAS, Plaintiffs and Defendants executed an agreement to settle this matter, subject to Court approval, on August 20, 2018;

WHEREAS, the Court reviewed the parties' Settlement Agreement and issued an order granting preliminary approval to it on September 28, 2019 (ECF No. 32);

WHEREAS, Section XIII(1) of the Settlement Agreement provides that Defendants have agreed to pay, subject to Court approval, the amount of up to $625,000 to Plaintiff's counsel for their attorneys' fees and expenses;

WHEREAS, Section XIII(2) of the Settlement Agreement provides that Defendants have agreed to pay, subject to Court approval, service awards totaling $3,500 to each of the three Class Representatives ($10,500 total);

WHEREAS, after considering Plaintiffs' motion, memorandum of law and supporting materials (including the declaration from counsel) as well as any material(s) that may be filed in opposition thereto, the Court having concluded that Plaintiffs' request for fees, expenses, and the payment of service awards is reasonable, permissible under the applicable law, and in accordance with the Settlement Agreement.

IT IS ORDERED AS FOLLOWS:

1. Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses, and Service Awards is **GRANTED**.

2. Defendants shall pay Plaintiffs' counsel $_____ for their attorneys' fees and expenses, in accordance with the Settlement Agreement.

3. Defendants shall also make an additional payment totaling $_____ to Plaintiffs' counsel for the service awards of the three Class Representatives, which amounts shall then be remitted by Plaintiffs' counsel to the Class Representatives, in accordance with the Settlement Agreement.

4. All other payments and costs shall be borne as set forth in the Settlement Agreement or as agreed to by the parties.

IT IS SO ORDERED.

Dated: _____

_____
Hon. Joseph H. Rodriguez
United States District Judge