UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, Individually and on Behalf of All Other Persons Similarly Situated, Plaintiff, v. GENERAL MOTORS COMPANY, DANIEL F. AKERSON, NICHOLAS S. CYPRUS, CHRISTOPHER P. LIDDELL, DANIEL AMMANN, CHARLES K. STEVENS, III, MARY T. BARRA, THOMAS S. TIMKO, and GAY KENT Defendants.	Civil Case No. 4:14-cv-11191 Honorable Linda V. Parker

REPLY MEMORANDUM IN FURTHER SUPPORT OF (I) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

Lead Plaintiff New York State Teachers' Retirement System ("Lead Plaintiff" or "New York Teachers") and Lead Counsel Bernstein Litowitz Berger & Grossmann LLP ("Lead Counsel") respectfully submit this reply memorandum of law in further support of: (1) Lead Plaintiff's Motion for Final Approval of Settlement and Approval of Plan of Allocation; and (2) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.[1]

I. INTRODUCTION

The proposed Settlement provides an immediate $300 million benefit to the Settlement Class, is the second largest issuer settlement in a PSLRA case in the Sixth Circuit and represents an excellent outcome in light of the many serious litigation risks outlined in the opening briefs. The related request for attorneys' fees (7%) and reimbursement of expenses is at the very low-end of requests in cases with similar recoveries. As would be expected, the Settlement Class's reaction to the Notice reflects broad support for the Settlement and fee request.

The Claims Administrator, Garden City Group, LLC ("GCG"), has disseminated the Notice to approximately 1.2 million potential Settlement Class Members and nominees. The Notice details the terms of the Settlement, Plan of Allocation, and Co-Lead Counsel's application for attorneys' fees of 7% and reimbursement of expenses. The deadline to file objections was March 23, 2015. Only six objections have been received, a minute number compared to the size of

[1] Unless otherwise indicated, all capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated November 11, 2015 (ECF No. 94-2) (the "Stipulation").

the Settlement Class. Not only are these objections without merit, but none was filed by an institutional investor even though such institutions owned 75% or more of General Motor's common stock during the Settlement Class Period. The objectors who have filed challenges collectively acquired just 13,210 shares of GM stock during the Settlement Class Period, representing just 0.0008% of the approximately 1.6 billion shares of GM common stock outstanding during the Settlement Class Period, further demonstrating that the Settlement has been well-received by the overwhelming majority of the Settlement Class. Similarly, despite the dissemination of almost 1.2 million notices, only 86 requests for exclusion been received, nearly all of which were submitted by small investors.[2]

II. ARGUMENT

A. The Reaction of the Settlement Class Strongly Supports Approval

Pursuant to the Preliminary Approval Order, on December 21, 2015, GCG began mailing copies of the Notice and Claim Form (the "Notice Packet") to potential Settlement Class Members and their nominees. *See* Declaration of Jose C. Fraga (ECF No. 102-2) (the "Fraga Decl."), at ¶¶ 3-5. Through April 13, 2016,

[2] Aside from one request for exclusion submitted by several TIAA-CREF investment funds, the other 85 exclusion requests either provided no information on the GM shares acquired during the Settlement Class Period or indicated that the number was minimal. Indeed, of these 85 requests for exclusion, 35 were submitted by investors who said they were not Settlement Class Members or did not provide sufficient information to determine if they were Settlement Class Members and another 9 by investors who sold all of the GM shares they purchased before the first corrective disclosure. As to the investors who did provide transactional details, they reportedly acquired under 10,500 GM shares during the Settlement Class Period. While not all of the requests complied with the requirements set forth in the Notice, Defendants have consented to granting the requests.

approximately 1.2 million copies of the Notice Packet have been mailed. *See* Supplemental Declaration of Jose Fraga (the "Suppl. Fraga Decl."), attached as Exhibit 1 to the Supplemental Declaration of Salvatore J. Graziano ("Suppl. Graziano Decl."), at ¶ 2. On December 21, 2015, the Notice, Claim Form, Stipulation, and Preliminary Approval Order, among other documents, were posted on the Settlement website, www.GMSecuritiesLitigation.com. Fraga Decl. at ¶ 11. On January 5, 2016, the Summary Notice was published in *USA Today* and *The Wall Street Journal* and released over *PR Newswire*. *Id.* at ¶ 9.

On March 9, 2016, two weeks prior to the objection deadline, Lead Plaintiff and Lead Counsel filed detailed papers in support of the Settlement, Plan Allocation, and fee and expense request. These papers are available on the public docket (ECF Nos. 100-102), and Settlement website. *See* Suppl. Fraga Decl. ¶ 3.

Following this extensive notice process, six objections have been received – all of which are without merit and should be rejected for the reasons discussed below. Lead Plaintiff and Lead Counsel respectfully submit that the small number of objections provides further evidence that the Settlement is fair, reasonable, and adequate, and that it should be approved by the Court. *See In re Delphi Corp. Sec., Derivative & ERISA Litig.*, 248 F.R.D. 483, 500 (E.D. Mich. 2008) ("small number of objections … can be viewed as indicative of the adequacy of the settlement"); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 457, 458 (S.D.N.Y. 2004) (six objections out of a class of approximately one million "constitutes a ringing endorsement of the settlement by class members"); *Olden v. Gardner*, 294 F. App'x 210, 217 (6th Cir. 2008) (finding that 79 objections in a class of nearly 11,000 "tends

to support a finding that the settlement is fair"); *Int'l Union v. Ford Motor Co.*, No. 05-74730, 2006 WL 1984363, at *27 (E.D. Mich. July 13, 2006) (800 objections out of a class of more than 170,000 provided "another reason to conclude that the Settlement is fair, reasonable, and adequate"), *aff'd*, 497 F.3d 615 (6th Cir. 2007).

Moreover, although institutional investors owned approximately 75% or more of the publicly traded GM common stock during the Settlement Class Period, no objections were filed by any institutional investors. Many of these institutions have substantial financial interests in this Action, and have in-house legal departments to closely review the proposed Settlement and fee request. As such, the absence of any objections by institutional investors further underscores the reasonableness of the Settlement. *See, e.g., In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 261 (D.N.H. 2007) (finding that "[t]he reaction of the class to the settlement has been almost entirely positive," where "[n]one of the institutional investors have objected to the size of the settlement"); *In re AOL Time Warner, Inc.*, MDL No. 1500, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006) (same); *In re AT&T Corp. Sec. Litig.*, MDL No. 1399, 2005 WL 6716404, at *4 (D.N.J. Apr. 25, 2005) (approving settlement where "no objections were filed by any institutional investors who had great financial incentive to object"); *In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 702-03 (E.D. Mo. 2002) (same).

B. Objectors Kayser Trust, Schoeman, Khemka and Orava Have Failed To Demonstrate Standing to Object

The Preliminary Approval Order requires objectors to provide documentation showing their purchases or acquisitions of GM common stock during the Settlement

Class Period, and those requirements are set out in the Notice.[3] However, while the Kayser Trust, Mr. Schoeman, and Mr. Khemka each assert that they acquired or own GM common stock, they provide no documentation; and Mr. Orava provides no indication that he was ever a GM shareholder.[4] An objector must be a class member to have standing to object,[5] and conclusory assertions of class membership are insufficient. *See In re Nationwide Fin. Servs. Litig.*, No. 2:08-CV-00249, 2009 WL 8747486, at *8 (S.D. Ohio Aug. 19, 2009) ("objectors failed to establish their membership in the Class or their standing to object"); *Feder v. Elec. Data Sys. Corp.*, 248 Fed. App'x 579, 581 (5th Cir. 2007) (objector lacked standing where he "produced no evidence substantiating his membership in the class"). Accordingly, the Court should reject the Kayser Trust, Schoeman, Khemka and Orava objections.

C. Mr. Marro's Objection Is Without Merit

Donald C. Marro objects to the Settlement because warrants to purchase GM stock received by Mr. Marro and others in connection with the liquidation of "Old GM" are not included in the Settlement Class. ECF No. 105, at ¶ 4.[6] Mr. Marro

---

[3] *See* Preliminary Approval Order, ECF No. 95, at ¶ 18; Notice ¶ 65.

[4] *See* Kayser Trust objection (ECF No. 107, at 2); Schoeman objection (ECF No. 96, at 3); and Khemka objection (ECF No. 104, at 1).

[5] *See, e.g., Tenn. Ass'n of Health Maint. Orgs., Inc. v. Grier*, 262 F.3d 559, 566 (6th Cir. 2001) ("The plain language of Rule 23(e) clearly contemplates allowing only class members to object").

[6] On April 5, 2015, Mr. Marro filed his (1) Omnibus Motions for Leave To File Supplemental Objections or, Alternatively, File Out Of Time, and For Joinder With the Schoeman (#96) and Khemka (#104) Objections To the Settlement Agreement Herein (ECF No. 110), and (2) Notice of Supplemental Objection and Supplemental Objection and Objection to the Proposed Settlement Agreement and Request for Related Relief (ECF No. 111). The Court granted Mr. Marro's Motions for Leave to File on April 13, 2016. ECF No. 115.

also requests that the Court "modify the Settlement Agreement such that [] an inflated dollar value is recognized for the shares distributed from the bankruptcy estate and thereby increases [sic] the number of shares distributed accordingly." *Id*. In Mr. Marro's Supplemental Objection, in addition to renewing certain of his original requests, he seeks orders, and "an evidentiary hearing," on several additional issues, including (a) whether notice was sent to "all shareholders of record;" (b) whether the Plan of Allocation adequately addresses the safety defect "cover up," fairly establishes "Recognized Loss criteria" and disproportionately favors New York Teachers, (c) the breakdown of Lead Counsel's lodestar, and (d) requests disclosure of confidential settlement communications between counsel for Lead Plaintiff and Defendants, which are subject to an absolute protection under Fed. R. Evid. 403.[7] *See* ECF No. 111, at 2. Each of these objections is specious and Mr. Marro's requested relief should be denied.[8]

[7] Mr. Marro's objections to the Plan of Allocation are addressed in Section II.I, below and his objection to the fee request is addressed in Section II.J.

[8] Mr. Marro has appeared as a *pro se* plaintiff in 47 actions in Fauquier County Circuit Court in Virginia, as a *pro se* plaintiff or objector in more than a dozen federal actions or bankruptcy proceedings, including an unsuccessful objection to GM's bankruptcy, as well as making four unsuccessful petitions for certiorari to the United States Supreme Court. *See, e.g., In re General Motors Corp.*, Case No. 09-5006 (REG) (Bankr. S.D.N.Y. June 26, 2009), ECF No. 2881 (Mr. Marro objected that certain aspects of GM's reorganization violated due process, equal protection and the takings clause); *see generally* Suppl. Graziano Decl. ¶ 9. Mr. Marro has been declared a "vexatious litigant" and sanctioned for his conduct. *See* Petition for Writ of Certiorari, *Marro v. Fauquier Cnty Bd. of Supervisors*, No. 11-160, 2011 WL 3488941, at *5-*6 (Apr. 21, 2011) (Mr. Marro's petition notes that he was twice declared a "vexatious litigant" and sanctioned, and that such sanctions were upheld in appeals to Virginia courts and the U.S. Supreme Court).

The Class alleged in the Amended Complaint does not include investors who held warrants to acquire GM stock. New York Teachers, after being appointed Lead Plaintiff, brought this securities class action on behalf of "all persons and entities who purchased or otherwise acquired GM common stock between November 17, 2010 and July 24, 2014." *See* ECF No. 62, at ¶¶ 2, 889. The Amended Complaint was filed on January 15, 2015 and was publicly available (including on Lead Counsel's website). Consistent with the class alleged in the Complaint, holders of warrants are not included in the definition of the Settlement Class. *See* Stipulation ¶ 1(rr). Similarly, consistent with the Complaint, the "Released Plaintiffs' Claims" are limited to claims "that relate to the purchase or acquisition of GM common stock during the Settlement Class Period." *See* Stipulation ¶ 1(mm); *see also* Notice ¶ 26. Accordingly, holders of GM warrants, among other GM securities that are not GM common stock, are not included in the Settlement Class; their claims are not released by the Settlement; and any claims related to those securities they may have are not affected by the Settlement.[9] *See In re Bank of Am. Corp. Sec. Derivative & ERISA Litig.*, No. 09 MDL 2058 (DC), 2010 WL 1438980, at *2 (S.D.N.Y. Apr. 9, 2010) (purchasers of debt securities and options who were not included in the class could not require Lead Plaintiffs to expand the class, but were "free to pursue their claims as individual cases"); *Boyd v. NovaStar Fin., Inc.*, No. 07-0139-CV-W-ODS, 2007 WL 2026130, at *3, n.2 (W.D. Mo. July 9, 2007) (noting that a suit seeking recovery

[9] Accordingly, the alternative relief sought in Mr. Marro's supplemental objection, "a carve-out of the right to bring or continue suit" on claims relating to the warrants (ECF No. 111, at 2) is unnecessary because those claims have not been released.

for purchasers of the defendant company's common stock excluded option traders and preferred stock purchasers, but that purchasers of those securities could file their own lawsuits); *Levin v. Miss. River Corp.*, 47 F.R.D. 294, 298 (S.D.N.Y. 1996) (denying request to intervene by movant whose claims were not included in the class and noting that movant "can commence a separate action").

Despite the fact that GM warrant holders are not included in the Settlement Class, Mr. Marro requests that the Court expand the Settlement Class to include holders of GM warrants and direct Lead Counsel to negotiate with defense counsel on behalf of those "Warrant Parties." ECF No. 105, at ¶¶ 4-5. It is well settled that "in a securities class action, a lead plaintiff is empowered to control the management of the litigation as a whole, and it is within the lead plaintiff's authority to decide what claims to assert on behalf of the class . . . . Lead Plaintiffs have the authority to decide what claims to assert on behalf of securities holders." *See Bank of Am. Corp.*, 2010 WL 1438980, at *1-*2 (citing *Hevesi v. Citigroup Inc.*, 366 F.3d 70, 82 n.13 (2d Cir. 2004)). Such authority includes the decision to assert claims on behalf of holders of certain securities and not others. *See id.* at *2 (upholding lead plaintiff's decision to bring claims only on behalf of stockholders: "Lead Plaintiffs should be given the opportunity to make th[e] decision" of whether or not to assert claims on behalf of holders of debt securities or options); *In re Bank of Am. Corp. Sec., Derivative, & ERISA Litig.*, No. 10 Civ. 275 (PKC), 2011 WL 4538428, at *2 (S.D.N.Y. Sept. 29, 2011) (a lead plaintiff "necessarily makes determinations that limit the class of shareholders. Inevitably, any class definition establishes boundaries as to who may recover"); *see also In re WorldCom, Inc. Sec. Litig.*, No.

02 CIV 3288 (DLC), 2004 WL 2591402, at *10, 15 (S.D.N.Y. Nov. 12, 2004) (rejecting an objection to a partial settlement which "request[ed] that the definition of the Class be expanded to include sellers of default swaps"). The authority cited above stands to create a practical limitation on the scope of the claims included in a class action settlement, which is reinforced here by the fact that such claims were never pursued by the Court-appointed Lead Plaintiff in this case and are not released in the proposed Settlement.

Determinations concerning the scope of the Settlement Class's claims were well-considered. Here, Lead Plaintiff, based on the advice of Lead Counsel, was highly selective and careful in exercising its discretion and determining to prosecute claims only on behalf of purchasers and acquirers of GM common stock. Lead Counsel, with the assistance of experts, carefully considered claims that could be brought with respect to all GM securities but decided that only common stock should be included. For example, as detailed in Lead Plaintiff's Motion for Final Approval of Settlement and Approval of Plan of Allocation (ECF No. 100) and the accompanying Declaration of Salvatore J. Graziano (ECF No. 102), Lead Plaintiff faced very serious risks in proving loss causation and damages in this Action. *See* ECF No. 100, at 13-14; ECF No. 102, at ¶¶ 76-85. These risks would have been significantly increased if holders of GM warrants and other securities had been included in the proposed Class. Among other issues, the trading volume of the GM warrants was very small relative to the trading volume of GM common stock. *See* Suppl. Graziano Decl. ¶ 6 (the daily trading volume of each of the GM warrants was 2% or less of the daily trading volume of GM common stock). This would have

presented a serious challenge in demonstrating market efficiency at class certification. *See, e.g.*, *Wilkof v. Caraco Pharms. Labs., Ltd.*, 280 F.R.D. 332, 342-43 (E.D. Mich. 2012) (describing the *Cammer* factors used to determine market efficiency, including the first factor of "whether there is an 'average weekly trading volume during the class period' that can be considered 'large'").

Moreover, even if a class including warrant holders could have been certified, the amount of potential damages on the warrant claims is very small compared to class-wide damages on the GM common stock claims asserted in this Action. *See* Suppl. Graziano Decl. ¶ 6. Indeed, damages even with respect to common stock would have been difficult to prove in this Action as a result of loss causation issues and the small percentage declines in GM's common stock price on the alleged corrective disclosure dates (including several that Defendants would have argued were statistically insignificant and others that they believe were unrelated to the fraud). Proof of damages with respect to warrants or other GM securities would have been that much harder. Lead Plaintiff's decision not to include claims on concerning GM warrants or other securities was reasonable and appropriate.

Issues concerning the number of shares distributed in GM's bankruptcy cannot be re-litigated here. Mr. Marro's request that the Court recognize "an inflated dollar value … for the shares distributed from the bankruptcy estate," and thereby "increase[] the number of shares distributed accordingly" (ECF No. 105, at ¶ 4), should also be denied. Any issues concerning the liquidation of "Old GM" and the number of shares of new GM stock issued to holders of debt in "Old GM" should have been raised and resolved in the bankruptcy proceeding and cannot be re-

litigated here.[10] However, the shares of GM common stock that were distributed as part of the liquidation of "Old GM" and received during the Settlement Class Period are being treated as eligible acquisitions under the Settlement and may be eligible for recovery under the Plan of Allocation, depending on the price of the GM common stock on the date it was distributed through the "Old GM" bankruptcy and when and at what price the stock was sold. Those shares were included in Lead Plaintiff's estimates of potential damages, which were used when negotiating the Settlement, and in the estimate of the number of affected shares that was used to generate the estimated per-share recovery listed in the Notice. *See* Notice ¶ 3. There is no basis to claim that such shares are not part of the Settlement.

Notice to the Settlement Class was timely. In his supplemental objection, Mr. Marro says that he was unaware of the class action before he received the Notice and Claim Form in late February, *see* ECF No. 110, at 1; ECF No. 111, at 1, and he seeks an evidentiary hearing to determine if notices were timely sent to all "shareholders of record" during the class period. Notice provided to the Settlement Class here was timely. The Claims Administrator began mailing copies of the Notice Packet to possible Settlement Class Members and their nominees on December 21, 2015 – more than three months (93 days) before the objection deadline – which included mailing to all record holders as identified in records provided by GM's counsel on that date. Fraga Decl. ¶¶ 3-5. Disseminating notices to the large majority

[10] Indeed, similar objections were submitted and rejected in the bankruptcy court, including an objection by Mr. Marro. *See,e.g., In re General Motors Corp.*, Case No. 09-5006 (REG) (Bankr. S.D.N.Y. June 26, 2009), ECF No. 2881 (Marro's objection).

of beneficial owners who were not record holders (who held in "street name") takes some additional weeks as the nominees must provide names and addresses to the Claims Administrator or forward the Notice Packets themselves. *Id*. ¶¶ 6-7. Here, by March 8, 2016 the Claims Administrator had mailed a total of 1,181,701 copies of the Notice Packet to potential Settlement Class Members and nominees. *Id*. ¶ 8.[11] These facts establish that mailing of the Notice was timely,[12] and, because they are supported by Mr. Fraga's sworn declarations, no evidentiary hearing is necessary.

Mr. Marro's action of filing an objection on March 9, shows the timeliness of the Notice. His receipt of the notice in late February provided him with approximately four weeks to prepare an objection before the March 23 deadline.

The settlement is not the product of collusion. Finally, Mr. Marro contends, without any factual support whatsoever, that the negotiation of the Settlement somehow demonstrates collusion or the "appearance of collusion" because of Lead Counsel's alleged "collaboration" with GM's board. ECF No. 111, at 2, 3, 9-10. Nothing could be further from the truth. The Action was vigorously litigated and the settlement negotiations were adversarial and at arm's length. GM's counsel advised Lead Plaintiff that a best-and-final demand should be submitted through

---

[11] *See* Suppl. Fraga Decl. ¶ 2 (an additional 15,121 Notice Packets were mailed between March 9 and April 13, 2016).

[12] *See, e.g., Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008) (notice comported with Rule 23 and due process when it was mailed to brokers 46 days before the objection deadline); *DeJulius v. New England Health Care Employees Pension Fund*, 429 F.3d 935, 946-47 (10th Cir. 2005) (upholding sufficiency of notice where notice packets were mailed 32 days before objection deadline).

GM's counsel, who would make a recommendation to GM's Board of Directors. *See* Suppl. Graziano Decl. ¶ 8. That demand was ultimately made and later accepted. There was no "collaboration" between Lead Counsel or Lead Plaintiff and GM's Board.[13]

D. The Kayser Trust Objection Is Without Merit

David Wagner, as Trustee of the Charles Francis Kayser Revocable Trust, and Charles Francis Kayser (collectively, the "Kayser Trust"), have submitted an objection to the Settlement that raises issues relating to the amount of the Settlement, the certification of the class, and information available about GM's insurance. ECF No. 107. This is objection is baseless and should be rejected.[14]

The recovery is an excellent result. The Kayser Trust objects to the amount of Settlement. The Kayser Trust argues that the $300 million settlement is not enough in light of the amount of the loss suffered by investors and the fact that the Kayser Trust believes "there is a strong likelihood of recovery." ECF No. 107, at 2. The Kayser Trust asserts there was a strong likelihood of recovery because of the alleged existence of documents showing that GM and its predecessors were aware

[13] In addition to his objection, Mr. Marro submitted a letter to the Court dated March 15, 2016, in which he claimed that counsel for Lead Plaintiff engaged in "telephone intimidation." This is false. *See* Suppl. Graziano Decl. ¶ 4. During the telephone call in question, Mr. Graziano informed Mr. Marro that his characterization that Mr. Graziano would have said to him that New York Teachers did not even consider including claims on behalf of GM warrant holders was not correct. *Id.* ¶¶ 3-4. When this inconsistency was raised, Mr. Marro abruptly terminated the call. *Id.* ¶ 4. As noted above, Marro has extensive history and experience as a *pro se* litigant and should have been willing to discuss his objection in this case with Lead Counsel further but chose instead to terminate the call.

[14] The Kayser Trust argues that GM warrants should be included in the Settlement. This should rejected for the reasons discussed in Section II.C above.

of the ignition-switch defect and because NHTSA had imposed a $35 million fine related to the defect, and that issue preclusion (based presumably on the NHTSA fine) should apply and establish liability for Lead Plaintiff here. *Id*. at 2-3.

The Kayser Trust is uninformed about the required proof and numerous risks in this case. As discussed in Lead Plaintiff's opening papers, there were substantial risks associated with establishing liability in the Action, including risks concerning falsity and scienter. *See* ECF No. 100, at 8-13; ECF No. 102, at ¶¶ 66-75. Claims under the securities laws require proof that the high-level individuals who were speaking for GM about subjects such as GM's recall liabilities had knowledge of the defect. Here, Defendants had powerful arguments that executives at GM responsible for recalls did not know that the ignition-switch-related recalls were estimable and reasonably probable prior to the fourth quarter of 2013.

Proving scienter would have been challenging in light of arguments that (i) the Individual Defendants were not aware of the ignition-switch defect, (ii) the GM employees with knowledge of the defect were lower-level employees and engineers whose state of mind cannot be attributed to GM under applicable law, and (iii) even those lower-level employees viewed the ignition-switch defect as a mere customer inconvenience issue (not a safety defect). Finally, contrary to the Kayser Trust's arguments, the NHTSA fine is insufficient to create issue preclusion because it is based on a different legal standard, which does not require proof that individuals who "spoke" for purposes of the securities laws had knowledge of defect, as the securities laws do.

Moreover, in addition to proving the falsity of Defendants' statements and scienter, Lead Plaintiff also had to prove that the declines in GM's stock price were caused by revelations of the true facts concerning the ignition-switch defect issue rather than other, non-fraud related matters – a task that was made substantially more challenging because GM's stock price did not decline when the recalls at issue were first publicly disclosed. Indeed, as discussed in Lead Plaintiff's opening papers, Defendants had a number of substantial arguments that the price drops after each of the four alleged corrective disclosures were caused, in whole or in part, by "confounding information" that did not reveal the fraud, or that the declines were not "statistically significant." *See* ECF No. 100, at 13-15; ECF No. 102, at ¶¶ 76-85. Indeed, the substantial loss causation risks were a critical driver of the settlement value of the case. *Id*. at ¶ 76.

The Kayser Trust also argues that the Settlement represents just 5% of the recovery that it would otherwise expect after a trial. ECF No. 107, at 2. This calculation is flawed, however, because (i) it is based on Recognized Loss Amounts under the Plan of Allocation which are intended only to weigh claims of Authorized Claimants against one another for purposes of making *pro rata* distribution of the Settlement and are specifically "not intended to be estimates of, nor indicative of the amounts that Settlement Class Members might have been able to recover after a trial" (Notice ¶ 42); and (ii) it is based on the $0.29 average per-share recovery estimate provided in the Notice (Notice ¶ 3), which – while required to be published in the Notice under the PSLRA, *see* 15 U.S.C. § 78u-4(a)(7)(A) – is inapplicable for purposes that the Trust seeks to uses it because it represents a blended average for

damages to all affected shares (not just those shares purchased in the period of highest inflation, as the Kayser Trust's shares allegedly were) and because it assumes (unrealistically) that 100% of eligible shares will participate in the Settlement by submitting claims.[15]

As discussed in Lead Plaintiff's opening papers in support of the Settlement, the $300 million Settlement represents approximately 11% to 25% of the maximum damages that might have been established if Lead Plaintiff prevailed at trial, depending on assumptions that are made about loss causation. ECF No. 100, at 9. This level of recovery is very favorable in a securities fraud action (let alone one such as this case with many risks) and strongly supports approval of the Settlement as fair, reasonable, and adequate. *See, e.g.*, *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (a recovery of approximately 6.25% was "at the higher end of the range of reasonableness of recovery in class action[] securities litigations").

Information related to GM's insurance coverage has no bearing on the adequacy of the Settlement. The Kayser Trust also objects at length to the

[15] The arguments in Mr. Marro's supplemental objection that the amount of the Settlement is not within the range of reasonableness (ECF No. 111, at 3-6) should be rejected for the same reasons. In particular, Mr. Marro's contention that the true damages may be closer to $12 billion is wrong. *Id.,* at 4. Mr. Marro's $12 billion figure mistakenly assumes that there were 2.1 billion damaged shares, each of which suffered a loss of $6.00. Lead Plaintiff's damages expert estimated that there were approximately 1.028 billion damaged shares, as not every GM share was damaged, and some shares were damaged by less than the full amount of inflation, due to (i) a fluctuating amount of inflation during the Settlement Class Period, and (ii) limiting damages to shares that were purchased at low prices and which would have experienced either no actual loss, or a loss less than the maximum amount of inflation.

Settlement on the grounds that certain information relating to GM's insurance and reinsurance policies has not been provided to Lead Counsel or to counsel for the Kayser Trust. Initially, this objection can be easily rejected because the limits of GM's insurance coverage had no bearing on the determination to settle the Action for $300 million. GM has significant assets and this was not a case where Defendants' insurance coverage limits (or any other ability-to-pay issues) determined the range of possible settlement. Indeed, the $300 million Settlement exceeds the amount of insurance coverage available to Defendants for the claims asserted in this case. Instead, the Settlement was reached and recommended to the Settlement Class based on the potential range of recovery if the case proceeded to trial, taking into account the very substantial risks of establishing falsity, scienter and loss causation, not any perceived limitations on GM's ability to satisfy a judgment or fund a settlement.

Moreover, it appears that the Kayser Trust and its counsel have objected to the Settlement principally to obtain insurance policies in connection with unrelated litigation between Mr. Kayser and GM. *See* ECF No. 107, at 5-11. For example, counsel for Mr. Kayser wrote a letter to Lead Counsel dated February 6, 2016 requesting that Lead Counsel provide him with copies of any insurance or reinsurance policies produced to it in this litigation. The letter explained that he was an attorney who represented a person with a personal injury/product liability claim against pre-bankruptcy GM ("Old GM") based on an allegedly defective fuel system and was seeking documents providing information on products liability insurance covering "Old GM." *See* February 6, 2016 Letter, attached to the Suppl. Graziano

Decl. as Exhibit 4, at 1. Although Lead Counsel have no record of receiving that February 6 letter until it was faxed to Lead Counsel by counsel for the Kayser Trust on March 22, 2016, and counsel for the Kayser Trust never inquired or followed-up on the request prior to March 22, 2016, Lead Counsel spoke with counsel for the Kayser Trust as soon as possible after his letter was received on March 22. *See* Suppl. Graziano Decl. ¶ 10. Lead Counsel could not, however, share information obtained from GM with him under the terms of the confidentiality order in this Action. Moreover, products liability insurance policies covering "Old GM" are irrelevant here, as no such insurance coverage applies to the claims in this Action, which are asserted against "New GM." (Indeed, the class period begins with "New GM's" November 2010 IPO.)

Finally, it is not appropriate to use this class action to seek discovery to advance an entirely unrelated lawsuit. *See Seiden v. Nicholson*, 72 F.R.D. 201, 206 (N.D. Ill. 1976) ("Objections to class action and derivative settlements cannot be used to gain leverage in other disputes.").

E. Mr. Khemka's Objection Should Be Rejected

Animesh Khemka objects to the Settlement because he believes that the "settlement does not address the long term impact of the alleged misrepresentations and omissions on the value of GM common stock" and therefore the Settlement is "too lenient on the company." ECF No. 104, at 1-2. (Mr. Khemka's objections to the Plan of Allocation are discussed below in Section II.I.)

Mr. Khemka's challenges the assumption that GM's stock price "fully recovered from the negative effects of the alleged misrepresentations and omissions

on July 24, 2014," (ECF No. 104, at 1) and argues that this is "unrealistic as public memory and media scrutiny does not have an end date" and that GM continued to suffer negative consequences beyond that date as evidenced by media coverage and "public shame." *Id*. at 2.

The Settlement was negotiated based on the potential damages that could be established under the Exchange Act, which requires that plaintiffs prove a causal connection between the revelation of alleged fraud and specific declines in stock prices. Lead Counsel selected the broadest possible class period for the case and identified the alleged corrective disclosure dates following consultation with Lead Plaintiff's damages expert, who studied the price movements in GM's stock to determine which price declines could be attributed to revelations of the alleged fraud (as opposed to reactions to other information). As is typical in cases like this, the expert's analysis was premised on a view that the market for GM stock is efficient and the price of GM common stock reacts quickly to absorb new information about the Company. (Such an assumption is necessary to permit a class action to be brought based on false statements under the fraud-on-the-market theory. *See Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2410, (2014).) Under the fraud-on-the-market theory, once the truth about the ignition switch came to light the stock market quickly assimilated the information and priced GM stock accordingly. The price change would include all available information, including "the long term impact of the alleged misrepresentations and omissions on the value of GM common stock," "public memory" and "media scrutiny." Accordingly, Mr. Khemka's objection is wrong as a matter of law.

F. Mr. Schoeman's Objection Should Be Overruled

Stephen Schoeman objects to the Settlement and the request for attorneys' fees and expenses. ECF No. 96. (The objections to fees and expenses are discussed below in Section II.J below.) The crux of Mr. Schoeman's objections appear to be that (1) that class members were not informed of the case prior to the settlement; (2) that the "underlying substantive legal issues" have not yet been considered by either the court or a jury; and (3) that the Notice and Claim Form are too long and difficult to understand. *Id*.

Notice was timely and adequate. Mr. Schoeman is aggrieved by the fact that the Notice provided him was his first notice of the existence of the Action and that "the class action [had] already been commenced AND WITHOUT [HIS] KNOWLEDGE OR AGREEMENT." ECF No. 96 at 2; *see also id.* at 3. As an initial matter, Mr. Schoeman and all other putative class members were provided notice by publication when this Action was commenced, as required by the PSLRA. ECF No. 13-4. Moreover, pursuant to Rule 23 of the Federal Rules of Civil Procedure, notice is mailed only after a class is actually certified either during litigation or for purposes of settlement. Rule 23 is structured this way because class members' rights to pursue their own claims are not foreclosed until a class is certified and, at that time, they are provided the opportunity to request exclusion. Here, the Settlement was reached before a class was certified and, accordingly, class members were mailed a notice informing them of both the pendency of the Action as a class action (including their right to request exclusion from the Settlement Class) and of

the proposed Settlement. This is standard procedure in the many class cases that are settled before resolution of a motion for class certification.

The form and content of the Notice are entirely appropriate. Mr. Schoeman objects to the length and complexity of the Notice and Claim Form. ECF No. 96. The Notice and Claim Form, which were approved by the Court in the Preliminary Approval Order, provide detailed yet understandable information about class members' rights and options, including a summary chart on page two of the Notice. The Notice meets all the requirements of Rule 23 and the PSLRA, which require a number of mandatory disclosures. *See* Fed. R. Civ. P 23(c)(2)(B); 15 U.S,C. § 78u-4(a)(7). Settlement Class Members are also invited to call the Claims Administrator or Lead Counsel if they have any questions about the Notice or Claim Form or need any additional information. *See* Notice ¶ 72.

The Court need not adjudicate the merits of the case to approve the Settlement. Finally, Mr. Schoeman objects that the reasons for the settlement "boil down to the risk that [Lead Plaintiff] may lose its class action lawsuit" and that he believes that this is not proper "when the underlying substantive legal issues are not considered by either the court or the jury!" ECF No. 96 at 2. It is well-established that a court need not "adjudicate the disputed issues or decide unsettled questions" before ruling on a class settlement; rather it need only consider factors such as the amount of information available to the settling parties and assess the risks of the litigation against the benefits of the settlement. *See Global Crossing*, 225 F.R.D. at 459; *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 631-32 (6th Cir. 2007) (reviewing a settlement does not require a Court to "decide the merits of the case or resolve

unsettled legal questions," because "[o]therwise, we would be compelled to defeat the purpose of a settlement in order to approve a settlement").

G. Mr. McCrate's Objection Should Be Overruled

Mark McCrate, who purchased 51 shares of GM common stock during the Settlement Class Period, has objected to various aspects of the Settlement, and the Notice. *See* Suppl. Graziano Decl. Exhibit 5. (The objections to the Plan of Allocation and requests for fees and expenses are addressed in Sections II.I and II.J).

The Notice properly addresses the issues in this case. Mr. McCrate objects to the discussion of the reasons of the settlement in the Notice because it does not "mention[] the loss of life directly related to the [ignition-switch] defect." McCrate Objection ¶ 4. This was an action for monetary damages based on declines in value of GM common stock and thus damages, or other consideration, resulting from loss of life were never at issue in this case, nor do they bear on the Settlement. Personal injury claims have been and are being litigated in both state and other federal courts.

The Settlement properly reflects the risks of no or a lesser recovery for the Settlement Class. Without providing any specific justification, Mr. McCrate says that he "recommend[s] no settlement and this class action be fully litigated" and says that "[i]f plaintiffs feel they have a strong case they should be comfortable" proceeding without a settlement. While Lead Plaintiff believes its claims have merit, Lead Plaintiff and Lead Counsel recognize there would be many obstacles to achieving a litigated verdict and risks that they might not be successful. Settlements, especially in complex class action cases such as this, are desirable because both sides can eliminate the risks, delay and substantial costs of continued litigation. *See*

Griffin v. Flagstar Bancorp, Inc., No. 2:10-CV-10610, 2013 WL 6511860, at *5 (E.D. Mich. Dec. 12, 2013).[16]

H. Mr. Orava's Objection Is Without Merit

Jack Orava objects to the Settlement on the grounds that it "is another frivolous lawsuit" and "is not a benefit to anyone except the lawyers." ECF No. 103, at 1. This objection is baseless. The $300 million Settlement will provide a substantial financial benefit to injured investors who submit claims to participate in the Settlement – no further analysis of whether the case is frivolous is required.

I. The Objections to the Plan Of Allocation Should Be Overruled

Messrs. Khemka, McCrate and Marro also object to the proposed Plan of Allocation. These objections are without merit and should be overruled.

As discussed in Lead Plaintiff's opening papers, the Plan of Allocation was developed based on an event study by Lead Plaintiff's damages expert which calculated the amount of artificial inflation in the closing prices of GM common stock that was proximately caused by Defendants' alleged false and misleading statements. This regression analysis was based on price changes in GM common stock in reaction to the alleged corrective disclosures, controlling for price changes that were attributable to market or industry forces. *See* ECF No. 102, at ¶ 98. Under the Plan of Allocation, a Recognized Loss Amount for a given transaction is based

[16] Mr. McCrate also objects at length to paragraph 71 of the Notice. However, that paragraph applies only to persons or entities who purchased or acquired GM stock for the beneficial interest of persons other than themselves (for example, entities such as brokers and other nominees) and it sets forth the methods for them to disseminate the Notice to beneficial owners.

on the difference between the artificial inflation on the date of purchase and the date of sale, capped at the claimant's actual market loss. *Id.* ¶ 99. This approach conforms with how Lead Plaintiff would have presented class-wide damages at trial and provides a fair and reasonable method to equitably allocate the Settlement.

The Plan of Allocation appropriately excludes recovery based on sales of shares before March 10, 2014. Mr. Khemka and Mr. Marro, in his supplemental objection, contend that the Plan of Allocation is unfair because it excludes recovery for shares sold before March 10, 2014. *See* ECF No. 104, at ¶ 2; ECF No. 111, at 2, 3. The Plan contains this restriction because March 10, 2014 is the date of the first alleged corrective disclosure that caused the price of GM common stock to decline.

These objections seek to alter the Plan of Allocation to obtain recoveries that are unavailable under or inconsistent with the loss causation requirements of the Exchange Act. Investors who sold their shares before the first corrective disclosure caused the price of GM common stock to decline are appropriately excluded from recovery because they would not be able to establish that the alleged fraud proximately caused their loss. In order for losses to be compensable under the Exchange Act, the disclosure of the allegedly misrepresented information must be the cause in the decline of the price of the security. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 342 (2005) (a securities plaintiff must prove that economic loss is proximately caused by the revelation that an alleged misrepresentation was false or misleading; where the "purchaser sells the shares . . . before the relevant truth begins to leak out, the misrepresentation will not have led to any loss"). As a result, plans of allocation in securities class actions appropriately require that shares

be held through a corrective disclosure to be eligible for a recovery. *See Nguyen v. Radient Pharms. Corp.*, No. SACV 11-00406 DOC (MLGx), 2014 WL 1802293, at *5-*7 (C.D. Cal. May 6, 2014) (approving, over objection, a plan of allocation that provided no recovery for "in and out traders" based on *Dura* and the plaintiffs' expert's conclusion as to the relevant corrective disclosure dates).

Mr. Khemka also specifically objects to the fact that the Plan of Allocation assigns no recognized loss for transactions in GM common stock sold before March 10, 2014, because GM issued recalls relating to the ignition-switch defect in February 2014. ECF No. 104 at ¶ 2. Dates in February were not included as corrective disclosure dates in the Plan of Allocation, however, because there were no statistically significant abnormal price declines in GM's common stock in reaction to initial notice of the recalls in February 2014. Simply put, GM's shares did not react in a statistically measurable way to news of the initial recalls and there was no plausible way to assert loss causation in connection with those disclosures.

In addition, Mr. Khemka contends more generally that the Plan of Allocation fails to provide compensation to all GM shareholders, include those "who continue to suffer." ECF No. 104 at ¶¶ 3, 5. Similarly, Mr. Marro generally challenges the "Recognized Loss criteria" and insinuates – without any support or basis in fact – that Lead Plaintiff disproportionately benefits from the terms of the Plan. However, the corrective disclosure dates and inflation amounts used in the Plan were appropriately based on Lead Plaintiffs' damages expert's event study analysis. The Plan was designed based on these neutral criteria and was not designed to disproportionately favor Lead Plaintiff. *See* Graziano Suppl. Decl. ¶ 7.

The Plan of Allocation appropriately uses the "lesser of" the decline in artificial inflation or market loss to calculate recognized losses. Mr. McCrate also asserts several objections to the Plan of Allocation. First, Mr. McCrate objects to the provisions of the Plan of Allocation that provide that a claimant's Recognized Loss Amount for a given purchase or acquisition of GM common stock should be calculated as "the lesser of" (i) the amount of artificial inflation on the date of purchase minus the amount of artificial inflation on the date of sale and (ii) the purchase price minus the sale price. *See* McCrate Objection at ¶ 5. Such a provision is typical in plans of allocation and appropriate because it avoids the dilutive effect of distributing settlement proceeds to investors who suffered no financial loss, or who experienced gains.[17] *See, e.g., Medoff v. CVS Caremark Corp*., No. 09-CV-554-JNL, 2016 WL 632238, at *7 (D.R.I. Feb. 17, 2016) (approving similar plan); *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 258-59 (E.D. Va. 2009) (same).

The $10 minimum payment requirement is beneficial. Mr. McCrate also objects that the Plan of Allocation limits distributions to Authorized Claimants who will receive $10 or more. *See* Notice ¶¶ 47, 50; McCrate Objection at ¶ 6. Imposing a minimum payment threshold of $10 is standard in securities class actions and benefits the Settlement Class as a whole because it will reduce the costs associated with printing and mailing checks for *de minimis* amounts, as well as costly follow-

[17] For example, an investor who purchased GM shares early in the Settlement Class Period for $22 per share, holds them while they appreciate to approximately $37 per share immediately before the first corrective disclosure, and then decline following the alleged corrective disclosures to $35.07 at the end of Settlement Class Period, did not suffer a financial loss and will not obtain a recovery on that transaction.

up to ensure those checks have been received and cashed. *See Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328-29 (3d Cir. 2011) (affirming use of a $10 minimum payment threshold over objection, "*de minimis* thresholds for payable claims are beneficial to the class as a whole since they save the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs and courts have frequently approved such thresholds"); *see generally* 2 JOSEPH M. MCLAUGHLIN, MCLAUGHLIN ON CLASS ACTIONS § 6:23 (11th ed. Westlaw 2014).[18]

Donation of funds to charity will occur only when further distribution is not "cost-effective." Mr. McCrate also objects to the provision that allows for the distribution of funds remaining in the Net Settlement Fund to not-for-profit organization(s). *See* Notice ¶ 55; McCrate Objection ¶ 8. The provision applies only after one or more re-distributions to Authorized Claimants of any balance remaining in the Net Settlement Fund, as a result of uncashed checks or for other reasons, have occurred, and only when "it is determined that the re-distribution of funds remaining is not cost-effective" (such as when the cost of conducting an additional *pro rata* distribution would exceed the remaining funds). Notice ¶ 54.

[18] Mr. McCrate's contention that the funds that would have been distributed to claimants with *de minimis* claims will "likely go" to counsel is not correct. Once the Authorized Claimants whose distributions calculate to less than $10 are eliminated from the calculation, the other Authorized Claimants will simply receive a slightly larger *pro rata* payment; counsel do not benefit in any way from this provision.

J. The Objections to the Motion for Attorneys' Fees and Expenses Should Be Rejected

Messrs. Schoeman, Marro and McCrate have also asserted objections to Lead Counsel's request for fees and expenses.

The 7% fee request is exceptionally low in comparison to typical fee awards in class action settlements of this size and Plaintiffs' Counsel are seeking a multiplier of only 1.9 on their lodestar. *See* ECF No. 101 at 8-10 (citing numerous comparable cases with fee awards ranging from 18% to 30%). The 7% fee request was imposed by Lead Counsel's fee agreement with New York Teachers and this extremely reasonable request is a credit to New York Teachers' aggressive efforts in negotiating a favorable agreement for the class, where other lead plaintiffs might have permitted a fee that was three or four times higher. In addition, the $775,746.12 in expenses for which reimbursement is sought were reasonable and necessary to the prosecution of the Action. Accordingly, the objections should be overruled.

Mr. Schoeman objects that requested attorneys' fee is "exorbitant and excessive" in light of the recovery and that Defendants' conduct did "not really and truly negatively affect most nearly all the shareholders of GM common stock." ECF No. 96, at 2. The fee request of 7% is demonstrably not exorbitant as it is well below the range of fees typically awarded in the Sixth Circuit, and the settlement proceeds will only be distributed to Settlement Class members who suffered damages.

Mr. Schoeman also objects to the request for reimbursement of Litigation Expenses, arguing that Lead Counsel did not "specifically detail each and every expense for which it seeks up to $1,000,000 in reimbursement." ECF No. 96, at 2.

However, Lead Counsel's submission included a chart providing a detailed breakdown of those expenses by category, *see* ECF No. 102, at Exhibit 4, and a discussion of the largest expenses, *see* ECF No. 102, at ¶¶ 122-130. The fee application containing that detailed information was filed two weeks before the objection deadline and posted on the settlement website.

Mr. McCrate contends that the Court should replace the request for attorneys' fees in the amount of 7% of the Settlement and reimbursement of $775,746.12 in Plaintiffs' Counsel's expenses with counsel's "documented, audited and honest cost to prosecute + 10%" – a formula often used in government contracts. *See* McCrate Objection at ¶¶ 3, 9. The request for attorneys' fees here is crucially different than fees awarded under a government contract (where there is no risk of non-payment) in that the Action was brought on a fully contingent basis and Plaintiffs' Counsel bore the risk that they would receive no payment. Recognizing such risks, numerous courts have awarded counsel in successful contingent fee class action cases lodestar multipliers. *See In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (approving multiplier of 6); *Bailey v. AK Steel Corp.*, No. 1:06-CV-468, 2008 WL 553764, at *3 (S.D. Ohio Feb. 28, 2008) (awarding multiplier of 3.04,); *In re CMS Energy Sec. Litig.*, No. 02-cv-72004, 2007 U.S. Dist. LEXIS 96786, at *14 (E.D. Mich. Sept. 6, 2007) (awarding 2.61 multiplier).

In his supplemental objection, Mr. Marro also objects to the fee and seeks a hearing to determine what portion of Plaintiff's Counsel's lodestar related to the merits of the litigation, as compared to litigation concerning the selection of Lead Plaintiff. This objection is also without merit. First, Lead Counsel believes that the

selection of New York Teachers as Lead Plaintiff benefited the class because of the skill and experience that New York Teachers brought to prosecuting the Action, and as evidenced by the extremely favorable fee agreement negotiated by New York Teachers. Moreover, given the small percentage fee sought, even if the time that Lead Counsel spent on lead plaintiff appointment issues was not considered or was discounted, the requested fee would still be fully appropriate (it would simply produce a slightly higher lodestar multiplier).

III. CONCLUSION

For all the forgoing reasons, Lead Plaintiff and Lead Counsel respectfully request that the Court overrule the objections received and: (1) approve the Settlement and Plan of Allocation; and (2) grant the request for attorneys' fees in the amount of 7% of the Settlement Amount, litigation expenses in the amount of $775,746.12, and a PSLRA award to the Lead Plaintiff in the amount of $2,903.71.

Dated: April 13, 2015

Respectfully submitted,

/s/ Salvatore J. Graziano
Salvatore J. Graziano
James A. Harrod
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas, 44th Fl.
New York, NY 10020
Telephone: (212) 554-1400
Facsimile: (212) 554-1444
Salvatore@blbglaw.com
Jim.Harrod@blbglaw.com

Lead Counsel for Lead Plaintiff and for the Settlement Class

THE MILLER LAW FIRM, P.C.
E. Powell Miller (P39487)
Marc L. Newman (P51393)
Sharon S. Almonrode (P33938)
950 West University Drive, Suite 300
Rochester, MI 48307
Telephone: (248) 841-2200
Facsimile: (248) 652-2852
epm@millerlawpc.com
mln@millerlawpc.com
ssa@millerlawpc.com

Local Counsel for Lead Plaintiff and for the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2016 I caused the foregoing Reply Memorandum in Further Support of (I) Lead Plaintiff's Motion For Final Approval of Settlement and Approval of Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses to be served on all counsel of record via the ECF filing system and on the following individuals by FedEx overnight delivery service:

Donald C. Marro 3318 Bust Head Road The Plains, VA 20198	Larry F. Woods, Esq. 24 North Frederick Avenue Oelwein, IA 50662 ***Counsel for Objectors Charles Francis Kayser Revocable Trust and Charles Francis Kayser***
Jack Orava 6607 Shadydale Drive Shelby Township, MI 48316	Animesh Khemka 281 East Warren Avenue Fremont, CA 94539
Stephen Schoeman 101 Jefferson Avenue Westfield, NJ 07090	Mark McCrate 641 Stoneybrook Dr. Dayton, OH 45429

Date: April 13, 2016
New York, New York

/s/ Salvatore J. Graziano
SALVATORE J. GRAZIANO

#973014