

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

RAFAEL SUAREZ, DAISY GONZALEZ,
and RICHARD BYRD, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.,

Defendant.

) Case No.: 3:21-cv-00393

) **Hon. William L. Campbell, Jr.**

) **CLASS ACTION**

**PLAINTIFFS’ REPLY IN FURTHER SUPPORT OF
MOTION FOR AWARD OF ATTORNEYS’ FEES AND EXPENSES
AND PLAINTIFFS’ INCENTIVE AWARDS**

Plaintiffs Rafael Suarez, Daisy Gonzalez, and Richard Byrd (collectively, “Plaintiffs”) respectfully submit this reply brief in further support of their Motion for Award of Attorneys’ Fees and Expenses and Plaintiffs’ Incentive Awards (the “Fee Motion”) (ECF No. 35).

The Settlement relief negotiated by Lead Class Counsel in this case is excellent. In addition to a six-year extended warranty and reimbursements for replacements prior to October 25, 2021, the Settlement also affords every owner of the Class Vehicles an opportunity to receive free replacement headlamps regardless of age or mileage. The latter component is particularly remarkable, as it is uncommon for an automotive class action settlement to include such a provision.¹ Only a single Class Member, out of over 3.2 million Class Members, objected to the

¹ See, e.g. *Collado v. Toyota Motor Sales, U.S.A., Inc.*, 2011 U.S. Dist. LEXIS 133572 (C.D. Cal. Oct. 17, 2011) (providing limited warranty extension for defective headlights for 5 years or 50,000 miles and reimbursement for out-of-pocket expenses incurred before the notice date); *Yaeger v. Subaru of Am., Inc.*, 2016 U.S. Dist. LEXIS 117193, at *27 (D.N.J. Aug. 31, 2016) (settlement provided for current owners to obtain free oil consumption testing and TSB repairs

Settlement, and that Objection has been addressed and withdrawn. *See* concurrently filed Plaintiffs' Reply in Support of the Parties' Joint Motion for Final Approval of Class Action Settlement ("Final Approval Reply"), at Section I. The outstanding outcome in this case is the direct result of Lead Class Counsel's skill, diligence, and doggedness. As the mediator, Judge Welsh, stated, "the negotiations were hard fought by both sides" and Lead Class Counsel are "highly experienced, effective and assertive counsel who were well versed in the facts of the case and the applicable law." *See* ECF 15-1, at ¶ 4.

Perhaps not surprisingly, given those facts, not a single Class Member has objected to Class Counsel's request for \$2.5 million in attorneys' fees and reimbursement of expenses, an amount to which Nissan North America, Inc. ("NNA") also agrees.

As noted in Plaintiffs' Fee Motion, which was posted on the Settlement website on September 20, 2021 (*see* Supplemental Declaration of Lana Lucchesi Re: Notice Procedures ["Supp. Lucchesi Decl."]), filed contemporaneously herewith, at ¶ 19), this fee request is easily supported under all relevant factors, the most important of which is the value generated for the Class. To date, Class Members have submitted nearly \$5.5 million in reimbursement claims, and, as the deadline for reimbursement claim is still more than four months away, that number will continue to grow. *See* Supp. Lucchesi Decl., at ¶ 22. In addition, Plaintiffs' expert values the extended warranty relief at around \$59 million. *See* ECF 36-3, at ¶ 7. In fact, the cost of notice and claims administration alone will exceed the attorneys' fee sought, as the Settlement Administrator has already billed over \$1.8 million, and has yet to mail the Effective Date Notice,

during an extended warranty period); *Berman v. GM Ltd. Liab. Co.*, 2019 U.S. Dist. LEXIS 200947, at *6 (S.D. Fla. Nov. 15, 2019) (class members were entitled to free replacement of piston assemblies at authorized dealerships, subject to an oil consumption diagnosis and their vehicle being within time and mileage limitations).

adjudicate claims, or mail checks, among other things. In light of the total benefits of the Settlement, the requested attorneys' fee is eminently reasonable.

The requested fee also represents a modest multiple of Class Counsel's reasonable lodestar and easily meets relevant legal standards in that regard too. Since their prior submission, Class Counsel have incurred additional lodestar of \$157,195, in connection with their efforts in, *inter alia*, preparing and submitting final approval papers, overseeing and implementing the notice and administration process, responding to Class Member inquiries, and dealing with the NNA error pertaining to the Settlement class definition (discussed in the Final Approval Reply, filed contemporaneously herewith). Class Counsel's total lodestar through November 30, 2021 is \$1,303,537.50, and their total expenses are \$54,146.38. *See* Mathews Supp. Decl., at ¶¶ 3-4; Exs. A-B. Thus, the \$2,500,000 requested amount, after subtraction of expenses, represents a multiple of less than 1.88 of Class Counsel's lodestar. That is well within the typical range commonly approved, and modest in light of the results achieved. *See* ECF No. 36, at I(A)(2)(iii). Moreover, Class Counsel will continue to expend significant time and effort overseeing the Settlement long after final approval.

Plaintiffs also seek \$5,000 incentive awards for each of the three Representative Plaintiffs, each of whom contributed substantially to achieving the benefits of the Settlement on behalf of their fellow class members. There were no Class Member objections to these requested incentive awards. These amounts too are commonplace, agreed by NNA, and justified under relevant legal standards.

Plaintiffs therefore respectfully request that the Court award Class Counsel \$2,500,000 in attorneys' fees and expenses and award the Representative Plaintiffs Incentive Awards of \$5,000 each.

DATED: December 6, 2021

Respectfully submitted,

/s/ Timothy N. Mathews

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2021, I electronically filed the foregoing PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES AND PLAINTIFFS' INCENTIVE AWARDS with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

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