UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
Miami Division

MDL No. 2599
Master File No.: 15-MD-02599-MORENO
S.D. Fla. Case No. 1:14-cv-24009-MORENO

IN RE: TAKATA AIRBAG PRODUCT LIABILITY LITIGATION
THIS DOCUMENT RELATES TO: **ECONOMIC LOSS TRACK CASES AGAINST FORD MOTOR COMPANY**

PLAINTIFFS' OMNIBUS RESPONSE TO OBJECTIONS TO THE FORD SETTLEMENT, AND CLASS COUNSEL'S APPLICATION FOR SERVICE AWARDS AND ATTORNEYS' FEES

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I. INTRODUCTION.

The objections filed against the Ford Settlement must sound very familiar to the Court. That is because they are no different than—indeed, in some instances they are word-for-word identical to—the unsuccessful, misguided objections raised against the prior six settlements approved in this MDL. Many attorneys for objectors are repeat players as well, confirming that they are, in fact, serial or professional objectors, a track record that calls into serious question the credibility of their objections. This Court properly overruled these objections to the six prior settlements, and it should do so again here.

Among the Class at large, the Settlement was exceedingly well received. From a total of 8,030,191 potential Class Members who were sent the Direct Mail notice, only eighteen objections were submitted, much fewer than consumer settlements typically attract, and even fewer than the first six settlements in this MDL received.[1] And even that number is inflated, for six objections are curiously taken verbatim from the same document, with only the names of the objectors changed.[2] The objections represent a microscopic .0002% of the Class. This extremely "low percentage of objections points to the reasonableness of [the] proposed settlement and supports its approval." *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005) (Altonaga, J.).[3]

The same features of the Settlement that were unsuccessfully attacked in the first two rounds are targets here as well. Objectors challenge the Outreach Program, a central benefit of the Settlement that improves the safety of Class Members, with misguided and inaccurate arguments concerning Ford's NHTSA-mandated outreach obligations and the effectiveness of the

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[1] An extensive empirical review determined that the average number of objections to settlements of consumer class actions is ***233***. *See* Theodore Eisenberg & Geoffrey Miller, *The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues*, 57 Vand. L. Rev. 1529, 1550 (2004). More recently, a settlement approved in the Volkswagen MDL received ***462*** objections, even though the class there was a small percentage of the size of the Class in this Settlement. *See In re: Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB, 2016 WL 6248426, at *16 (N.D. Cal. Oct. 25, 2016). As to the prior two settlements, 26 objections were submitted on behalf of 29 class members, and as to the first four settlements, 30 objections were submitted on behalf of 41 class members. By any measure, the number of objections received here is remarkably low.

[2] (ECF Nos. 3110; 3125; 3126; 3127; 3128; 3130.) As the objections are identical, only Mr. Chaney's objection will be specifically referenced (ECF No. 3110), for the sake of efficiency.

[3] As reflected in the Supplemental Declaration of the Notice Administrator, 4,311 opt-out requests have also been submitted, amounting to less than .05% of the Class. Ex. A, ¶ 15.

first six settlements' outreach efforts. The Rental Car/Loaner Program, which makes a rental or loaner vehicle available to any Class Member who brings a recalled Subject Vehicle to a dealership, is attacked on the inaccurate premise that Ford was already providing such a program. It was not. The valuation of the Customer Support Program, computed by an automotive-industry expert, whom a number of courts have relied upon for similar work, is attacked as inadmissible, even though the admissibility of evidence is not pertinent to the approval of a settlement, and the valuation, in either event, satisfies the criteria for reliable, admissible expert testimony. And a so-called intra-class conflict is conjured, even though none actually exists.

As is typical in this context, however, the primary target of most objections is Class Counsel's fee request. By any measure—whether this Settlement is considered alone or collectively with the prior six settlements, whether the value of the non-monetary benefits, such as the Customer Support Program, is included or not—Class Counsel's fee request is at or well below the prevailing benchmark for reasonable attorneys' fees from a common fund. Yet the objectors largely ignore prevailing law, as well as fee awards approved from serial settlements reached in similar multi-defendant MDLs, many of which exceed Class Counsel's fee request here. The objectors ask this Court to ignore the actual value of the Settlement, to apply the wrong law, and to use the wrong method to award fees. These misguided requests should be rejected, as they were in the prior six settlements.

Considering all seven settlements in this MDL collectively, as this Court previously indicated it would, Class Counsel's fee request still falls below the Eleventh Circuit's benchmark for reasonableness, even using the most conservative valuation of the settlements, i.e., without attributing any value to their non-cash benefits. Of the $1,555,346,448 in aggregate Settlement Amounts, the $306,606,020 in previously awarded fees—for work performed by more than two-dozen law firms—together with the $74,775,00 in fees requested here would amount to 24.5% of the total common fund. Under Eleventh Circuit law, this is not an excessive fee. It is reasonable.

Class Counsel's fee request not only is consistent with prevailing law and awards in similar cases, but also is well justified. The Settlement is an outstanding result for the Class. Even using the conservative value of the Settlement, it is the largest class action settlement to which Ford has ever agreed. Although the structural features of the Settlement are the same as those of the prior six agreements, the litigation path against Ford was distinct and unique. Of the seven automakers who have now settled, the litigation against Ford was the most involved and

hard-fought, requiring the most depositions of defendant witnesses, the most dispositive motions, the most complaint iterations, the most advanced factual development, and ultimately the most time to reach a resolution. It would be anomalous and create perverse incentives to reward Class Counsel's persistent, diligent work, undertaken entirely on a contingency basis, with a fee award below the prevailing benchmark for reasonableness under such circumstances.

The Ford Settlement is fundamentally sound and provides substantial benefits to millions of consumers. It more than fulfills the standards for final approval set forth in Federal Rule of Civil Procedure 23(e). And the service awards and attorneys' fees sought in Class Counsel's application are fair, reasonable, and entirely consistent with Eleventh Circuit precedent. Accordingly, Plaintiffs respectfully urge the Court to grant final approval of this Settlement to enable its prompt implementation; to award Class Representatives the requested service awards; and to award Class Counsel the requested attorneys' fees.

II. THE OBJECTIONS TO THE SETTLEMENT SHOULD BE OVERRULED.

Because objections to the Settlement largely overlap and often are repetitive, they are addressed by general topic below. Almost every objection has been overruled by this Court in approving the six prior settlements. Not one of these objections calls into question the fairness, reasonableness, or adequacy of the Settlement.

A. The Outreach Program Provides A Substantial Benefit To The Class.

The Outreach Program, designed to ameliorate the extraordinary public safety hazard giving rise to this litigation, should be the least controversial aspect of the Settlement. Several objectors, however, take issue with it. Their objections are misguided, resting on flawed assumptions about both the Outreach Program and Ford's NHTSA-mandated outreach obligations.

Some objectors claim that the Outreach Program is merely duplicative of the Rule 23(c) Notice Plan. (ECF No. 3108 at 2, 4-7; 1088 (in No. 14-cv-24009) at 5-6.) This objection betrays a fundamental misunderstanding of the Settlement, as well as the Outreach Program. The objective of the discrete Rule 23(c) Notice Plan—which is now complete and was implemented by the Court-appointed Notice Administrator, Epiq Systems, following preliminary approval of the Settlement (ECF No. 3069-2)—was simply "to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 691 (S.D. Fla. 2014) (Moreno, J.) (quoting *Phillips*

Petroleum Co. v. Shutts, 472 U.S. 797, 811–812 (1985)). In contrast, the objective of the Outreach Program, a crucial component of the Settlement that will be administered for at least four years, is to "maximiz[e], to the extent practicable, completion of the Recall Remedy in Subject Vehicles for the Takata Airbag Inflator Recalls" (ECF No. 2909-1, § III.B.1)—i.e., to remove as many defective, and potentially deadly, Takata inflators from Ford vehicles as practicable. Unlike the Notice Plan, the Outreach Program will not be informing Class Members of their rights under the Settlement, but instead will be encouraging and motivating Class Members to bring their vehicles to dealerships to have the defective Takata inflators replaced.

The low completion rates for the Recall Remedy that preceded the Settlement confirm that mere awareness of the defect is insufficient to motivate many drivers to bring their vehicles to dealerships. The Takata Inflator Recalls have received ample news coverage across the country, and aside from the Settlement's Direct Mail Notice, many Class Members have received recall letters or postcards from Ford. But Recall Remedy completion rates remain depressed, in part because such outreach efforts, limited to impersonal letters and postcards, have been ineffective. (*See* ECF No. 2909-1 at 90.) The Notice Plan, although reaching an estimated 95% of the Class (ECF No. 3069-2) and indisputably satisfying the requirements of Rule 23(c) and due process, alone cannot be expected to drive Recall Remedy completion rates much higher, particularly because most of the information in the Direct Mail Notice sent to Class Members concerns the Settlement, not the Recall Remedy. Instead, innovative techniques and approaches, including targeted and personalized messaging, door-to-door canvassing, and incentives, must be utilized. The Outreach Program serves this purpose.

The Outreach Program also differs from the Notice Plan in that the Outreach Program will be coordinated with Ford's availability of replacement parts. The Direct Mail Notice was sent to every Class Member soon after preliminary approval of the Settlement, as required by Rule 23(c) and due process. But replacement inflators are not available for every recalled Subject Vehicle yet. The Outreach Program will ensure that innovative outreach efforts are directed to Class Members at a time when they can immediately repair their vehicles and link them directly to dealerships to make repair appointments. It is simply inaccurate to claim, as certain objectors do, that the Outreach Program is "redundant" of the Notice Plan. (*E.g.*, ECF

No. 3107, 2, 4-7.)[4]

Nor are objectors' attacks on the effectiveness of the Outreach Program well-founded. Several objectors mischaracterize information in the Settlement Special Administrator's Status Report (ECF No. 3049) as indicating that the Outreach Programs for the first six settlements have failed to motivate vehicle owners to have the Recall Remedy performed. (ECF Nos. 3106 at 2-6; 3110 at 3-4; 1088 (in No. 14-cv-24009) at 10-11.) For example, one objector misreads the report as indicating that $400 million has already been spent on outreach efforts, yielding response rates for direct mail and phone calls of 3% and 5%, respectively. (ECF Nos. 1088 (in No. 14-cv-24009) at 10-11.) Another objector likewise claims that Class Members are not benefiting from the Outreach Programs due to the low "take rates." (ECF No. 3106 at 4.) These objections are misguided on every point.

The Outreach Programs for the prior six settlements have not come close to spending the full amount allocated to outreach—the $400 million figure approximates the total budget for outreach during the four-year lifespan of the programs, which are still in just their first year of operation. The response rates documented for various outreach "channels," far from demonstrating a lack of effectiveness, show that the Outreach Program is carefully measuring the effectiveness of each outreach effort, so that resources can be allocated to the most effective methods for each population going forward. (ECF No. 3049 at 3.) This scientific approach to outreach, previously absent from the recall industry, is a critical innovation that the Settlement Special Administrator has introduced. Further, lesser response rates to relatively low-cost channels of outreach, such as email and social media, are expected and acceptable, because these channels can be used to expose Class Members to outreach messaging with high frequency at minimal expense. (ECF No. 3049 at 6 n.4.)

Significantly, a critical metric of effectiveness—the number of Recall Remedies performed since the implementation of the Outreach Programs—is ignored by the objectors and undercuts their baseless criticism. As of early October 2018, 969,848 Recall Remedies had been

[4] It is likewise completely inaccurate to characterize the Outreach Program as a "marketing campaign" (ECF No. 3106 at 7) that will somehow "provide a positive public relations benefit for Ford" (ECF No. 3108 at 2), as some objectors claim. The sole objective of the Outreach Program, as defined in the Settlement, is to maximize completion of the Recall Remedy in Ford's Subject Vehicles. (ECF No. 2909-1 at 24, § III.B.1.) It is difficult to understand, and the objectors do not explain, how informing customers that there is a dangerous defect in their Ford vehicles translates into a "public relations benefit" for Ford.

completed, and 317,371 appointments and "warm transfers" to dealerships to allow consumers to schedule appointments for repairs had been made. (ECF No. 3049 at 7.) Those figures are surely much higher now, two months later. *More than one million people, therefore, are now much safer because of the outreach efforts funded by the first six settlements*. This is a remarkable success story, not grounds for criticizing the Settlement.

Several objectors also persist in mistakenly claiming that the Outreach Program is not a benefit attributable to the Settlement because it is coextensive with Ford's NHTSA-mandated obligations. (ECF Nos. 3108 at 5-8; 3110 at 3; 1088 (in No. 14-cv-24009) at 6-10.) The same misguided and ill-informed objection was raised and properly overruled as to the first six settlements. (ECF Nos. 2063 at 1-2; 2066 at 5-6; 2073 at 2; 2084 at 4-7.; 2262 at 6, 8-10; 2272-5 at 5-9; 2266 at 2; 2264 at 4-8; 2272-1 at 2.)

Federal law governing recall notifications initially obligates an automaker to mail just one recall notice to car owners. *See* 49 U.S.C. § 30119(a)-(d); 49 C.F.R. § 577.7. It also empowers NHTSA to require automakers to send additional notifications to car owners. *See* 49 U.S.C. § 30119(e); 49 C.F.R. §§ 577.10, 577.12. With this authority, NHTSA issued the Third Amendment to the Coordinated Remedy Order ("ACRO") on December 9, 2016, which is included as an exhibit to and referenced in the Settlement. (ECF No. 2909-1 at 82.) The ACRO effectively establishes the baseline outreach obligations of automakers for the Takata recalls. (ECF No. 2909-1 at 104-05, ¶ 42.) It requires automakers to conduct "supplemental notification efforts," but ultimately leaves the scope, means, and sophistication of such efforts to the discretion of each automaker, unless specifically instructed to issue a particular notification by the Independent Monitor overseeing the ACRO. (*Id.*)[5]

The unique benefit of the Settlement's Outreach Program is that it picks up where the baseline obligations of the ACRO leave off, expressly requiring Ford to expand or go beyond its current outreach efforts. (ECF No. 2909-1, § III.B.1.) Far from leaving outreach to the

[5] Objector Owens highlights general "recommendations" made by the Independent Monitor in late 2016 to suggest that the Outreach Program amounts to Ford's efforts to comply with the ACRO. This argument, however, ignores the clear language of the ACRO, which does not require Ford to implement specific "supplication notification efforts" unless specifically instructed by the Independent Monitor. The "recommendations" cited by objector Owens are just that—general recommendations, not specific obligations or directives. It also hardly would make sense for Ford to just begin complying with its supposed obligations under the ACRO more than two years after it was issued.

discretion of Ford, the Settlement's Outreach Program mandates that Ford provide massive funding—more than $98 million—for outreach efforts and empowers the Settlement Special Administrator, Patrick A. Juneau, to oversee and administer a dynamic, state-of-the art program.

As reflected in Mr. Juneau's prior declaration, the "sole focus" of the Outreach Program "will be to increase remedy completion," which will significantly decrease the number of vehicles with dangerous Takata inflators. (ECF No. 2127-2, ¶ 4.) Utilizing a secure database with up-to-date information on Subject Vehicles and Class Members, the program will "develop and implement specific campaign strategies, optimized based on the unique characteristics of individual subgroups of the overall targeted population, to utilize personal and relevant messaging, graphics, content, media and channels, to increase remedy rates beyond those produced by generic outreach efforts." (*Id.*, ¶ 9.) It also "will monitor and test strategies utilized across various targeted populations to determine which outreach efforts resulted in successful remedies so that the process can continually evolve and be refined over time." (*Id.*, ¶ 10.) In short, with these strategies and others highlighted by the Settlement Special Administrator, the Outreach Program will employ advanced marketing strategies that are not currently being used in outreach efforts to motivate Class Members to bring their vehicles to dealerships for removal and replacement of the dangerous inflators, far exceeding the baseline requirements of the ACRO.[6]

Moreover, the Outreach Program's flexibility and active oversight by the Settlement Special Administrator will ensure that resources are efficiently allocated to the most effective forms of outreach. As mandated in the Settlement, the Outreach Program "is not intended to be a static program with components that are fixed for the entire settlement period." (ECF No. 2909-1, § III.B.6.) Rather, the Settlement Special Administrator, with input from Class Counsel and Ford, is empowered to "adjust and change its methods of outreach as is required to achieve its goal of maximizing the completion of the Recall Remedy." (*Id.*)[7] And because the Settlement is non-

[6] One objector erroneously misreads the Settlement Special Administrator's ability "to confer with NHTSA and the Independent Monitor" as suggesting that the Outreach Program is effectively controlled by NHTSA and the Independent Monitor. (ECF No. 1088 (in No. 14-cv-24009) at 7.) But vesting the Settlement Special Administrator with *discretion* to confer with NHTSA and the Independent Monitor does not give NHTSA or the Independent Monitor any control of the Outreach Program—it just opens the door to communication to avoid interference with NHTSA's separate activities. (ECF No. 2909-1, § III.B.1.)

[7] One objector complains that the parameters of the Outreach Program are not defined in sufficient detail. (ECF No. 3107 at 4-7.) But the flexibility of the Outreach Program is essential

reversionary, any funds from the Outreach Program budget—which is capped at 33% of the Settlement Amount—that the Settlement Special Administrator determines cannot be effectively spent to maximize Recall Remedy completion rates will be made available for cash payments directly to Class Members.[8]

Mr. Juneau's most recent Status Report confirms that the advanced, targeted strategies envisioned for the Outreach Program are being implemented successfully. (ECF No. 3049.)[9] It also confirms the distinct, unique role of the Outreach Program, as each automotive company continues to engage in outreach efforts aside from the activities performed by the Settlement Special Administrator. (*Id.* at 7 n.6) The fact that the automakers who previously settled continue these separate outreach efforts undercuts the objectors' claims that the Outreach Program is coextensive with the automakers' NHTSA-mandated obligations.

Several objectors also unwittingly advance arguments that actually support the Outreach Program. Objectors Perkowski and Chaney, for example, highlight a colloquy between the Court and Class Counsel at the fairness hearing for the prior two settlements in which the Court suggested the use of incentive payments to encourage vehicle owners to bring their vehicles to dealerships for the Recall Remedy. (ECF No. 3110 at 5; 1088 (in No. 14-cv-24009) at 10-12.) The objectors fault the Ford Settlement for not utilizing such incentive payments. (*Id.*) The problem for the objectors is that the Ford Settlement does, in fact, incorporate the Court's suggestion, expressly identifying "incentives for Class Members to bring their Subject Vehicles to Ford Dealers for the completion of he Recall Remedy" as a permissible form of outreach in the

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to its effectiveness. In addition, the general forms of Outreach contemplated are outlined in the Settlement. (*E.g.*, ECF No. 2909-1, § III.B.2.)

[8] An objector misreads a provision of the Settlement as leaving the Settlement Amount indefinite. (ECF No. 3107 at 4-7.) That is obviously wrong. The provision that the objector misunderstands simply provides the Parties flexibility to alter the *timing* of payments to fulfill the purposes of the Settlement—e.g., if the recall schedule is accelerated, the Parties may agree to accelerate the timing of payments. (ECF No. 2909-1, § III.A.2.h.)

[9] Objector Perkowski launches an unwarranted and uncalled for personal attack on Mr. Juneau and his staff. (ECF No. 1088 (No. 14-cv-24009) at 12.) Mr. Juneau is a renowned expert in the field of settlement administration, and he has assembled a staff of industry leading experts to implement this Settlement and the six that already have achieved their effective dates. Mr. Juneau and his staff are doing excellent work, and the objector's attack should be emphatically rejected.

Outreach Program. (ECF No. 2909-1 at 22, § III.B.2.)[10] In addition, out-of-pocket and residual cash payments are conditioned on having the Recall Remedy performed for current vehicle owners, supplying the cash incentive that even objectors recognize value in. This objection, far from presenting a real challenge to the Settlement, only betrays the objectors' failure to review the actual agreement.

Millions of dangerous, defective airbag inflators remain in Class Members' vehicles. A significant reason this hazard persists is that outreach efforts have been insufficient and ineffective. (*See* ECF No. 2909-1 at 90.) The Outreach Program aims to overcome this obstacle and "significantly increase Recall Remedy completion rates." (ECF No. 2909-1, § III.B.1.) It hardly can be disputed that making Class Members substantially safer by motivating them to remove life-threatening inflators from their vehicles provides a direct benefit to Class Members.[11] Indeed, by averting serious injuries and deaths from defective inflators that may otherwise remain in Class Members' vehicles for a longer period of time or indefinitely, it is likely that the actual value of the Outreach Program to Class Members will far exceed the amount of money allocated to it. Because the Outreach Program obligates Ford to fund outreach efforts that far *exceed* both its current efforts and the requirements of law, it unquestionably represents a significant benefit to Class Members.

B. The Customer Support Program Provides A Substantial Benefit To The Class.

A few objectors criticize the Customer Support Program ("CSP") and the value ascribed to it by Kirk Kleckner, a well-recognized expert in the field. (ECF No. 3069-3.) These ill-founded objections should be overruled.

Effectively an extended warranty, the CSP provides prospective coverage for repairs and

[10] One objector acknowledges that the Settlement permits the use of incentive payments, but still objects because a specific budget has not been set for such payments. (ECF No. 3108 at 8.) This objection ignores the program's objective to allocate resources to the most effective methods of outreach. As explained earlier, a central task of the Settlement Special Administrator is to measure the effectiveness of each outreach method and allocate funds to the methods that "achieve [the program's] goal of maximizing completion of the Recall Remedy." (ECF No. 2909-1 at 27, § III.B.6). Setting an inflexible budget for incentive payments, in contrast, would only limit the effectiveness of the program.

[11] One objector claims, without explanation, that the Outreach Program's benefits cannot be limited to Class Members. (ECF No. 1088 (No. 14-cv-24009) at 6.) This is incorrect. The Class is defined to include, as of the preliminary approval date, all current owners and lessees of Ford vehicles equipped with Takata inflators that are or will be recalled, the same population that the Outreach Program will target.

adjustments (including parts and labor) necessary to correct any defects in the materials or workmanship of (1) the Takata PSAN inflators contained in the driver or passenger front airbag modules of Subject Vehicles, or (2) replacement driver or passenger inflators installed pursuant to the Takata Airbag Recall in the Subject Vehicles. (*E.g.*, ECF No. 2909-1, § III.G.) There is no serious challenge to the substantial, practical benefit that the CSP provides to Class Members. Indeed, the Eleventh Circuit has recognized that the provision of such an extended warranty is "a significant tangible benefit." *Carter v. Forjas Taurus, S.A.*, 701 F. App'x 759, 767 (11th Cir. 2017); *see also In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 8:10ML 02151 JVS, 2013 WL 3224585, at *17 (C.D. Cal. June 17, 2013) (holding that objections to a similar customer support program "lack merit").

The few challenges to Mr. Kleckner's methodical valuation of the CSP also lack merit. (ECF Nos. 3091 at 11-13; 3106 at 9.) The objectors generally claim that Mr. Kleckner's valuation would not meet the requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), for admissibility. This argument falters at the starting gate, because a district court considering the fairness of a settlement need not determine the admissibility of evidence under *Daubert*. *See Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. v. Gen. Motors Corp.* ("*UAW*"), 497 F.3d 615, 636-37 (6th Cir. 2007).[12] This is because, "[i]n a fairness hearing, the judge does not resolve the parties' factual disputes but merely ensures that the disputes are real and that the settlement fairly and reasonably resolves the parties' differences." *Id.*; *accord In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 442-43 (3d Cir. 2016). Indeed, in *Carter*, the Eleventh Circuit affirmed the district court's reliance on an expert's settlement valuation without refencing *Daubert*, reasoning instead that "[i]t is settled law that the weight to be accorded expert opinion is solely within the discretion of the judge sitting without jury." *Carter*, 701 F. App'x at 767 (quoting *Debra P. by Irene P. v. Turlington*, 730 F.2d 1405, 1412 (11th Cir. 1984)).

Nonetheless, it is clear that Mr. Kleckner's valuation of the CSP would readily satisfy the requirements of *Daubert*. Mr. Kleckner, a Certified Public Accountant with an MBA, is a highly qualified valuation expert, particularly in the automotive field, having served as the CFO of an

[12] One objector attempts to distinguish the *UAW* decision on the grounds that the expert opinions in that case related to the overall fairness of the settlement, as opposed to attorneys' fees. (ECF No. 3091 at 12-13.) This is a distinction without difference, as the overall fairness of the settlement is more consequential than the question of fees.

automotive dealership for several years and a valuation consultant and expert for almost two decades. (*E.g.*, ECF No. 3069-3 at 1-2, 11-14.) No objector contests this point. His valuation methodology, moreover, is reliable. Based on data provided by Ford,[13] together with industry and government data he has collected from years of experience in the field, as well as prior valuations he performed in this MDL (*id.* at 15), Mr. Kleckner performed complex calculations, rooted in economics, to determine the number of Subject Vehicles eligible for the CSP, the number of coverage years the CSP is expected to provide, and the estimated retail price of a single year of the CSP (*id.* at 6-8). Mr. Kleckner explains his methodology in detail and shows his final calculations. (*Id.* at 6-8, 17.) A number of courts have relied on similar valuation opinions from Mr. Kleckner in evaluating the fairness of settlements and fee requests.[14] Indeed, his opinions have been deemed reliable and relevant under *Daubert*. *See In re Toyota Motor Corp.*, 2013 WL 3224585, at *3 n.10.

Objector Elder-Johnson claims that Mr. Kleckner's market-based methodology is not recognized in the appraisal community. (ECF No. 3091 at 12.) But several courts have endorsed this approach in rejecting similar objections. *See, e.g., In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d at 168–69 ("The Court does not accept [the] argument that the value of the extended warranties is limited to the value of repairs provided gratis during the extended warranty period. That valuation method reflects the costs the extended warranties imposed on the Defendants, but not the value the warranties conferred on class members."); *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 306-07 (E.D. Pa. 2003) (rejecting a valuation of an extended warranty benefit based on past warranty repair data because "[t]he cost to the [defendant of the warranty program] is irrelevant," and endorsing a valuation that "uses a market price for a warranty as its starting point"). The objector's criticism of Mr. Kleckner's valuation therefore finds no support in the facts or the law.

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[13] Mr. Kleckner has submitted a supplemental declaration, attached as Exhibit B, identifying the specific data Ford provided, in response to the Elder-Johnson objection. The data came directly from Ford, so the objector's reliance on decisions concerning unreliable information are misplaced. (ECF No. 3091 at 12.)

[14] *See, e.g., Gray v. BMW of N. Am., LLC*, No. 13-CV-3417 (WJM), 2017 WL 3638771, at *3 (D.N.J. Aug. 24, 2017) (relying on Kleckner valuation of settlement to grant final approval); *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 169 (D. Mass. 2015) (same for fee award); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 8:10ML 02151 JVS, 2013 WL 3224585, at *3 (C.D. Cal. June 17, 2013).

Having failed to identify any valid objection to Mr. Kleckner's valuation of the CSP, objectors should not be permitted to cross-examine Mr. Kleckner at the fairness hearing. The Sixth Circuit has observed that "no court of appeals, to our knowledge, has demanded that district courts invariably conduct a full evidentiary hearing with live testimony and cross-examination before approving a settlement. . . . Our court, and several others, have instead deferred to the district court's traditionally broad discretion over the evidence it considers when reviewing a proposed class action settlement." *UAW*, 497 F.3d at 636. The former Fifth Circuit similarly observed that a district court conducting a settlement hearing "does not try the case," as the "very purpose of compromise is to avoid the delay and expense of such a trial." *Young v. Katz*, 447 F.2d 431, 433 (5th Cir. 1971). The fairness hearing is designed to afford the court an opportunity to assure itself that the settlement is fair, reasonable, and adequate, *Canupp v. Liberty Behavioral Health Corp.*, 417 F. App'x 843, 845 (11th Cir. 2011), not to reach conclusions on issues of fact underlying the merits of the dispute. *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977). In undertaking this assessment, then, this Court need not conduct a mini-trial.[15]

This Court therefore "has the discretion to limit the fairness hearing, and the consideration of [] objections, so long as such limitations are consistent with the ultimate goal of determining whether the proposed settlement is fair, adequate and reasonable." *Tenn. Ass'n of HMOs, Inc. v. Grier*, 262 F.3d 559, 567 (6th Cir. 2001); *see Geier v. Alexander*, 801 F.2d 799, 809 (6th Cir. 1986) ("[U]nless the objectors have made a clear and specific showing that vital material was ignored by the District Court[,] [t]here is no need for the District Court to hold an additional evidentiary hearing on the propriety of the settlement.") (internal quotation marks omitted).

Where, as here, evidence in the record is sufficient to allow the Court to document its evaluation of the fairness of the settlement, the Court should not indulge an objector's demand for the opportunity to develop additional evidence at or in advance of the fairness hearing. *See, e.g.*, *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) (rejecting objectors' argument that they should have been entitled to "subpoena witnesses for the settlement hearing" regarding damages data because "a great deal, if not all, of this information already exists in the [document] depository"), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d

[15] For this reason, objector Elder-Johnson is incorrect to claim that Mr. Kleckner's declaration should be excluded as inadmissible hearsay. (ECF No. 3091 at 13.) The cases that the objector relies upon concern trial proceedings, not a fairness hearing.

Cir. 2000). Where the evidence submitted in support of the settlement is the result of truly adversarial proceedings and where the "comprehensiveness" of the records developed by the proponents of the settlement is evident, the objector has a greater burden to show the necessity of additional evidence. *See Newberg on Class Actions* § 13:32 (5th ed. 2011); *see also In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 24, 27 (D.D.C. 2001). Because the objector has not satisfied its burden of showing the necessity of additional evidence, its request to cross-examine Mr. Kleckner should be denied.[16]

Because Mr. Kleckner's detailed valuation of the CSP is reliable, this Court should rely on it to estimate the value of the CSP in the Settlement.

C. The Rental Car Program Provides A Substantial Benefit To The Class.

The Rental Car/Loaner Program ("RCP") provides another substantial benefit to the Class. Several objectors, however, claim that the RCP is an illusory benefit because certain Ford dealerships have voluntarily provided rental cars to certain customers in the past. (ECF Nos. 3091 at 3; 3108 at 10-11.) This objection is misguided and should be overruled.

Under the Settlement's RCP, any Class Member who brings a recalled Subject Vehicle to a dealership for the Recall Remedy and requests a rental/loaner vehicle will be provided one for free, until the Recall Remedy is performed on the Subject Vehicle. (ECF No. 2909-1, § III.C.) The value of this benefit is substantial. Ford has negotiated with rental car companies across the country to comply with its obligations. This program directly addresses complaints from some *pro se* objectors concerning the delays in getting the Recall Remedy performed (ECF No. 3074), and it makes obtaining the Recall Remedy more convenient.

Several objectors nonetheless try to dismiss the value of the program because a few news articles and press statements indicate that Ford's dealerships had the discretion to provide rental vehicles, on a case-by-case basis, to certain customers before the Settlement. (ECF Nos. 3091 at 3; 3108 at 10-11.) But even the evidence the objectors cite demonstrates that, absent the obligations of the Settlement, Ford was not required to provide rental vehicles to customers. (ECF Nos. 3108-6 (announcing that Ford would only provide loaners for "certain" vehicles under limited conditions); 1088-4 (in No. 14-cv-24009) (reporting that Ford denied consumers rental

[16] For the same reasons, a similar request to cross-examine Professor Brian Fitzpatrick (ECF No. 3106 at 1) should be denied. Indeed, the objector does not even attempt to challenge Professor Fitzpatrick's methodology.

vehicles even when replacement inflators were unavailable).) Indeed, in testimony before a Senate Sub-Committee in March 2018, Ford's representative declined to commit to providing rental cars to all customers who owned recalled vehicles. *See* Ex. C at 2.

In establishing an enforceable right to obtain a rental or loaner vehicle, therefore, the Settlement provides a significant and concrete benefit, which Mr. Kleckner has evaluated and determined exceeds the 20% credit that Ford is receiving for the comprehensive program. (ECF No. 3069-3 at 8-10.) In a supplemental declaration submitted with this response, Mr. Kleckner estimates that the value of the RCP exceeds the 20% credit that Ford will receive by more than $100 million. *See* Ex. B.[17] The objections to the RCP should therefore be overruled. *See Lane v. Facebook, Inc.*, 696 F.3d 811, 825 (9th Cir. 2012) ("Even assuming Objectors' premise that Beacon was already effectively terminated, absent a judicially-enforceable agreement, Facebook would be free to revive the program whenever it wanted. It is thus false to say that Facebook's promise never to do so was illusory.").

D. There Are No Intra-Class Conflicts That Preclude Certification Of The Class Or Approval Of The Settlement.

A few objectors claim that there are intra-class conflicts between certain Class Members, which should preclude certification of the Settlement Class. The purported conflicts, objectors claim, are between former owners of Subject Vehicles and current owners, and those who have had their vehicles repaired and those who have not. (ECF Nos. 3108 at 2-4; 1088 (in No. 14-cv-24009) at 2-6.) These objections are groundless; no such conflicts exist, nor would they preclude class certification and final approval of the Settlement.

[17] The *Daubert* attack on Mr. Kleckner's RCP valuation (ECF No. 3091 at 12) fails for the same reasons discussed earlier. *See* Section II.B, *supra*. To value the RCP, Mr. Kleckner first estimated the number of vehicles covered by the program based on information provided by Ford; he then estimated the number of rental car days for each vehicle, based on his years of experience in the industry and the time needed to complete the repair; and finally he multiplied the product of total number of covered vehicles and the number of rental car days by the reimbursement rate Ford provides for rental vehicles. (ECF No. 3069-3, ¶ 7.) Because Ford was not able to provide parts availability data in sufficient detail for Mr. Kleckner to calculate the extent of any delays, he made an extremely conservative assumption that "no rental car days will be attributable to the timing of replacement parts availability." *See* Ex. B, ¶ 4.c. This conservative approach is evident in his calculations, as he estimates that the length of each rental will be just 1.09 days. *See* Ex. B at 5. His approach to valuing the RCP is straightforward, conservative, and rooted in economics, as well as his extensive experience in the automotive industry. The objectors' attack on the reliability of Mr. Kleckner's valuation is unwarranted.

Claims of intra-class conflict implicate the adequacy prong of Rule 23(a), which requires class representatives and their counsel to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy requirement "serves to uncover conflicts of interests between the named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). But "a party's claim to representative status is defeated only if the conflict between the representative and the class is a ***fundamental*** one, going to the specific issues in controversy." *Pickett v. Iowa Beef Processors*, 209 F.3d 1276, 1280 (11th Cir. 2000) (emphasis added). Thus, "a conflict will not defeat the adequacy requirement if it is merely speculative or hypothetical." *Ward v. Dixie Nat. Life Ins. Co.*, 595 F.3d 164, 180 (4th Cir. 2010) (internal quotation marks omitted); *see also Cobell v. Salazar*, 679 F.3d 909, 920 (D.C. Cir. 2012) (holding that an objector's "discussion of a hypothetical conflict is an inadequate basis for vacating [a] class settlement agreement").

There are no disabling intra-class conflicts here. The interests of all Class Members align in establishing the defect in Takata inflators installed in Ford's vehicles, proving Ford's knowledge of the defect, and recovering economic damages from Ford. *See Carriuolo v. General Motors Co.*, 823 F.3d 977, 989–90 (11th Cir. 2016) (rejecting intra-class conflict argument because "[e]ach class member is connected by the common predominate inquiry: Did [the defendant] violate FDUTPA by affixing inaccurate Monroney stickers to [the vehicles at issue]"); *James D. Hinson Elec. Contracting Co., Inc. v. BellSouth Telecomm., Inc.*, 275 F.R.D. 638, 643 (M.D. Fla. 2011) (finding that no fundamental intra-conflict existed when "[t]he specific issues in this controversy concern whether [defendant's] billing practices were deceptive, fraudulent, or resulted in unjust enrichment," and all class members would benefit if plaintiffs prevailed on their claims); (ECF No. 2318-1, ¶ 8 ("No objector has identified a conflict that would cause a single team of lawyers to harm class members of one type while pressing the claims of class members of another type."); *id.* at 35-36, ¶ 19 ("There are no conflicts between or among these Plaintiffs that would render joint representation problematic. All of their claims are compatible.")).

Some objectors nonetheless claim that a conflict exists between current and former owners, and between those who are aware of the defect and those who are not, in that current owners and those who are unaware of the defect will enjoy more benefits from the Settlement than former owners and those who already are aware of the defect. But "almost every settlement

will involve different awards for various class members." *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1146 (8th Cir. 1999). "Such differences in settlement value do not, without more, demonstrate conflicting or antagonistic interests within the class." *In re Pet Food Prod. Liab. Litig.*, 629 F.3d 333, 346 (3d Cir. 2010).

In addition, the Eleventh Circuit recently rejected this very argument concerning a conflict between former and current owners in *Carriuolo*, concluding that "the fact of resale is immaterial because the injury occurred when class members paid a price premium at the time of lease or purchase." 823 F.3d at 990; (*see also* ECF No. 2318-1 at 36, ¶ 20 ("The liability and damages theories of current and former owners can also be advanced concurrently by a single team of attorneys because there is no obvious way in which argument or evidence helpful to one subgroup would work to the detriment of the other.")). In addition, former owners and current owners are treated the same with respect to compensation from the Settlements: both are eligible for the out-of-pocket claims process and residual distribution. (*E.g.*, ECF No. 2013-1, § III.F.)

To be sure, the Outreach Program and RCP will benefit certain current owners—i.e., those who have not had their defective airbags replaced yet. But as the authorities discussed above establish, the allocation of different benefits among Class Members does not, by itself, "demonstrate conflicting or antagonistic interests within the class." *In re Pet Food*, 629 F.3d at 346. None of the authorities the objectors rely upon suggests that every component of relief in a settlement must be provided to every single class member, regardless of each class member's circumstances. Instead, the cases hold that discrete groups of class members cannot be required to release their claims without receiving some form of settlement relief. That has not occurred here, and the objectors do not contend otherwise. Far from implicating the adequacy requirement of Rule 23, the only pertinent question is whether the allocation of benefits among Class Members is reasonable. (ECF No. 2318-1, ¶ 9; *id.* at 36, ¶ 25.) As discussed in the preceding sections concerning the Outreach Program and RCP, the public safety rationale underlying the allocation of Settlement benefits to these programs establish that the structure of the Settlement is eminently reasonable.

Nor are subclasses required under such circumstances. *See, e.g.*, *Shaffer v. Cont'l Cas. Co.*, 362 F. App'x 627, 630–31 (9th Cir. 2010) (explaining that "the fact that it is possible to draw a line between categories of class members" does not necessarily mean that subclasses are required); *UAW*, 497 F.3d at 629 ("[I]f every distinction drawn (or not drawn) by a settlement

required a new subclass, class counsel would need to confine settlement terms to the simplest imaginable or risk fragmenting the class beyond repair."); *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 202 (3d Cir. 2005) ("[I]f subclassing is required for each material legal or economic difference that distinguishes class members, the Balkanization of the class action is threatened."); *Petrovic*, 200 F.3d at 1146-48 (rejecting need for creation of subclasses despite large differences in recovery among class members).

Objections claiming that intra-class conflicts exist should, therefore, be overruled.

E. Certification Of The Settlement Class Does Not Require State-By-State Analysis Of Plaintiffs' Claims.

Even though the Class is being certified for settlement purposes only, some objectors claim that the Court must perform a state-by-state analysis of Plaintiffs' claims to find that the predominance requirement of Rule 23(b)(3) is satisfied. (ECF Nos. 3091 at 5-6; 3106 at 6-7; 3110 at 8-11.) This objection is not only inconsistent with the law, but it demonstrates that many objections are canned challenges untethered to the facts of this particular case.

The case upon which objectors primarily rely for this argument is *In re Hyundai & Kia Fuel Economy Litigation*, 881 F.3d 679, 689 (9th Cir.), *reh'g en banc granted sub nom. In re Hyundai And Kia Fuel Economy Litigation*, 897 F.3d 1003 (9th Cir. 2018). The Ninth Circuit, however, recently ruled that the decision "shall ***not*** be cited as precedent by or to any court of the Ninth Circuit" because a majority of Ninth Circuit judges voted to rehear the case *en banc*, 897 F.3d at 1007 (emphasis added), a fact that several objectors fail to mention. The *Hyundai* panel's non-precedential decision, over a dissent, vacated an order approving a class settlement in a case brought under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), because the district court did not analyze whether variations in state consumer protection laws precluded class certification. *In re Hyundai*, 881 F.3d at 707.

On the facts, the *Hyundai* case is inapplicable here, because unlike in the *Hyundai* case, 881 F.3d at 680, this Court's jurisdiction does not rest solely on CAFA, 28 U.S.C. § 1332(d). That the *Hyundai* case arose exclusively under CAFA was a significant factor in the panel's reasoning. *See In re Hyundai*, 881 F.3d at 691 (beginning its analysis with the proposition that "[w]here plaintiffs bring a nationwide class action under CAFA and invoke Rule 23(b)(3), a court must consider the impact of potentially varying state laws"). Here, in contrast, Plaintiffs asserted federal claims under RICO and the Magnuson-Moss Act, and thus this Court has federal-question jurisdiction under 28 U.S.C. § 1331 (ECF No. 2445-1, ¶¶ 34, 200-52). Of course, there are no

variations in the law applicable to a nationwide class asserting a uniform federal claim, so the *Hyundai* panel's focus on variations in state law does not apply here.[18]

Even more fundamentally, as a matter of law, the objectors are mistaken to rely on the *Hyundai* panel's decision, because it fails to account for the difference between the litigation and settlement contexts for class certification. According to the Supreme Court, "[s]ettlement is relevant to a class certification." *Amchem Prods. v. Windsor*, 521 U.S. 591, 619 (1997). "Confronted with a request for settlement-only class certification," *Amchem* directs that a "district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." *Id.* at 620. Thus, in determining whether to certify a nationwide settlement class, a district court need not determine whether the law of a single state will apply or whether the law of multiple states will apply to subclasses, because these are matters of manageability. Indeed, the Eleventh Circuit reached this precise conclusion in *Carter v. Forjas Taurus, S.A.*, 701 F. App'x 759, 765 (11th Cir. 2017). In *Carter*, the Eleventh Circuit, relying on *Amchem*, held that the district court did not abuse its discretion in certifying a nationwide settlement class, because the settlement-only posture alleviated the need to inquire as to "intractable management problems." *Id.* at 765 (quoting *Amchem*, 521 U.S. at 620). Likewise, the Third Circuit, *en banc*, rejected the objectors' argument and the *Hyundai* panel's position in *Sullivan v. DB Investments, Inc.*, 667 F.3d 273 (3d Cir. 2011), reasoning that "[b]ecause we are presented with a settlement class certification, we are not as concerned with formulating some prediction as to how [variances in state law] would play out at trial, for the proposal is that there be no trial," and concluding that "state law variations are largely irrelevant to certification of a settlement class." *Id.* at 304 (internal quotation marks omitted).

The *Hyundai* panel's decision—now deemed non-precedential by the Ninth Circuit and subject to *en banc* review—presents no obstacle to class certification here, because it is inapplicable to this case, which involves federal-question jurisdiction and a uniform federal claim, and it is inconsistent with Eleventh Circuit law. As explained in Plaintiff's motion for final approval, the Settlement Class easily satisfies the requirements of Rule 23 for certification.

[18] Objector Chaney's argument, echoed by the five other objectors who submitted the same exact document as an objection, that Plaintiffs should include a named plaintiff from Alabama (ECF No. 3110 at 8-10) is difficult to understand, given the assertion and settlement of a uniform federal RICO claim that applies to every Class Member nationwide.

F. The Remaining Miscellaneous Objections Should Be Overruled.

The remaining objections to the reasonableness of the Settlement are more difficult to categorize, but are largely conclusory, vague, not supported by specific factual or legal support, and should thus be overruled. *See Nelson v. Mead Johnson & Johnson Co.*, 484 F. App'x 429, 434-35 (11th Cir. 2012) (affirming district court's decision overruling conclusory objections); *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1382 (S.D. Fla. 2007) (noting that "lack of substance of the objections . . . weighs in favor of approving the Settlement").

Objector Owens challenges the process for reimbursement of out-of-pocket expenses, claiming that Class Members are unfairly at the mercy of the Settlement Special Administrator and should be provided an appellate procedure. (ECF No. 3108 at 12.) This objection ignores that the parties negotiated and agreed upon a list of categories of the most obvious and legitimate expenses that should be reimbursed, while still providing the Settlement Special Administrator with discretion to include additional categories of reimbursable expenses. (ECF No. 2909-1, § III.D.3.) The objector also fails to cite any authority requiring an appellate procedure for the administration of settlement claims, and it is not difficult to understand why—the costs of requiring the Settlement Special Administrator or any other party to review countless appeals of decisions on the reimbursement of out-of-pocket expenses could easily cannibalize the Settlement Fund.

Several Class Members have submitted *pro se* objections as well. Although these objections are no doubt sincere, in stark contrast to those manufactured by professional objectors, they ultimately do not cast doubt on the fairness, adequacy, or reasonableness of the Settlement. Mr. Arth, for example, challenges the merit of the lawsuit in general and opposes Class Counsel's fee request to deter such lawsuits in the future. (ECF No. 3135.) Class Counsel respectfully disagrees with Mr. Arth's opinion as to the merit and importance of this and similar public-interest litigation, while the reasonableness of Class Counsel's fee request is addressed in the Section III, *infra*.

Several objectors, in contrast to Mr. Arth, do not believe that the Settlement goes far enough in punishing Ford or providing compensation. (ECF Nos. 3131 (McGlown); 3074 (Youndt); 3133 (Huhman); 3134 (Mulholland).) Mr. Mulholland, for example, describes his frustrating experience of being unable to obtain a replacement inflator or sell his vehicle for a fair price for two years, and Ford's unwillingness to provide a rental vehicle until recently. (ECF

No. 3134.) Similarly, Mr. Huhman, Mr. Youndt, and Ms. McGlown assert that their vehicles have lost market value and express concern that the Settlement does not compensate them sufficiently. (ECF Nos. 3074; 3131; 3133.) The Settlement, however, provides concrete benefits to these Class Members. It requires Ford to provide them with rental or loaner vehicles until their recalled vehicles are repaired, addressing their safety concerns, and it entitles them to compensation for the diminished value of their vehicles, either through the out-of-pocket claims process or residual payments. Of course, if the Class Members do not believe that the Settlement provides adequate compensation, they have the option of removing themselves from the Class and pursuing individual claims against Ford. But as explained in Plaintiffs' motion for final approval, the Settlement Amount represents a fair, adequate, and reasonable resolution, given the various factors that must be considered under Rule 23(e), including the risks of continued litigation and the estimated damages recoverable. (ECF No. 3069 at 23-32.)

Another Class Member, Ms. Nickolopoulos, submitted a letter expressing concern that Class Representatives would receive the entirety of the Settlement Fund through service awards, leaving absent Class Members with no compensation. (ECF No. 3111-1.) As there are 27 Class Representatives, the total allocated to service awards is capped at $135,000, less than .04% of the $299.1 million Settlement Amount. Thus, Class Representatives certainly will not receive the entirety of the Settlement Fund.

Finally, Mr. Hutsler, an attorney in Alabama, appears *pro se* as well. He claims that the benefits provided by the Settlement are less than represented because attorneys' fees, notice to the class, and the costs of administration are deducted from the Settlement Fund. (ECF No. 3130 at 2.) But the Direct Notice sent to all Class Members, as well as the Long-Form Notice, clearly discloses this fact, accurately representing the benefits of the Settlement. (ECF No. 3069-2 at 31-55.) Mr. Hutsler also challenges Class Counsel's fee request, but mistakenly relies on inapplicable California state law, as opposed to prevailing Eleventh Circuit law (ECF No. 3130 at 3), which, as explained in Section III, *infra*, supports Class Counsel's request.

III. THE OBJECTIONS TO THE APPLICATION FOR ATTORNEYS' FEES SHOULD BE OVERRULED.

Class Counsel's fee request of $74,775,000, equivalent to 25% of the Settlement Amount, is in line with this Court's fee awards in the prior six settlements and well within the range of awards found to be reasonable under Eleventh Circuit precedent. This fee request also comports with awards regularly approved in comparable multi-defendant class actions and will

appropriately award Class Counsel for the outstanding result they have obtained for the Class, a result that was achieved only after four years of hard-fought litigation undertaken entirely on a contingency fee basis with Class Counsel advancing substantial costs.

Considering this Settlement together with the six prior agreements, as the Court indicated it would (ECF No. 2386 at 2), a fee award of $74,775,000 here would bring the total fees awarded from all seven settlements to $381,381,020, approximately 24.5% of the collective Settlement Amounts of $1,555,346,448, a percentage that falls ***below*** the benchmark for reasonableness established by the Eleventh Circuit. If the value of non-monetary benefits, such as the Customer Support Program, is factored in, the percentage drops further still, solidifying the conclusion that Class Counsel's fee request is reasonable.

The boilerplate objections lodged against Class Counsel's fee request are misguided and no different than those the Court properly overruled in its fee awards for the prior six settlements. Not a single objection points to any Eleventh Circuit precedent that comes close to calling into question the reasonableness of Class Counsel's fee request. There is no doubt that Class Counsel's fee request is reasonable and appropriate.

A. Class Counsel's Fee Request Is Reasonable And Adheres To Prevailing Law In This Circuit And District.

The Eleventh Circuit has repeatedly held, and reiterated just two months ago, that a fee award of "25% of a common fund [is] a benchmark attorney's fee award" in this Circuit. *Muransky v. Godiva Chocolatier, Inc.*, 905 F.3d 1200, 1217 (11th Cir. 2018) (citing *Camden I Condo. Assoc. v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991)); *see also Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1243 (11th Cir. 2011) ("25% is generally recognized as a reasonable fee award in common fund cases."). Class Counsel's fee request, even viewed with the most conservative lens—i.e., completely disregarding the value attributed to the Customer Support Program—aligns precisely with the benchmark. If anything, as explained in Class Counsel's initial motion (ECF No. 3069 at 36-47), the twelve factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), which can justify an upward deviation from the benchmark, support an above-benchmark percentage, confirming the reasonableness of the request. Indeed, even aside from the *Johnson* factors, it would be sufficient for this Court to simply "determine[] that because 25% is generally accepted as reasonable in common fund cases, it should also be considered reasonable in this case." *Faught*, 668 F.3d at 1243. There can be no reasonable dispute that awarding Class Counsel fees totaling 25% of the

Settlement Amount would be reasonable under Eleventh Circuit law.

Such an award would also comport with awards granted in comparable, multi-defendant class actions in which successive settlements have been approved. For example, just last week a New York district court awarded fees equating to 26% of the aggregate common fund created through fifteen settlements in an MDL. *Alaska Electrical Pension Fund v. Bank of America*, No. 14-CV-7126 (JMF), 2018 WL 6250657, at *1 (S.D.N.Y. Nov. 29, 2018) (awarding approximately $126 million in fees of $504.5 million aggregate common fund from 15 settlements). Likewise, last month another federal court in Michigan awarded fees equating to 25% of the aggregate common fund created through the third-round of settlements in an MDL. *In re Automotive Parts Antitrust Litig.*, No. 12-cv-00103 (E.D. Mich. Nov. 7, 2018) (ECF No. 626) (awarding approximately $108 million in fees of $432.8 million aggregate common fund from third-round of settlements). Numerous other examples of fee awards from a series of settlements in multi-defendant MDLs are cited in Class Counsel's application, all of which approve percentages of the aggregate common funds that exceed the percentage requested here. (ECF No. 3069 at 40-41.)

Additional instructive examples are found in the prior declaration of Professor Charles Silver. (ECF No. 2318-1, ¶¶ 21-28.) In each case, sophisticated plaintiffs retained counsel on a contingency basis and supported fee awards exceeding 25% of the aggregate common funds created through a series of settlements worth more than $1 billion. (*Id.*) For example, in a series of settlements that recovered in excess of $2 billion for sophisticated drug wholesalers, the fees awarded ranged from 27.5% to 33.33% plus expenses. (*Id.*, ¶¶ 25-26.) Likewise, in recent litigation concerning faulty residential mortgage-backed securities, the National Credit Union Administration entered into 25% contingency fee agreements with law firms pursuing the litigation and paid them more than $1.2 billion from settlements worth approximately $5.1 billion. These examples demonstrate that Class Counsel's fee request is consistent with, if not well below, the market price for contingency representation, which should guide the Court's determination. *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("[C]ourts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.").

Class Counsel's fee request also aligns with fees awarded from large settlements in this District.

- *In re Checking Account Overdraft Litig.*, 09-MD-02036 (S.D. Fla.) (awarding at least

$265 million in fees (30%) of approximately $884.6 million in multiple settlements from the same MDL);[19]

- *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) (awarding fees of $325,380,997 (31 ⅓%) of $1.06 billion settlement);[20]
- *Love v. Blue Cross & Blue Shield Assoc.*, No. 03-cv-21296 (S.D. Fla. Apr. 20, 2008) (awarding fees of $49,776,407 (38%) of $130 million settlement)
- *In re: Terazosin Hydrochloride Antitrust Litig.*, 99-md-1317 (S.D. Fla. April 19, 2005) (awarding fees of $24,166,667 (33 ⅓%) of $72.5 million settlement);
- *Gutter v. E.I. Dupont De Nemours & Co.*, 95-2152-Civ (S.D. Fla. May 30, 2003) (awarding fees of $25.8 million (33 ⅓%) of $77.5 million settlement);
- *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (affirming fee award of 33 1/3 % of settlement of $40 million).

As these decisions demonstrate, whether calculated as 25% of the $299,100,000 Settlement Amount or 13.95% of the $535,920,000 full value of the Settlement, which is inclusive of Mr. Kleckner's valuation of the Customer Support Program, Class Counsel's fee request is consistent with the Eleventh Circuit's benchmark percentage of 25% and similar awards approved in this District.

A few objectors acknowledge that the benchmark in the Eleventh Circuit is 25% but contend that the percentage should be adjusted downward here. (ECF Nos. 3091 at 9-10; 3108 at 13.) Their arguments have no basis in the facts or the law. As explained in Plaintiffs' motion for final approval, the pertinent *Johnson* factors strongly support the reasonableness of Class Counsel's fee request. (ECF No. 3069 at 39-48.) Plaintiffs' analysis of these factors, together with Professor Fitzpatrick's initial opinion (ECF No. 3069-4, ¶¶ 15-31), remains largely unchallenged.

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[19] *E.g.*, *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1366; 2013 WL 11319244, at *18 (S.D. Fla. Aug. 2, 2013); 2013 WL 11320088, at *16 (S.D. Fla. Aug. 2, 2013); 2013 WL 11319242, at *18 (S.D. Fla. Aug. 2, 2013); 2013 WL 11319243, at *18 (S.D. Fla. Aug. 2, 2013); 2013 WL 11319392, at *17 (S.D. Fla. Aug. 5, 2013); 2013 WL 11319391, at *19 (S.D. Fla. Aug. 5, 2013); 2014 WL 11370115, at *18 (S.D. Fla. Jan. 6, 2014); 2014 WL 12557836, at *15 (S.D. Fla. Apr. 1, 2014); 2014 WL 12557837, at *17 (S.D. Fla. June 10, 2014); 2015 WL 12642178, at *15 (S.D. Fla. Apr. 2, 2015); 2015 WL 12641970, at *18 (S.D. Fla. May 5, 2015); ECF No. 3134 (S.D. Fla. Dec. 19, 2012); ECF No. 3331 (S.D. Fla. Mar. 12, 2013).

[20] Some objectors attempt to distinguish *Allapatah* on the grounds that it was litigated for a longer period of time and involved an appeal to the Supreme Court. (ECF No. 2271 at 13.) But this difference does not help the objectors, because the fee requested here—25% of the Settlement Amount—is already well below the 31 ⅓% awarded in *Allapatah*.

The few objectors who even address the *Johnson* factors only do so in a cursory manner. (ECF Nos. 3091 at 9-10; 3108 at 13.) For example, despite Class Counsel's detailed description of the enormous amount of time and resources that more than 28 law firms have invested in this litigation on a contingent basis (ECF No. 3069 at 42-44), the objectors insist that the "time and labor" factor does not support a benchmark fee award because Class Counsel have not presented lodestar figures. This argument fails because the Eleventh Circuit has expressly rejected the lodestar method for awarding fees in common fund cases, *Camden I*, 946 F.2d at 774.

Several objectors also ineffectively attempt to minimize the "novelty and difficulty" factor by pointing to governmental investigations of Takata inflators. (*E.g.*, ECF Nos. 3091 at 3; 3106 at 10; 3108 at 5, 13.) These investigations, as reflected in Takata's guilty plea, focused on Takata's wrongdoing, not the conduct of automotive companies like Ford, with whom this Settlement was reached following Class Counsel's diligent investigation of its knowledge of Takata's defective inflators. If anything, the governmental investigation of Takata impeded Plaintiffs' claims, because it yielded Takata's guilty plea to wire fraud, which Ford attempted to use as a defense. The automotive Defendants made this argument to the Court in a Status Report dated February 23, 2017:

> Takata's guilty plea significantly undermines Plaintiffs' claims against the Automotive Defendants in the economic loss class actions. The gist of those claims is that the Automotive Defendants allegedly hid a safety defect from their customers but Takata has now admitted that it concealed inflator ruptures that occurred during development testing from those very same defendants. . . . *In short, Takata's guilty plea makes the theory of Plaintiffs' case even more implausible than it already was.*

Automotive Defendants' Status Report, dated February 23, 2017 (ECF No. 1407) (emphasis added). The objectors' claim that Class Counsel merely "piggy-back[ed]" governmental investigations (ECF No. 3108 at 13), therefore, is baseless.

The objectors, moreover, simply fail to address the various obstacles and risks overcome, the substantial amount of work that Class Counsel firms turned away because of the time and effort this MDL demanded, the significant contingent risk that Class Counsel undertook, and the extensive amount of work that remains for Class Counsel to perform over the next four years to oversee and manage the Settlement on behalf of the Class. (ECF No. 3069 at 38-48.) Collectively, the *Johnson* factors support Class Counsel's fee request here.

The objectors also ignore the disruptive incentives a reduced fee would foster. Awarding contingent fees in line with established benchmarks and prevailing market rates, even if they "far exceed the market value of the services if rendered on a non-contingent basis[,] are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose." *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299–300 (9th Cir. 1994). As the court observed in *Behrens v. Wometco Enter., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990), "[i]f this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing."

Objections claiming that Class Counsel's fee request is excessive do not adequately account for this substantial risk of non-payment. When a large class action succeeds in generating a valuable common fund for class members, hindsight bias—the inclination, after an event has occurred, to see it as having been predictable or inevitable—makes it easy to overlook such risk. The countless class actions and other contingency cases that are dismissed at various stages serve as a useful reminder of the risk involved. In the past several years, Class Counsel has brought—and lost, without recovering ***any*** fees—numerous significant cases that required the investment of considerable resources. The following are but only a few examples:

- *Parker v. American Traffic Solutions, Inc.*, No. 14-cv-24010 (S.D. Fla.): Class action challenging the use of certain red-light cameras. After three years of litigation, an adverse ruling from the Florida Supreme Court led to dismissal of plaintiffs' claims without any recovery.
- *In re Natureguard Cement Roofing Shingles Cases*, JCCP No. 4215 (Stanislaus County, California): Product defect case litigated for more than five years in which class certification was granted and millions of dollars in hard costs were spent on experts and discovery, as well as many millions more in attorney time. After eight weeks of trial, the court reversed its prior decisions, nonsuited several claims, and decertified the class as to all claims. The jury returned a defense verdict for remaining claims. Appeals were unsuccessful. Zero recovery for plaintiffs and class members, and zero fees or expense reimbursement for counsel after a fight of more than seven years.
- *Philips v. Ford Motor Co.*, No. 5:14-cv-02989 (N.D. Cal.): Consumer fraud claim seeking millions in damages for a defective Electronic Power Assist Steering system in hundreds of thousands of Ford vehicles. After 2 years of hard fought litigation and significant discovery, the court denied class certification and granted summary judgment. The case is pending before the Ninth Circuit.
- *Ellis v. J.P. Morgan Chase*, No. 4:12-cv-03897 (N.D. Cal.): RICO class action filed

seeking millions in damages for Chase's imposition of unlawful fees for property inspections. After 3 years of hard fought litigation and significant discovery, the court denied class certification and granted summary judgment. The case is pending before the Ninth Circuit.

- *GH et al. v. Eli Lilly & Company et al.*, No. 13-SC-93732 (Mo. Sup. Ct., *en banc*, 2013): Case litigated for more than two years on a contingency basis against pharmaceutical companies, on behalf of approximately 60 plaintiffs who received defective chemotherapy that had been diluted. The case was dismissed by the trial court. After two appeals, the trial court's dismissal was affirmed by the Missouri Supreme Court.
- *Balschmiter v. TD Auto Finance, LLC*, Case No. 2:13-cv-01186 (E.D. Wis.): A proposed class action under the Telephone Consumer Protection Act that was litigated until the eve of trial and ended without any recovery for the proposed class or fees for counsel.
- *Ray v. Spirit Airlines, Inc.*, No. 12-cv-61528 (S.D. Fla.): RICO class action seeking millions in damages for deceptive and unlawful fees dismissed after four years of litigation, including significant discovery and two appeals to the Eleventh Circuit.
- *Chultem v. Ticor Title Ins. Co.*, 2015 IL App (1st) 140808 (1st Dist., 2015): Class action brought on behalf of purchasers of title insurance against title insurers, challenging payment of kickbacks to real estate attorneys who served as attorney agents for the insurers. After almost 11 years of litigation involving several appeals, orders granting and vacating class certification, and a bench trial, the court found for the defendants and the decision was affirmed on appeal. No recovery for the class and no compensation for almost 11 years of attorney time and substantial expenses.
- *Price v. Philip Morris, Inc.*, 2015 IL 117687, 43 N.E.3d 53 (Ill. 2015): Class action that was litigated for about 15 years on behalf of consumers against cigarette manufacturer, alleging fraud in manufacture, distribution, marketing, and sale of cigarettes. After numerous appeals, a reversal of the judgment for the plaintiffs was left to stand.

This ever-present, all-or-nothing risk of non-payment cannot fairly be ignored, as objectors try to do here in attacking Class Counsel's fee as if success were a foregone conclusion. As one court cautioned, "[i]f the plaintiffs' bar is not adequately compensated for its risk, responsibility, and effort when it is successful, then effective representation for plaintiffs in these cases will disappear." *Muehler v. Land O'Lakes, Inc.*, 617 F. Supp. 1370, 1375-76 (D. Minn. 1985).

Ignoring these important considerations, the objectors' arguments for awarding Class Counsel less than the requested, reasonable fee rest on inaccurate assumptions and ultimately would undermine the efficacy of class action litigation. For example, some objectors argue that the fee awarded from the Ford Settlement should be reduced because it is similar to the first six settlements. (ECF Nos. 3091 at 3, 9; 1088 (in No. 14-cv-24009) at 13; 3106 at 10; 3107 at 12; 3108 at 14.) The prior six settlements, however, did not reduce, or provide compensation for, the

amount of work that Class Counsel had to do to pursue Plaintiffs' claims against Ford for the past four years. The mere similarity in the structure of the settlements yielded *de minimis* efficiencies, because it only saved the time needed to draft the actual Settlement Agreement and related motions, all of which were then reviewed, revised, and customized for this Settlement. Class Counsel's immense amount of work on the Ford claims was non-duplicative of the work that generated the first six settlements.

Moreover, as Professor Fitzpatrick has explained in declarations submitted to this Court, reducing Class Counsel's fee simply because there have been earlier settlements against different Defendants, as the objectors urge, would incentivize conduct contrary to the interests of class members *and* the courts. (ECF No. 2318-2, ¶ 4; 2256-5, ¶ 23.) The following example illustrates this important point:

> [L]et's say that class counsel thought a court would award it 30% of the first settlement in a litigation but only 20% of the second settlement. Class counsel would then have the incentive to delay settlement with the first defendant until it could reach settlement with the second defendant so it could present settlement with both defendants as one transaction and seek 30% of the entire sum in fees. But unnecessarily delaying settlements is obviously not in the best interest of class members (or even defendants). Moreover, even if class counsel would not delay a first settlement, this line of thinking still creates bad incentives: why would class counsel invest as much time in a case where all they can get is 20% when they can work on an entirely different litigation where they might be able to get 30%?

(ECF No. 3069-4, ¶ 26.) As Professor Fitzpatrick demonstrates, reducing Class Counsel's fee award simply because of earlier Settlements in the MDL would only encourage attorneys in the future "either 1) to delay settlements with early defendants until they can secure settlements with later defendants or 2) to invest less time in settlements with later defendants in favor of new litigation where they will not be compensated with lesser fee percentages." (ECF No. 2318-2, ¶ 4.) Obviously, neither practice would benefit class members or the courts. Nor have the objectors cited any authority indicating that courts do or should reduce fee awards in such circumstances. Because it would establish counter-productive incentives that would undermine the efficacy of class action litigation, the objectors' argument for reducing Class Counsel's fee lacks merit.

B. Class Counsel's Fee Should Not Be Reduced Because The Settlement Is A "Mega-Fund."

Relying on cases from courts outside the Eleventh Circuit, several objectors claim that the percentage used to calculate Class Counsel's fee should be reduced because the Settlement

represents a "mega-fund." For good reason, this argument has expressly and repeatedly been rejected in this District. For example, in *Allapattah*, Judge Gold explained:

> While some reported cases have advocated decreasing the percentage awarded as the gross class recovery increases, ***that approach is antithetical to the percentage of the recovery method adopted by the Eleventh Circuit*** in *Camden*, the whole purpose of which is to align the interests of Class Counsel and the Class by rewarding counsel in proportion to the result obtained. *See Camden*, 946 F.2d at 774 (percentage award should be determined early on in the litigation so that attorneys can devote their full time to attempting to increase the fund for the class, which in turn increases their own fee). By not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, the sliding scale approach creates the perverse incentive for Class Counsel to settle too early for too little.

454 F. Supp. 2d at 1213 (emphasis added); *accord In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1367 (quoting *Allapattah*). Likewise, in awarding Class Counsel fees from the prior two settlements, the Court acknowledged the "mega-fund" line of authority but ultimately declined to embrace it and adhered to *Camden I* to approve Class Counsel's fee award. (ECF No. 2386 at 2.)

Several objectors also cite empirical studies of fee awards to argue that the percentage of the fund awarded should be lower in "mega-fund" cases. (ECF Nos. 3107 at 12; 3108 at 14-15; 1088 (in No. 14-cv-24009) at 13-14.) The authors of the same empirical studies upon which the objectors rely, however, have submitted declarations in this MDL in support of Class Counsel's fee requests, concluding that it would ***not*** be appropriate to reduce the fee percentage here based on the size of the Ford Settlement. (ECF Nos. 2318-2, ¶¶ 5-6; 2318-3, ¶¶ 38-47; 2256-5, ¶¶ 20-21.) Although their studies did show that a few courts *outside* the Eleventh Circuit reduce fee percentages as settlement sizes increase, they did not find any statistically significant evidence that courts within the Eleventh Circuit engage in this practice. (ECF Nos. 2318-2, ¶ 5; 2318-3, ¶¶ 37-39; 2033-3, ¶ 20.) To the contrary, Professor Fitzpatrick's study shows that, in the Eleventh Circuit, the average fee awarded was 28.1 percent, and the median fee awarded was 30 percent (ECF No. 3069-4, ¶ 20); meanwhile, Professor Miller's most recent study, which incorporates data from 2009-2013, shows that, in the Eleventh Circuit, the mean percentage fee ***increased*** to 30 percent and the median percentage fee ***increased*** to 33 percent (ECF No. 2318-3, ¶¶ 36-37). Indeed, as Professor Fitzpatrick explains, there are a number of examples from across the country

of fee awards at or above 30 percent, and there are sound policy reasons for not reducing fee percentages as settlement sizes increase. (ECF No. 3069-4, ¶¶ 21-26.) Professor Silver, likewise, lists ***35*** settlements of $100 million or more in which fee awards equaled or exceeded 30 percent. (ECF No. 2318-1 at 23-24.)

Aside from this empirical research, there are important policy reasons for not reducing fee-award percentages when settlements are for large amounts of money. Such a practice would establish "perverse incentives [that] are obviously not in the best interests of class members—or in the best interests of a society interested in optimal compensation of injuries and optimal deterrence of wrongdoing." (ECF No. 2318-2, ¶ 3.) The following example illustrates this point:

> [I]f courts award class action attorneys 30% of settlements if they are under $100 million but only 20% of settlements if they are over $100 million, then rational class action attorneys will prefer to settle cases for $90 million (i.e., a $27 million fee award) rather than $125 million (i.e., a $25 million fee award).

(ECF No. 2318-2, ¶ 21.) Reducing fee percentages as settlement amounts increase thus "blunt[s] the incentives of class counsel to fight for the largest settlement, and, indeed, might incentivize class counsel to settle cases earlier for smaller sums" (*id.*), none of which would serve the interests of class members.

Neither the law, similar awards, nor sound policy supports using a lower percentage to calculate Class Counsel's fees because of the size of the Ford Settlement.

C. A Lodestar Cross Check Should Be Rejected.

Some objectors argue that Class Counsel's fee request should be checked against their lodestar. (ECF Nos. 3091 at 3; 3106 at 10; 3107 at 12; 3108 at 13-14; 1088 (in No. 14-cv-24009) at 14-15, 19-20.) Courts in this District strongly disagree.[21]

The Eleventh Circuit has squarely held that district courts should award fees in class actions using the percentage-of-the-fund method, and not the lodestar method. *Camden I*, 946 F.2d at 774. Our Circuit has never held that a district court abused its discretion by choosing not to employ a "lodestar crosscheck." Indeed, according to Professor Fitzpatrick, courts that do not use the lodestar crosscheck are on firmer footing than courts that do. (ECF No. 2318-2, ¶¶ 5-6.) As scholars have explained, the lodestar crosscheck can effectively cap the amount of

[21] The same arguments, by the same counsel, were raised and rejected in connection with the first six settlements. (ECF Nos. 2271 at 17-18; 2272-5 at 16-17; 2272-2 at 2; 2266 at 5.)

compensation class counsel can receive from a settlement and thereby blunt their incentives to achieve the largest possible award for the class. *See* Myriam Gilles & Gary Friedman, *Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers*, 155 U. Pa. L. Rev. 103, 140-45 (2006). As such, it can reintroduce the very same undesirable consequences of the lodestar method—to delay resolution of a case in order to build up lodestar figures—that the percentage-of-the-fund method was designed to correct in the first place. *See, e.g., Camden I*, 946 F.2d 768, 771-74 (citing the lodestar method's difficulty to administer and its failure to align class counsel's interests with the class's interests). For this reason, courts in this District have expressly rejected objections calling for the use of a lodestar crosscheck. *See, e.g., In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362–63 ("The lodestar approach should not be imposed through the back door via a 'cross-check.' Lodestar creates an incentive to keep litigation going in order to maximize the number of hours included in the court's lodestar calculation.") (internal quotation marks omitted); *accord Wilson v. EverBank*, No. 14-cv-22264, 2016 WL 457011, at *19 (S.D. Fla. Feb. 3, 2016).

While prevailing law in the Eleventh Circuit and this District is clear that a lodestar cross-check should not be employed, its use here only further demonstrates that the requested fee is reasonable and fair. As the Court indicated that it will consider this Settlement together with the prior six settlements when evaluating Class Counsel's fee request (ECF No. 2386 at 2), the appropriate denominator of the cross-check equation is Class Counsel's total lodestar for the MDL, which is approximately $139.1 million, and the appropriate numerator is the sum of Class Counsel's fee request here and the fees awarded in the prior six settlements, which collectively totals $381,381,020.[22] This calculation produces a lodestar cross-check multiple of 2.74 ($381,381,020/$139,100,000). This "multiplier" is well within the range that numerous courts, including those in this District, have approved as reasonable. *See, e.g., In re Volkswagen "Clean*

[22] This approach to evaluating successive applications for awards of attorneys' fees—calculating a cumulative multiplier that compares class counsel's total fee award to class counsel's total lodestar—is routinely applied. *See, e.g., In re Automotive Parts Antitrust Litigation*, No. 12-cv-00103 (Nov. 7, 2018) (ECF No. 626), at 7 n.4 (calculating a cumulative multiplier because "it would be impractical to compartmentalize and isolate the work that Class Counsel did in any particular case at any particular time"); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) (approving a second fee award that when combined with a prior award "in its aggregate gives Lead Counsel $336.1 million in fees based on a total lodestar of approximately $83.2 million").

Diesel" Mktg., Sales Practices, & Prod. Liab. Litig., No. MDL 2672, 2017 WL 3175924, at *4 (N.D. Cal. July 21, 2017) ("Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation."); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1343–44 (S.D. Fla. 2007) (noting that "lodestar multiples in large and complicated class actions range from 2.26 to 4.5") (internal quotation marks omitted); (ECF No. 2313 at 9-10 (citing additional cases)). Empirical studies also confirm that, for settlements of this size, a multiplier of 2.74 is "well within the mainstream." (ECF Nos. 2318-2, ¶ 7; 2318-3, ¶ 39.)

Thus, although prevailing law in this Circuit and District reject use of the lodestar method in common fund settlements like this one, the lodestar cross-check here provides only further support for Class Counsel's requested fee.

D. Eleventh Circuit Law, Not Florida Law, Governs The Fee Request.

Several "professional" objectors claim that this Court should apply Florida law, instead of the federal common-fund doctrine, as established by the United States Supreme Court and the Eleventh Circuit, to Class Counsel's fee request. (ECF Nos. 3107 at 12-13; 3108 at 13-14; 3110 at 12-16; 1088 (in No. 14-cv-24009) at 15-19.) They are wrong.[23] The objectors' argument is premised on the mistaken assumption that this Court's jurisdiction rests exclusively on diversity of citizenship, and in any event, cannot be reconciled with binding Eleventh Circuit precedent or countless decisions from this District.[24]

To be sure, a few courts outside the Eleventh Circuit, relying primarily on inapposite authorities concerning fee-shifting disputes, have applied state law to award attorneys' fees from class settlements in diversity cases. *See, e.g., In re Volkswagen & Audi Warranty Extension Litig.*, 692 F.3d 4, 15 (1st Cir. 2012); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). But these decisions are both inapplicable to the facts here and inconsistent with Eleventh Circuit law.

The out-of-circuit decisions are inapplicable because, in each case, the court's jurisdiction

[23] The same objectors' counsel unsuccessfully advanced the identical argument against Class Counsel's fee request from the first six settlements. (ECF Nos. 2066 at 10-13; 2083 at 2; 2084 at 6, 12; 2262 at 16-20; 2272-2 at 2; 2083 at 2; 2264 at 14-16.)

[24] Although the objectors' argument should be rejected because it is wrong on the law, calculating Class Counsel's fee based on Florida law could actually produce an even higher award than Class Counsel is seeking, since Florida law permits the use of a multiplier of 5, *Kuhnlein v. Dep't of Rev.*, 662 So. 2d 309, 315 (Fla. 1995), which would produce a total fee in excess of $600 million.

depended exclusively on diversity of citizenship, which was the key factor driving each decision. Here, in contrast, this Court has federal-question jurisdiction based on Plaintiffs' Magnuson-Moss claims asserted under 15 U.S.C. § 2310 and Plaintiffs' RICO claims asserted under 18 U.S.C. § 1964, as well as supplemental jurisdiction over state-law claims under 28 U.S.C. § 1367 (ECF No. 2445-1, ¶¶ 34, 200-52), a decisive factor the objectors completely ignore. Because this Court has federal-question jurisdiction, the cases upon which the objectors rely are irrelevant, and the federal common-fund doctrine unquestionably applies. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (applying federal common-fund doctrine where plaintiffs asserted federal securities claims but ultimately obtained recovery "under the New York law of contracts"). That should conclusively end the matter.

The objectors' out-of-circuit decisions also are inconsequential because they are inconsistent with Eleventh Circuit law. On numerous occasions, the Eleventh Circuit has applied the federal common-fund doctrine to review fee awards from class action settlements in diversity cases. For example, in *Faught*, 668 F.3d at 1237, the plaintiffs asserted only state-law claims for breach of contract and bad faith failure to pay an insurance claim, and invoked the Court's diversity jurisdiction under 28 U.S.C. § 1332. *See* Nationwide Class Action Complaint, *Faught v. Am. Home Shield Corp.*, No. cv-07-P-1928, 2007 WL 4652588 (N.D. Ala. Oct. 22, 2007). In reviewing the district court's fee award from the class settlement that resolved the case, the Eleventh Circuit exclusively applied its own, well-established common-fund precedents, including *Camden I*, 946 F.2d at 768, and *Waters*, 190 F.3d at 1293, not state law. *Faught*, 668 F.3d at 1242-44. Likewise, in *Poertner v. Gillette Co.*, 618 F. App'x 624, 625 (11th Cir. 2015), a diversity case involving a single Florida statutory claim, the court exclusively considered its own common-fund precedent, not state law,[25] to affirm a fee award from a class settlement.

One basis for applying the federal common-fund doctrine in diversity cases is that it is rooted in the court's equitable powers. Since its decisions in *Trustees v. Greenough*, 105 U.S. 527 (1882), and *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1885), more than a century ago, the Supreme Court "has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

[25] *See* Third Amended Class Action Complaint and Demand for Jury Trial, *Poertner v. Gillette Co.*, No. 12-cv-00803, 2013 WL 11089015 (M.D. Fla. Nov. 1, 2013).

"The common-fund doctrine reflects the traditional practice in courts of equity, and it stands as a well-recognized exception to the general principle that requires every litigant to bear his own attorney's fees." *Id.* (citations omitted)

Linking the common-fund doctrine to a court's equitable power is, likewise, an enduring tenet of Eleventh Circuit law, as the former Fifth Circuit affirmed forty years ago, when it described "the inherent equitable power of a trial court to allow counsel fees and litigation expenses out of the proceeds of a fund that has been created, increased or protected by successful litigation." *In re Air Crash Disaster at Fla. Everglades on Dec. 29, 1972*, 549 F.2d 1006, 1017 (5th Cir. 1977). The equitable principle upon which the doctrine rests is that "persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense." *Boeing*, 444 U.S. at 478.

As an assertion of the court's inherent equitable power, the common-fund doctrine applies even in diversity cases, because "[n]either the Federal Rules of Civil Procedure nor the *Erie* doctrine deprive Federal courts in diversity cases of the power to enforce State-created substantive rights by well-recognized equitable remedies even though such remedy might not be available in the courts of the State." *Clark Equip. Co. v. Armstrong Equip. Co.*, 431 F.2d 54, 57 (5th Cir. 1970) (citing *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945)). For this reason, several decisions from this District have expressly rejected the objectors' position in diversity cases and have applied the federal common-fund doctrine to award attorneys' fees from class action settlements. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362 n.32 ("Eleventh Circuit attorneys' fee law governs this request, not the law of Florida."); *Allapattah*, 454 F. Supp. 2d at 1200 ("The district court presiding over a diversity-based class action pursuant to Fed. R. Civ. P. 23 has equitable power to apply federal common law in determining fee awards irrespective of state law.").

Ultimately, then, the objectors urge this Court to ignore both that it has federal-question jurisdiction and binding Eleventh Circuit precedent. The request borders on the frivolous. In accordance with the Eleventh Circuit's directive in *Camden I*, the Court should award attorneys' fees here "based upon a reasonable percentage of the fund established for the benefit of the class." 946 F.2d at 774.

E. Fees Should Be Awarded On The Full Value Of The Settlement.

As outlined in Plaintiffs' motion for final approval, the combined value of the Settlement,

including Mr. Kleckner's valuation of the CSP, is $535,920,00, which constitutes the common fund created through the Settlement. The value of the Settlement is actually higher if the full value of the Rental Car/Loaner Program is included. *See* Ex. B. Several objectors, however, claim that the value of the common fund, for the purpose of awarding attorneys' fees under the percentage-of-fund approach, should be reduced by subtracting the value of the Outreach Program, Notice Program, CSP, and Rental Car Program. (ECF Nos. ECF Nos. 3091 at 3; 3106 at 10; 3107 at 9-10; 3108 at 12-13; 3110 at 4.)[26] They are wrong.

The objectors' arguments for subtracting these settlement components from the value of the common fund largely echo the debunked arguments discussed above challenging whether these programs benefit Class Members. These programs "are real benefits to the Class and therefore benefits for which class counsel should be compensated. If courts do not include such benefits in their fee decisions, then class counsel will have no incentive to seek to make obligatory anything defendants could do on their own voluntarily—which would leave class members at the mercy of the very defendants that wronged them to begin with." (ECF No. 2318-2, ¶ 11.)

The objectors' attempt to excise the value of the non-monetary relief, such as the CSP, from the value of the common fund fails for another, albeit decisive, reason: it conflicts with Eleventh Circuit precedent. *See Faught*, 668 F.3d at 1243–44 (affirming fee award "designed to compensate the class counsel for the non-monetary benefits they achieved for the class"); *see also Carter*, 701 F. App'x at 767 (concluding that "fee award is a reasonable percentage of the settlement value" when considering the "enhanced warranty, which is itself a significant tangible benefit");[27] *Poertner*, 618 F. App'x at 628-29 (affirming district court's valuation of nonmonetary relief).[28] A number of courts around the country likewise have based fee awards on the value of

[26] The same arguments were raised and overruled in connection with the first six settlements. (ECF Nos. 2063 at 2; 2064 at 3; 2073 at 2; 2075 at 6; 2078 at 6-7, 9-10; 2084 at 6.)

[27] One objector (ECF No. 3091 at 7) claims that the court in *Carter* did not consider the value of the extended warranty in affirming the reasonableness of the fee. That is incorrect. The court compared the awarded fee to the value of the settlement *both* with *and* without the extended warranty, and concluded that the fee was reasonable either way. *Carter*, 701 F. App'x at 767.

[28] Several objectors claim that the RCP amounts to a "reversionary" provision, and that Class Counsel's fees should be limited to the value of rental cars provided. (*E.g.*, ECF No. 3107 at 6-8.) That argument, however, overlooks the fact that value of the RCP far outstrips the credit that Ford receives, *see* Ex. B, ¶ 4, and in either event, it is simply inconsistent with Eleventh Circuit law. *See Poertner*, 618 F. App'x at 628 n.2; *Carter*, 701 F. App'x at 767.

non-monetary relief, as established by expert valuations.[29]

Because Mr. Kleckner's valuation of the CSP is, as discussed earlier, reasonable and reliable, the value of the CSP, along with the value of the Outreach and Notice Programs, all of which provide benefits to the Class, should be included in the common fund when calculating an appropriate fee.[30]

F. This Is Not A "Coupon" Settlement.

A few objectors mistakenly claim that certain Settlement benefits, including the Rental Car/Loaner Program and the Customer Support Program, qualify as "coupons," under 28 U.S.C. § 1712, triggering that provision's limitations on fee awards. (ECF No. 3091 at 7-8; 3108 at 8-9.) Prevailing law construing the term "coupon" in § 1712 forecloses the objectors' argument. Neither the Rental Car/Loaner Program nor the Customer Support Program qualify as "coupon" relief, because neither program requires Class Members to purchase anything from Ford or functions as a mere discount for Ford services or products.

The term "coupon" is not defined in § 1712, which generally requires heightened scrutiny of settlements that provide for a recovery of "coupons." 28 U.S.C. § 1712. From decisions applying the provision, however, "[t]he simplest definition to emerge is that a coupon is a discount on another product or service offered by the defendant in the lawsuit, with the critical factor being that the nonpecuniary benefit forces future business with the defendant." *Newberg on Class Actions* § 12:11 (5th ed. 2011); *see Radosti v. Envision EMI, LLC*, 717 F. Supp. 2d 37, 54 n.16 (D.D.C. 2010) ("Although Congress did not define the term 'coupon' in the statute, courts have generally considered a coupon settlement to be one that provides benefits to class members in the form of a discount towards the future purchase of a product or service offered by the defendant."). Thus, eighteen free months of a defendant's credit monitoring service was not a "coupon," because "class members do not have to purchase a product in order to obtain a benefit."

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[29] *In re Shop-Vac Mktg. & Sales Practices Litig.*, No. 2380, 2016 WL 7178421, at *12 (M.D. Pa. Dec. 9, 2016) (using percentage-of-fund approach for settlement that provided extended warranty, which was valued by expert); *O'Keefe*, 214 F.R.D. at 304 (same); *In re LG/Zenith Rear Projection Television Class Action Litig.*, No. CIV.A. 06-5609 (JLL), 2009 WL 455513, at *9 (D.N.J. Feb. 18, 2009) (same).

[30] The costs of the Notice Program, along with any administration costs, should be included in the value of the common fund when calculating a fee award. *See Huyer v. Buckley*, 849 F.3d 395, 398 (8th Cir. 2017) ("[A] district court may include fund administration costs as part of the 'benefit' when calculating the percentage-of-the-benefit fee amount.") (internal quotation marks omitted).

Chakejian v. Equifax Information Services, LLC, 275 F.R.D. 201, 215 n.17 (E.D. Pa. 2011); *see Hillis v. Equifax Consumer Services, Inc.*, No. 104-cv-3400, 2007 WL 1953464, at *11 (N.D. Ga. 2007) (finding that three or six free months of credit monitoring was not a coupon because class members were not "entitle[d] … to a discount on some future purchase" and were "not required to spend any money to avail themselves of the in-kind relief"). Likewise, account credits for new cable programming services were not "coupons," because the credits "are not discounts off the purchase of services; they are essentially the equivalent of cash that can be spent to purchase new services outright, without spending any of the customers' own money." *Parsons v. Brighthouse Networks, LLC*, No. 2:09-CV-267, 2015 WL 13629647, at *7 (N.D. Ala. Feb. 5, 2015) (emphasis in original).

Like the relief addressed in the cases cited above, neither the Customer Support Program nor the Rental Car/Loaner Program requires Class Members to spend any of their own money to avail themselves of the program's benefits, nor do they simply provide a discount on a product offered by Ford. Instead, both programs provide complete benefits to Class Members with "no strings attached." *Hillis*, 2007 WL 1953464, at *11. For this reason, another court recently held that an extended warranty benefit in a settlement, akin to the Customer Support Program here, did not qualify as a "coupon," because "the warranty relief does not offer a discount on other products or force class members to conduct business with Defendants." *In re Shop-Vac Mktg. & Sales Practices Litig.*, No. 2380, 2016 WL 7178421, at *10 (M.D. Pa. Dec. 9, 2016). Likewise, in *Carter v. Forjas Taurus, S.A.*, 701 F. App'x 759, 767 (11th Cir. 2017), the Eleventh Circuit did not apply § 1712 to the enhanced warranty benefit.

Because this Settlement, which primarily consists of cash relief, does not provide coupons to Class Members, the limitations of § 1712 are inapplicable.

G. Class Counsel's Fee Award Should Be Paid Following Final Approval.

The attorneys' fee provision of the Settlement requires Ford to pay the fees awarded by the Court not later than 14 days after the Court issues the Final Order and Final Judgment. (ECF No. 2013-1, § III.A.2.c.) A sole objector argues, however, that attorneys' fees should not be paid for several years, until distributions to all Class Members are made. (ECF No. 3107 at 2, 11-12.)[31] This objection was properly overruled in connection with the first six settlements,[32] and

[31] (ECF No. 2068 at 8-10; 2072 at 16-17; 2073 at 3; 2272-1 at 4; 2271 at 7-9.)

[32] In seeking to delay the payment of Class Counsel fees, the objectors misconstrue the purpose of

should be overruled here as well.

The provision that requires Ford to pay attorneys' fees not later than 14 days after the Court awards such fees and grants Final Approval "is the current best practice to discourage class members from taking appeals in an effort to blackmail class counsel." (ECF No. 2318-2, ¶ 9.) In other words, it is designed to remove the incentive for Class Counsel to give into "objector blackmail" from the same professional objectors who are challenging this very provision. *See* Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623, 1625 (2009).

The fee provision of the Settlement "permit[s] counsel to receive whatever fees the district court awards them as soon as those courts approve those settlements, regardless of whether the settlements are appealed," and thus "objectors who bring meritless appeals can no longer delay the point at which class counsel receive their fees." *Id.*[33] Courts routinely approve such provisions for this precise reason, i.e., "the socially-useful purpose of deterring serial objectors." *In re: Whirlpool Corp. Front–loading Washer Prod. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL 5338012, at *20–21 (N.D. Ohio Sept. 23, 2016).[34]

In addition, because the Settlement is non-reversionary—i.e., none of the Settlement Funds revert back to Ford—there is no doubt how much Ford will pay toward the Settlement. Thus, "there is nothing to be gained to delay class counsel's fee awards in these cases; doing so would serve only to make life harder on contingency-fee lawyers by forcing them to make payroll at their firms for several more years while they wait to receive compensation for work they did

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the four-year settlement program. The Settlement has at least a four-year lifespan to track the expected schedule of recalls and thereby ensure that settlement funds will be available for Class Members who have vehicles in the lower Priority Groups, which will not be recalled for several years. As the Settlement makes clear, Class Members do not need to wait four years to make a claim for compensation or to start receiving other settlement benefits. In fact, certain benefits, including the Outreach Program and Rental Car Program were funded and made available after Preliminary Approval.

[33] Of course, if approval of the Settlement is reversed on appeal, such fees must be immediately returned. (ECF No. 2909-1, § X.9.)

[34] *See also Pelzer v. Vassalle*, 655 F. App'x 352, 365 (6th Cir. 2016); *Brown v. Hain Celestial Grp., Inc.*, No. 3:11-CV-03082-LB, 2016 WL 631880, at *10 (N.D. Cal. Feb. 17, 2016); *In re LivingSocial Mktg. & Sales Prac. Litig.*, 298 F.R.D. 1, 22 n.25 (D.D.C. 2012); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3.07-md-1827, 2011 WL 7575004, at *1 (N.D. Cal. Dec. 27, 2011).

long ago." (ECF No. 2318-2, ¶ 8.)[35]

IV. THE ARGUMENTS OF SERIAL OBJECTORS LACK CREDIBILITY.

The requirement that objectors and their lawyers list their prior recent objections—designed to deter and ferret out frivolous objections—seems to have struck a nerve. The drawn-out protestations in some objector papers indicate they have something to hide—and they do. Indeed, it is noteworthy that only the professional objectors took issue with this requirement; none of the *pro se* objectors did. While "meritorious objectors can be of immense help to a district court in evaluating the fairness of a settlement," courts have correspondingly cautioned that "it is also important for district courts to screen out improper objections because objectors can, by holding up a settlement for the rest of the class, essentially extort a settlement of even unmeritorious objections." *Bezdek v. Vibram USA, Inc.*, 809 F.3d 78, 84 n.3 (1st Cir. 2015) (citing *Newberg on Class Actions* § 13:21 (5th ed. 2011)).

Several of the objectors here are represented by members of a small but active group of lawyers, often acting in concert, who have made a cottage industry out of challenging class action settlements, not to benefit the class, but to leverage a fee. Several attorneys claims that they have represented so many objectors over the past five years that simply providing the number of such representations would be burdensome (ECF Nos. 3107 at 14; 3108 at 16-17; 3110 at 17; 1088 (in No. 14-cv-24009) at 20-21).[36] Beyond the number of settlements challenged over the past five years, strong evidence that objections stem from professional objectors' counsel include baseless rote allegations (such as those before the Court) that class counsel deliberately undervalued the claims, and boilerplate objections (again, like those before the Court) to fees, notice, or the settlement release. Such lawyers—who employ objections, followed by meritless appeals, to merely obtain a payoff—interfere with the system and "often delay and unnecessarily complicate class proceedings." *Newberg on Class Actions* § 15:37. The Federal Judicial Center therefore advises courts to "[w]atch out . . . for canned objections from professional objectors who seek out

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[35] The objectors' reliance on *Walco Investments, Inc. v. Thenen*, 975 F. Supp. 1468 (S.D. Fla. 1997), is misplaced. In that case, the attorneys were paid through a "hybrid fee arrangement" whereby the attorneys received interim payments at a reduced hourly rate and a final enhancement at the end of the litigation. *Id.* at 1470. Here, in contrast, Class Counsel have invested enormous amounts of time and resources on a purely contingent basis.

[36] One such objector, Mr. Pentz, has been identified as a "professional objector" by other district courts. *See In re IPO Sec. Litig.*, 671 F. Supp. 2d 467, 497 n.219 (S.D.N.Y 2010) *opinion clarified*, No. 21 MC 92 SAS, 2010 WL 5186791 (S.D.N.Y. July 20, 2010) (listing cases).

class actions to extract a fee by lodging generic, unhelpful protests." Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges*, at 15 (2d ed. 2009); *see also In re Elec. Books Antitrust Litig.*, 639 F. App'x 724, 728 (2d Cir. 2016) ("[P]rofessional objectors are lawyers who file stock objections to class action settlements—objections that are [m]ost often . . . nonmeritorious—and then are rewarded with a fee by class counsel to settle their objections."); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362 (recognizing that professional objectors' "sole purpose is to obtain a fee by objecting to whatever aspects of the Settlement they can latch onto" rather than "a concern for the welfare of the Settlement Class").

Contrary to the objectors' complaints, the information pertaining to past objections requested in the Notice, which is most likely in the possession of objectors and their counsel, may be relevant to and properly considered by this Court in determining any potential "ulterior motive" of the objectors. *See Greco*, 635 F. App'x at 633 (noting that the district court "properly considered that [an objector] (or his counsel) may have had an ulterior motive in objecting to the settlement, rather than opting out"). These disclosure requirements reasonably seek to aid this Court in its responsibility to screen out wholly nonmeritorious objections.

The complaint of several objectors that Class Counsel could just as easily obtain the requested information through the federal court's PACER system misses the point. The Notice's disclosure requirements are not primarily for the benefit of Class Counsel. Instead the information that objectors are required to disclose, not only to Class and Defense Counsel but also directly to this Court, is intended to conserve this Court's time and resources in its administration of this litigation. *See Garber*, 2017 WL 752183, at *4 n.9.

The objectors' concern that the disclosure requirements are equivalent to unauthorized attorney discovery (ECF No. 3108 at 17) likewise is without merit. As objectors readily admit, the information regarding objectors and their counsel's prior class action litigation history is available on public forums, such as this Court's PACER system and the website www.serialobjector.com, and thus disclosure of such information does not intrude upon any confidential or attorney-client privileged information. Nor does the Notice's requirement to provide any "agreements that relate to the objection or the process of objecting" seek protected information. *See In re Grand Jury Subpoena*, 204 F.3d 516, 520 (4th Cir. 2000) ("[T]he identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-

client privilege, because such information ordinarily reveals no confidential professional communications between attorney and client.") (internal citations and quotation marks omitted).

Rather than "disfavor[ing]" (ECF No. 3108 at 17) attorney discovery, in attempting to curtail abusive serial objector practices, district courts have ordered discovery, not unlike the information sought by the Notice's disclosure requirements, from objectors and/or their attorneys. *See In re IPO Sec. Litig.*, 728 F. Supp. 2d at 294–95 ("These questions sought to determine if any of the Objectors' counsel have a pattern or practice of objecting to class action settlements for the purpose of securing a settlement from class counsel."); *McLaughlin on Class Actions* § 6:10 at n.9 (13th ed.) (compiling cases).

Debate over whether the information sought regarding past litigation practices is relevant to the merits of any given objection or to an objector's standing does not render the disclosure requirements unreasonable. Federal courts have demonstrated that they are capable of separating any analysis of the merits of objections, even if lodged by known serial objectors, from consideration of the motives of such objectors. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362 (notwithstanding the recognized improper motives of certain objectors, the court "nonetheless considered their objections on the merits."). Still, requiring an objector to provide information that could shed light on the basis for his objection is not inconsequential to the Court's obligation to ensure that a class action settlement is fair, adequate, and reasonable.[37] Along these lines, some courts have considered the objector's or counsel's history of objecting to class action settlements relevant to the court's discretion in ordering the posting of an appellate bond. *In re IPO Sec. Litig.*, 728 F. Supp. 2d at 214-16.

Accordingly, it was entirely reasonable for this Court to approve the Notice with its litigation-history disclosure requirements, and the information gleaned from those disclosures warrants the Court viewing the positions advanced by the serial objectors with skepticism.

V. CONCLUSION

For the foregoing reasons, the objections of Class Members to approval of the Ford Settlement, Service Awards, and Class Counsel's fee request should be overruled.

[37] Nor does the requirement that all objectors personally sign the objection even when represented by counsel unduly burden objectors by subjecting them to a higher standard than other class members. *See Bezdek*, 809 F.3d at 83 ([T]he imposition of disparate requirements on objectors does not provide an independent basis for invalidating the settlement.").

Dated: December 4, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on December 4, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

By: */s/ Peter Prieto*
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