

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SURESH PERSAD, DANIEL G. WRIGHT
and ROBERT S. DRUMMOND,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

FORD MOTOR COMPANY,

Defendant.

Civil Action No. 2:17-cv-12599-TGB-MKM

Hon. Terrence G. Berg

Magistrate Judge Mona K. Majzoub

**SUPPLEMENTAL MEMORANDUM OF LAW IN FURTHER SUPPORT
OF: (I) PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT; AND (II) CLASS COUNSEL'S
UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION EXPENSES,
AND SERVICE AWARDS TO PLAINTIFFS**

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The Court's April 30, 2021 Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order") directs that:

[N]o later than seven (7) days prior to the Final Fairness Hearing, Class Counsel shall file any supplemental memoranda addressing any objections and/or opt-outs.

ECF No. 89, at ¶ 14. Accordingly, pursuant to that Order and Rules 23(e) and 23(h) of the Federal Rules of Civil Procedure, Plaintiffs Suresh Persad, Daniel G. Wright, and Robert S. Drummond ("Plaintiffs") and Class Counsel Kessler Topaz Meltzer & Check, LLP and The Miller Law Firm, P.C. ("Class Counsel") respectfully submit this supplemental memorandum of law in further support of: (i) Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement (ECF No. 92) (the "Final Approval Motion"); and (ii) Class Counsel's Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards to Plaintiffs (ECF No. 93) (the "Fee Motion") (together, the "Motions").¹

I. PRELIMINARY STATEMENT

In accordance with the Preliminary Approval Order, the Court-authorized claims administrator for the Settlement, KCC Class Action Services ("KCC"), has

¹ Capitalized terms not defined herein have the same meanings as set forth in the Settlement Agreement (ECF No. 81-2, as amended by ECF No. 85-2) or in the Joint Declaration of Joseph H. Meltzer and E. Powell Miller submitted in connection with the Motions (ECF No. 94) (the "Joint Declaration" or "Joint Decl."). Unless otherwise indicated, internal citations and quotations have been omitted and emphasis has been added.

disseminated over 848,795 copies of the Notice and Claim Form (“Notice Packet”) to potential Settlement Class Members. The Notice informed recipients of, among other things, the essential terms of the Settlement and Class Counsel’s intention to apply to the Court for attorneys’ fees in the amount of \$3,000,000, the reimbursement of Litigation Expenses in the amount of \$500,000 and service awards to Plaintiffs up to \$30,000, to be allocated equally. In addition, the Notice was made available on the website for the Settlement, <http://www.explorerexhaustsettlement.net/>. See Decl. of Lana Lucchesi Regarding A) Mailing of the Notice Packet; and B) Report on Requests for Exclusion Received to Date (“KCC Decl.”) (ECF No. 94-3), at ¶¶ 6-19. In addition, notice of the Settlement was provided by KCC pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715. See *id.*, ¶¶ 3-5. The deadline to request exclusion from the Settlement Class or to file an objection to any aspect of the Settlement has passed.

Plaintiffs and Class Counsel are pleased to advise the Court that, following the extensive Court-approved notice program, ***not a single member of the Settlement Class has objected to any aspect of the Settlement or the requested fees and expenses.*** In addition, ***only 39*** requests for exclusion from the Settlement Class—representing less than ***0.005%*** of the total Notice Packets mailed—have been received. See KCC Decl., ¶¶ 23-24; Ex. D.

Accordingly, Plaintiffs and Class Counsel respectfully submit that the reaction of the Settlement Class is a testament to the fairness, adequacy, and reasonableness of the Settlement and the fee and expense requests and provides strong support for the Court's approval of both Motions.

II. ARGUMENT

A. The Reaction of the Settlement Class Strongly Supports Approval of the Settlement

The time for objecting or requesting exclusion has passed, and the Settlement Class's reaction clearly supports approval. Here, the absence of *any* objections from Settlement Class Members strongly supports a finding that the Settlement is fair, reasonable, and adequate. *See, e.g., Griffin v. Flagstar Bancorp, Inc.*, 2013 WL 6511860, at *5 (E.D. Mich. Dec. 12, 2013) (“Such unanimous approval is entitled to great weight and favors final approval.”); *In re Se. Milk Antitrust Litig.*, 2013 WL 2155379, at *6 (E.D. Tenn. May 17, 2013) (“The lack of objections by class members in relation to the size of the class highlights the fairness of the settlements to unnamed class members and supports approval of the settlements.”); *Kogan v. AIMCO Fox Chase, L.P.*, 193 F.R.D. 496, 502 (E.D. Mich. 2000) (finding “the fact that not one class member objected after receiving the best notice possible under the circumstances to weigh heavily in favor of approving the settlement agreement”); *see also N.Y. State Tchrs.’ Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 238 (E.D.

Mich. 2016) (even where “a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement”).

Likewise, the fact that only 39 requests for exclusion were received following the mailing of over 848,000 Notice Packets further supports approval of the Settlement. *See, e.g., In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 527 (E.D. Mich. 2003) (finding where the “overwhelming majority of class members have elected to remain in the Settlement Class, without objection,” the “reaction of the class, . . . demonstrates that the Settlement is fair, reasonable, and adequate.”).

B. The Settlement Class’s Reaction Also Strongly Supports Approval of Class Counsel’s Fee and Expense Requests

As is true with the Settlement, *not a single* Settlement Class Member has objected to Class Counsel’s Fee Motion, including the request for service awards to Plaintiffs. The fact that there are no objections is strong evidence that the requested amount of fees and expenses is reasonable. *See, e.g., Lowther v. AK Steel Corp.*, 2012 WL 6676131, at *4 (S.D. Ohio Dec. 21, 2012) (“The lack of objections is strong evidence of the acceptability of a fee request.”); *New England Health Care Emps. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 634 (W.D. Ky. 2006) (“The lack of objections from the Class supports the reasonableness of the fee request.”); *Kogan*, 193 F.R.D. at 505 (approving fee request and noting that not one class member objected).

III. CONCLUSION

For the reasons set forth above and in the Motions and briefs in support, Plaintiffs and Class Counsel respectfully request that the Court approve the Settlement and Class Counsel's request for attorneys' fees and expenses, including the services awards to Plaintiffs.

Dated: November 8, 2021

Respectfully submitted,

/s/ Joseph H. Meltzer

Joseph H. Meltzer

Ethan J. Barlieb

KESSLER TOPAZ

MELTZER & CHECK, LLP

280 King of Prussia Road

Radnor, PA 19087

Tel: (610) 667-7706

jmeltzer@ktmc.com

ebarlieb@ktmc.com

THE MILLER LAW FIRM, P.C.

E. Powell Miller (P39487)

Sharon S. Almonrode (P33938)

William Kalas (P82113)

950 West University Drive, Suite 300

Rochester, MI 48307

Tel: (248) 841-2200

epm@millerlawpc.com

ssa@millerlawpc.com

wk@millerlawpc.com

*Attorneys for Plaintiffs and the
Proposed Classes*

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2021, I caused a true and correct copy of the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

/s/ Joseph H. Meltzer

Joseph H. Meltzer

Ethan J. Barlieb

KESSLER TOPAZ

MELTZER & CHECK, LLP

280 King of Prussia Road

Radnor, PA 19087

Tel: (610) 667-7706

jmeltzer@ktmc.com

ebarlieb@ktmc.com

THE MILLER LAW FIRM, P.C.

E. Powell Miller (P39487)

Sharon S. Almonrode (P33938)

William Kalas (P82113)

950 West University Drive, Suite 300

Rochester, MI 48307

Tel: (248) 841-2200

epm@millerlawpc.com

ssa@millerlawpc.com

wk@millerlawpc.com

*Attorneys for Plaintiffs and the
Proposed Classes*