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UNITED STATED DISTRICT COURT
FOR THE DISTRICT OF UTAH

ANDREA KATZ, et al.	)	
Plaintiffs,	)	PLAINTIFFS' MOTION FOR APPROVAL OF PARTIES SEPARATELY NEGOTIATED PAYMENT OF ATTORNEYS' FEES AND EXPENSES
vs.	)	
GARMIN LTD., et al.	)	
Defendants.	)	
	)	Civil No. 2:14-cv-165-RJS
	)	Judge: Hon. Robert J. Shelby

Plaintiffs, Andrea Katz and Joel Katz, on behalf of themselves and a class of all other persons similarly situated (collectively, "Plaintiffs"), hereby move, pursuant to Rule 54(d)(2)and Rule 23(h) of the Federal Rules of Civil Procedure, for an Order awarding the parties seperately negotiated payment of Class Counsel's attorneys' fees and expenses. This motion is supported by Plaintiffs' Memorandum of Law in Support of the Motion, the attached Exhibits, and any argument presented by the parties at the Final Approval Fairness Hearing, currently set for November 3, 2016. Notice of this Motion will be served on all class members by posting a copy of the Motion, and supporting Memorandum on the class notice website, as approved by this Court.

Proposed Findings of Fact and Conclusions of Law supporting and approving the payment of Attorneys' Fees and Expenses are attached as Exhibit 2 to Plaintiffs' Memorandum of Law in Support of this Motion.

September 28, 2016

Respectfully submitted,

HATCH, JAMES & DODGE,P.C.

/s/ Mark F. James

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CERTIFICATE OF SERVICE

This will hereby certify that on this the 28th day of September a copy of the forgoing Plaintiffs' Motion for Approval of Parties Separately Negotiated Payment of Attorneys' Fees and Expenses was electronically served through the United States District Court for the District of Utah's ECF system on the following counsel for the defendant:

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UNITED STATED DISTRICT COURT
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INTRODUCTION

Plaintiffs, Joel Katz and Andrea Katz, individually and as representatives of the Class preliminarily certified by this Court, respectfully make this submission in support of the final approval of the separately negotiated payment of attorneys' fees and expenses by the Defendant, Garmin International, Inc. ("Garmin"). In support of this submission, Plaintiffs submit the following documentation:

a. Affidavit of Noel J. Nudelman, Esq. (Ex. 1); and

b. Proposed Findings of Fact and Conclusions of Law (Ex. 2)

The Settlement, if approved by the Court, would fully resolve the claims of all Class Members against Defendant and its affiliates (defined in the Settlement Agreement as "Released Parties") with respect to all matters alleged in the Complaint. With respect to the Class Members, the Settlement Agreement provides that Defendant will repair or replace the Forerunner 610 Watchband at no cost, including, but not limited to, all postage, shipping and handling ("No Cost"), even if the request is made after the warranty has expired, provided that the request is made within 12 months of the date of final approval of the Settlement by the Court. No proof of purchase will be required for repair of the Watchband. If a repair or replacement of the Watchband is not feasible, as determined by Defendant in its sole and absolute discretion, Defendant will replace the Watch with a comparable model, the Garmin Forerunner 620, which has a Manufacturer's recommended retail price of $349.99.

Also with respect to the Class Members, Defendant will extend the limited warranty as set forth in the warranty provided to customers at the time of purchase of the Forerunner 610 (the "One-Year Consumer Limited Warranty") to the allegedly defective Watchband only, for a period of 12 months following the date of final approval of Settlement by the Court. The extension of the

One-Year Consumer Limited Warranty will only cover any damage to, or loss of, the Watch as a result of the alleged defective Watchband. In addition, if Defendant replaces the Watch with a comparable model, the comparable model shall come with the One-Year Consumer Limited Warranty applicable to the replacement watch, as if the replacement watch were purchased independent of the Action or this Agreement, from the date of the receipt or delivery of the replacement watch to the Class Member.

Furthermore, if any Class Member suffered damage to the Watch as a result of the Watchband detaching from the Watch, Defendant will repair the Watch at No Cost, even if the request is made after the warranty has expired, provided that the request is made within 12 months of the date of final approval of the settlement by the Court. If a repair of the Watch is not feasible, as determined by Defendant in its sole and absolute discretion, Defendant will replace the Watch with a comparable model, the Garmin Forerunner 620, which has a manufacturer's recommended retail price of $349.99. If Defendant replaces the Watch with a comparable model, the comparable model shall come with the One-Year Consumer Limited Warranty, from the date of the receipt or delivery of the replacement watch to the Class Member. No proof of purchase will be required for repair of the Watch.

Moreover, if the Watch was lost as a result of the defective Watchband, Defendant will replace the Watch with a comparable model, the Garmin Forerunner 620. In order to obtain the comparable model, the customer will be required to provide a receipt or Objective Evidence of Proof of purchase of the Watch, which is described in the Settlement Agreement.

Members of the Subclasses will receive cash payments. Subclass 1 consists of Class Members who purchased a replacement Watchband to address the alleged design defect regardless of where they purchased the replacement Watchband. Defendant will reimburse the actual cost of

the replacement Watchband to Class Members who have a receipt or Objective Evidence of Proof of purchase if purchased from Defendant or one of Defendant's authorized retailers. If the Class Member purchased a replacement watchband from a third party and it was a non-Garmin Watchband, Defendant will reimburse the Class Member the actual cost up to $50.00. Subclass 2 consists of Class Members who paid to repair the Watchband or Watch regardless of where they had the Watchband or Watch repaired due to the Watchband or Watch being damaged because of the alleged design defect. Class Members who provide a receipt or Objective Evidence of Proof of repair of same and written certification in a form agreed upon by the parties, shall be reimbursed for their actual cost, if the repair was done by Defendant. For Class Members who used a third party to repair the Watchband or Watch, Defendant will agree to reimbursement for the actual cost up to $75.00. The Settlement Agreement also permits Class Members to recover more than one benefit in the same or multiple categories provided they meet the requirements to participate separately in each category.

Although members of the Class are still submitting Claims to the Claims Administrator, and the Claims Administrator is still conducting its Claims Evaluation Process ("CEP"), preliminary data has been made available to Class Counsel and counsel for Garmin. It is estimated that there are potentially over 130,000 members of the identified Class[1]. Nudelman Aff. ¶36. Of these potential class members, as of the date of this filing, there have been approximately 5,990 claims filed with the Claims Administrator. Nudelman Aff. ¶37. Of these 5,990, thus far, 364 have been determined by the Claims Administrator to be duplicates, leaving 5,626 potential valid claims. Nudelman Aff.¶38. As described below, the value of the Settlement is calculated by evaluating the categories of claims for which Class Members have submitted claims forms and

[1]The Settlement Class is defined as individuals who purchased and/or owned a Garmin Forerunner 610 Watch between April 2011 and July 2014 in the United States.

using the data provided by the Claims Administrator, aggregating the value of the claims filed. Although review is not yet complete, if the Court were to only consider the potential value of the claims submitted that have preliminarily been approved by the Claims Administrator as well as the value of the extension of the warranty by Garmin for all Class Members, then conservatively the total potential range of the settlement value for Class Members is $3,188,896-$3,463,499. This includes a breakdown of the claims approved by the Claims Administrator based on the various categories for recovery[2], plus the value of the extended warranty, which, as described below, could be valued at $2,600,000. Nudelman Aff. ¶39. However, it is expected that additional Claims will be filed and approved, as the deadline for submitting a claim form is not until midnight September 28, 2016. As described above, the Settlement provides that for every Class Members, Defendant will extend the limited warranty provided to customers at the time of purchase of the Forerunner 610 (the "One-Year Consumer Limited Warranty") for a period of 12 months following the date of final approval of Settlement by the Court to the allegedly defective Watchband only. If a Class Member's Watchband breaks during the extended warranty period as a result of the defect Garmin has agreed to replace that Watchband. If a Class Member's Watch breaks or is lost because of the alleged defective Watchband during the extended warranty period, Garmin will repair the Watch or if a repair of the Watch is not feasible, as determined by Garmin in its sole and absolute

[2] Of the over 5,626 non-duplicated claims that have already been submitted, the Claims Administrator has already preliminarily approved 3,810 claims. The breakdown of the claims approved have a settlement value range in the amount of $588,896-$863,499 as shown by the breakdown below.
Class 1 – individuals who are requesting their Watchband be replaced or repaired and are submitting their Forerunner 610 to Garmin for repair or replacement at no cost to them. 697 claims x $20-$349.00 – Range is: $13,940-$243,253.
Class 2 – individuals whose Forerunner 610 Watch has been damaged or lost because of the alleged Watchband Defect and are requesting repair or replacement of their Watch. 1,504 x $349.00 = $524,896
Subclass 1 –reimbursement for purchase of a replacement watchband 1,013 claims x $20.00 - $50.00. Range is: $20,260-$50,650
Subclass 2 – reimbursement for monies spent to repair Watchband or Watch 596 claims x $50.00-75.00. Range is $29,800-$44,700.

discretion, Garmin will replace the Watch with a comparable model, the Garmin Forerunner 620, which has a manufacturer's recommended retail price of $349.99. Garmin has advised that it values the replacement Watchband at a retail value of approximately $20, based upon the pricing of the replacement band on Garmin's website. Nudelman Aff. ¶40. Finally, the Settlement provides that the repair and replacement will done at No Cost, with Garmin paying for all postage, shipping and handling. Nudelman Aff. ¶26,

The Settlement also provides that in addition to the monetary value of the Settlement, Garmin will pay all additional expenses which would otherwise be ordinarily borne by Class Members. These additional expenses include (1) the extraordinary cost of providing nationwide notice to the class which included (a) the cost of establishing a telephone center and (b) the cost of maintaining a web-site where Class Members could get answers to their questions and submit their claims, (2) the fees and expenses of the Class Action Administrator, Heffler Claims Administration, which was retained pursuant to this Court's preliminary approval Order, and (3) the cost of evaluating claims submitted to Heffler for the CEP; and Plaintiffs' Attorneys' Fees and Expenses in the amount of $385,000 which Garmin has agreed to pay, subject to the approval of this Court. All of these additional costs, which would otherwise reduce the benefit afforded to the Class are being paid by the Defendant in addition to the monies pledged to satisfy the Claims of the Class. Nudelman Aff. ¶41.

The Settlement structure that Class Counsel has negotiated provides a streamlined, simplified claims procedure that is designed to quickly and easily provide relief to damaged Class Member. It "benefits the class enormously" and is "extraordinary because class members have relatively modest individual Claims that would be impracticable to redress individually." *See e.g. In re Prudential Insurance Company of America Sales Practices Litigation,* 962 F.Supp.450, 535

(D.N.J. 1997) *aff'd in part In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998).

ARGUMENT

A. THE REQUESTED FINAL ORDER AUTHORIZING DEFENDANT TO PAY THE AGREED PAYMENT OF FEES AND EXPENSES IS WARRANTED AND REASONABLE.

Through skillful and focused litigation, Plaintiffs' counsel has achieved a Settlement that conservatively has a range of class-wide relief that is valued at $3,188,896-$3,463,499. Nudelman Aff. ¶39. In addition to the funds being used to pay the claims of Class Members, Defendant has also agreed to pay $385,000 as payment of Attorneys' Fees, which includes reimbursement of expenses to Class Counsel. The Attorneys' Fees and Expenses paid by the Defendant in no way reduces the Settlement benefits made available to the Class Members and thus are in addition to the negotiated Settlement relief. In addition, the separately negotiated fees include compensation for all future services to be rendered to the Class by Class Counsel, services which experience shows will constitute a substantial continuing commitment of time, effort and resources. Nudelman Aff. ¶¶42-44.

The fee negotiations were conducted at arm's length and only after all of the terms of the Settlement for the Class had been agreed upon. Nudelman Aff. ¶45. Because the fee is to be paid by the Defendant separate and apart from the benefits provided to the Class, the Defendant had a particular incentive to bargain strenuously to keep the fee as low as possible. *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 720 (5th Cir. 1974), *abrogated by Blanchard v. Bergeron*, 489 U.S. 87, 109 S. Ct. 939, 103 L. Ed. 2d 67 (1989). In fact, the parties did not initially agree on the amount of the fees and expenses to be paid by Garmin, and the issue was only settled between the parties after many rounds of back and forth negotiations between the

parties. Nudelman Aff. ¶49. Under these circumstances, the Court should give great weight to the negotiated fee in considering the fee request. *Elkins v. Equitable Life Ins. of Iowa*, CIVA96-296-CIV-T-17B, 1998 WL 133741 (M.D. Fla. Jan. 27, 1998). As shown in greater detail below, Class Counsel's request is entirely reasonable and should be approved by the Court for the following reasons:

- The Settlement provides extraordinary economic benefits for the Class
- Substantial work has been done and remains to be done in bringing the case, achieving the Settlement, obtaining the Court's approval and in monitoring and implementing the Settlement, including administration of the CEP, for which Class Counsel will receive no further compensation, in excess of the agreed upon amount of $385,000;
- Class Counsel undertook the litigation on this matter on a completely contingent basis, has advanced all expenses, including, but not limited to, those of investigation and accepted all risk that they have already worked for years and may work for an additional prolonged period and receive no additional compensation or reimbursement whatsoever in the event of successful resolution of the case;
- Class Counsel's fee and expense request, as agreed to by Garmin, is a reasonable percentage; 11% when one considers the value of the extended warranty in the value of the settlement and up to just over40% -- of the cash value being paid out by Garmin now as immediate economic value to the Settlement Class. This does not include the added value of the settlement administration which is also being paid by Garmin;

- Similar fees have been awarded by courts nationwide based on similar percentages of value provided to classes involving sale of alleged known defective consumer products.

Given these considerations, it should not be surprising that despite the dissemination of the Class Notice to over one hundred thousand of Garmin Forerunner 610 owners and users, to date there have been no objections[3] to the fee and expense request that was disclosed in the published Settlement Agreement, Class Notice and Publication Notice Nudelman Aff. ¶50. The absence of fee and expense objections is a clear indication of the sense by Class Members that the fee and expense payment to be paid to Class Counsel by Garmin is appropriate. It was only because of the efforts of Class Counsel, taken wholly at their own risk, that a settlement benefit was obtained for the Class. *Cf., In re Rio Hair Naturalizer Products Liab. Litig.*, MDL 1055, 1996 WL 780512, at *17 (E.D. Mich. Dec. 20, 1996)("Absent Petitioner's efforts, there would be no fund whatsoever for distribution to class members").

This litigation involves issues which are important for consumers who must find a way to assert their rights, even when small dollar amounts per claim are at stake. Absent appropriate commensurate fee awards, the incentives to pursue consumer protection litigation would be non-existent and consumers would be unable to pursue these important claims. As Professor Conte has stated:

> [C]ourts have been careful to award a fully compensable reasonable fee based on the underlying economic inducement for class action lawyers to pursue potentially expensive or complex common fund litigation. These lawyers assume the risk of no compensation unless they successfully confer common fund benefits on the class, based on their reasonable expectation that they will in the recovery in a fair proportion, in contrast to receiving a fee based initially on time-expended criteria that failed to give the **results obtained** factor primary consideration.

[3] The one objection that has been filed to date does not object to the Attorneys' fees and expenses being sought but rather addressed the Garmin Forerunner 610 product itself.

1 Alba Conte, Attorney Fee Awards §1.09 at 16 2d ed. 1993 (footnotes omitted, emphasis in original). Simply put, the valuable services provided by Class Counsel both before and after this Settlement is approved, need be rewarded to ensure future similar efforts by counsel to protect the rights of American consumers. *Doe v. Blue Cross Blue Shield of Maryland, Inc.*, 173 F. Supp. 2d 398, 405–406 (D. Md. 2001) (allowing attorney's fees in class actions allows individuals whose claims are too small to justify individual lawsuits to aggregate their claims to seek redress in the courts). The purpose of a class action lawsuit is to "provide a mechanism for litigation of small claims that no individual plaintiff would have the incentive to bring." *In re Microsoft Corp. Antitrust Litig.*, 214 F.R.D. 371, 378 (D. Md. 2003), *on reconsideration in part sub nom. In re Microsoft Corp. Antitrust Litig.-Consumer Track*, MDL 1332, 2003 WL 21781969 (D. Md. July 28, 2003); *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997). As courts have recognized, plaintiffs' counsel take enormous risks when they pursue large consumer cases, and often those risks are not successful. When they are, it is important that counsel be sufficiently rewarded to compensate them for the risks they take, both in time, monies advanced and in allocation of their resources.

B. COURTS HAVE REGULARLY APPROVED NEGOTIATED FEE ARRANGEMENTS AS PART OF CLASS ACTION SETTLEMENTS.

Fee arrangements between plaintiffs and defendants in class actions of this nature are encouraged, particularly where attorneys' fees are negotiated separately from and after the terms of the settlement on behalf of the class have been agreed to by the parties. *Johnson*, 488 F.2d at 720. *See also Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) ("parties to a class action may properly negotiate not only the settlement of the action, but also the payment of attorney's fees."). Similarly, in this case, the attorney's fee was negotiated

between the parties only **after** all of the essential provisions of the Settlement were determined. Nudelman Aff. ¶45.

Moreover, unlike a typical limited fund case, in this case Class Counsel's fee and expense award will not affect the Class recovery. A decision to reduce or even deny an award of attorney's fees and expenses would only be beneficial to the Defendant and will not result in any additional benefit to the Class. *See In re First Capital Holdings Corp. Fin. Products Sec. Litig.*, 33 F.3d 29 (9th Cir. 1994). Nor does a negotiated fee present the potential for adversity between counsel and the class that a traditional class settlement may present, because the attorney's fees and expenses in this case are to be paid by Garmin directly, **in addition** to the Class recovery.

In *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S. Ct. 1933 (1983), the United States Supreme Court held that negotiated, agreed upon attorney's fee provisions, such as this one, are the "ideal" towards which the parties should strive. "A request for attorney's fees should not result in a second major litigation. Ideally, of course, the litigants will settle the amount of the fee*." Id*. *See also Matter of Cont'l Illinois Sec. Litig.*, 962 F.2d 566, 568–70 (7th Cir. 1992), *as amended on denial of reh'g* (May 22, 1992) (market factors known by the negotiating parties themselves, should determine the value of attorney's fees). *M. Berenson Co., Inc. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 829 (D. Mass. 1987) ("The authorities encourage parties situated as those herein to agree as to the amount of counsel fees to be paid. Whether a defendant is required by statute or agrees as part of the settlement of a class action to pay the plaintiffs' attorneys' fees, ideally the parties will settle the amount of the fee between themselves.").

The parties followed the recommended, preferred and appropriate procedure here. Class counsel and Defendant's counsel separated the issues of settlement and fees, negotiated all

aspects of the Settlement first, and came to an agreement on all terms before turning to the question of attorneys' fees and expenses. Nudelman Aff. ¶45. The fees were negotiated under market conditions. While Class Counsel wanted to ensure they were properly compensated for the risks they took in pursing this contingent fee consumer protection case, Defendants' counsel had a direct incentive to negotiate the lowest amount their client would be required to pay. The result was an arm's-length, negotiated, reasonable fee set by market forces. Because the fee was negotiated after all other aspects of the Settlement were concluded, there was no concern that the claims of the Class were prejudiced or that their class benefits would be diminished because of the agreed to fees. Nudelman Aff. ¶56. The Court's role, in this context, is appropriately different than in a traditional "common fund" case, where the awarded fee is included within, and subtracted from, the total amount awarded to the class, thereby diminishing the amount available to pay awards. Here, the Defendant has agreed, subject to the Court's approval, to pay a sum certain over and above what it has agreed to pay to the Class. *See In re M.D.C. Holdings Sec. Litig.* [1990 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶95, 474 at 97, 487-88 (S.D. Cal. Aug.30 1990) ("Because this Court believes the parties should be encouraged to settle all their disputes as part of the settlement of a derivative case, including the amount of the fee, and that if the agreed to fee falls within a range of reasonableness, it should be approved as part of the negotiated settlement between plaintiffs and defendants. There is no need for this Court to second guess whether Defendant, a sophisticated company with experienced competent counsel, may have underpaid or overpaid in negotiating its exposure to fees and expenses."); *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*, [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶96, 937 at 969 (C.D. Cal. Jun. 10 1992) (In approving an $8 million fee request, the court held "the fee was negotiated at arm's length with sophisticated defendants by the attorneys… Where

there is such arm's length negotiation….the Court is reluctant to interpose its judgment as to the amount of attorneys' fees in the place of the amount negotiated…").

C. **CLASS COUNSEL IS ENTITLED TO BE COMPENSATED FOR CREATING A COMMON BENEFIT FOR THE CLASS.**

Attorneys who create a common benefit for a group of persons are entitled to their fees and costs based on the common benefit achieved. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980). It was only through the efforts of the Plaintiffs and their lawyers that the tangible monetary, and other, benefits were obtained for the Class.

1. Under the Common Benefit Doctrine the Preferred Method of Calculating Attorneys' Fees is as a Percentage of the Overall Class Benefit.

The preferred approach to calculating the amount of attorneys' fees in common benefit classes is to award a percentage of the overall class benefit. *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1042 (S.D. Ohio 2001), *decision clarified*, 148 F. Supp. 2d 936 (S.D. Ohio 2001). Indeed, eight Circuits (the Third, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, and District of Columbia) have adopted the percentage method. *See Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 437–38 (D. Md. 1998) *citing In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 821–22 (3d Cir. 1995); *Longden v. Sunderman*, 979 F.2d 1095, 1099 (5th Cir. 1992); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 517 (6th Cir. 1993); *Matter of Continental Illinois Securities Litigation*, 962 F.2d at 572; *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991). In addition, the Supreme Court has seemed to embrace and endorse this method of calculating fees. *Blum v. Stenson*, 465 U.S. 886, 900 n. 16, 104 S. Ct. 1541 (1984).

Compensating counsel in common benefit and common fund cases on a percentage basis makes good sense. First, it is consistent with the practice in the private marketplace where contingent fee attorneys are customarily compensated on a percentage of the recovery method. *In re Public Service Co. of New Mexico*, [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶96, 988 at 94, 291-92 (S.D. Cal. July 28, 1998) ("If this were a non-representative litigation, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 40% of the recovery.") Second, it provides plaintiff's counsel with a strong incentive to effectuate and maximize the possible recovery in the shortest amount of time necessary under the circumstances, which is what occurred here. *Duhaime v. John Hancock Mut. Life Ins. Co.*, 989 F. Supp. 375, 377 (D. Mass. 1997) (the advantage of the percentage method is that it focuses on result, rather than process, which better approximates the workings of the marketplace.) Third, use of the percentage method decreases the burden imposed on the Court to expend judicial resources to examine lawyer's time records (i.e.. the "lodestar" method) and assures that Class Members do not experience undue delay in receiving their share of the settlement. Goldenberg, 33 F. Supp. 2d at 438; *Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F. Supp. 499, 503 (E.D. Va. 1995); *In re Activision Sec. Litig.*, 723 F. Supp. 1373 (N.D. Cal. 1989).

2. A 11% Award is Reasonable and Warranted.

Here, Counsel's request for fees and reimbursement of expenses is approximately 11% of the value of the Settlement when including the value of the extended warranty. Nudelman Aff. ¶9. "Fees in the range of 30-40% of any amount recovered are common in complex and other cases that are taken on a contingent basis." *Lande v. Page*, 862 F.Supp.2d 1182, 1256 (D.N.M. 2012). *See also Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, No. CIV-12-1319-D, 2015 WL 2254606, at *3 (W.D. Okla. May 13, 2015)(An award of forty percent (40%) of the settlement

value is well within the range of acceptable fee awards). In this case the requested fee award is on par with the typical percentage awarded in class litigation:

- *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327 (Bankr. D. Md. 2000) n.11, $185 mil. settlement, $71 mil. awarded, **38%**
- *Chieftain Royalty Co.*, No. CIV–11–212–R, Dkt. No. 182 at *6 (W.D. Okla. May 31, 2013) (awarding 46.5 million, **39%**)
- *In re Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997), $127 mil. settlement, $46 mil. awarded, **36%**
- *Van Gemert v. Boeing Co.*,516 F. Supp. 412 (S.D.N.Y.1981), awarded **37.3**%

The agreed fee to counsel in this case, net of expenses, is less than 40%. As discussed above, Defendant has agreed to pay the substantial costs normally borne by the Class. Moreover, this percentage, does not even consider the substantial amount of work going forward for which there will be no additional compensation Nudelman Aff. ¶43. And, as previously noted, unlike the typical contingency fee, the fee in this case does not reduce the compensation to the class.

The Tenth Circuit has adopted a test that the Fifth Circuit adopted in *Johnson v. Georgia Highway Express, Inc.*, which analyzes the following twelve factors when requested to award attorneys' fees in a class action: (i) the time and labor required; (ii) the novelty and difficulty of the question presented in the case; (iii) the skill requisite to perform the legal service properly; (iv) the preclusion of other employment because of acceptance of the case; (v) the customary fee; (vi) whether the fee is fixed or contingent; (vii) any time limitations the client or the circumstances imposed; (viii) the amount involved and the results obtained; (ix) the attorneys' experience, reputation, and ability; (x) the case's undesirability; (xi) the nature and length of the professional relationship with the client; and (xii) awards in similar cases. *In re Thornburg*

Mortg., Inc. Sec. Litig., 912 F. Supp. 2d 1178, 1249 (D.N.M. 2012). "[R]arely are all of the *Johnson* factors applicable." *Uselton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 854 (10th Cir. 1993).

The Manual of Complex Litig., Third, § 24.121 has further described these factors as: (1) the size of the fund and the number of persons benefited; (2) the presence or absence of substantial objections by class members to the settlement terms and/or the fee request; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) awards in similar cases. Applying the relevant factors, the Court should approve the requested award of attorneys' fees. Application of these factor fully supports a $385,000 award here as fair and reasonable, especially considering that it is an agreed upon additional payment above the class relief by Garmin.

a. The Size of the Fund and the Number of Persons Benefited.

Plaintiffs' counsel has achieved a Settlement that, as described above including the value for the extended warranty benefits for the approximately 130,000 Class Members, conservatively has a range of class-wide relief that is valued at $3,188,896-$3,463,499. Nudelman Aff. ¶ 39. It will benefit and afford relief to all Forerunner 610 users who purchased and/or owned a Forerunner 610 Watch between April 2011 and July 2014. It is estimated that there are over 130,000 individuals in the Class, and for those whose Watchband broke through no misuse and caused damage to the Watch or Watchband, it provides significant relief. Nudelman Aff. ¶¶36-40. Discounting for misuse, the Settlement still allows for Forerunner 610 consumers to receive almost 100% of the monies they expended to fix their 610 Watches.[4]

[4] The Settlement provides, *inter alia*, that Garmin will repair or replace the Forerunner 610 watchband at no cost, including but not limited to all postage, shipping and handling ("No Cost"), even if the request is made after the

b. The Absence of Objections to the Settlement and the Fee Request.

As of the filing of this Motion[5], there has been only one objection[6] to the settlement lodged and no objections to the amount of the attorney's fee/expenses which Garmin has agreed to pay to Class Counsel. The published notice, as well as the notice that was mailed or emailed and that was posted on the settlement administrator's website, all made clear the amount of attorney's fees and expenses being sought by Class Counsel. Therefore, the potential class has been fully advised, and to date there has not been a single objection to the awarding of these fees.

c. The Skill and Standing of the Attorneys Involved.

As set forth in the supporting declaration, Class Counsel has handled significant matters of complex litigation in various state and federal courts throughout the United States, as well as numerous class actions, including multiple class cases alleging similar product design defects. Class Counsel is not only skilled practitioners in the litigation field, but also have a successful track record in complex litigation including class actions and mass torts. Nudelman Aff.¶ 51. Heideman Nudelman & Kalik ("HNK") served as lead counsel in *Klinger v. Motorola*, a case litigated in the District of Maryland as a consumer class action for defective product design of the antenna attached to the Motorola Star-Tac cellular phone. *Id.*. The firm also served as co-lead counsel in *Bernard v. Microsoft*, a District of Columbia indirect purchaser class action,

warranty has expired, provided that the request is made within 12 months of the date of final approval of the Settlement by the Court. No proof of purchase will be required for repair of the Watchband. If a repair or replacement of the Watchband is not feasible, as determined by Defendant in its sole and absolute discretion, Defendant will replace the Watch with a comparable model, the Garmin Forerunner 620, which has a Manufacturer's recommended retail price of $349.99. The Settlement also provides that members of the Subclasses may receive certain cash payments, including capped reimbursement costs for monies expended to replace the Watchband or to repair the Watch or Watchband if the Watch was damaged because of the alleged defect. The Settlement Agreement also permits Class Members to recover more than one benefit in the same or multiple categories provided they meet the requirements to participate separately in each category.

[5] The deadline for filing objections to the Settlement or opt-out of the Settlement is October 14, 2016.

[6] The objection filed addressed the Garmin Forerunner 610 product and did not object to the value of the Attorneys' Fees being sought.

which resulted in a significant recovery for indirect purchasers of Microsoft products in the District of Columbia. *Id*.. HNK was co-lead counsel in *Sherrill, et al. v Amerada Hess, et al*, a case litigated in the state court's in Charlotte, North Carolina wherein over 500 individuals who resided next to or near oil tank farms owned by 16 different oil companies sued these oil companies for their environmental claims for personal injuries and other damages. A confidential settlement was reached to conclude this toxic tort litigation. *Id.*

The firm has served as lead counsel in numerous cased wherein the firm represents victims and their family members who have been killed or injured in terrorist attacks in Europe, Lebanon, Jordan, Iraq and Israel. *Id.* To date, in excess of $500 million dollars has been collected on behalf these clients. *Id.* Among the cases for which a recovery has been made on behalf of victim clients are:

- *Patrick Scott Baker, et al. v. Great Socialist People's Libyan Arab Jamahiriya, et al*., where HNK served as lead counsel to the American victims of the terrorist hijacking of EgyptAir Flight 648 on November 23, 1985. The case was filed in the United States District Court for the District of Columbia. The evidence obtained showed that both Libya and Syria were sponsored and provided material support for the hijacking. Clients obtained a judgment in the amount of $601 million dollars. Clients were also compensated for their injuries as part of a settlement agreement negotiated between the United States and Libya. *Id.*

- *The Estate of John Buonocore, III, et al. v. Great Socialist People's Libyan Arab Jamahiriya, et al*. and *Malina et al. v. Great Socialist People's Libyan Arab Jamahiriya*, where HNK served as lead counsel to the American victims and their families in and action filed in the United States District Court for the District of Columbia against the Great Socialist People's Libyan Arab Jamahiriya and Syrian Arab Republic for death or injury to themselves or their

family members as a result of the terrorist attack at the Leonardo da Vinci Airport in Rome, Italy on December 27, 1985. Clients obtained a judgment of over $3 billion dollars. Clients were also compensated for their injuries as part of a settlement agreement negotiated between the United States and Libya. *Id.*

- *Philip Litle, et al. v. Arab Bank, plc*, where HNK serves as co-counsel for over two hundred American plaintiffs in an action against Arab Bank, plc, a Jordanian Bank, for the facilitation of acts of international terrorism and provision of material support to various terrorist groups involved in the Second Intifada in Israel, which resulted in the death and injury to American nationals. In September 2014, a judgment as to liability was entered against the Bank. A confidential settlement has been reached to compensate these clients for their personal injury and death claims. *Id*.
- The firm also represents over 170 marines and their family members who were victims of the 1983 Marine Barracks bombing in Beirut, Lebanon in their claims against the Islamic Republic of Iran. These victims have received over $2 billion in compensatory and punitive judgment awards. As result thereof, the firm, along with co-counsel in that case who also have judgments against the Islamic Republic of Iran, have been able to attach approximately $1.9 billion dollars in assets to satisfy a portion of their judgments. The assets have been ordered to be turned over to the firm's clients and other victims of Iranian terrorism, and a distribution process is underway. It is anticipated that the firm's clients will recover in excess of $180 million. *Id.*

In this instance, the settlement here is the fruit of Class Counsel's experience, reputation and ability in these sort of cases.

Garmin was equally represented by highly competent counsel, Ken Mallin and Jena Valdetero of Bryan Cave, an international law firm. Bryan Cave is a highly regarded law firm with a well-documented successful litigation history. Thus the experience, skill and resources of opposing counsel make the Settlement not only fair, but an excellent negotiated resolution for both the Class and Garmin.

d. The Complexity of the Litigation

Prosecuting the claims asserted by Plaintiffs require knowledge of consumer law that few attorneys possess. As discussed above, litigating Plaintiffs' claims through trial would entail extensive and expensive proof of Defendant's alleged defects and their failure to meet industry standards. The decision making process relating to the Forerunner 610, pricing assumptions, product development and marketing and other relevant determinations would all be intricately interwoven in the litigation. The evaluation and development of these complex factual issues would require substantial expert testimony concerning highly complex product design, manufacturing and business practices. The complexity of these issues is further compounded by the varying degrees to which the Watchbands were defective and Defendant's recognition of the Watchband problems and their continuing efforts to improve the Watchband. Therefore, the claims which were asserted by the Plaintiffs certainly were complex.

e. The Risk of Non-Payment

Class Counsel undertook this litigation on a purely contingent basis, thereby bearing the full risk on non-recovery. Lost time and effort was not the only risk; Class Counsel also advanced all of the costs. Nudelman Aff.¶ 57. These and all future related expenses are included within and will be deducted from the Class Counsel's fee.

The risk of non-payment and loss in a consumer class case is real. Similar actions have been dismissed or adjudicated against other plaintiffs. Adverse rulings lead to appeals and litigation can be expensive, long and time consuming.

f. The Amount of Time Devoted By Class Counsel

The magnitude, complexity and benefit to the nationwide class action litigation undertaken by Class Counsel cannot be overstated. Investigating, researching and then initiating such nationwide consumer litigation consumes an enormous amount of time and resources. Moreover, as is often the case with claim submission settlements, the hours expended by counsel after the settlement is approved are certainly will be substantial. Class Counsel's hours are in no way complete and cannot be totaled at this time as there are untold duties that remain to be fulfilled by Class Counsel and will likely last for a significant time in the future. Nudelman Aff.¶¶ 57-60. However, if one were to only look at the amount of time that has been spent to date, Class Counsel's lodestar is already more than $301,741, without including any time for the expected work which Class Counsel will need to undertake in the future. Nudelman Aff.47 When estimates for that time are included, it is likely that a 1:1 ratio with the agreed to Attorneys' Fee Amount will be earned when comparing Class Counsel's lodestar. Nudelman Aff. ¶48. The continuing work and past dedication to this matter are just some of the factors which confirm the reasonableness of the separately negotiated fee to be approved by the Court.

Experience in settlements of this nature shows that further substantial time and effort will be required after approval to ensure that the Settlement is properly implemented and that Class Members receive the benefits of the Settlement. Nudelman Aff. ¶59. For example post-settlement responsibilities will include:

- Continued monitoring of calls to the Class Action Information Center;

- Answering inquiries from Class Members made directly to Class Counsel;
- Establishing and monitoring the CEP process with Claims evaluator and negotiating resolutions to all issues arising in the course of the process;
- Consulting and conferring with Class Members and Defendant regarding any disputes that may arise in the CEP process;
- Drafting all documents for the appeals process, if any;

Under these circumstances, the negotiated fee award is fully warranted and should be approved by the Court.

g. Awards in Similar Cases**.**

As discussed earlier, the negotiated award agreed to by the Defendant for compensating Class Counsel is on par, and in many instances less than, what other class counsel has received in similar cases.

Therefore, inasmuch as the pertinent factors support approval of the agreed upon fee and expense award, and inasmuch as the Class has been provided notice through the publication of the Settlement Agreement, and mailed or emailed and published Notices as to the amount of the fee being sought, to which there has been no objection, the Defendant's payment of $385,000 in Fees and Expenses should be approved to compensate Class Counsel for the extraordinary result that does not diminish the benefits or relief obtained for the Class.

D. THE INCENTIVE AWARDS TO ANDREA KATZ AND JOEL KATZ ARE APPROPRIATE.

Separate and apart from the class-wide relief that Garmin has agreed to fund and pay, Garmin has agreed to make a one-time payment to Andrea Katz and Joel Katz, each, in the amount of $1,250 as further settlement compensation for their role as the class representatives for the Settlement Class. Incentive awards are fairly typical in class action cases. *See* 4 William

B. Rubenstein et al., *Newberg on Class Actions* § 11:38 (4th ed.2008); Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 *U.C.L.A. L. Rev.* 1303 (2006) (finding twenty-eight percent of settled class actions between 1993 and 2002 included an incentive award to class representatives). In the Tenth Circuit incentive awards have been found to be permissible. *UFCW Local 880-Retail Food Employers Joint Pension Fund v. Newmont Min. Corp.*, 352 F. App'x 232, 235 (10th Cir. 2009) ("Incentive awards [to class representatives] are justified when necessary to induce individuals to become named representatives").

Here, had Mr. and Mrs. Katz not only persevered in their claims against Garmin – first in Illinois and then in Utah, thousands of Garmin Forerunner 610 consumers would not be receiving the relief they are now able to obtain from the Defendant. Mr. and Mrs. Katz responded to discovery requests, had their personal financial data examined by the Defendant and filed Declarations all in support of the Class in an effort to obtain class wide relief for other consumers nationwide who had similarly experienced financial loss as a result of the allegedly faulty Watchband manufacturing and design. Nudelman Aff.¶¶20-21. While such awards are discretionary, they are intended to compensate class representatives for work done on behalf of the class and to recognize their willingness to act as a private attorney general. *Lane v. Page*, 862 F. Supp. 2d 1182, 1236–37 (D.N.M. 2012); *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir.2000). In this case, the award to *Mr. and* Mrs. Katz is modest in comparison to the contributions they have made. Accordingly, the Court should find that the requested incentive awards to the Class Representatives in the total amount of $2,500 are reasonable and consistent with incentive awards in other class litigation. *Droegemueller v. Petroleum Dev.*

Corp., No. CIV.A.07-CV-2508, 2009 WL 961539, at *5 (D. Colo. Apr. 7, 2009) (Approving $5,000 to each representative class plaintiff).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court at its Final Approval and Fairness Hearing to be held on November 3, 2016, enter a Final Order approving and authorizing Garmin to pay the agreed amount of Attorneys' Fees and Expenses, and incentive fee award to the named Plaintiffs, and issue Findings of Fact and Conclusion of Law as to the awarding of Attorneys' Fees and Expenses substantially in form submitted herewith as Exhibit 2 and enter an Order so awarding those Attorneys' Fees and Expenses.

September 28, 2016

Respectfully submitted,

HATCH, JAMES & DODGE, P.C.

By: /s/ Mark F. James

HEIDEMAN NUDELMAN & KALIK, P.C.

Richard D. Heideman
Noel J. Nudelman
Tracy Reichman Kalik

Attorneys for Plaintiffs

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ANDREA KATZ on behalf of herself and all persons similarly situated, and JOEL KATZ on behalf of himself and all persons similarly situated, Plaintiffs, vs. GARMIN, LTD, and GARMIN INTERNATIONAL, INC., Defendants.	DECLARATION OF NOEL J. NUDELMAN IN SUPPORT PLAINTIFFS' MOTION FOR APPROVAL OF PARTIES SEPARATELY NEGOTIATED PAYMENT OF ATTORNEYS' FEES AND EXPENSES Civil No. 2:14-cv-165-RJS Judge: Hon. Robert J. Shelby

Noel J. Nudelman, Esq., under penalty of perjury, states upon personal knowledge and information as follows:

1. I am an adult of sound mind, over twenty-one (21) years of age, and make this statement under penalty of perjury based on my own personal knowledge.

2. I have been licensed to practice law in the States of New Jersey, New York and the District of Columbia since 1993, 1994 and 1996, respectively. I have been licensed in U.S. District Court for the Southern District of New York since 2010, and the U.S. District Court for the District of Columbia since 1996, respectively. I was admitted to practice before this Court *pro hac vice* for the above referenced case in August 2014.

3. I am a partner with the law firm of Heideman Nudelman & Kalik, P.C. in Washington, D.C.

4. I represent the Plaintiffs in this class action. I, along with members of my law firm, began investigating the claims involved in this case for more than a year before filing this lawsuit against Garmin.

5. Prior to filing this class action lawsuit in this Court, my firm conducted extensive research, investigation and analysis to identify the specific problems with the Garmin Forerunner 610 watch ("Watch"), including the mechanical and engineering problems related to these Watches detaching from the watchband ("Watchband"), and the efforts at repairing or fixing those problems by Garmin and feedback from consumers who were potential class members. Our pre-filing investigation included extensive research on the claims to investigate the scope of the problem and the size of the class. Considerable time was spent interviewing Garmin customers and reviewing customer statements and customer reviews regarding the problems consumers were experiencing. Numerous websites, and other forms of publicly available information were analyzed. Considerable time was also spent preparing the original Complaint for filing.

6. In conjunction with the filing of this class action lawsuit, my law firm also analyzed the practical and technical issues related to identifying the scope of the defective Watch and Watchband problem, the size of the potential class impacted by the Watchband problem, and the valuation of damages to the class and other issues related to the Garmin Forerunner 610 potential class.

7. Despite initial research which revealed numerous customer complaints about the Watch, there were no lawsuits filed against Garmin based on this defective design.

8. This class action was first filed in December, 2013 in the Northern District of Illinois. In January, 2014 the Illinois District Court dismissed the diversity action based on Plaintiff's failure to plead her state of citizenship, as she had only plead her domicile[1].

9. On March 6, 2014, Plaintiffs Andrea Katz and Joel Katz, residents of this District, filed this class action against Defendant in the United States District Court for the District of Utah, asserting that the Watch suffered from a design defect that resulted in the Watchband detaching from the Watch. Plaintiffs raised claims for breach of contract, breach of express warranty, breach of implied warranty, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, violations of the Utah Consumer Sales Practice Act, violations of the Lanham Act, violations of the Utah Truth in Advertising Act, as well as alternate claims for negligence, negligent misrepresentation, and unjust enrichment.

10. On March 31, 2014, Defendant filed a motion to change venue to the Northern District of Illinois.

11. On June 6, 2014, Plaintiffs filed a motion for class certification. (Doc. 17.)

[1] Plaintiff Andrea Katz refiled her class action complaint in the Northern District of Illinois (the "Second Illinois Action"). In February, 2014, Defendant filed a motion to dismiss for lack of Article III standing. Plaintiff then voluntarily dismissed the Second Illinois Action.

12. On October 21, 2014, the Court denied Defendant's motion to change venue, denied Plaintiffs' motion for class certification without prejudice, and ordered Defendant to respond to the Complaint. (Doc. 29.)

13. On November 12, 2014, Defendant filed a partial motion to dismiss certain claims.

14. On April 16, 2015, the Court granted in part and denied in part Defendant's motion, and dismissed Plaintiffs' Lanham Act claim, negligence and negligent misrepresentation claims, and breach of warranty claim as to Joel Katz only. The other causes of action, including breach of contract, breach of warranty as to Andrea Katz, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, violations of the Utah Consumer Sales Practice Act, and unjust enrichment, remained as alleged in Plaintiffs' Complaint.

15. On April 29, 2015, Defendant filed its Answer to the Complaint, in which it denied any and all liability to Plaintiffs and the putative class and asserted various affirmative defenses.

16. Research and review of the issues involved with venue transfer, the preliminary motion for class certification, the partial motion to dismiss, and the affirmative defenses set forth by Garmin were completed and analyzed.

17. Formal written discovery requests were made of Garmin for the purposes of obtaining documentation related to the scope of the alleged deficiencies in the Watch. These inquiries centered on the need for documentation from Garmin relating to the design, testing, marketing, quantity of Watches sold, identification of and quantity of problems encountered with the Watch and the

timing and extent of Garmin's knowledge and/or discovery of the Watch and Watchband problems.

18. These requests culminated in the receipt of over 15,000 pages of documentation from Garmin.

19. My law firm spent a significant number of hours reviewing Garmin's interrogatory answers as well as the documents produced and analyzing the contents of them. The documents were analyzed for the purposes of identifying problems, determining the size of the potential Class and the amount of potential damages the Class Members suffered. The documents were categorized for use in a database, so that whether for settlement or litigation purposes, the documents could be used to support Plaintiffs' claims. In addition, the documents were analyzed with additional research for the purposes of testing the veracity of the Garmin documentation, especially as it related to the potential scope and size of the proposed class.

20. In addition, Mr. and Mrs. Katz responded to written discovery requests from the Defendant, had their personal financial data examined by the Defendant and filed Declarations all in support of the Class in an effort to obtain class wide relief for other consumers nationwide who had similarly experienced financial loss as a result of the allegedly faulty Watch manufacturing and design.

21. They submitted Declarations in support of their and other potential Class Members claims.

22. As Plaintiffs' counsel was preparing various motions, including a renewed motion for class certification, the Court entered a jointly sought stay of further discovery in the matter to allow the parties to pursue settlement discussions.

23. Through the use the discovery and the information obtained as a result of their own independent investigations, the parties engaged in meaningful and complex settlement negotiations.

24. As a result of these extended settlement negotiations, the parties were able to settle all outstanding issues.

25. On May 31, 2016, this Court entered an Order, [D.E. 55] preliminarily approving the class settlement ("Settlement").

26. The Settlement provides that Defendant will repair or replace the Forerunner 610 Watchband at no cost, which includes, but not limited, to all postage, shipping and handling ("No Cost"), even if the request is made after the warranty has expired, provided that the request is made within 12 months of the date of final approval of the Settlement by the Court. No proof of purchase will be required for repair of the Watchband. If a repair or replacement of the Watchband is not feasible, as determined by Defendant in its sole and absolute discretion, Defendant will replace the Watch with a comparable model, e.g. the Garmin Forerunner 620, which has a Manufacturer's recommended retail price of $349.99. Garmin has advised that the replacement Watchband has a retail value of approximately $20, based upon the pricing of the replacement band on Garmin's website.

27. Also with respect to the Class Members, Defendant will extend the limited warranty as set forth in the warranty provided to customers at the time of purchase of the Forerunner 610 (the "One-Year Consumer Limited Warranty") to the allegedly defective Watchband only, for a period of 12 months following the date of final approval of Settlement by the Court.

28. In addition, if Defendant replaces the Watch with a comparable model, the comparable model shall come with the One-Year Consumer Limited Warranty applicable to the replacement watch, as if the replacement watch were purchased independent of the Action or the Settlement Agreement from the date of the receipt or delivery of the replacement watch to the Class Member.

29. Members of the Subclasses will receive cash payments. Subclass 1 consists of Class Members who purchased a replacement Watchband to address the alleged design defect regardless of where they purchased the replacement Watchband. Defendant will reimburse the actual cost of the replacement Watchband to class members who have a receipt or Objective Evidence of Proof of purchase if purchased from Defendant or one of Defendant's authorized retailers. If the class member purchased a replacement Watchband from a third party and it was a non-Garmin Watchband, Defendant will reimburse the class member the actual cost up to $50.00.

30. Subclass 2 consists of Class Members who paid to repair the Watchband or Watch regardless of where they had the Watchband or Watch repaired due to the Watchband or Watch being damaged because of the alleged design defect. Claimants who provide a receipt or Objective Evidence of Proof of repair of

same and written certification in a form agreed upon by the parties, shall be reimbursed for their actual cost, if the repair was done by Defendant. For those customers who used a third party to repair the Watchband or Watch, Defendant will agree to reimbursement for the actual cost up to $75.00.

31. The Settlement Agreement also permits Class Members to recover more than one benefit in the same or multiple categories provided they meet the requirements to participate separately in each category.

32. After the terms of the Settlement Agreement were negotiated to resolve the class members' claim, the parties then met and negotiated an agreement with regard to fees and expenses. Although agreement was difficult to reach, the parties agreed that Garmin would agree to pay, and Plaintiffs' counsel would agree to accept, attorney's fees and litigation costs in the aggregate lump sum of $385,000 dollars, in addition to paying for the claims of the Class Members.

33. During and prior to the settlement discussions, proposed class counsel assessed the probability of ultimate success on the merits, including the evaluation of the risks of successfully establishing both liability and damages at trial. Proposed counsel for the class believed that they had a strong case and negotiated a settlement on that basis. However, Defendant Garmin had numerous potential formidable defenses at its disposal. Garmin contested every aspect of Plaintiffs' claims and expressed an intention to continue contesting Plaintiffs' claims through trial (and possible appeal). Although counsel for Plaintiffs' believe Plaintiffs have substantial claims with valid merit, Garmin is

represented by highly experienced and competent counsel who would likely mount a zealous and thorough defense to Plaintiffs' claims for relief.

34. The litigation was hard fought and contentious and the settlement is a product of the extensive arm's length negotiations conducted by counsel experienced with all aspects of class action litigation. Plaintiffs' counsel are familiar with all the facts and applicable law related to this action and have significant experience prosecuting claims, including consumer class actions.

35. Plaintiffs' counsel did not possess any "inventory" of individual cases that were separately settled or otherwise faired better than the Class Settlement. The negotiations with Garmin were often intense and occasionally heated as the parties disputed numerous key issues in the litigation, including, but not limited to, whether a class could be successfully certified, whether the legal defenses asserted by Garmin had merit, whether liability could be imposed on Garmin, the extent of Plaintiffs' damages, and the specific terms of the settlement.

36. Although members of the Class are still submitting Claims to the Claims Administrator, and the Claims Administrator is still conducting its Claims Evaluation Process ("CEP"), preliminary data has been made available to Class Counsel and counsel for Garmin. It is estimated that there are potentially over 130,000 members of the identified Class.

37. Of these potential class members, as of the date of this filing there have been approximately 5,990 claims filed with the Claims Administrator.

38. Of these 5,990, thus far, 364 have been determined by the Claims Administrator to be duplicates, leaving 5,626 potential valid claims.

39. Although review is not yet complete, if the Court were to only consider the potential value of the claims submitted and that have preliminarily been approved by the Claims Administrator as well as the value of the extension of the warranty by Garmin for all Members of the Class conservatively the total potential range of the settlement value for class members who have filed claims is $3,188,896-$3,463,499. This includes a breakdown of the claims approved by the Claims Administrator based on the various categories for recovery[2], plus the value of the extended warranty, which as described below could be valued at $2,600,000 in extended warranty benefits.

40. Garmin has advised that the replacement Watchband has a retail value of approximately $20, based upon the pricing of the replacement band on Garmin's website. Therefore, at a minimum, the 130,000 Class Members would have the ability to claim over $2,600,000 in extended warranty benefits; assuming Garmin did not need to replace any of the Class Members Watches with a comparable model.

41. The Settlement also provides that in addition to the monetary value of the Settlement, the Defendant will pay all additional expenses which would

[2] Of the over 5,626 non-duplicated claims that have already been submitted, the Claims Administrator has already preliminarily approved 3,810 claims. The breakdown of the claims approved have a settlement value range in the amount of $588,896-$863,499 as shown by the breakdown below.
Class 1 – individuals who are requesting their Watchband be replaced or repaired and are submitting their Forerunner 610 to Garmin for repair or replacement at no cost to them. 697 claims x $20-$349.00 – Range is: $13,940-$243,253.
Class 2 – individuals whose Forerunner 610 Watch has been damaged or lost because of the alleged Watchband Defect and are requesting repair or replacement of their Watch. 1,504 x $349.00 = $524,896
Subclass 1 –reimbursement for purchase of a replacement watchband 1,013 claims x $20.00 - $50.00. Range is: $20,260-$50,650.
Subclass 2 – reimbursement for monies spent to repair Watchband or Watch 596 claims x $50.00-75.00. Range is $29,800-$44,700.

otherwise be ordinarily borne by Class Members. These additional expenses include (1) the extraordinary cost of providing nationwide notice to the class which included (a) the cost of establishing a telephone center and (b) the cost of maintaining a web-site where Class Members could get answers to their questions and submit their claims, (2) the fees and expenses of the Class Action Administrator, Heffler Claims Administration, who were retained pursuant to this Court's preliminary approval Order, and (3) the cost of evaluating claims submitted to Heffler for the CEP.

42. In addition, Garmin has agreed to pay Plaintiffs' Attorneys' Fees and Expenses in the amount of $385,000 which Garmin has agreed to pay, subject to the approval of this Court.

43. The separately negotiated fees include compensation for all future services to be rendered to the Class by Class Counsel, services which experience shows will constitute a substantial continuing commitment of time, effort and resources, with no additional compensation to Class Counsel.

44. Class Counsel's hours are in no way complete and cannot be totaled at this time as there are untold duties that remain to be fulfilled by Class Counsel and will likely last for a significant time in the future.

45. The fee negotiations were conducted at arm's length and only after all of the terms of the Settlement for the Class had been agreed upon.

46. Experience in settlements of this nature shows that further substantial time and effort will be required after approval to ensure that the Settlement is properly implemented and that Class Members receive the benefits of the Settlement.

47. If the Court were to only look at the amount of time that has been spent to date, Class Counsel's lodestar is already $301,741, without including any time for the expected work which Class Counsel will need to undertake in the future.

48. When estimates for that time are included, it is likely that a 1:1 ratio with the agreed to Attorneys' Fee Amount will be earned when comparing Class Counsel's lodestar

49. The parties did not initially agree on the amount of the fees and expenses to be paid by Garmin, and the issue was only settled between the parties after many rounds of back and forth negotiations between the parties.

50. After the dissemination of the Class Notice to over one hundred thousand of Garmin Forerunner 610 owners and users, to date there has been no objections[3] to the fee and expense request that was disclosed in the Preliminary Motion for Class Certification (D.E. 54).

51. Counsel for the Plaintiffs is not only skilled practitioners in the litigation field, but have a successful track record in complex litigation including class actions and mass torts.

a. The firm served as lead counsel in *Klinger v. Motorola*, a case litigated in the District of Maryland as a consumer class action for defective product design of the antenna attached to the Motorola Star-Tac cellular phone.

b. My firm also served as Co-lead counsel in *Bernard v. Microsoft*, a District of Columbia indirect purchaser class action, which resulted in a significant

[3] The one objection that has been filed to date does not object to the Attorneys' fees and expenses being sought but rather addressed the Garmin Forerunner 610 product itself.

recovery for indirect purchasers of Microsoft products in the District of Columbia.

c. My firm served as co-lead counsel in *Sherrill, et al. v Amerada Hess, et al*, a case litigated in the state court's in Charlotte, North Carolina wherein over 500 individuals who resided next to or near oil tank farms owned by 16 different oil companies sued these oil companies for their environmental claims for personal injuries and other damages. A confidential settlement was reached to conclude this toxic tort litigation.

d. My firm also has served has lead counsel in numerous cased wherein we represent victims and their family members who have been killed or injured in terrorist attacks in Europe and Israel. To date, my firm has collected in excess of $500 million dollars on behalf these clients Among the cases for whom we have recovered on behalf of our victim clients are:

- *Patrick Scott Baker, et al. v. Great Socialist People's Libyan Arab Jamahiriya, et al*., where my firm served as lead counsel to the American victims of the terrorist hijacking of EgyptAir Flight 648 on November 23, 1985. The case was filed in the United States District Court for the District of Columbia. The evidence obtained showed that both Libya and Syria were sponsored and provided material support for the hijacking. Our clients obtained a judgment in the amount of $601 million dollars. Clients obtained a judgment in the amount of $601 million dollars. Clients were also compensated for their injuries as part of a settlement agreement negotiated between the United States and Libya

- *The Estate of John Buonocore, III, et al. v. Great Socialist People's Libyan Arab Jamahiriya, et al. and Malina et al. v. Great Socialist People's Libyan Arab Jamahiriya,* where my firm served as lead counsel to the American victims and their families in and action filed in the United States District Court for the District of Columbia against the Great Socialist People's Libyan Arab Jamahiriya and Syrian Arab Republic. Our clients obtained a judgment of over $3 billion dollars. Our clients recovered for the death or injury to themselves or their family members as a result of the terrorist attack at the Leonardo da Vinci Airport in Rome, Italy on December 27, 1985. Our clients were compensated for their injuries as part of a settlement agreement negotiated between the United States and Libya.
- *Philip Litle, et al. v. Arab Bank, plc,* my firm serves as co-counsel for over one hundred and fifty American plaintiffs in an ongoing action against Arab Bank, plc, a Jordanian Bank, for the facilitation of acts of international terrorism and provision of material support to various terrorist groups involved in the Second Intifada in Israel, which resulted in the death and injury to American nationals. In September 2014, my firm obtained judgment as to liability against the Bank. This is the first time that a financial institution was found liable for violating the Anti-Terrorism Act. A confidential settlement has been reached to compensate these clients for their personal injury and death claims.

- We also represent over 170 marines and their family members who were victims of the 1985 Marine Barracks bombing in Beirut, Lebanon in their claims against the Islamic Republic of Iran. These victims have received over $2 billion in compensatory and punitive judgment awards. As result thereof, we, along with our co-counsel have been able to attach approximately $1.9 billion dollars in Iranian assets. The assets have been ordered to be turned over to our clients and other victims of Iranian terrorism, and a distribution process is underway. It is anticipated that the firm's clients will recover in excess of $180 million.

52. My firm has an extremely busy law practice and we have forgone work on other matters presented to my firm in order to assure we had the proper time and resources to represent the Plaintiffs in this case.

53. Despite my experience in litigating class actions and complex litigation, I believe that prosecuting this litigation through trial and appeal would likely be extremely expensive and time consuming for a variety of reasons. Plaintiffs' claims are based on claimed defects in the Watch and Watchband. Issues related to causation would present extensive, expensive, risky and time consuming proof challenges for Plaintiffs' counsel. Defendant could assert many various reasons why particular Watchband's broke and Defendant would assert that it is difficult, if not impossible, to show a particular defective design caused the watchband to detach in all circumstances, involving millions Watches.

54. Research performed by Plaintiffs' counsel determined that there was misuse and abuse by customers using the Watch. Therefore, proving causation would require detailed analysis of all variables to show that valid Class Members' Watch broke due to no misuse or abuse. Counsel for Plaintiffs' Class are willing and able to undertake such a task, but it clearly would be a difficult challenge. Additionally, because Defendant's resistance to Plaintiffs' claims has been steadfast, it has been Plaintiffs Counsel's experience, that large companies such as Defendant remain as determined advocates committed to sparing no expense or resource in litigating claims such as the Plaintiffs for prolonged periods of time. Accordingly, I believe this Settlement to be in the best interests of the Class and the case, and that the Court should give preliminary approval to this Settlement.

55. In addition to the settlement value achieved for the Plaintiffs class as a whole, counsel for the Plaintiffs class also separately negotiated a settlement with the Defendant for the payment of attorney's fees and expenses. The attorney's fees and expenses that Garmin has agreed to pay in this case, in no way reduced, or came out of, the settlement benefits made available to the class members because the attorney's fees and expenses are being paid in addition to the settlement relief available to class members.

56. Additionally, the negotiated attorney fees include compensation for all future services to be rendered by Plaintiffs' counsel, services which first hand experience shows will constitute a substantial and continuing commitment of time, effort and resources. The fee negotiation in this case was conducted at

arm's-length as well, and, again, only after all the terms of the Settlement had been agreed upon by the parties. Plaintiffs' counsel and Defendant's counsel, fully separated the issues of (a) settlement and (b) fees, negotiating all substantive terms of the settlement first and deferring negotiation of attorney's fees and expenses until all substantive terms of the Settlement were agreed upon.

57. The fee award negotiated by the parties, which includes Plaintiffs' counsel paying all of its own expenses does not consider the substantial amount of work going forward following the preliminary approval of the Settlement, for which Plaintiffs' counsel will receive no additional compensation.

58. Plaintiffs' counsel has dedicated a sizeable amount of effort and attention spanning years and including countless number of hours conducting legal research related to issues germane to this class action, including, but not limited to, causes of action, pleading issues, similar type consumer protection and product defect claims, notice requirements, identification of national class members, the proper claims evaluation procedures and guidelines, and Plaintiffs' counsel's obligations as class counsel.

59. Experience with settlements of this nature shows that substantial ongoing time and effort will be required of Plaintiffs' class counsel after preliminary approval of this Settlement to ensure that the Settlement is properly implemented and that class members receive their benefits.

60. In summary, prior experience confirms that many additional real attorney hours of providing continuing service to the class through final completion of this matter will be required.

61. Since the presentation of the proposed Settlement to this Court and the entry of the Court's Preliminary Approval Order, counsel for Garmin and counsel for the Plaintiffs' class have worked tirelessly to carry out the provisions of the Court's Preliminary Approval Order.

62. The proposed settlement before the Court is the culmination of years of intense legal research, drafting, analysis of thousands of pages of documentation and information received from Garmin and potential class members and extensive arms-length negotiations with Garmin.

FURTHER DECLARANT SAYETH NAUGHT

I, Noel J. Nudelman declare under penalty of perjury that the forgoing is true and correct.

Executed on this the 28th day of September, 2016.

*/s/ Noel J. Nudelman*_____
Noel J. Nudelman

Exhibit 2

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Attorneys for Plaintiffs

UNITED STATED DISTRICT COURT
FOR THE DISTRICT OF UTAH

ANDREA KATZ, et al.	)	
Plaintiffs,	)	PROPOSED FINDINGS OF FACT
	)	AND CONCLUSIONS OF LAW IN
vs.	)	REGARDING PLAINTIFFS'
	)	MOTION FOR APPROVAL OF
GARMIN LTD., et al.	)	PARTIES SEPARATELY
	)	NEGOTIATED PAYMENT OF
Defendants.	)	ATTORNEYS' FEES AND
	)	EXPENSES
	)	

Civil No. 2:14-cv-165-RJS

Judge: Hon. Robert J. Shelby

Plaintiffs and Defendant submitted for approval a Proposed Settlement of this class action that is memorialized in a Settlement Agreement, filed with the Court on May 31, 2016 (referred to as the "Settlement Agreement" or "Settlement"). Included in the Settlement Agreement is a provision for the Defendant, Garmin, to pay in addition to the monies it will expend for relief to the Class, a separately negotiated amount for Attorneys' Fees and Expenses to Class Counsel.[1] For the reasons set forth below, the Court has determined that the negotiated Attorneys' Fees and Expenses are fair, reasonable and adequate and should therefore be approved. The Court makes the following findings of fact and conclusions of law and issues the accompanying Order approving the separately negotiated Attorneys' Fees and Costs. These Findings of Fact and Conclusions of Law shall not be binding on the Defendant or used as precedent against it in any other proceedings or action or otherwise used against it in any way outside of this case.

I. BACKGROUND

A. Materials Considered by the Court

1. In reaching its decision in this case, this Court has considered the written memoranda of Class Counsel. As discussed below, Class Counsel has supported the request with affidavits. Class counsel made oral presentations at the Final Approval Hearing held before this Court on November 3, 2016.

[1] "Class Counsel" as referenced herein refers to the law firm of Heideman Nudelman & Kalik, P.C. and, when applicable, to that firm's local/Class liaison counsel, Hatch, James & Dodge, P.C. The Court anticipates that the division of the fee award between those firms will be determined by agreement between them.

B. History of the Litigation

2. On December 18, 2013, Plaintiff Andrea Katz filed a class action complaint against Defendant in the United States District Court for the Northern District of Illinois (the "First Illinois Action").

3. The complaint alleged the Watch design was defective in that the Watch's watchband (the "Watchband") could and did become detached from the Watch. *Id*. Plaintiff demanded both monetary damages and an injunction prohibiting further sale of the Watch. *Id.*

4. On January 29, 2014, the Illinois court dismissed the diversity action based on Plaintiff's failure to plead her state of citizenship.

5. On January 30, 2014, Plaintiff Andrea Katz refiled her class action complaint in the Northern District of Illinois (the "Second Illinois Action").

6. On February 21, 2014, Defendant filed a motion to dismiss for lack of Article III standing.

7. On February 28, 2014, Plaintiff voluntarily dismissed the Second Illinois Action.

8. On March 6, 2014, Plaintiffs Andrea Katz and Joel Katz, residents of this District, filed this class action against Defendant in the United States District Court for the District of Utah (the "Action"), asserting again that the Watch suffered from a design defect that resulted in the Watchband detaching from the Watch.

9. Plaintiffs raised claims for breach of contract, breach of express warranty, breach of implied warranty, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, violations of the Utah Consumer Sales Practice Act, violations of the Lanham Act, violations of the Utah Truth in Advertising Act, as well as alternate claims for negligence, negligent misrepresentation, and unjust enrichment.

10. On March 31, 2014, Defendant filed a motion to change venue to the Northern District of Illinois.

11. On June 6, 2014, Plaintiffs filed a motion for class certification.

12. On October 21, 2014, the Court denied Defendant's motion to change venue, denied Plaintiffs' motion for class certification without prejudice, and ordered Defendant to respond to the Complaint.

13. On November 12, 2014, Defendant filed a partial motion to dismiss certain claims, to which the Plaintiffs substantively responded

14. On April 16, 2015, the Court granted in part and denied in part Defendant's motion, and dismissed Plaintiffs' Lanham Act claim, negligence and negligent misrepresentation claims, and breach of warranty claim as to Joel Katz.

15. The other causes of action, including breach of contract, breach of warranty as to Andrea Katz, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, violations of the Utah Consumer Sales Practice Act, and unjust enrichment, remained as alleged in Plaintiffs' Complaint.

16. On April 29, 2015, Defendant filed its Answer to the Complaint, in which it denied any and all liability to Plaintiffs and the putative class and asserted various affirmative defenses.

17. Thereafter, the parties engaged in extensive written discovery, including the review and production by Defendant of more than 15,000 pages of documents, and the review by Plaintiffs of that production.

18. Following the exchange of written discovery, the parties engaged in extensive arms-length negotiations over many months concerning the terms and conditions of the proposed settlement.

19. The parties did not negotiate the amount of attorneys' fees until after the terms of the class-wide relief were agreed upon and reduced to a settlement term sheet executed by counsel for the parties.

C. Findings of Fact and Conclusions of Law with Respect to Plaintiff's Attorney's Fees and Expenses

20. The Settlement provides significant economic value to the Class. In addition, it is noted that the settlement provides that Defendant will fund the significant expense of providing and publishing notice to the Class, creating and maintaining a web site, processing claim forms and Class correspondence and maintaining a settlement related toll-free call center to answer questions of Class Members. Moreover, Defendant has agreed to pay the CEP Administrator. It also has agreed to the payment of attorney's fees and expenses separate and apart from the value paid to the Class.

21. Plaintiffs have requested the Court approve an award of attorney's fees and reimbursement of expenses in the aggregate lump sum of $385,000. The Court finds that the fee and expense negotiations were conducted at arm's length, and only after the Parties had reached an agreement on all other essential terms of the Settlement. There is no evidence that the Settlement, or the Fee and Expense agreement was in any way collusive. Under these circumstances, the Court gives great weight to the negotiated fee in considering the Fee and Expense request.

22. Negotiated Fee agreements between plaintiffs and defendants in class actions are encouraged, particularly where, as here, the attorneys' fees are negotiated separately and only after all the terms of the settlement have been agreed to between the parties.

23. The Court finds that Class Counsel is entitled to be paid fees and their expenses as a result of the substantial benefit provided to the Class, that same is fair and reasonable, and, for the

reasons set forth herein, approves the award of Attorney's Fees and Expenses in the amount of $385,000.

24. The Court specifically notes that a preferred approach to calculating attorney fees to be awarded in a common benefit case is as a percentage of the class benefit. Indeed eight Circuits, including this Circuit, (the Third, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, and District of Columbia) have adopted the percentage method. This accomplishes two objectives. First, it is consistent with the private marketplace where contingent fee attorneys, such as Class Counsel, are routinely compensated on a percentage of recovery method. Second, it provides a strong incentive to Class Counsel to obtain the maximum recovery in the shortest time possible under the circumstances. Finally, the percentage method reduces the burden on the Court to review and calculate individual attorney hours and rates and expedites getting appropriate relief to class members.

25. As calculated by Class Counsel, Noel J. Nudelman, and as set forth in his Affidavit, the request for attorney's fees and reimbursement of expenses is approximately 11% of the value of the Settlement to the Class. The requested fee award is on par, with the typical percentage awarded in class litigation. This percentage does not even consider the substantial amount of work which Class Counsel must render going forward, and for which there will be no additional compensation beyond the fee award.

26. Class Counsel's hours are not complete. When estimates for that time are included, it is likely Class Counsel's lodestar will be or will exceed a 1:1 ratio with the agreed to Attorneys' Fee Amount.

27. The Manual of Complex Litig., Third, § 24.121 lists seven factors commonly considered with regards to attorney's fees: (1) the size of the fund and the number of persons benefited;

(2) the presence or absence of substantial objections by class members to the settlement terms and/or the fee request; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) awards in similar cases. Application of each factor fully supports the award sought in this matter.

28. The Class relief that was negotiated was calculated to benefit and afford relief to all Forerunner 610 Watch users who purchased and/or owned the Garmin Forerunner 610 watch between April 2011 and July 2014 in the United States and whose Watchband or Watch was lost or damaged as a result of the alleged design defect through no misuse.

29. As of the date of the filing of the Motion to Approve Class Counsel Separately Negotiated Attorneys' Fees and Expenses, no objections to the amount of the fee being sought by Class Counsel. The Published Notice, the Notice that was e-mailed or mailed and was posted on the settlement administrator's website all made it clear as to the amount of Attorney's Fees and Expenses being sought by Class Counsel. Therefore, the Class has been fully advised.

30. Class Counsel are committed to the thorough and complete litigation of complex matters and class actions, as evidenced by their reputation in obtaining successful results for the clients in complex matters including consumer class actions. Class Counsel has demonstrated expertise and a commitment to excellence and resolute fulfillment of their duties to their clients. The Settlement is a direct result of their experience, commitment and desire to obtain substantial timely relief for Class Members. Similarly, Defendant was represented by experienced, excellent counsel. The professional skill and standing of the representation in this case is beyond question and supports approval of the requested award.

31. Litigation of this case requires development of complex factual issues dependent on consumer, engineering, causal and other concepts that few attorneys are able to competently present to the Court. Class Counsel has developed and demonstrated an expertise in these issues, as well extensive experience in complex matters including class and commercial litigation. The capability and expertise brought to bear on behalf of the Plaintiff here argue strongly in support of the Court's approval of an award of $385,000 million as the attorney's fees and expenses to be paid to Class Counsel.

32. Class Counsel undertook this litigation on a purely contingent basis, thereby bearing the full risk, and expense of non-recovery. Lost time and effort was not the only risk; Class Counsel also advanced all of the costs. These and all future expenses will be deducted from the Class Counsel's approved fee. Combined with the attorney time, staff costs, and expenses the risk of loss was high. Nonetheless, Class Counsel remained committed to achieving a fair, reasonable and adequate resolution for their clients, and has done so.

33. Class Counsel expended substantial amounts of time litigating and resolving this action and will be required to expend additional time consuming duties that will remain to be fulfilled after the Settlement is approved. The expenditure of time and effort, on a wholly contingent basis, confirms the reasonableness of Class Counsel fee request. Class Counsel will not receive any additional compensation for the time and efforts in implementing, monitoring and administering the Settlement and CEP. Moreover, it is important to note that time expended is just one factor in examining the reasonableness of a fee award. The effort of Class Counsel in this case has been exemplary. Accordingly, the time and effort of Class Counsel weighs heavily in favor of approving the requested Attorney's Fees and Expenses to be paid by the Defendant.

34. Accordingly, the Court finds that the request for Attorney's Fees and Expenses is fair, reasonable, appropriate and fully warranted. The Court herby approves and authorizes the requested Fee and Expense Award in the amount of $385,000, to be paid by the Defendant directly to Class Counsel, Heideman Nudelman & Kalik in accordance with the Settlement Agreement, pursuant to this Final Approval of the within Settlement.

D. Findings of Fact and Conclusions of Law with Respect to the Incentive Award to the Named Plaintiffs as Class Representatives

35. The Court also recognizes the time commitment and efforts of the Class Representatives to secure relief on behalf of all Class Members. The Court accordingly approves the award of $1,250 each to Joel Katz and Andrea Katz. Such award will also be paid by the Defendant.

The Court, being fully advised, so finds and does order the Clerk of Court to enter the within Findings of Fact and Conclusions of Law.

DATED this ____ day of November, 2016.

BY THE COURT

_____
Hon. Robert J. Shelby, USDC