

NAME SEARCHED: Richard Kahn

PWM BIS-RESEARCH performed due diligence research in accordance with the standards set by AML Compliance for your business. We completed thorough searches

on your subject name(s) in the required databases and have attached the search results under the correct heading below.

Significant negative media results may require escalation to senior business, Legal and Compliance management. Also, all accounts involving PEPs must be escalated.

Search: Result:

RDC

PCR

BIS

Yes

No Hit

Hit

No Hit

Hit

Not Required

Not Required

No

Not Required

D&B

Smartlinx

Court Cases

Results?

Yes

Not Required

Results?

be Required

Yes

Not Required

Review by Legal May

No Results

Search not required

Prepared by: Prachi Pawa Date: 06/19/2017

Research Analyst

Instructions:

1. Review and confirm that all results are returned for your client.
2. Please note that you are still required to perform any Martindale-Hubbell search (if applicable) on each search subject. We have attached the web link below for your convenience: <http://www.martindale.com/xp/-Martindale/home.xml>
3. As needed, provide comment for any negative results.
4. If applicable, please obtain clearance from Compliance for all alerts.
5. Save any changes you make to this document and attach file to your KYC. Please note: Submission of a signed KYC is your confirmation that you have fully reviewed the research documents.

No

VII. Smartlinx

VIII. Court Cases

No

Click here for results:

I. RDC Results

II. PCR Results

III. Negative Media

IV. Non-Negative Media

Reviewer Comments (as necessary):

RDC alert (mail send separately)

No PCR alert (Please see attached)

There was no information found

There was no information found

V. Other Language Media Not Required

VI. D&B

Not Required

Result Found(please see attached)

Result Found(please see attached)

For internal use only

OFAC RESULTS

RDC:

11602748 Alerted

KYC 1791049

Richard Kahn

Country:UNITED STATES

Date of

Birth:

[REDACTED]

PCR:

C20170637921902 Richard Kahn 12893128 NCA customised Closed - No Hit

19/06/2017

BIS RESULTS

Negative Media:

There was no information found

Non-Negative Media:

There was no information found

Other Language Media:

Not Required

Public Records:

1 OF 1 RECORD(S)

FOR INFORMATIONAL PURPOSES ONLY

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Date:6/16/2017

Report processed by:

DEUTSCHE BANK AG||

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Page 2

Full Name

Address

KAHN, RICHARD DANIEL [REDACTED]

ADDITIONAL PERSONAL INFORMATION

SSN

DOB

Subject Summary

Name Variations

1: KAHN, R

2: KAHN, RICHARD

3: KAHN, RICHARD D

4: KAHN, RICHARD DANIEL

5: KAHN, RICHARD D

SSNs Summary

No. SSN

1:

DOBs

Reported DOBs:

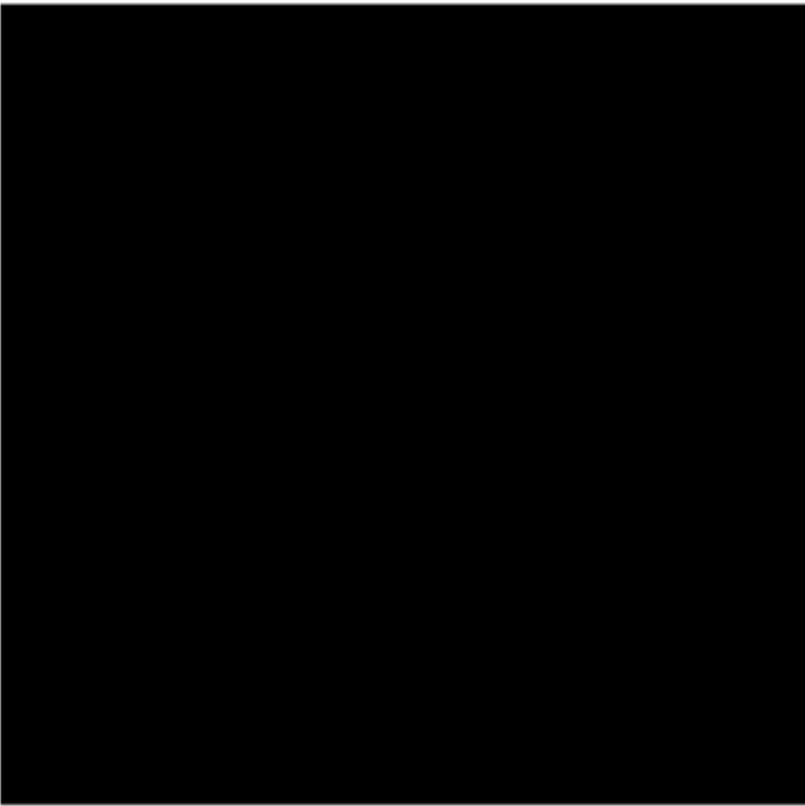
Possible E-Mail Addresses

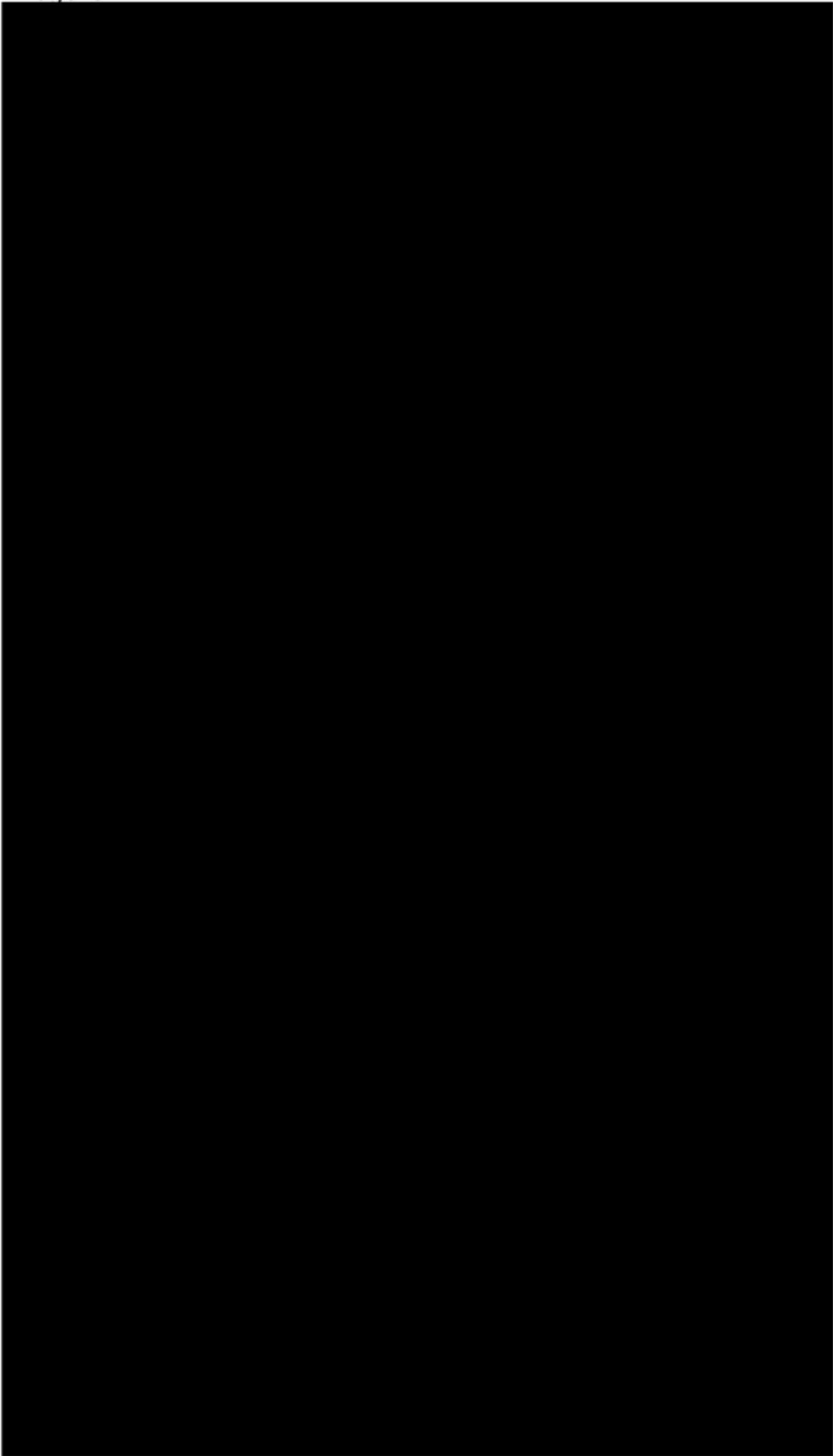
Others Using SSN - 0 records found

Address Summary - 16 records found

No. Address

1:





Address
For internal use only
Dates
Phone
Dates
Phone



[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 39

Median Income: \$81,397

Median Home Value: \$429,167

Median Education: 16 years

Household Members

None Listed

Other Associates

None Listed

3: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Household Members

None Listed

Other Associates

None Listed

4: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 36

Median Income: \$28,140

Median Home Value: \$78,195

Median Education: 12 years

Household Members

None Listed

Other Associates

None Listed

5: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 35

Median Income: \$123,611

Median Home Value: \$678,697

Median Education: 16 years

Household Members

None Listed

Other Associates

None Listed

6: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 38

Median Income: \$225,720

For internal use only

Dates

8/1996 - 11/2002

Phone

Dates

1/1997 - 3/2003

Phone

Dates

8/2007 - 8/2007

Phone

Dates

12/2002 - 6/2008

Phone

[REDACTED]

3/2003 - 9/2008

Page 5

Median Home Value: \$1,000,000

Median Education: 18 years

Household Members

BLITSTEIN, CAROL RUBIN

KAHN, GARY E

LIPUMA, ALISSA B

Other Associates

RUBIN, LUCILLE L

7: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 27

Median Income: \$131,641

Median Home Value: \$1,000,000

Median Education: 15 years

Household Members

None Listed

Other Associates

None Listed

8: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 45

Median Income: \$156,818

Median Home Value: \$896,802

Median Education: 14 years

Household Members

None Listed

Other Associates

None Listed

9: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 22

Median Income: \$11,280

Median Home Value: \$0

Median Education: 12 years

Household Members

None Listed

Other Associates

None Listed

10: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

For internal use only

Dates

4/1995 - 2/1997

Phone

Dates

5/1973 - 1/2000

Phone

Dates

2/2000 - 2/2000

Phone

[REDACTED]

Dates

2/2001 - 2/2001

Phone

Page 6

Median Head of Household Age: 35

Median Income: \$139,826

Median Home Value: \$803,571

Median Education: 15 years

Household Members

None Listed

Other Associates

None Listed

11: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 46

Median Income: \$106,250

Median Home Value: \$504,854

Median Education: 13 years

Household Members

None Listed

Other Associates

None Listed

12: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 42

Median Income: \$148,281

Median Home Value: \$744,932

Median Education: 16 years

Household Members

KAHN, IRENE L

Other Associates

None Listed

13: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 22

Median Income: \$17,885

Median Home Value: \$0

Median Education: 13 years

Household Members

None Listed

Other Associates

None Listed

14: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

For internal use only

Dates

5/1973 - 5/1973

Phone

[REDACTED]

Dates

8/1991 - 12/1991

Phone

Dates

8/1990 - 10/1993

Phone

[REDACTED]
[REDACTED]

Dates

6/1994 - 6/1994

Phone

Page 7

Median Head of Household Age: 39

Median Income: \$80,556

Median Home Value: \$448,387

Median Education: 15 years

Household Members

None Listed

Other Associates

None Listed

15: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 38

Median Income: \$208,387

Median Home Value: \$965,909

Median Education: 15 years

Household Members

None Listed

Other Associates

None Listed

16: [REDACTED]

Address

[REDACTED]
[REDACTED]
[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: [REDACTED]

Median Income: \$123,316

Median Home Value: \$1,000,000

Median Education: 16 years

Household Members

None Listed

Other Associates

None Listed

Voter Registrations - 8 records found

1: New York Voter Registration

Registrant Information

Name: KAHN, RICHARD D

Residential Address: [REDACTED]

[REDACTED]
[REDACTED]

SSN: [REDACTED]

Date of Birth: [REDACTED]

Gender: Male

Voter Information

Registration Date: 10/6/2003

Last Vote Date: 2/5/2008

Party Affiliation: INDEPENDENT

Active Status: ACTIVE

2: New York Voter Registration

Registrant Information

Name: KAHN, RICHARD D

Residential Address: [REDACTED]

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Dates

2/2008 - 6/2017

Phone

[REDACTED]

Dates

Phone

[REDACTED]

[REDACTED]

SSN: [REDACTED]

Date of Birth: [REDACTED]

Gender: Male

Voter Information

Registration Date: 10/6/2003

Last Vote Date: 2/5/2008

Party Affiliation: REPUBLICAN

3: New York Voter Registration

Registrant Information

Name: KAHN, RICHARD D

Residential Address: [REDACTED]

[REDACTED]

[REDACTED]

SSN: [REDACTED]

Date of Birth: [REDACTED]

Gender: Male

Voter Information

Registration Date: 10/6/2003

Last Vote Date: 11/2/2010

Party Affiliation: INDEPENDENT

Active Status: ACTIVE

4: New York Voter Registration

Registrant Information

Name: KAHN, RICHARD D

Residential Address: [REDACTED]

[REDACTED]

[REDACTED]

SSN: [REDACTED]

Date of Birth: [REDACTED]

Gender: Male

Voter Information

Registration Date: 10/6/2003

Last Vote Date: 11/2/2010

Party Affiliation: INDEPENDENCE

Active Status: ACTIVE

5: New York Voter Registration

Registrant Information

Name: KAHN, RICHARD D

Residential Address: [REDACTED]

[REDACTED]

[REDACTED]

Home Phone: [REDACTED]

SSN: [REDACTED]

Date of Birth: [REDACTED]

Gender: Male

Voter Information

Registration Date: 10/6/2003

Last Vote Date: 11/8/2016

Party Affiliation: INDEPENDENCE
Active Status: ACTIVE
6: New York Voter Registration
Registrant Information
For internal use only

Page 9

Name: KAHN, RICHARD D

Residential Address: [REDACTED]
[REDACTED]
[REDACTED]

Home Phone: [REDACTED]

SSN: [REDACTED]

Date of Birth: [REDACTED]

Gender: Male

Voter Information

Registration Date: 10/6/2003

Last Vote Date: 2/5/2008

Party Affiliation: INDEPENDENT

Active Status: ACTIVE

7: New York Voter Registration

Registrant Information

Name: KAHN, RICHARD D

Residential Address: [REDACTED]
[REDACTED]
[REDACTED]

SSN: [REDACTED]

Date of Birth: [REDACTED]

Gender: Male

Voter Information

Registration Date: 10/6/2003

Last Vote Date: 11/2/2004

Party Affiliation: REPUBLICAN

Active Status: ACTIVE

8: New York Voter Registration

Registrant Information

Name: KAHN, RICHARD D

Residential Address: [REDACTED]
[REDACTED]
[REDACTED]

SSN: [REDACTED]

Date of Birth: [REDACTED]

Gender: Male

Voter Information

Registration Date: 9/6/1996

Party Affiliation: REPUBLICAN

Driver Licenses - 0 records found

Professional Licenses - 1 records found

1: Professional License

Licensee Information

Name: KAHN, RICHARD

SSN: [REDACTED]

Address: [REDACTED]
[REDACTED]
[REDACTED]

Gender: M

License Information

License Type: CPA

License Number: 078502

Health Care Providers - 0 records found

Health Care Sanctions - 0 records found

For internal use only

Page 10

Pilot Licenses - 0 records found

Sport Licenses - 0 records found

Real Property - 0 records found

Motor Vehicle Registrations - 5 records found

1: NY MVR

Registrant Information

Registrant: KAHN, RICHARD D

DOB: [REDACTED]

Address: [REDACTED]

[REDACTED]

[REDACTED]

Registration Information

Original Registration Date: 3/17/2011

Registration Date: 3/17/2011

Registration Expiration Date: 3/16/2013

Vehicle Information

VIN: 1GNSKKE34BR274132

Class: PASSENGER CAR/LIGHT TRUCK

Model Year: 2011

Make: Chevrolet

Model: K1500

Series: SUBURBAN LTZ

Body Style: 4 Dr Wagon Sport Utility

Weight: 5827

Plate Information

License Plate Type: Private

License Plate Number: FHH6920

Plate State: NY

Source Information

Data Source: GOVERNMENTAL

2: NY MVR

Vehicle Information

VIN: 1GNSKKE34BR274132

Class: PASSENGER CAR/LIGHT TRUCK

Model Year: 2011

Make: Chevrolet

Model: K1500

Series: SUBURBAN LTZ

Body Style: 4 Dr Wagon Sport Utility

Weight: 5827

Owner Information

Name: KAHN, RICHARD D

DOB: [REDACTED]

Address: [REDACTED]

[REDACTED]

[REDACTED]

Title Information

Title Transfer Date: 4/7/2011

Title Issue Date: 4/7/2011

Source Information

Data Source: GOVERNMENTAL
3: NY MVR
Registrant Information
Registrant: KAHN, RICHARD D
DOB: [REDACTED]
For internal use only

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Address: [REDACTED]
[REDACTED]
[REDACTED]

Registration Information

Original Registration Date: 5/22/2009

Registration Date: 5/22/2009

Registration Expiration Date: 7/8/2011

Vehicle Information

VIN: SALMF15407A257934

Class: PASSENGER CAR/LIGHT TRUCK

Model Year: 2007

Make: Land Rover

Model: Range

Series: ROVER HSE

Body Style: 4 Dr Wagon Sport Utility

Weight: 5701

Plate Information

License Plate Type: Private

Previous Plate Number: EAE1027

Previous Plate State: NY

License Plate Number: EAE1027

Plate State: NY

Source Information

Data Source: GOVERNMENTAL

4: NY MVR

Vehicle Information

VIN: SALMF15407A257934

Class: PASSENGER CAR/LIGHT TRUCK

Model Year: 2007

Make: Land Rover

Model: Range

Series: ROVER HSE

Body Style: 4 Dr Wagon Sport Utility

Weight: 5701

Owner Information

Name: KAHN, RICHARD D

DOB: [REDACTED]

Address: [REDACTED]
[REDACTED]
[REDACTED]

Title Information

Title Transfer Date: 8/9/2007

Title Issue Date: 8/9/2007

Source Information

Data Source: GOVERNMENTAL

5: NY MVR

Registrant Information

Registrant: KAHN, RICHARD D

DOB: [REDACTED]

Address: [REDACTED]

[REDACTED]
[REDACTED]
Registration Information

Original Registration Date: 12/7/2003

Registration Date: 12/7/2003

Registration Expiration Date: 1/6/2006

Vehicle Information

VIN: SALPM16412A466707

For internal use only

Page 12

Class: PASSENGER CAR/LIGHT TRUCK

Model Year: 2002

Make: Land Rover

Model: Range

Series: ROVER HSE

Body Style: 4 Dr Wagon Sport Utility

Weight: 4960

Plate Information

License Plate Type: Private

Previous Plate Number: BEV5149

Previous Plate State: NY

License Plate Number: BEV5149

Plate State: NY

Source Information

Data Source: GOVERNMENTAL

Boats - 0 records found

Aircraft - 0 records found

Bankruptcy Information - 0 records found

Judgments/Liens - 1 records found

1: NY Judgments and Liens Filings

Debtor Information

Name: KAHN, RICHARD

SSN: [REDACTED]

Address: [REDACTED]
[REDACTED]
[REDACTED]

Creditor Information

Name: SIBA R E L P

Filing Information

Jurisdiction: NY

Amount: \$1,783

Filing Date: 5/2/2000

Eviction Y

Filing 1

Number: 20000072311

Type: CIVIL NEW FILING

Agency: CIVIL COURT OF THE CITY OF NEW YORK

Agency State: NY

Agency County: NEW YORK

UCC Liens - 0 records found

Fictitious Businesses - 0 records found

Notice Of Defaults - 0 records found

Potential Relatives - 10 records found

1st Degree: 10

No.

1.

Full Name

MINSKY, LISA G

• AKA KAHN, LISA G

• AKA MINSKY, LISA G

• AKA MINSKY, LISA GALE

• AKA MINSKY, LISA G

SSN: [REDACTED]

DOB: [REDACTED]

(Age: [REDACTED])

Address/Phone

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

For internal use only

No.

Full Name

Address/Phone

[REDACTED]

2.

KAHN, GARY E

Deceased

- AKA AHN, GARY E
- AKA KHAN, G
- AKA KAHAN, GARY

SSN: [REDACTED]

DOB: [REDACTED]

(Age: [REDACTED])

[REDACTED]

3.

BLITSTEIN, CAROL RUBIN

- AKA KAHN, CAROL RUBIN
- AKA RUBIN, CAROL JAYNE
- AKA RUBIN, KAHN CAROL
- AKA BLITSTEIN, CAROL JAYNE
- AKA RUBIN, CAHN CAROL
- AKA KAHN, C R
- AKA RUBIN-KAHN, CAROL
- AKA RUBIN, BLITSTEIN CAROL
- AKA RUBIN CAHN, CAROL
- AKA RUBIN KAHN, CAROL
- AKA BLISTEIN, CAROL R
- AKA LITSTEIN, CAROL R
- AKA RUBINKAHN, CAROL

SSN: [REDACTED]

DOB: [REDACTED]

[REDACTED])

4.

LIPUMA, ALISSA B

- AKA KAHN, ALISSA B
- AKA PUMA, ALISSA LI

- AKA KAHNLIPUMA, ALISSA
- AKA LIPUMA, AB
- AKA LIPUMA, A
- AKA KAHN-LIPUMA, ALISSA
- AKA LI PUMA, ALISSA B
- AKA KAHN, ALISSA L
- AKA KHAN, ALISSA
- AKA LI, ALISSA B
- AKA LIPLUMA, ALISSA B
- AKA LIPUMA, ALISSA P
- AKA PUMA, ALISSA B LI
- AKA KAHN, LIPUMA ALISSA

SSN: [REDACTED]

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[REDACTED]

No.

5.

Full Name

DOB: [REDACTED]

[REDACTED]

KAHN, IRENE L

• AKA NUGENT, KAHN IRENE

SSN: [REDACTED]

DOB: [REDACTED]

(Age: [REDACTED])

[REDACTED]

6.

KAHN, IRWIN A

• AKA KAHN, IRWIN A

SSN: [REDACTED]

DOB: [REDACTED]

(Age: [REDACTED])

[REDACTED]

7.

KAHN, GABRIELLE EVE

SSN: [REDACTED]

DOB: [REDACTED]

(Age: [REDACTED])



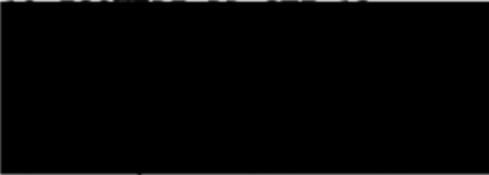
8.

KAHN, IRWIN GRANTEE

SSN: [REDACTED]

DOB: [REDACTED]

(Age: [REDACTED])



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Address/Phone

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No.

9.

Full Name

KAHN, IRWIN M

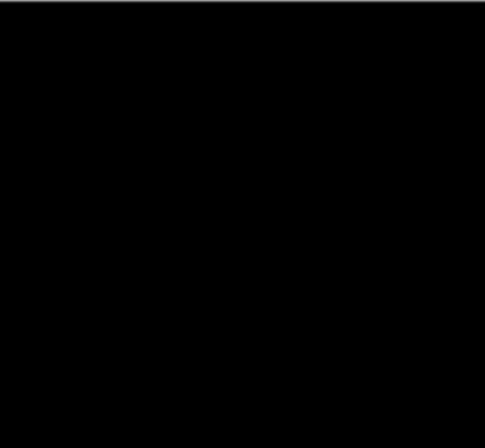
- AKA KAHN, IRWIN K
- AKA IRWIN, KAHN

SSN: [REDACTED]

DOB: [REDACTED]

(Age: [REDACTED])

Address/Phone



10.

KAHN, FRANCINE L

Deceased

- AKA CAHN, FRANCINE L
- AKA KAHN, FRAN
- AKA LEA, KAHN
- AKA KAHN, LEA

SSN: [REDACTED]

DOB: [REDACTED]

(Age: [REDACTED])

Business Associates - 6 records found

1: ARC HOLDING INC.

Name: KAHN, RICHARD

Status: INACTIVE

State: NY

Corporation Number: 2558550

Descriptive Status: INACTIVE

Record Type: CURRENT

Record Date: 4/18/2017

Filing Date: 9/29/2000

2: ARKAY CAPITAL CORP.

Name: KAHN, RICHARD

Status: ACTIVE

State: NY

Corporation Number: 2515783

Descriptive Status: ACTIVE

Record Type: CURRENT

Record Date: 4/18/2017

Filing Date: 5/31/2000
3: HBRK ASSOCIATES INC.
Name: KAHN, RICHARD
Status: ACTIVE
State: NY
Corporation Number: 3714818
Descriptive Status: ACTIVE
Record Type: CURRENT
Record Date: 4/18/2017
For internal use only



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Filing Date: 8/29/2008

4: K & F CAPITAL CORP.

Name: KAHN, RICHARD

Status: INACTIVE

State: NY

Corporation Number: 2516183

Descriptive Status: INACTIVE

Record Type: CURRENT

Record Date: 4/18/2017

Filing Date: 6/1/2000

5: RDK ASSET MANAGEMENT INC.

Name: KAHN, RICHARD

Status: INACTIVE

State: NY

Corporation Number: 2558561

Descriptive Status: INACTIVE

Record Type: CURRENT

Record Date: 4/18/2017

Filing Date: 9/29/2000

6: THE C.O.U.Q. FOUNDATION, INC.

Name: KAHN, RICHARD

Status: INACTIVE

State: FL

Corporation Number: F08000003048

Descriptive Status: INACTIVE

Title: DIRECTOR, TREASURER

Record Type: CURRENT

Record Date: 12/5/2016

Filing Date: 9/23/2011

Person Associates - 4 records found

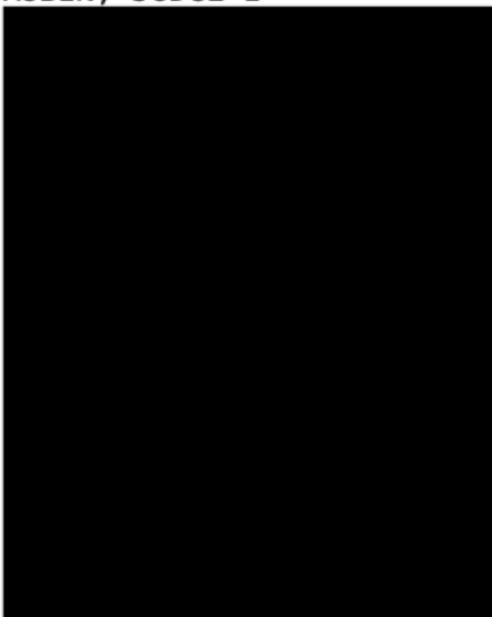
No. Full Name

Address

1: RUBIN, LUCILLE L

2: RUBIN, ISAAC J

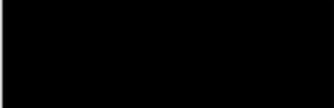
RUBIN, I
RUBBIN, ISAAC
RUBIN, ISAAC
RUBIN, JUDGE I



Page 17

No. Full Name

Address



3: SCHEFFLER, ADAM

CRAIG

SCHEFELER, ADAM C

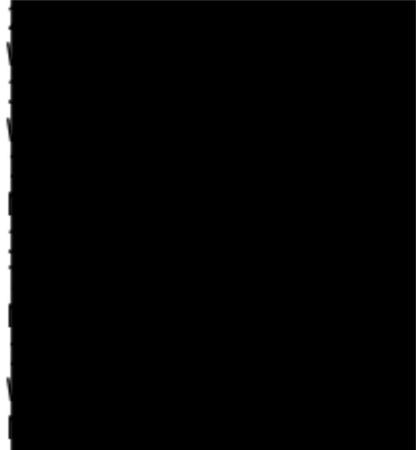
SCHEFFLER, A C

SCHLEFFLER, ADAM

SHEFFLER, ADAM

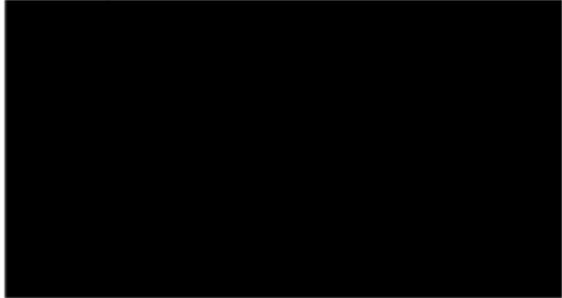
SCHEFFER, ADAM

SHEFFLER, DAM



4:

RUBIN, LUCILLE L



Neighbors - 9 records found



Name

MAURO, ANDREA F JR

MAURO, CHARLES L JR

NEU, CHLOE

NEU, FRANCINE M

NEU, ROBERT T

BENDALL, B J

BENDALL, PAULA A

LACY, JOHN

MOEDER, ALYSSA C

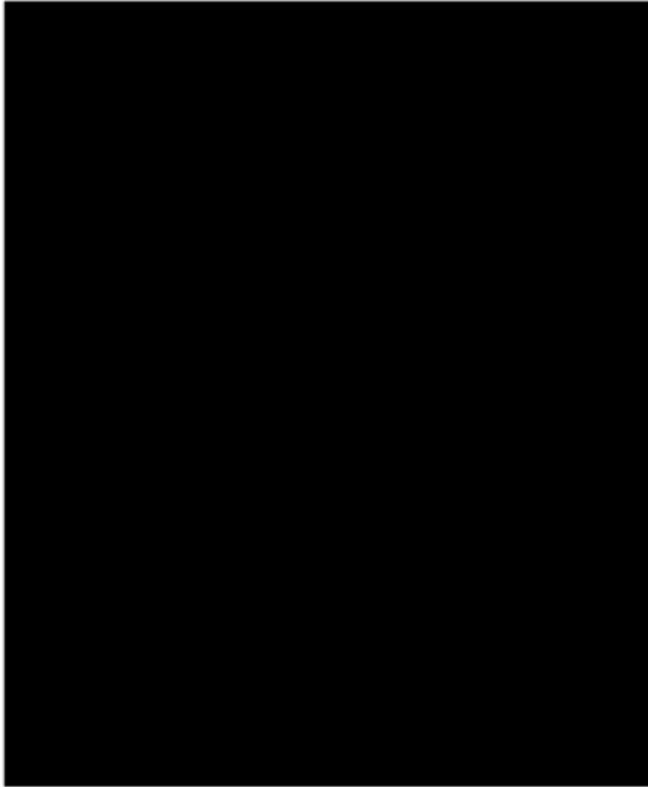
MOEDER, CHARLES W

ODELL, MRSSPETER M

ABRAHAMSON, L R

BARONOFF, KENNETH D

Address



SSN

Phone

DOB

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MINSKY, LISA G
WESELEY, MATTHEW D
HENRIPIN, DANIELLE
HENSON, MARY BETH

Employment Locator - 24 records found

1:

Company Name: ARKAY CAPITAL CORP.

Name: KAHN, RICHARD

SSN: [REDACTED]

Confidence: Medium

2:

Company Name: HBRK ASSOCIATES INC.

Name: KAHN, RICHARD

SSN: [REDACTED]

Confidence: Medium

3:

Company Name: RDK ASSET MANAGEMENT INC.

Name: KAHN, RICHARD

SSN: [REDACTED]

Confidence: Medium

4:

Company Name: ARC HOLDING INC.

Name: KAHN, RICHARD

SSN: [REDACTED]

Confidence: Medium

5:

Company Name: RDK ASSET MANAGEMENT INC.

Name: KAHN, RICHARD

SSN: [REDACTED]

Confidence: Medium

6:

Company Name: K & F CAPITAL CORP.

Name: KAHN, RICHARD

SSN: [REDACTED]

Confidence: Medium

7:

Company Name: THE C.O.U.Q. FOUNDATION, INC.

Name: KAHN, RICHARD

Title: DIRECTOR, TREASURER

SSN: [REDACTED]

Confidence: Medium

8:

Company Name: THE C.O.U.Q. FOUNDATION, INC.

Name: KAHN, RICHARD

Title: DIRECTOR

SSN: [REDACTED]

Confidence: Medium

9:

Company Name: HBRK ASSOCIATES INC.

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[REDACTED]

Name: KAHN, RICHARD

[REDACTED]

SSN: [REDACTED]

Phone: [REDACTED]

Confidence: High

10:

Company Name: RDK ASSET MANAGEMENT INC.

Name: KAHN, RICHARD

Address: [REDACTED]

[REDACTED]

SSN: [REDACTED]

Confidence: High

11:

Company Name: ARC HOLDING INC.

Name: KAHN, RICHARD

[REDACTED]

SSN: [REDACTED]

Confidence: Medium

12:

Company Name: RDK ASSET MANAGEMENT INC.

Name: KAHN, RICHARD

Address: [REDACTED]

[REDACTED]

SSN: [REDACTED]

Confidence: High

13:

Company Name: K & F CAPITAL CORP.

Name: KAHN, RICHARD

[REDACTED]

SSN: [REDACTED]

Confidence: Medium

14:

Company Name: ARKAY CAPITAL CORP.

Name: KAHN, RICHARD

[REDACTED]

SSN: [REDACTED]

Phone: [REDACTED]

Confidence: Medium

15:

Company Name: ALASKA FREEDOM FISHN

Name: KAHN, RICHARD

Title: CONTACT

[REDACTED]

SSN: [REDACTED]

Confidence: High

16:

Company Name: ALASKA FREEDOM FISHN

Name: KAHN, RICHARD

Title: CONTACT

Address: [REDACTED]

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[REDACTED]

SSN: [REDACTED]

Confidence: High

17:

Company Name: HBRK ASSOCIATES INC

Name: KAHN, RICHARD

Title: CONTACT

Address: [REDACTED]

[REDACTED]

SSN: [REDACTED]

Phone: [REDACTED]

Confidence: High

18:

Company Name: HBRK ASSOCIATES INC

Name: KAHN, RICHARD

Title: CONTACT

Address: [REDACTED]

[REDACTED]

SSN: [REDACTED]

Phone: [REDACTED]

Confidence: High

19:

Company Name: RDK ASSET MANAGEMENT INC

Name: KAHN, RICHARD

Title: CONTACT

Address: [REDACTED]

[REDACTED]

SSN: [REDACTED]

Confidence: High

20:

Company Name: RDK ASSET MANAGEMENT INC.

Name: KAHN, RICHARD

Title: CHAIRMAN OR CHIEF EXECUTIVE OFFICER

Address: [REDACTED]

[REDACTED]

SSN: [REDACTED]

Confidence: High

21:

Company Name: RDK ASSET MANAGEMENT INC.

Name: KAHN, RICHARD

Title: CHAIRMAN OR CHIEF EXECUTIVE OFFICER

Address: [REDACTED]

[REDACTED]

SSN: [REDACTED]

Confidence: High

22:

Company Name: RDK ASSET MANAGEMENT INC.

Name: KAHN, RICHARD

Title: PRINCIPAL EXECUTIVE OFFICE CONTACT

Address: [REDACTED]

[REDACTED]
SSN: [REDACTED]

Confidence: High

23:

Company Name: RDK ASSET MANAGEMENT INC.

Name: KAHN, RICHARD

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Title: PRINCIPAL EXECUTIVE OFFICE CONTACT

Address: [REDACTED]
[REDACTED]

SSN: [REDACTED]

Confidence: High
24:

Company Name: RDK ASSET MANAGEMENT INC.

Name: KAHN, RICHARD

Title: PROCESS ADDRESS CONTACT

Address: [REDACTED]
[REDACTED]

SSN: [REDACTED]

Confidence: High
Criminal Filings - 0 records found
Cellular & Alternate Phones - 1 records found

1:

Personal Information

Name: KAHN, RICHARD

Address: [REDACTED]
[REDACTED]

Phone Number: [REDACTED]

Phone Type: Mobile

Carrier Information

Carrier: VERIZON WIRELESS-NY

Carrier City: NEW YORK CITY

Carrier State: NY

Sources - 83 records found

All Sources

Corporate Affiliations

Email addresses

Historical Person Locator

Liens and Judgments

Motor Vehicle Registrations

Person Locator 1

Person Locator 2

Person Locator 4

Phone

PhonesPlus Records

Professional Licenses

Voter Registrations

83 Source Document(s)

6 Source Document(s)

10 Source Document(s)

30 Source Document(s)

1 Source Document(s)

6 Source Document(s)

7 Source Document(s)

6 Source Document(s)

1 Source Document(s)

6 Source Document(s)

1 Source Document(s)

1 Source Document(s)

8 Source Document(s)

D&B:

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Court Cases:

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Watchlists and Blacklists

June 9, 2017

Richard Kahn

SOURCE:

COUNTRY: United States of America

LIST NAME: NYSE Arca Enforcement

AUTHORITY: New York Stock Exchange

* * * * * PERSONAL INFORMATION * * * * *

COUNTRY: United States of America

ADDITIONAL INFORMATION: Decision number: 12-ARCA-3

* * * * * OTHER INFORMATION * * * * *

LIST INFORMATION:

ENTITY TYPE: I

DATE OF PUBLICATION: April 20, 2012

LIST NAME: NYSE Arca Enforcement

DATE OF INFORMATION: January 23, 2017

CASE: Name on the list of Arca Disciplinary Actions (Position: ETP Holder Limited Partner)

COUNTRY: United States of America

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Watchlists and Blacklists June 9, 2017

LOAD-DATE: June 9, 2017

JOSHUA SKEEN and LAURIE FREEMAN, on behalf of themselves and all others similarly situated, Plaintiffs, v. BMW OF NORTH AMERICA, LLC, a Delaware limited liability company; BMW (U.S.) HOLDING CORP., a Delaware corporation; and BAYERISCHE MOTORENWERK AKTIENGESELLSCHAFT, a foreign corporation, Defendants.

Civ. No. 2:13-cv-1531-WHW-CLW

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

2016 U.S. Dist. LEXIS 97188

July 26, 2016, Decided

July 26, 2016, Filed

NOTICE: NOT FOR PUBLICATION

PRIOR HISTORY: Skeen v. BMW of N. Am., LLC, 2014 U.S. Dist. LEXIS 9256 (D.N.J., 2014)

CORE TERMS: settlement, attorneys' fees, repair, lodestar, timing chain, notice, billing rate, warranty, reimbursement, class action, settlement agreement, per hour, tensioner, class members, engine, documentation, final approval, replacement, billable, calculation, approving, paralegal, mileage, multiplier, partner, weigh, percentage-of-recovery, discovery, billed, oil

COUNSEL: [*1] KUNAL A. MIRCHANDANI, Objector, Pro se, LIGHTHOUSE POINT, FL.

JODY WILLIAMS, Objector, Pro se, SAN CARLOS, CA.

RICHARD ELLENBOGEN, Objector, Pro se, OLD GREENWICH, CT.

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THOMAS BRISCHLER, Objector, Pro se, MILLER PLACE, NY.

ANTHONY MAZZARELLA, Objector, Pro se, MARS, PA.

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2016 U.S. Dist. LEXIS 97188, *

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GREGORY MUNRO, Objector, Pro se, MISSOULA, MT.

JOHN NEMELKA, Objector, Pro se, PROVO, UT.

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ROBIN MACKKEY, Objector, Pro se, SAN FRANCISCO, CA.

For JOSHUA SKEEN, LAURIE FREEMAN, on behalf of themselves and all others similarly

situated, Plaintiffs: JEFFREY ALAN KONCIUS, LEAD ATTORNEY, Kiesel Law LLP, Beverly Hills, CA; WILLIAM J. PINILIS, LEAD ATTORNEY, PINILIS HALPERN, MORRISTOWN, NJ.

For Scott Lamb, [*2] Gina Romaggi, Emmanuel Nomikos, Plaintiffs: WILLIAM J. PINILIS,

LEAD ATTORNEY, PINILIS HALPERN, MORRISTOWN, NJ.

For PATRICIA CURRAN, Plaintiff Consolidated: BRYAN L. CLOBES, LEAD ATTORNEY, CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP, PHILADELPHIA, PA; WILLIAM J. PINILIS, LEAD ATTORNEY, PINILIS HALPERN, MORRISTOWN, NJ.

For BMW OF NORTH AMERICA, LLC, a Delaware limited liability company, BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT, a foreign corporation, Defendant: CHRISTOPHER J. DALTON, ROSEMARY JOAN BRUNO, LEAD ATTORNEYS, BUCHANAN, INGERSOLL & ROONEY, PC, NEWARK, NJ; DANIEL ZEV RIVLIN, BUCHANAN INGERSOLL & ROONEY PC, NEW YORK, NY.

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For BMW (US) HOLDING CORP., a Delaware corporation: CHRISTOPHER J. DALTON, ROSEMARY JOAN BRUNO, LEAD ATTORNEYS, BUCHANAN, INGERSOLL & ROONEY, PC, NEWARK, NJ.

JUDGES: William H. Walls, Senior United States District Judge.

OPINION BY: William H. Walls

OPINION

Walls, Senior District Judge

In this class action arising from alleged defects in the MINI Cooper, a line of vehicles

produced by Defendants BMW of North America, LLC, BMW (U.S.) Holding Corp., and

Bayerische Motorenwerk Aktiengesellschaft, Plaintiffs move for final approval of the

settlement between Defendants and a nationwide class of vehicle [*3] owners and an

award of attorneys' fees and expenses. Defendants do not oppose the motion for final

settlement approval but oppose, in part, the motion for attorneys' fees.

After conducting a

fairness hearing on July 14, 2016, the Court grants final certification of the settlement

class, approves the settlement, and grants in part Plaintiffs' motion for attorneys' fees and

expenses.

FACTUAL AND PROCEDURAL HISTORY

I. The second amended complaint

A full factual and procedural background of this case is detailed in this Court's January 6,

2016 opinion and order granting preliminary approval of the settlement and is incorporated

here. ECF No. 71. This case arises from claims regarding the MINI Cooper, a line of

vehicles produced by Defendants. Plaintiffs are owners or lessees of MINI Coopers who

allege that, at the time of purchase, their vehicles contained a latent defect in a part of the

engine known as the "timing chain tensioner" which causes the part to fail prematurely,

eventually requiring replacement of that part or even the entire engine.

Second Amended

Complaint, ECF No. 53 ¶¶ 6-7, 61. The cars at issue are "second generation" MINI

Coopers with an N12 or N14 engine: the MINI Cooper [*4] R56 (Cooper Hardtop), 2007-2010

model years; the MINI Cooper R55 (MINI Clubman), 2008-2010 model years; and the MINI Cooper R57 (MINI Cooper Convertible), 2009-2010 model years. Id. at

2, ¶¶ 5152.

Plaintiffs allege that Defendants made various misrepresentations and omissions in

relation to the sales and marketing of the vehicles. Id. ¶¶ 49-50, 57, 64-66. Named Plaintiffs in this case include individuals from Georgia, Illinois, New Jersey, Minnesota, Arizona, Pennsylvania, Florida, New York, Texas, Tennessee, and Arkansas who purchased their vehicles between June 2007 and December 2011. Id. ¶¶ 15-41. In the second amended complaint, filed after this action was consolidated with another case dealing with similar subject matter, Curran v. BMW of North America, LLC, 2:13-cv-4625, see Order of Consolidation, ECF No. 36; and after the Court dismissed several federal and state law claims, see ECF No. 9; the named Plaintiffs bring claims on behalf of themselves and a nationwide class of individuals who leased or purchased the cars at issue. ECF No.

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53 at 1. Alternatively, the Plaintiffs bring claims on behalf of themselves and twelve statewide classes of individuals who leased or purchased the cars [*5] at issue in Arizona, Arkansas, California, Florida, Georgia, Illinois, Minnesota, New Jersey, New York, Pennsylvania, Texas, and Tennessee. Id. Plaintiffs bring a total of eighteen causes of action, including claims for breach of express warranty, id. ¶¶ 98-105, breach of implied warranty, id. ¶¶ 106-119, and violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., id. ¶¶ 132-38, on behalf of themselves and the entire nationwide class. Plaintiffs also bring state law claims on behalf of the twelve statewide classes. Id. ¶¶ 120337.

On

April 17, 2014, Plaintiff Richard Kahn filed a putative class action against Defendants in the United States District Court for the Eastern District of New York dealing with similar subject matter. Kahn v. BMW of North America, LLC, 2:14-cv-02463-ADS-ARL. Plaintiff

Kahn's action has not yet been consolidated with this one.

II. The N14 Class settlement agreement

On November 30, 2015, Plaintiffs filed an unopposed motion for preliminary approval of class settlement with respect to owners and lessees of vehicles with an N14 engine only (the "N14 Class"). ECF No. 70. On January 6, 2016, the Court granted preliminary approval, certifying the settling Class for purposes [*6] of settlement only and issuing instructions to begin notifying Class members. ECF No. 72. On July 14, 2016, the Court presided over a fairness hearing as required by Federal Rule of Civil Procedure 23(e). In the interim, 5,310 Class members submitted claims under the settlement, 23 class members objected to the settlement, and 123 opted out. P. Mot. Final Approval Settlement Agreement, Supp. Decl. Matthew J. McDermott in Support Supp. Mot. Approve Settlement ("Supp. McDermott Decl."), ECF No. 107-1 ¶¶ 13-18. No objections were raised at the fairness hearing.

A. The N14 Class

The settlement agreement defines the "N14 Class" and "N14 Vehicles" as: [a]ll persons or entities in the United States, the District of Columbia,

and Puerto Rico who currently own or lease, or previously owned or leased, a model-year 2007 through 2009 MINI Cooper 'S' Hardtop (R56), a model-year 2008 through 2009 MINI Cooper 'S' Clubman (R55), or a model-year 2009 through 2010 MINI Cooper 'S' Convertible (R57) vehicle, manufactured at any time from start of production in November 2006 through July 2010.

Declaration Raymond P. Boucher, ECF No. 69-3 Ex. 1, Settlement Agreement and Release at 4 (the "N14 Class Vehicles" and the "N14 Class"). Named Plaintiffs who [*7]

purchased only vehicles containing N12 engines are not included in the N14 Class. Id. at 2

n.1. Also excluded from the N14 Class are:

Defendants, as well as Defendants' affiliates, employees, officers and directors, attorneys, agents, insurers, their-party providers of extended warranty/service contracts, franchised dealers, independent repair/service facilities, fleet owners and operators, rental companies and vehicles, the attorneys representing Defendants in this case, the Judges and Mediator to whom this case is assigned and their immediate family members, all persons who request exclusion from (opt-out of) the Settlement, vehicles deemed a total loss (other than vehicles whose engines failed or were damaged due to timing-chain tensioner and/or timing chain failure), vehicles whose true mileage is unknown, all persons who previously released any claims encompassed in this Settlement, and vehicles transported outside the United States.

Id. at 4-5.

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B. The settlement terms

1. Relief for N14 Class members

If the Court grants final approval to the settlement agreement, Defendants agree to dismiss

this action with prejudice with respect to all Plaintiffs, and N14 Class members "will be

forever barred and enjoined [*8] from pursuing any claims" resolved by the settlement. Id.

at 16, 31-33.

In consideration, Defendants have agreed to provide N14 Class members with four

primary types of relief. First, N14 Class Vehicles will receive a warranty extension for the

timing-chain tensioner and timing chain for seven years or 100,000 miles from the date

when the vehicle was first placed into service, whichever comes first, subject to certain

exceptions. Id. Second, N14 Class members who submit claims by the relevant deadlines

are entitled to reimbursement for out-of-pocket expenses incurred before the effective

settlement date for repair and/or replacement of the timing chain and/or timing-chain

tensioner, subject to certain limitations. Id. at 17-18. Class members are entitled to 100%

of costs incurred at authorized MINI dealers and up to \$120 for timing-chain tensioners

and \$850 for timing chains repaired or replaced at independent service centers. Id. Third,

N14 Class members who submit timely claims are entitled to reimbursement for up to

\$4,500 in out-of-pocket expenses incurred before the effective settlement date for repair

and/or replacement of an engine because of timing-chain tensioner and/or timing chain

failure, subject to [*9] discounts based on mileage and the amount of time since their

vehicle was first placed into service, as well as certain other limitations. Id. at 19-20.

Finally, N14 Class members who submit timely claims are entitled to compensation of up

to \$2,250 if they had to sell their vehicle at a loss before the effective settlement date due

to an unrepaired damaged or failed engine caused by timing-chain tensioner and/or timing

chain failure, again subject to discounts based on mileage and the time since their vehicle

was first placed into service, as well as certain other limitations. Id. at 21-22.

The settlement requires N14 Class members to complete and submit a claim form, either online or by mailing a hard copy, providing information and documentation about their N14 Vehicle(s), routine maintenance, repairs, and sale. P. Mot. Final Approval Settlement Agreement, ECF No. 92 at 15; see also Notice and Claim Form, Decl. Matthew J. McDermott in Support Mot. Approve Settlement ("McDermott Declaration"), ECF No. 92-4

Ex. A. If the Court grants final approval to the settlement agreement, the Settlement Administrator will review each timely claim and initially decide whether to grant or deny each claim. ECF No. 92 at [*10] 15; ECF No. 92-4 Ex. A § K. Granted claims will be submitted to Defendants for final approval. ECF No. 92 at 15-16; Settlement Agreement and Release, ECF No. 69-3 Ex. 1 ¶ III.E.2. The Settlement Administrator will notify each Class member whose claim is denied, in whole or in part, of the reason for the denial and the steps the Class member may take to cure any deficiencies in his or her claim. ECF No. 92 at 15; ECF No. 69-3 Ex. 1 ¶ III.E.1. Class members who cannot cure the deficiencies may notify Class Counsel of their wish to appeal the denial, eventually submitting any dispute to an agreed-upon Special Master for a binding determination. ECF No. 92 at 16; ECF No. 69-3 Ex. 1 ¶ III.E.3.

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2. Attorneys' fees and expenses

The Parties agreed that, if the Court grants final approval of the settlement agreement,

Class Counsel may seek an award of up to \$2,320,000 in fees and expenses.

ECF No. 693

Ex. 1 ¶ VIII.B. Defendants will not object to an award of up to \$1,820,000.

Id. Class

Counsel may also move for service awards of up to \$4,000 for each of the Named

Plaintiffs in the Class without objection from Defendants. Id. ¶ VIII.C. All attorneys' fees

and expenses, service awards, and expenses [*11] incurred administering the settlement

agreement shall be paid by Defendants in addition to, and will not reduce, any relief paid to

Class members who submit valid claims. Id. ¶ VIII.A.

C. Notice to N14 Class members

In its order granting preliminary approval of the settlement agreement, this Court directed

the parties to serve notice of the settlement on all N14 Class members by February 20,

2016, 45 days after the order, and set a deadline of June 20, 2016 for Class members to

submit claims, request exclusion from the Class, or object to the settlement. ECF No. 72 at

2.

The Parties selected Class Action Administration LLC ("CAA") as the Claims Administrator

for this settlement. ECF No. 92-4 ¶ 1; ECF No. 107-1 ¶ 1. CAA located records for 186,031

N14 Class members representing 80,224 N14 Class Vehicles. ECF No. 92-4 ¶ 4. Of these,

185,582 records had mailing addresses, and 111,893 had email addresses. Id. CAA emailed notices of the settlement to addresses associated with 111,843

Class

Vehicles on February 19, 2016 and 50 Class Vehicles on May 2, 2016. Id. ¶ 8. Delivery

failed for 631 of these addresses, resulting in a success rate of over 94 percent. ECF No.

107-1 ¶ 4. Before February [*12] 19, 2016, CAA also established a website, www.TimingChainTensionerSettlement.com, containing information about the settlement

and blank copies of the claim form for N14 Class members, ECF No. 92-4 ¶ 10, and a tollfree

telephone number for Class members to seek information about the settlement. Id. ¶

12. Telephone operators took 3,992 calls from Class members and other individuals

between February 19, 2016 and July 6, 2016, and the website had 116,591

document
downloads and page views during the same period. ECF No. 107-1 ¶¶ 6-9.
Because of a "communication error" between the Parties and CAA and delays
obtaining
Class member contact information from several state motor vehicle agencies,
see Letter
Request for Supplemental Notice Program, ECF No. 88 at 1, CAA mailed notices
and
claim forms to only 80,000 N14 Class members on February 19, 2016. ECF No.
92-4 ¶ 6.
CAA mailed an additional 92,201 notice packets to Class members on February
26, 2016,
11,366 notice packets on March 23, 2016, 1,221 notice packets on May 2,
2016, and 794
notice packets on May 19, 2016, for a total of 185,582 notice packets mailed
to Class
members. Id. After multiple attempts, delivery failed for 6,581 of these
[*13] addresses,
resulting in a success rate of over 96 percent. ECF No. 107-1 ¶ 7.
At the request of the Parties, this Court extended the deadline for N14
Class members to
submit claims to July 21, 2016 for Class members from Kansas, New Hampshire,
Oklahoma, and Pennsylvania; ECF No. 89 at 1-2; August 29, 2016 for Class
members
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from Hawaii, id. at 2; and July 1, 2016 for all other Class members, id. at 2; and extended

the deadline for all Class members to opt out of or object to the settlement to July 1, 2016.

Id. at 1. CAA updated the settlement website to reflect the extended deadlines before June

20, 2016. ECF No. 107-1 ¶ 11. On June 20, 2016, CAA mailed supplemental notice

postcards to a total of 13,141 Class members in Kansas, Oklahoma, New Hampshire,

Pennsylvania, and Hawaii, and emailed a supplemental notice to all 111,893 email

addresses on file. Id. ¶ 12.

D. N14 Class member claims, requests for exclusion, and objections

According to Plaintiffs, as of July 6, 2006, a total of 5,310 N14 Class members have

submitted claims under the settlement agreement, and 2,064 claims have been approved.

The remaining claims are under review or are awaiting supplemental documentation from

Class members. Id. ¶¶ 17-18. One [*14] hundred and twenty three Class members have

opted out of the settlement, and 23 Class members have submitted objections to the

settlement on various grounds. Id. at ¶¶ 13-16; see ECF Nos. 75, 77-85, 96-98, 100-01,

103-04, 106. The Court will address each of these objections individually in this opinion.

E. Motions for final approval of settlement and attorneys' fees

On May 19, 2016, Plaintiffs moved for an award of \$2,320,000 in attorneys' fees and

expenses for Class Counsel. ECF No. 86. Defendants filed a brief in opposition on June

16, 2016, arguing that the Court should award Class Counsel only \$1,820,000 in attorneys'

fees and expenses. ECF No. 90.

On June 20, 2016, Plaintiffs filed an unopposed motion seeking an order granting final

certification of the N14 Class for settlement purposes, final approval of the settlement, and

relief for N14 Class members under the terms of the settlement agreement.

ECF No. 92.

Plaintiffs filed a supplemental motion on July 7, 2016 containing updated information about

Class member responses and discussing objections filed after June 20, 2016. ECF No.

107.

The Court held a fairness hearing regarding both issues as required by Federal Rule of

Civil Procedure 23(e) on July 14, 2016.

DISCUSSION [*15]

Before granting approval of the settlement agreement, the Court must consider: (1)

whether the N14 Class can be certified under Federal Rule of Civil Procedure 23; (2)

whether notice to the Class was adequate; (3) whether the settlement is fair, reasonable,

and adequate; and (4) whether Plaintiffs' proposed provision for attorneys' fees and costs

is reasonable.

I. Final Class certification is appropriate

The Court earlier granted conditional N14 Class certification, and now "final settlement

depends on the finding that the class met all the requisites of Rule 23." In re Gen. Motors

Corp. Pick-Up Truck Fuel Tank Products Liab. Litig. ("GM Truck Prods."), 55 F.3d 768, 797

(3d Cir. 1995). Under Rule 23(a), the Court must find that (1) the Class is so numerous

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that joinder of all members is impracticable, (2) there are questions of law or fact common

to the Class, (3) the claims or defenses of the representative parties are typical of the

claims or defenses of the Class, and (4) the representative parties will fairly and

adequately protect the interests of the Class. Fed. R. Civ. P. 23(a). Rule 23(b)(3), under

which Plaintiffs seek class certification, additionally requires that "questions of law or fact

common to class members predominate over any questions affecting only individual

members, and that [*16] a class action is superior to other available methods for fairly and

efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

Plaintiffs bear the burden of demonstrating that Rule 23's requirements are met by a

preponderance of the evidence, and the Court "must make whatever factual and legal

inquiries are necessary and must consider all relevant evidence and arguments presented

by the parties." *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 306 (3d Cir. 2008).

1. Numerosity

Rule 23(a)(1) requires that it be impracticable to join all class members, but there is "no

minimum number of members needed for a suit to proceed as a class action." *Marcus v.*

BMW of N. Am., LLC, 687 F.3d 583, 595 (3d Cir. 2012). Though Rule 23(a)(1) "requires

examination of the specific facts of each case," the numerosity requirement is generally

met "if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40."

Id. (citations omitted). Here CAA identified 186,031 N14 Class members representing

80,224 N14 Class Vehicles. ECF No. 92-4. ¶ 4. The Court finds that the numerosity

requirement is satisfied.

2. Commonality

Under Rule 23(a)(2), the Named Plaintiffs must "share at least one question of law or fact

with the grievances of the prospective class." *Stewart v. Abraham*, 275 F.3d 220, 227 (3d

Cir. 2001) (citations omitted). Class claims "must depend upon a common contention . . .

of such a nature that it is capable of classwide [*17] resolution -- which means that

determination of its truth or falsity will resolve an issue that is central

to the validity of each one of the claims in one stroke." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 131 S. Ct. 2541, 2551, 180 L. Ed. 2d 374 (2011). The commonality requirement is met here.

Because, as Plaintiffs represented when seeking preliminary approval of the settlement,

"[a]ll Class Vehicles had the allegedly defective timing chain tensioner installed," P. Mot.

Preliminary Approval, ECF No. 70 at 21, "the claims of the Class Representatives and the

Settlement Class are predicated on the core common issue as to whether Defendants are

liable for the damages suffered" by Class members as a result of the defective part. Id.

3. Typicality

Under Rule 23(a)(3), the Named Plaintiffs' claims must be "typical of the claims or

defenses of the class." Fed. R. Civ. P. 23(a)(3). "The typical inquiry is intended to assess .

. . whether the named plaintiffs have incentives that align with those of absent class

members so as to assure that the absentees' interests will be fairly represented." Baby

Neal for & by Kanter v. Casey, 43 F.3d 48, 57-58 (3d Cir. 1994). "This investigation

properly focuses on the similarity of the legal theory and legal claims; the similarity of the

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individual circumstances on which those theories and claims are based; and the extent to

which the proposed representative [*18] may face significant unique or atypical defenses

to her claims." In re Schering Plough Corp. ERISA Litig., 589 F.3d 585, 597-98 (3d Cir.

2009).

Plaintiffs' claims, "for settlement purposes only," are identical to the N14 Class claims. ECF

No. 70 at 22. Plaintiffs represent that 101 Class Members assert that Defendants

knowingly placed Class Vehicles containing the alleged defect into the stream of

commerce and refused to honor its warranty obligations" and that "all Class Members

assert the same or similar legal theories of liability against Defendants." Id. The Court finds

that the typicality requirement is satisfied.

4. Adequacy of representation

The Court must determine whether "the representative parties will fairly and adequately

protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The Court considers whether

the Named Plaintiffs have "the ability and the incentive to represent the claims of the class

vigorously, that [they have] obtained adequate counsel, and that there is no conflict

between the [Named Plaintiffs'] claims and those asserted on behalf of the class." Hassine

v. Jeffes, 846 F.2d 169, 179 (3d Cir. 1988). In this case, counsel is adequate. Plaintiffs

claim that counsel are "exceedingly experienced and competent in complex litigation and

have an established track record in litigating complex class action suits." [*19] ECF No. 70

at 22. As discussed, Plaintiffs' claims are also representative of those of all N14 Class

members, and Plaintiffs "have no interests antagonistic to the class." Id. at 23. Though the

Named Plaintiffs stand to recover payments of \$4,000 each above the other consideration

provided in the proposed settlement, thereby out-recovering other Class members, "this

amount accords with the effort Plaintiff[s have] taken to pursue the class' claims."

Weissman v. Gutworth, 2015 U.S. Dist. LEXIS 8543, 2015 WL 333465 at *4 (D.N.J. May

26, 2015) (Walls, J.). The Court finds that the adequacy requirement of Rule 23(a)(4) is

satisfied.

5. Rule 23(b)(3)

Rule 23(b)(3) includes two requirements: that "questions of law or fact common to class

members predominate over any questions affecting only individual members, and that a

class action is superior to other available methods for fairly and efficiently adjudicating the

controversy." Fed. R. Civ. P. 23(b)(3). The "predominance" requirement demands that

"proposed classes are sufficiently cohesive to warrant adjudication by representation."

Amchem v. Windsor, 521 U.S. 591, 624, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997). "[T]he

focus of the predominance inquiry is on whether the defendant's conduct was common as

to all of the class members, and whether all of the class members were harmed by the

defendant's conduct." *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 298 (3d Cir. 2011).

As explained, Plaintiffs alleged in their motion for preliminary approval [*20] that

Defendants installed the defective timing chain tensioner in all N14 Class Vehicles. ECF

No. 70 at 21. Because the claims of each N14 Class member -- under federal and/or state

law -- proceed from this common factual nucleus, all of the claims uniformly turn on "(a)

whether Defendants knew or should have known that the Class Vehicles contained the

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alleged defect when it placed them into the stream of commerce; (b) whether Defendants

have a duty to honor its warranty on the Class Vehicles; and, (c) whether Defendants, in

refusing to honor the Class Vehicles' warranty, violated applicable federal and state

consumer protection laws." Id. at 24. The Court finds that these common questions of law

or fact predominate over any questions affecting only individual class members.

The Rule 23(b)(3) superiority requirement "asks the court to balance, in terms of fairness

and efficiency, the merits of a class action against those of alternative available methods of

adjudication." In re Warfarin Sodium Antitrust Litig. ("Warfarin Sodium"), 391 F.3d 516,

533-34 (3d Cir. 2004) (citations and quotations omitted). The Court looks at "(1) the

interest of individual members of the classes in controlling the prosecution of the action, (2)

the extent of litigation [*21] commenced elsewhere by class members, (3) the desirability

of concentrating claims in a given forum, and (4) the management difficulties likely to be

encountered in pursuing the class action." Danvers Motor Co. v. Ford Motor Co., 543 F.3d

141, 149-50 (3d Cir. 2008).

Considering these factors, the again Court finds that a class action is the superior method

of adjudicating N14 Class members' claims. The class action "offers prompt relief to the

class members and averts the undue costs they would incur in prosecuting their claims

individually." Weissman, 2015 U.S. Dist. LEXIS 8543, 2015 WL 333465 at *5. Out of the

nearly 200,000 members of the N14 Class, over 5,000 submitted claims after receiving

notice of the settlement. ECF No. 92 at 2. It is far more desirable to allow these Class

members to obtain relief under the terms of the settlement in this district than to require

them to file an additional 5,310 actions in courts across the country. And although

Defendants admit that they faced some initial difficulties obtaining motor vehicle records

and notifying Class members of the settlement, see ECF No. 88, the Court has no reason

to doubt that "management difficulties" will prevent Defendants from processing Class

members' claims.

Because the Court has found that the proposed class action satisfies the requirements

[*22] of Rules 23(a) and (b), the Court will certify the Class defined in the parties'

settlement agreement.

II. Class notice was proper

Members of a class certified under Rule 23(b)(3) must be provided with "the best notice

practicable under the circumstances, including individual notice to all members who can be

identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Due process requires that

notice be "reasonably calculated, under all the circumstances, to apprise interested parties

of the pendency of the action and afford them an opportunity to present their objections."

In re National Football League Players Concussion Injury Litig., 821 F.3d 410, 435 (3d Cir.

2016) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct.

652, 94 L. Ed. 865 (1950)). The notice must "clearly and concisely state in plain, easily

understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii)

the class claims, issues, or defenses; (iv) that a class member may enter an appearance

through an attorney if the member so desires; (v) that the court will exclude from the class

any member who requests exclusion; (vi) the time and manner for requesting exclusion;

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2016 U.S. Dist. LEXIS 97188, * and (vii) the binding effect of a class judgment on members under Rule 23(c)-(3)." Fed. R. Civ. P. 23(c)(2)(B).

The notice provided to N14 Class members met those requirements. It described the proposed settlement, its terms, and the nature of the claim filed on behalf [*23] of the Class. See 92-4 Ex. A. It also described Class members' right to be excluded from the settlement, to object, and to be heard at the final fairness hearing. Id. at 1, 6, 7. The notice also advised Class members of the binding effect the settlement would have on individuals who did not opt out of the Class. Id. at 6. Though the hearing was rescheduled from its original date, see ECF No. 76, the notice informed Class members that "the date and time of the hearing are likely to change" and directed them to visit the settlement website or call the toll-free number for updated information. Id. at 7. Class members were also provided with email notice of the change in hearing date and claim submission deadlines. See ECF No. 107-1 ¶ 12.

Notice forms were emailed to 111,893 individuals and delivery failed for 631, for a 94 percent email success rate. ECF No. 107-1 ¶¶ 4-5. Notice forms were also mailed to 185,582 individuals, and 6,581 were returned as undeliverable, for a 96 percent success rate. Id. ¶¶ 3-3. The Court finds that the notice met the requirements of Fed. R. Civ. P. 23(c)(2)(B). See, e.g., Weissman, 2015 U.S. Dist. LEXIS 67477, 2015 WL 3384592, at *4 (Class notice was proper where Defendants mailed notice forms with 86 percent success rate).

III. The settlement is fair, reasonable, and adequate [*24]

A. Legal standard

District courts must review settlement terms in a class action and, "if the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The court "acts as a fiduciary, guarding the claims and rights of the absent class members." Ehrheart v. Verizon Wireless, 609 F.3d 590, 593 (3d Cir. 2010). The Third Circuit Court of Appeals identified

nine factors that bear on this analysis in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975):

- (1) the complexity and duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;
- (6) the risks of maintaining a class action;
- (7) the ability of the defendants to withstand a greater judgment;
- (8) the range of reasonableness of the settlement in light of the best recovery; and
- (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation.

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GM Truck Prods., 55 F.3d at 785-86 (citing Girsh, 521 F.2d at 157).

In addition to the Girsh factors, the Third Circuit encourages district courts to consider

additional factors, such as the probable outcome of a trial on the merits, the probable outcome of claims by other classes, and the reasonability of any provisions for attorneys'

[*25] fees. In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions ("Prudential"),

148 F.3d 283, 323 (3d Cir. 1998). The "Prudential considerations are just that, prudential."

In re Baby Products Antitrust Litig. ("Baby Products'), 708 F.3d 163, 174 (3d Cir. 2013).

Finally, the Third Circuit has guided that an important consideration is "the degree of direct

benefit provided to the class," including "the size of the individual awards compared to

claimants' estimated damages." Id.

Though a district court must vigorously protect the interests of absent class members, it

also owes deference to a settlement as the negotiated agreement of private parties. As the

Third Circuit explained, "[s]ettlements are private contracts reflecting negotiated

compromises. The role of a district court is not to determine whether the settlement is the

. are fair, reasonable and adequate when considered from the perspective of the class as

a whole." Id. at 173-74 (citation omitted).

B. Analysis

The Court finds that the Girsh factors and Prudential considerations weigh in favor of

approving the settlement.

1. Girsh factor one: Complexity and duration of litigation

The first Girsh factor considers the complexity and likely [*26] duration of litigation without

settlement. GM Truck Prods., 55 F.3d at 785. This factor favors approving a settlement

when resolution of the claims by trial would require "additional discovery, extensive pretrial

motions addressing complex factual and legal questions, and ultimately a complicated,

lengthy trial." Warfarin Sodium, 391 F.3d at 536. The action here, which has been pending

for over three years, would require the analysis of records from "hundreds of consumers,"

expert opinions on complex mechanical issues, and the resolution of claims

under federal law and the laws of several different states. ECF No. 92 at 20-21. The first Girsh factor favors final approval of the settlement.

2. Girsh factor two: reaction of the Class

The second Girsh factor "attempts to gauge whether members of the class support the settlement." *Prudential*, 148 F.3d at 318. Although the Third Circuit has warned that district courts should be "cautious about inferring support from a small number of objectors in a sophisticated settlement," *Warfarin Sodium*, 391 F.3d at 536 (quoting *GM Truck Prods.*, 55 F.3d at 812), courts typically "analyze this factor by counting the number of objectors and weighing the vociferousness of their objections," as well as by counting the number of Class members who submit claims. *Martina v. L.A. Fitness Intern., LLC*, 2013 U.S. Dist. LEXIS 145285, 2013 WL 5567157, at *5 (D.N.J. Oct. 8, 2013) (Walls, J.) (citing *Prudential*, 148 F.3d at 318; *GM Truck Prods.*, 55 F.3d at 812).

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Of the 186,031 N14 Class [*27] members, 5,310 submitted claims, 123 opted out, and 23

submitted objections.¹

ECF No. 107-1 ¶¶ 13-18. The percentage of Class members who submitted a claim is small, a factor that this Court has previously held may "cancel[] out" a

low objection rate. *Martina*, 2013 U.S. Dist. LEXIS 145285, 2013 WL 5567157, at *5-6. As

Plaintiffs point out, however, the low response rate in this case is perhaps expected:

according to Defendants, the defect rate in Class Vehicles is "in the single digits," so the

vast majority of Class members did not suffer harm and may have no reason to seek repair

or replacement of their timing chains or timing chain tensioners. *Id.* at 21 n.9.

1 Plaintiffs reference 20 total objections, excluding the objections of Richard Ellenbogen, ECF No. 78, Timothy Fitzgerald, ECF

No. 92-5 Ex. 11, and Donald Mann, ECF No. 104, for lack of standing because the three opted out of the N14 Class; the

objection of Shirley M. Stipe-Zendle, ECF No. 102, because objection is actually an erroneously filed claim; and the objection of

Marika Hamilton, ECF No. 107-2 Ex. 11 for unknown reasons; and including objections from Gerald Maloney and Sarah H.

Beeby that have not been filed on ECF or otherwise provided to the Court.

ECF No. 107-1 Ex. B. The Court considers the [*28]

23 objections that have been filed with or otherwise provided to the Court. Twenty-three Class members, or approximately 0.01 percent of Class, objected to the

settlement. Most of the objectors argue either that (a) the settlement's warranty extension

is inadequate because it does not cover their vehicles, or (b) the requirement that Class

members provide documentation of their vehicles' service history to receive repair

reimbursements is unduly burdensome. The Court considers the 23 Class member objections individually:

a. Objection of Kunal A. Mirchandani

Class member Kunal A. Mirchandani submitted an objection on February 29,

2016,

arguing that the settlement agreement puts an unreasonable burden on Class members to

provide documentation of the service histories of their Class Vehicles. ECF No. 75. Mr.

Mirchandani claims that the requirement that Class members document their

Vehicles'

maintenance and repair history to receive reimbursement is unfair to the owners of used

vehicles, who may not have the previous owners' service records, as well as

to individuals
who "may simply have discarded the records." Id. at 2-3. Although Mr.
Mirchandani
acknowledges that Class members may submit an affidavit [*29] of service
from a
mechanic in lieu of other documentation, he argues that mechanics are
unlikely to
remember servicing vehicles and that requiring Class members to obtain
multiple affidavits
if multiple mechanics have serviced a Vehicle is unreasonable. Id. at 3-4.
The Court agrees with Plaintiffs that the settlement's documentation
requirement is not
unreasonable. Plaintiffs claim that, even if individual mechanics do not
recall servicing
individual vehicles, "most, if not all, mechanics have access to a
database . . . which would
allow them to quickly and easily search the maintenance history of any given
car that had
service performed at that shop." ECF No. 92 at 22. The claims of 2,064 Class
members
have already been approved, demonstrating that the burden is not unduly
onerous. ECF
No. 107-1 ¶¶ 17-18. Finally, despite Mr. Mirchandani's claim that "Defendant
is in a better
position [than Class members] to research and review service records through
its own
dealership network," ECF No. 75 at 2, Plaintiffs claim that Defendants are
not in a better
position because they "do not have a central registry of dealer records or
access to them."
ECF No. 92 at 22.
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b. Objection of Jody Williams

Class member [*30] Jody Williams filed an objection to the settlement agreement on

March 10, 2016, arguing that the warranty extension provided by the settlement is too

short and will not protect her 2007 MINI Cooper S hard top if it begins to "show signs of the

timing chain problem in a year or two." ECF No. 77. Ms. Williams also states that she

contacted her local MINI dealership to have her vehicle inspected, but that the dealership

"won't even look at my vehicle unless it shows symptoms of the timing chain problem." Id.

at 1.

Plaintiffs do not deny that the warranty on Ms. Williams's vehicle, the very first model year

in the Class, has already expired even under the extended terms of the settlement. ECF

No. 92 at 22-23. The Court agrees with Plaintiffs, however, that the Court's job is "not to

determine whether the settlement is the fairest possible resolution." *Baby Products*, 708

F.3d at 173 (emphasis added). With regard to the amount of relief offered under the

settlement and the Class members receiving that relief, "lines must be drawn somewhere."

ECF No. 92 at 23 (quoting *Alin v. Honda Motor Co., Ltd.*, 2012 U.S. Dist. LEXIS 188223,

2012 8751045, at *12 (D.N.J. Apr. 13, 2012) (finding that class settlement with auto

manufacturer was reasonable where the "largest [*31] category of objections comes from

customers whose cars were too old, or had too many miles to be eligible for recovery

according to the lines drawn in the agreement)).

Ms. Williams does not convince the Court that the seven-year warranty provided by the

settlement, though perhaps not the fairest possible resolution, is unreasonable. The limited

warranty extension reflects the reality that cars decline in value over time. See, e.g., *In re*

Dispirito, 371 B.R. 695, 701 n.6 (Bankr. D.N.J. 2007) ("Whether a vehicle is driven 30,000

miles a year, or only on Sundays by an elderly parent to go back and forth to church, there

can be no dispute that a vehicle's value is likely to decrease daily."). A warranty extension

need not be indefinite to be reasonable.

In any event, the settlement provides Ms. Williams with other forms of

relief: as Plaintiffs point out, the settlement allows Class members to receive reimbursement for repairs and replacements on their timing chains and timing chain tensioners regardless of the age or mileage of the Class Vehicle, along with a graduated reimbursement for engine replacements. ECF No. 92 at 22. According to Plaintiffs, Ms. Williams and other Class members had notice of the alleged defects in their vehicles and were [*32] encouraged to seek free inspections and repairs long before the beginning of the claims period: Defendants instructed Class members to seek inspections of their vehicles in October 2013, informing them that any necessary timing chain and tensioner repairs would be done "at no cost" to the Class members, and MINI mechanics were instructed to provide inspections and repairs of the timing chain and timing chain tensioner free of charge. Id. at 22-23; see also Decl. Raymond P. Boucher in Support P. Mot. Attorneys' Fees, ECF No. 86-6 Ex. 1 (sample letter informing Class member that "your vehicle may have been fitted with a faulty chain tensioner which may lead to an insufficiently tightened timing chain," instructing Class member to "contact your authorized MINI dealer at your earliest convenience to arrange an appointment," and informing Class member that "the repair will be done at no cost to you"). That Ms. Williams's dealership allegedly refused to inspect her

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vehicle is troubling and may indicate non-compliance with the terms of the settlement agreement, but this does not affect the fairness, reasonability, or adequacy of the settlement itself.

c. Objection of Richard I. Ellenbogen

Richard I. Ellenbogen [*33] filed an objection on March 11, 2016, arguing that the settlement is unreasonable because the extended warranty does not cover vehicles, like his, that fall outside the time limit but have low mileage and may display defects in the future. ECF No. 78. Mr. Ellenbogen seeks either an extension of the warranty to 75,000 miles without regard to the number of years or a complete recall repair of all Class Vehicles. Id. Plaintiffs note that Mr. Ellenbogen submitted a written request for exclusion on June 22, 2016. See ECF No. 107-1 Ex. C (opt-out list identifying Mr. Ellenbogen). Because Mr. Ellenbogen has requested exclusion from the N14 Class, he no longer has standing to object to the settlement. In re Ins. Brokerage Antitrust Litig., 282 F.R.D. 92, 110 (D.N.J. 2012) ("The case law does not suggest that a class member requesting exclusion from a settlement may nonetheless object to that settlement.")

d. Objection of Jerry D. Phillips

Jerry D. Phillips filed an objection to the settlement on March 11, 2016, arguing that the service record documentation requirement is "particularly onerous" for the same reasons mentioned by Mr. Mirchandani, that MINI should turn over any service records it possesses to Class Members, and that the warranty extension is insufficient [*34] for the same reasons mentioned by Ms. Williams and Mr. Ellenbogen. ECF No. 79. For the reasons discussed, none of these arguments renders the settlement unfair, unreasonable, or inadequate.²

² Mr. Phillips also claims that "MINI sold their customers an engine containing parts that were 100% guaranteed to fail; the only thing uncertain was when it would fail." ECF No. 79 at 1 (emphasis in original). The Court's fairness analysis might be different if the failure of each Class Vehicle were guaranteed. As discussed, however, Plaintiffs acknowledge that the defect rate of the Class Vehicles is merely "in the single digits," so the engines in most Class Vehicles will not fail because of the defect at issue.

ECF No. 92 at 21.

e. Objection of Thomas Brischler

Thomas Brischler filed an objection on March 23, 2016, arguing again that the warranty extension is too short. ECF No. 80. Mr. Brischler acknowledges that, even though his vehicle does not fall under the extended warranty, he is eligible for reimbursement for timing chain and timing chain tensioner repairs or reimbursements, but states that he has not sought repairs because he will not be entitled to reimbursement if this Court rejects the [*35] settlement agreement. Id. at 1-2. Mr. Brischler seeks a warranty extension and an extension of the claims period after the effective settlement date. Id. at 2. Mr. Brischler is correct that the finality of the settlement depends on the Court's approval, but this is not reason for the Court to withhold its approval.

f. Objection of Anthony Mazarella

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Anthony Mazzarella filed an objection on April 8, 2016, arguing that his 2007 Base/Standard MINI Cooper, which is not a Class Vehicle, should be included in the N14

Class. ECF No. 81. As Plaintiffs argue, Mr. Mazzarella has no standing to make an

objection on the basis of this vehicle because it is not a Class Vehicle.

ECF No. 92 at 24.

g. Objection of Jenean C. Cordon

Jenean C. Cordon filed an objection on April 12, 2016, arguing that the warranty should be

extended to ten years after the in-service date. ECF No. 82. For the reasons discussed,

the Court finds that this does not demonstrate the settlement agreement is unreasonable,

unfair, or inadequate.

h. Objection of Oona Robinson

Oona Robinson filed an objection on April 15, 2015, arguing that the settlement should

"compensate people fully for the financial impact incurred" as a result of the alleged

defects. [*36] ECF No. 83. Ms. Robinson seeks a payment of \$49,500, representing

approximately \$4,500 in repairs for her Class Vehicle over five years of ownership and

\$45,000 that she spent on a new car to replace her Class Vehicle. To repeat, Ms.

Robinson is entitled, with limitations, to reimbursement for repairs and replacement of the

timing chain, tensioner, and engine. See ECF No. 92. As to Ms. Robinson's request that

Defendants be required to compensate Class members in full for the purchase of

"replacement" vehicles, the Court finds that this would be unreasonable: not only, as

Plaintiffs argue, does this argument "not take into account the nature of a settlement,"

which generally involves some sort of compromise, ECF No. 92 at 25, but it would provide

a windfall to Class members whose replacement vehicles were more expensive than their

Class Vehicles. This requirement would also ignore that, because vehicles decline in value

with time and mileage, individuals are always likely to spend some amount of money when

purchasing a new vehicle to replace an old one, even if the old vehicle is free of defects.

i. Objection of Gary Kaufman

Gary Kaufman filed an objection on April 11, 2016, arguing that [*37] the warranty

extension is inadequate because it does not cover his vehicle. ECF No. ■. It is unclear whether, at the time he filed the objection, Mr. Kaufman had taken his vehicle in for repairs or whether he had declined to repair it, believing that he would have to pay for engine repairs himself. Id. at 1. In any event, the Court repeats that Mr. Kaufman, like all Class Members, is eligible for reimbursement for part repairs and replacements made before the effective date of the settlement. See ECF No. 92 at 25.

j. Objection of LaTonya Curtis

LaTonya Curtis filed an objection on May 16, 2016, arguing that the general terms of the settlement are insufficient. ECF No. 85. Ms. Curtis is the owner of a 2010 MINI Cooper Clubman S, which is not an N14 Class Vehicle. Ms. Curtis lacks standing to challenge the settlement.

k. Objection of Timothy Fitzgerald

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Timothy Fitzgerald submitted an objection to Defendants on June 3, 2016, arguing, for reasons already discussed, that the warranty extension is not long enough. ECF No. 92-5

Ex. 11. In the event the Court does not extend the warranty, Mr. Fitzgerald requests to be excluded from the N14 Class. Id. at 1. The Court grants this request.

1. Objection of James. [*38] M. Ward

On June 13, 2016, James M. Ward filed an objection to the settlement, arguing that the settlement should include compensation for Class members who sold their Class Vehicles

at a loss after repairing the engine. ECF No. 97. Mr. Ward seeks compensation for "all or

part of the \$18,559.43" price at which he bought his Class Vehicle. Id. at 1. Again, this

objection ignores the reality that even non-defective cars decline in value after their

purchase. As discussed, Mr. Ward is also entitled to reimbursement for repairs and

replacements made on his Class Vehicle.

m. Objection of Jamye C. Brown

On June 20, 2016, Jamye C. Brown filed an objection to the settlement agreement,

arguing again that the extended warranty is too short and does not cover her Class Vehicle

and that the engine repair provision is unreasonable. ECF No. 96. Ms. Brown states that,

in response to MINI's 2013 recall, she brought her vehicle to a "qualified Mini dealership,"

where the timing chain tensioner was repaired free of charge. See id. at 1,

5. Damage to

the engine rendered the vehicle unusable, however, and Ms. Brown did not replace the

engine because she would be entitled to reimbursement for only ten percent of the cost.

See [*39] id. at 4, 5 (2009 model, 57,125 miles); ECF No. 92 at 13 (engine repair or

replacement schedule).

Again, the Court agrees with Plaintiffs that the reimbursement schedule and warranty

limitation reflect a need to "draw the line" somewhere and the reality that vehicles decline

in value over time.

n. Objection of Gregory Munro

On June 20, 2016, Gregory Munro filed an objection to the settlement. ECF No. 98. Mr.

Munro, a law professor, argues that (a) the warranty extension is not long enough to

provide relief to owners of old or high mileage Class Vehicles under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., (b) there has been "inadequate discovery into the conduct of defendants" regarding the alleged defects and defendants' knowledge of the defects, and (c) the settlement does not include reimbursement for other expenses, including towing charges, travel expenses, and the cost of substitute vehicles, that might be available as "consequential damages" in a tort action. Id. at 1. Mr. Munro also argues that the settlement agreement "does not address" an allegedly defective oil system in the Class Vehicles "that may have been a substantial factor in the timing chain failures." Id. at 4-5.

Mr. Munro is correct that the owners of Class Vehicles [*40] who repaired or replaced failed engines or who sold their vehicles at a loss when the vehicles had certain combinations of mileage and age, see ECF No. 92 at 13, 14, are not entitled to compensation for the engine repairs or sales under the terms of the settlement. ECF No.

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98 at 2, 4. Mr. Munro claims this is unreasonable because the Magnuson-Moss Warranty

Act "does not place mileage restrictions on the remedies for damages," so the settlement

does not provide owners of high-mileage or older vehicles with the maximum award that

they could collect under the statute. *Id.* at 2. Mr. Munro also argues that the settlement

does not allow Class members to collect the "myriad consequential damages," such as

towing and travel charges, that are sometimes available as tort remedies. *Id.* at 1. The

Court repeats, however, that settlements need not provide maximum relief to be

reasonable and fair. "Settlements are private contracts reflecting negotiated compromises," including the elimination of risk for both parties associated with litigation,

and they need not be the "fairest possible resolution." *Baby Products*, 708 F.3d at 173. As

the Court will explain, the eighth and ninth *Girsh* factors require the Court to weigh the

"range of reasonableness [*41] of the settlement in light of the best recovery," against the

"the range of reasonableness of the settlement in light of all the attendant risks of

litigation." *GM Truck Prods.*, 55 F.3d at 785. The Court analyzes the fairness of the

settlement in light of these factors, not simply by looking at the "best recovery" alone.

Mr. Munro also suggests that the settlement is unreasonable because the Parties did not

engage in sufficient factual discovery. ECF No. 98 at 4. Mr. Munro claims that he

submitted information about his vehicle to Class Counsel and was told that counsel would

be "unable to provide any assistance." *Id.* As a result, he is "dubious about whether

enough outreach" was performed "to allow any kind of a statistical analysis of the extent of

the problem to advise the settlement." *Id.* The Court will not question the veracity of

Plaintiffs' claim that "Plaintiffs' Counsel not only had the benefit of the input and service

records from their approximately two dozen clients but also communicated with hundreds

of consumers . . . who had experienced the defect." ECF No. 69-3 ¶ 11. In any event, even

if Class Counsel did not select Mr. Munro as a Named Plaintiff, Class Counsel did

communicate with Mr. Munro and did [*42] receive information from him about his vehicle.

Mr. Munro also speculates that because "defendants made no responses to the discovery propounded to them and no depositions were taken," Plaintiffs had little factual basis for their settlement. ECF No. 98 at 4. As the Court will discuss in its analysis of Girsh factor three, however, other courts have found this amount of discovery adequate to support a settlement agreement.

Finally, Mr. Munro objects to the settlement because it does not require Defendants to disclose that the Class Vehicles featured an allegedly defective oil system, including dip sticks that are "difficult if not impossible to read." ECF No. 98 at 4. Mr. Munro claims this oil system "may have been a substantial factor in the timing chain failures." Id. This allegation seems to stem entirely from Mr. Munro's own experience seeking service for his own vehicle. Id. at 3-4. Plaintiffs' second amended complaint does not allege that the oil systems in any of the Class Vehicles were defective, and Plaintiffs deny receiving any notice of allegedly defective oil systems from the mechanic they retained as an expert in this cast. ECF No. 53; ECF No. 107 at 6. The Court will not require [*43] Defendants to make admissions about subjects that are not at issue in the case.

o. Objection of John Nemelka

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John Nemelka filed an objection to the settlement date June 15, 2016, objecting to the caps on reimbursements for Class members whose timing chain or timing chain tensioners were repaired at independent service centers. ECF No. 100. Mr. Nemelka states that, in December 2015, he had his Class Vehicle repaired at an independent service center, rather than at his local BMW dealership, to "save money." Id. at 1. The repair cost \$1,778.45. Id. Mr. Nemelka correctly states that, had the repair been done at the BMW dealership, he would be entitled to a full reimbursement under the settlement terms. Because the repair was conducted by a third party, he is entitled to only \$970.

To repeat, Defendants informed Class members of the alleged timing chain and tensioner defect in October 2014 and instructed them to seek repairs, free of charge (and subject to a full reimbursement), at authorized MINI service centers. See ECF No. 86-6 Ex. 1.

Plaintiffs explain that Defendants required a cap on reimbursements for repairs from thirdparty service centers because they have no control over the prices charged [*44] at thirdparty centers. Particularly in light of the early disclosure about repairs at authorized MINI service centers, the Court finds that the cap on reimbursements for repairs at independent service centers is not unreasonable.

p. Objection of James Jones

James Jones submitted an objection, dated June 19, 2016, that was filed in this Court on June 29, 2016. ECF No. 101. Mr. Jones objects to the settlement on three grounds: first, that the settlement does not provide relief for owners of Class Vehicles that have not yet displayed any defects; second, that the documentation requirement for reimbursement is unduly burdensome, especially for the owners of used Class Vehicles; and third, that the final approval hearing should not be held until the deadline to submit objections has expired.

The Court disagrees with Mr. Jones's first and second objections for the reasons already discussed; the settlement allows Class members to receive repairs and replacements of

allegedly defective parts even if their vehicles have not displayed damage, and Class members are in a better position than Defendants to document their vehicles' histories.

With regard to the third objection, the fairness hearing [*45] was held on July 14, 2016, after the July 1, 2016 deadline for N14 Class members to submit objections under the

Court's supplemental notice program. See ECF No. 89.

q. Objection of Shirley M. Stipe-Zendle

Docket number 102, filed as an objection to the settlement on June 29, 2016, appears

instead to be a claim for reimbursement for timing chain tensioner/timing chain repair or

replacement submitted by Class member Shirley M. Stipe-Zendle. ECF No. 102.

The document contains no objection to the settlement. Plaintiffs state that they have provided

the document to the Claims Administrator for processing as a claim. ECF No. 107 at 7.

r. Objection of Julie A. Clifford

Julie Ann Clifford submitted an objection to the settlement that was filed on June 29, 2016.

ECF No. 103. Ms. Clifford objects to the settlement on three grounds: (a) the documentation requirement for engine repair reimbursement unreasonably requires the

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servicing mechanic to acknowledge that the problems were caused by a defective timing chain, something that MINI has "every incentive not to confess," id. at 1; (b) the total reimbursement amounts are unreasonably low; and (c) the claims period is unreasonably short.

Although it is true [*46] that Defendants could theoretically avoid having to reimburse any

Class members for repairs made at MINI servicing centers by instructing mechanics not to attribute engine failure to timing chain or tensioner defects, Defendants' voluntary October

2014 acknowledgment that Class vehicles "may" have these defects suggests that this is

unlikely. See ECF No. 86-6 Ex. 1. In any event, Class members whose claims are denied

by the Settlement Administrator for lack of documentation may appeal the decision to a

Special Master, giving them some recourse for unreasonable denials. ECF No. 92 at 16;

ECF No. 69-3 Ex. 1 ¶ III.E.3.

For reasons discussed, the Court finds that the reimbursement amounts included in the settlement are not unreasonably low. In any event, Ms. Clifford states that her total cost of repairs to date is actually lower than the amount she is entitled to be reimbursed. ECF No.

103 at 2. Though she will not be reimbursed for incidental expenses, Ms. Clifford may

receive a full reimbursement for the repairs and replacements she has paid for.

The Court disagrees that the claims period is unreasonably short. Under 28 U.S.C. §

1715(d), the Court may grant final approval of a proposed settlement as early [*47] as 90

days after notice is given to the appropriate federal official and state officials of each state

in which class members reside. 28 U.S.C. § 1715(d). Although Plaintiffs initially requested

a claims period of 90 days, see ECF No. 69-2 ¶ 8, the Court extended this period to 120

days following the Court's preliminary approval of the settlement. See ECF No. 72 at 1-2.

s. Objection of Donald Mann

Donald Mann submitted a notice that was filed with this Court on June 29, 2016. ECF No.

104. Mr. Mann incorrectly appears to assume that the settlement "offers a reimbursement

of \$850 less a reduction for age and mileage" for timing chain repairs conducted at an authorized MINI service center and objects that the retail cost of a timing chain tensioner is less than the amount quoted to him by the service center to examine his Class Vehicle. Id.

at 1. In any event, Mr. Mann states his intent to be excluded from the N14 Class for purposes of this settlement, so he has no standing to object to the settlement. Id.

t. Objection of Robin Mackey

Robin Mackey submitted an objection, dated July 1, 2016, that was filed in this Court on

July 5, 2016. ECF No. 106. Mr. Mackey objects to the settlement's service history

documentation [*48] requirement; arguing specifically that documentation of routine oil

changes is irrelevant to the claims at issue. Id. The Court agrees with Plaintiffs and

Defendants that documentation of the routine maintenance of Class Vehicles is relevant to

claims of defects and damage in those vehicles, see ECF No. 107 at 7-8, and repeats that

this documentation requirement is not unduly burdensome.

u. Objection of Kimberly Winkler

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Kimberly Winkler submitted an objection, dated June 28, 2016, that was filed in this Court

on July 5, 2016. ECF No. 106-1. Mr. Winkler describes a litany of problems with his Class

Vehicle, including timing chain malfunctions, and seeks an extension of his warranty and

reimbursement for out-of-pocket expenses and other costs. Id. at 2. Mr. Winkler does not

object to anything specific about the terms of the settlement, and

Plaintiffs point out that

because his extended warranty does not expire until 2017, Mr. Winkler is already entitled

to reimbursement for all past repairs. ECF No. 107 at 8.

v. Objection of Marika Hamilton

Marika Hamilton mailed an objection to counsel for Defendants on March 14, 2016. ECF

No. 107-2 Ex. 11. Ms. Hamilton alleges damage to her Class Vehicle's timing [*49] chain

tensioner -- a repair or replacement for which she is entitled to full reimbursement under

the settlement -- but does not otherwise object to the settlement.

w. Objection of Susan Von Struensee

Susan Von Struensee submitted an objection to counsel for Defendants on June 22, 2016.

ECF No. 107-2 Ex. 12. Ms. Von Struensee objects to the settlement on the grounds that

(a) she did not receive notice of the settlement and (b) Class members are unreasonably

required to submit documentation that they changed the oil in their Class Vehicles at least

once every 2,000 miles, even though dealers only advise owners to seek oil changes

every 15,000 or 10,000 miles. Id. at 1. With regard to the first objection, the Court repeats

that CAA provided notice by mail to over 96% of Class members and by email to over

94%. 107-1 ¶¶ 4, 7. Plaintiffs explain that they discussed Ms. Struensee's second

objection with her by phone and clarified that Class members seeking reimbursement are

not required to submit documentation of oil changes every 2,000 miles. ECF No. 107 at 8;

see also ECF No. 69-3 Ex. 1 Ex. B at 5 (Claim form, explaining that Class members must

provide evidence of "regular oil changes (within 2,000 [*50] miles of recommended

schedule)").

The 23 objectors make arguments that raise several legitimate Girsh factor considerations.

Ultimately, however, because of the relatively small number of objections and exclusions compared with the total number of Class members, the reaction of the N14 Class to the settlement supports a finding of fairness.

3. Girsh factor three: State of proceedings and amount of discovery completed
The third Girsh factor "captures the degree of case development that class counsel had accomplished prior to the settlement," so that the Court may "determine whether counsel had an adequate appreciation of the merits of the case before negotiating."
Warfarin
Sodium, 391 F.3d at 537.

Here, according to Plaintiffs, the Parties reached their settlement after (a) the Court ruled on a motion to dismiss the first amended complaint, see ECF No. 39; (b) Plaintiffs filed a second amended complaint, ECF No. 53; (c) the Parties exchanged initial disclosures and discovery requests; and (d) the Parties engaged in a full-day mediation with the Honorable Theodore Katz (Ret.) and a settlement conference with Magistrate Judge Cathy L. Waldor.
ECF No. 92 at 26. The Court finds that all Parties have an "adequate appreciation [*51] of
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the merits of the case," so this factors weighs in favor of settlement. See Martina, 2013

U.S. Dist. LEXIS 145285, 2013 WL 5567157, at *6 (finding adequate appreciation of merits

when parties "exchanged initial disclosures and arrived at the Settlement after negotiation

before a retired federal judge.").

4. Girsh factors four and five: the risks of establishing liability and damages

The fourth and fifth Girsh factors require the Court to balance the Parties' relative

likelihood of success in establishing liability and damages against the immediate benefits

derived from a settlement. See Prudential, 148 F.3d at 319. The Court weighs these

factors against the best and worst possible outcomes for Plaintiffs. In re Cendant Corp.

Litig., 264 F.3d 201, 237-39 (3d Cir. 2001).

Although Plaintiffs survived an initial motion to dismiss, see ECF No. 39, the Court has not

yet ruled on the substantive issues underlying the litigation -- namely, whether Defendants

caused defective timing chain tensioners to be installed in the Class Vehicles and whether

they are liable for damages. The Court lacks the factual record necessary to determine

Plaintiffs' likelihood of success on the merits, but Plaintiffs claim that "all parties," including

Defendants, "remain confident of their chance at prevailing at trial." ECF No. 92 at 26-27.

Plaintiffs state that [*52] their best possible outcome would likely involve "years of

litigation," including an appeal to the Third Circuit after Plaintiffs received a favorable

decision in this Court. Id. at 27. This would require "a very substantial expenditure in

attorneys' fees and costs by both parties," but would likely "not result in an increased

benefit to the Class." Id. Though it is difficult to accurately estimate Plaintiffs' likelihood of

success in establishing either liability or damages, the Court finds that the fourth and fifth

Girsh factors weigh in favor of approving the settlement.

5. Girsh factor six: the risks of maintaining a class action

The sixth Girsh factor "measures the likelihood of obtaining and keeping a class

certification if the action were to proceed to trial. A district court retains the authority to

decertify or modify a class at any time during the litigation if it proves

to be unmanageable." Warfarin Sodium, 391 F.3d at 537 (citing Prudential, 148 F.3d at 321).

Because of this, the "specter of decertification makes settlement an appealing alternative."

O'Brien v. Brain Research Labs, LLC, 2012 U.S. Dist. LEXIS 113809, 2012 WL 3242365,

at *18 (D.N.J. Aug. 9, 2012).

Plaintiffs maintain -- and the Court agrees, at this point -- that this action could be properly

maintained as a class action. ECF No. 92 at 27. Although Plaintiffs speculate that there are

"myriad [*53] risks of maintaining class action status," including potential arguments

Defendants may raise involving individualized issues, id. at 28, the Court is not convinced

that this factor weighs in favor of approving the settlement.

6. Girsh factor seven: the ability of Defendants to withstand a greater judgment

The seventh Girsh factor considers "whether the defendants could withstand a judgment

for an amount significantly greater than the [s]ettlement." In re Cendant, 264 F.3d at 240.

Still, the fact that a defendant "could afford to pay more does not mean that it is obligated

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to pay any more than what . . . class members are entitled to under the theories of liability that existed at the time the settlement was reached." Warfarin Sodium, 391 F.3d at 538.

Here, as Plaintiffs state, "Defendants operate a successful, well-known, multi-national automobile business." ECF No. 28. Even if all 5,310 Class members who submitted claims

were entitled to the maximum claim amounts for each type of repair, replacement, or sale, the total amount of the settlement would likely be insignificant when compared with

Defendants' total revenues. This factor does not favor approval of the settlement.

7. Girsh factors eight and nine: the reasonableness of the settlement in light of the

best recovery [*54] and all the attendant risks of litigation

The final two Girsh factors "test two sides of the same coin: reasonableness in light of the

best possible recovery and reasonableness in light of the risks the parties would face if the

case went to trial." Warfarin Sodium, 391 F.3d at 538 (citing Prudential, 148 F.3d at 322).

The Court determines "whether the settlement represents a good value for a weak case or

a poor value for a strong case." Id. In cases where plaintiffs seek primarily monetary relief,

"the present value of the damages plaintiffs would likely recover if successful,

appropriately discounted for the risk of not prevailing, should be compared with the amount

of the proposed settlement." Id. (quoting Prudential, 148 F.3d at 322).

In the second amended complaint, Plaintiffs seek, among other things, (a) an order

requiring Defendants to notify Class members of the alleged timing chain tensioner defect

and to repair the defect or reimburse Class members for the repairs; (b) an injunction

requiring Defendants to stop refusing to repair the defect, at no charge; (c) an award to

Plaintiffs and Class members of compensatory, exemplary, and/or statutory damages; and

(d) an award of restitution. ECF No. 53 ¶ 338.

Although the settlement does not provide Class members with [*55] damages, it does

provide Class members with much of the relief they seek: (a) notice of the alleged defect,

provided at the expense of Defendants; (b) free repairs or full reimbursement for repairs of

the timing chain and timing chain tensioner; (c) full or partial payment for engine repairs for some, but not all, Class Vehicles, as determined by vehicle mileage and age; (d) a warranty extension that provides an extended period of coverage for some, but not all, Class Vehicles, as determined by vehicle mileage and age; and (e) full or partial reimbursement for some, but not all, Class members who sold their un-repaired Class Vehicles at a loss, as determined by vehicle mileage and age. See ECF No. 69-3 Ex. A at 3-4.

As the Court has discussed, several Class members object that the settlement provides fewer benefits to the owners of high-mileage or older Class Vehicles than to the owners of new, low-mileage vehicles. See, e.g., ECF Nos. 77-80, 82, 84, 92-5 Ex. 11, 96, 98. This is true, but the Court repeats that the line must be drawn somewhere. Because the value of vehicles decreases with age and mileage, see *Dispirito*, 371 B.R. at 701 n.6, the Court finds that the settlement is reasonable in light of Plaintiffs' [*56] original requests for relief and the not insubstantial chance that Plaintiffs would not prevail on all of their claims at trial. Girsh factors eight and nine weigh in favor of granting final approval to the settlement.

8. Prudential considerations
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The Prudential considerations -- the probable outcome of a trial on the merits, the probable outcome of claims by other classes, and the reasonability of any provisions for attorneys' fees -- also weigh in favor of approving the settlement. 148 F.3d at 323. As discussed, the Court cannot estimate the probable outcome of a trial on the merits for the N14 Class or for the owners of N12 vehicles because it has not yet ruled on any dispositive issues, but both Parties represent that they "remain confident of their chance at prevailing at trial." ECF No. 92 at 26-27. As the Court will discuss, the attorneys' fees sought by Plaintiffs are reasonable. Most relevant for the Prudential consideration, Plaintiffs represent that the settlement is not limited by a fixed amount -- the total amount Defendants pay will be determined by the claims submitted by Class members -- and the fees and expenses awarded to Class Counsel, along with the incentive awards granted to the Named [*57] Plaintiffs, will not reduce the amount available for Class members. ECF No. 92 at 29.

The Court finds that the Prudential factors weigh in favor of approval of the settlement.

9. Baby Prods.: the degree of direct benefit provided to the class
The Court also considers the "degree of direct benefit provided to the class," including the "number of individual awards compared to both the number of claims and the estimated number of class members, the size of the individual awards compared to claimants' estimated damages, and the claims process used to determine individual awards." Baby

Prods., 708 F.3d at 174.

The Court repeats that 5,310 of 186,031 Class members have submitted claims. Though

this is a relatively small percentage, but Plaintiffs and Defendants estimate that fewer than ten percent of Class Vehicles have actually exhibited the alleged defects, potentially explaining why many Class members did not submit claims. ECF No. 92 at 21.

Of the 5,310 Class members who have submitted claims, all who submit sufficient documentation and are eligible for awards should receive rewards; the total amount paid by Defendants to Class members is not limited by a fixed fund amount, nor will the attorneys'

fees and costs

or [*58] awards granted to the Named Plaintiffs reduce the amount available to Class

Members. ECF No. 92 at 29-30. This analysis favors approval of the settlement.

After considering all of the factors, the Court finds the proposed settlement fair, reasonable, and accurate.

IV. Attorneys' fees

In the settlement, Plaintiffs agree not to seek an award of attorneys' fees and expenses in

an amount greater than \$2,320,000, and Defendants agree not to object to an award of up

to \$1,820,000. ECF No 69-3 Ex. 1 ¶ VIII.B. The settlement also provides that Defendants

will not oppose service awards of \$4,000 each to the Named Plaintiffs serving as N14

Class Representatives. Id. VIII.C.

Plaintiffs now seek service awards for eighteen Named Plaintiffs and \$2,320,000 in

attorneys' fees and expenses. ECF No. 86. Defendants do not oppose the service awards

but argue that the Court should award Plaintiffs only \$1,820,000 in attorneys' fees and

expenses. ECF No. 90. The Court now determines whether Plaintiffs' request is reasonable.

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A. Legal standard

Federal Rule of Civil Procedure 23(h) provides that, "[i]n a certified class action, the court

may award reasonable attorney's fees that are authorized by law or by the parties'

agreement." Fed. R. Civ. P. 23(h). A "thorough judicial [*59] review of fee applications is

required in all class action settlements." GM Truck Prods., 55 F.3d at 819.

"Determining an

appropriate award is not an exact science," and the "facts of each

individual case drive the

amount of any award." In re AremisSoft Corp. Sec. Litig. ("AremisSoft"), 210 F.R.D. 109,

128 (D.N.J. 2002).

The Third Circuit has established two methods for evaluating an award of attorneys' fees:

the percentage-of-recovery method, which involves giving attorneys a portion of the total

damages awarded to plaintiffs, and the lodestar method, which involves

multiplying the

number of hours reasonably worked on a case by the reasonable billing rate

for the

services. Prudential, 148 F.3d at 333; In re Ins. Brokerage Antitrust Litig.

("Ins.

Brokerage"), 579 F.3d 241, 280 (3d Cir. 2009) (citing In re Rite Aid Corp.

Sec. Litig. ("Rite

Aid"), 396 F.3d 294, 302 (3d Cir. 2005)). The percentage-of-recovery method

is generally

avored in cases involving a common fund, while the lodestar method "is more commonly

applied in statutory fee-shifting cases." Prudential, 148 F.3d at 333. The

lodestar method

may also be applied "in cases where the nature of the recovery does not

allow the

determination of the settlement's value necessary for application of the

percentage-of-recovery

method." Id. (citing GM Truck Prods., 55 F.3d at 821). The court should

perform a

"cross-check" by comparing the fee award [*60] calculated under the chosen

method with

the award calculated under the alternative method. Ins. Brokerage, 579 F.3d

at 280 (citing

Rite Aid, 396 F.3d at 300).

"The party seeking attorney's fees has the burden to prove that its request for attorney's

fees is reasonable.'" Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir.

1990) (quoting

Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933, 76 L. Ed. 2d 40

(1983)). "In a

statutory fee case, the party opposing the fee award then has the burden to challenge . . .

. . . the reasonableness of the requested fee." Id. (citing *Bell v. United Princeton Props., Inc.*, 884 F.2d 713 (3d Cir. 1989)).

B. Analysis

1. The Court applies the lodestar method of fee calculation

The Court agrees with all Parties that the lodestar method is the proper method of fee

calculation for this matter. See ECF No. 86 at 17; ECF No. 90 at 1.

Plaintiffs bring a cause

of action on behalf of the entire N14 Class under the Magnuson-Moss Warranty Act, which

provides for statutory fee-shifting. ECF No. 86 at 17 (citing 15 U.S.C. § 2310(d)(2)

(allowing consumers to recover "a sum equal to the aggregate amount of cost and

expenses (including attorneys' fees based on actual time expended) determined by the

court to have reasonably incurred by the plaintiff"). The lodestar method is also

appropriate because the settlement award to N14 Class members also does not consist of

a single, predetermined, common fund from which a percentage-of-recovery can [*61] be

easily calculated. Instead, the settlement includes a "non-monetary" provision -- the

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warranty extension -- along with monetary awards that will not be calculated in the

aggregate until all claim submission periods have ended and Defendants have processed

the claims. ECF No. 86 at 18.

2. The lodestar calculation supports an award of between \$1,917,673.40 and \$2,320,000 in fees and expenses

Plaintiffs seek attorneys' fees and expenses in the total amount of \$2,320,000, which is

31.5 percent less than their lodestar calculation of \$3,387,328.75. ECF No. 86 at 22.3

Defendants do not argue that Class Counsel is entitled to less than the lodestar amount,

but instead argue that Plaintiffs' \$3,387,328.75 lodestar calculation is itself incorrect, based

on unreasonably high billing rates and insufficient documentation of the hours reportedly

billed by Class Counsel. ECF No. 90 at 1.

3 In their reply brief in further support of their motion for attorneys' fees, Plaintiffs submit that this sum has increased by an

additional \$113,606. ECF No. 105 at 1, 1 n.1 (citing *Norton v. Wilshire Credit Corp.*, 36 F. Supp. 2d 216, 219 (D.N.J. 1999)

("Prevailing parties may also collect reasonable attorney's fees for time spent preparing the fee petition.") (citing *Institutionalized*

Juveniles v. Secretary of Pub. Welfare, 758 F.2d 897, 924-25 (3d Cir. 1985)). Because Defendants [*62] address the hours

and billing rates reported in Plaintiffs' original motion, and because this calculation adequately supports the award Plaintiffs

seek, the Court performs its analysis using the hours and billing rates reported in the original motion.

The Court calculates the lodestar amount by multiplying the number of hours "reasonably

worked" on a client's case by a "reasonable hourly billing rate for such services based on

the given geographical area, the nature of the services provided, and the experience of the

attorneys." *Ins. Brokerage*, 579 F.3d at 280 (quoting *Rite Aid*, 396 F.3d at 302). "To

examine the lodestar factor properly, a Court should make explicit findings about how

much time counsel reasonably devoted to a given matter, and what a reasonable hourly

fee would be for such services." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 199200

(3d Cir. 2000) (citations omitted).

With regard to the hours worked by class counsel, the court may exclude from its

calculation hours that are "not reasonably expended," such as hours attributable to overstaffing,

hours that appear excessive in light of the experience and skill of the lawyers, and hours that are redundant or otherwise unnecessary, as well as hours that are not "adequately documented." Norton v. Wilshire Credit Corp., 36 F. Supp. 2d 216, 219 (D.N.J. 1999) (Walls, J.) (citing Hensley at 433-34). Although a "fee petition should [*63] include 'some fairly definite information as to the hours devoted to various general activities, e.g., pretrial discovery, settlement negotiations and the hours spent by various classes of attorneys, e.g., senior partners, junior partners, associates," Rode, 892 F.2d at 1190 (quoting Lindy Bros. Builders, Inc. of Phila. v. American Radiatory & Standard Sanatory Corp., 487 F.2d 161, 167 (3d Cir. 1973)), "it is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney." Id. To determine whether an attorney's billing rate is reasonable, a court "should assess the experience and skill of the prevailing party's attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." Id. (citations omitted).

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Local Civil Rule 54.2, which governs attorneys' fee applications in "all actions in which a

counsel fee is allowed by the Court or permitted by statute," requires counsel to submit

affidavits or other documents along with their motion for attorneys' fees that set forth:

(1) the nature of the services rendered, the amount of the estate or fund in court, if any, the responsibility assumed, the results obtained, any particular novelty or difficulty about the [*64] matter, and other factors pertinent to the evaluation of the services rendered;

(2) a record of the dates of services rendered;

(3) a description of the services rendered on each of such dates by each person of that firm including the identity of the person rendering the service and a brief description of that person's professional experience;

(4) the time spent in the rendering of each of such services; and

(5) the normal billing rate of said persons for the type of work performed.

L.Civ. R. 54.2(a). Local Civil Rule 54.2(c) permits district courts to order that plaintiffs need

not provide one or more of the items in L. Civ. R. 54.2(a) in order to receive attorneys' fees.

"After arriving at this lodestar figure, the district court may, in certain circumstances, adjust the award upward or downward to reflect the particular circumstances of a given case."

Yong Soon Oh v. AT&T Corp., 225 F.R.D. 142, 146 (D.N.J. 2004). "All of these calculations should be reduced to writing." Id. Courts frequently apply a

"lodestar multiplier," which "attempts to account for the contingent nature or risk involved in a

particular case and the quality of the attorneys' work" by increasing the attorneys' fee

awarded beyond the lodestar amount. Ins. Brokerage, 579 F.3d at 280 (quoting Rite Aid,

396 F.3d at 305-06). This multiplier "need not fall within any pre-defined range, provided

that [*65] the District Court's analysis justifies the reward." Id. (quoting Rite Aid, 396 F.3d

at 307).

a. Class Counsel billable hour and rate submissions

Plaintiffs calculate a lodestar amount of \$3,387,328.75 for 5,100.75 hours of time

expended by attorneys and paralegals at nine Class Counsel law firms. ECF No. 86-6 ¶

29. In support of this calculation, Plaintiffs submit signed declarations from supervising

attorneys at each of the nine Class Counsel firms detailing (a) the billing

rates for partners, associates, and paralegals at the firm; (b) the total hours billed by each individual; (c) the relevant experience of the firm and the billing attorneys; (d) a breakdown of the billable hours by each partner, associate, and paralegal into eleven general categories of work, and (e) a breakdown of expenses.⁴

See ECF No. 86-6; Decl. Bryan L. Clobes in Support.

P. Mot. Attorneys' Fees, ECF No. 86-2; Decl. David S. Markun in Support. P. Mot.

Attorneys' Fees, ECF No. 86-3; Decl. Jeffery A. Koncius in Support. P. Mot. Attorneys'

Fees, ECF No. 86-4; Decl. John A. Yanchunis in Support. P. Mot. Attorneys' Fees, ECF

No. 86-5; Decl. Tina Wolfson in Support. P. Mot. Attorneys' Fees, ECF No. 86-7; Decl.

William J. Pinilis in Support. [*66] P. Mot. Attorneys' Fees, ECF No. 86-8.

⁴ The firms break down their work into: (1) "Analysis/Strategy/Attorney Meetings," (2) "Case Management," (3) "Court Appearance," (4) "Discovery," (5) "Document Review," (6) "Experts -- Work or Consult," (7) "Client Meeting," (8) "Research," (9) "Fact Investigation/Development," (10) "Pleadings/Motions," and (11) "Settlement." See, e.g., ECF No. 86-2 Ex. 1.

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Cafferty Clobes Meriwether & Sprengel LLP reports a total of 509.6 billable hours from

eight attorneys and two paralegals with billing rates between \$240 and \$750 per hour, for a

total lodestar amount of \$335,975.00. ECF No. 86-2 ¶ 7 (listing billing rates and hours

billed of individual attorneys and paralegals). The firm also reports litigation expenses of

\$9,626.66. Id. ¶ 11. Markun Zusman Freniere & Compton, LLP reports a total of 976.50

billable hours from eight attorneys and one paralegal with billing rates between \$250 and

\$650 per hour, for a total lodestar amount of \$574,325.00. ECF No. 86-3 ¶ 7. The firm also

reports litigation expenses of \$47,192.00. Id. ¶ 11. Kiesel Law LLP reports a total of

1,572.1 billable hours from ten attorneys and six paralegals with billing rates between \$150

[*67] and \$1,100 per hour, for a total lodestar amount of \$756,859.50. ECF No. 86-4 ¶ 7.

The firm also reports litigation expenses of \$30,568.95. Id. ¶ 11. Morgan & Morgan, PA

reports a total of 38.3 billable hours from one attorney with a billing rate of \$900 per hour

and 84.2 billable hours from one paralegal with a billing rate of \$150 per hour, for a total

lodestar amount of \$47,100.000. ECF No. 86-5 ¶ 17. The firm also reports litigation

expenses of \$1,455.56. Id. Raymond Boucher, currently of the Law Office of Raymond

Boucher, APC and Boucher, LLP, and formerly of Khorrami Boucher Sumner, LLP and

Khorrami Boucher, LLP, reports (a) a total of 952.9 billable hours from one attorney at the

Law Office of Raymond Boucher, APC at billing rates between \$925 and \$1,100 per hour,

for a total lodestar amount of \$1,039,947.50, ECF No. 86-6 ¶ 36, along with expenses of

\$7,100.12, id. ¶ 37; (b) a total of 147.8 billable hours from four attorneys, one law clerk,

and one paralegal at Boucher, LLP at billing rates between \$185 and \$750 per hour, for a

total lodestar amount of \$92,792.50, id. ¶ 40, along with expenses of \$16,601.82, id. ¶ 41;

and (c) a total of 269.2 billable hours from eight attorneys [*68] and one law clerk at

Khorrami Boucher Sumner, LLP and/or Khorrami Boucher, LLP at billing rates between

\$185 and \$625 per hour, for a total lodestar amount of \$139,078.25, id. ¶

44, along with expenses of \$17,003.15. Id. ¶ 45.5
Ahdoot & Wolfson, PC reports a total of 349.2 billable hours from seven attorneys at billing rates between \$415 and \$810 per hour, for a total lodestar amount of \$235,408.50. ECF No. 86-7 ¶ 7. The firm also reports litigation expenses of \$3,303.86. Id. ¶ 11. PinilisHalpern, LLP reports a total of 193.90 billable hours from one attorney at a billing rate of \$625 per hour, for a lodestar amount of \$121,187.50. ECF No. 86-8 ¶ 7. The firm also reports litigation expenses of \$516.27. Id. ¶ 11. The attorneys represent that Boucher, LLP, lead Class Counsel, reviewed time records from the other Class Counsel firms "for accuracy and removal or time that, although incurred, the lawyers determined in their discretion should not be included in this fee application." ECF No. 86-2 ¶ 6.

5 Due to a default judgment and court-appointed receivership in New York State Supreme Court against Khorrami Boucher Sumner Sanguinetti, LLP and/or Khorrami Boucher, LLP, Mr. Boucher seeks an [*69] award of only 68% of the lodestar amount for work performed by those firms. ECF No. 86-6 ¶ 46.

b. The Knapton Declaration
Plaintiffs also submit a declaration from Gerald G. Knapton of the law firm Ropers, Majeski, Kohn & Bentley. Decl. Gerald G. Knapton in Support. P. Mot. Attorneys' Fees, ECF No. 86-9. Mr. Knapton declares that he is an expert on "the reasonableness and necessity of attorneys' fees," id. ¶ 2, states that he interviewed Class Counsel attorneys
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and reviewed their timekeeping records, id. ¶¶ 12, 16-23, and offers his expert opinion that both the combined Class Counsel lodestar calculation of \$3,387,328.75, and the combined Class Counsel expense calculation of \$133,358.39 are reasonable. Id. ¶ 11. Mr. Knapton claims that the total time of 5,100 hours "is similar to the range of hours [he has] seen in other class actions that are resolved without trial." Id. ¶ 17. Mr. Knapton notes that the average billing rate for the Class Counsel attorneys and paralegals is \$664.15 per hour, which he states "appears to be in the range of what New Jersey Courts have found to be reasonable in other class action matters." Id. ¶ 28 (citing cases). Mr. Knapton also observes that Class Counsel's [*70] requested billing rates have been approved in the Northern and Central District of California, the Southern District of Florida, and California state courts. Id. ¶¶ 31-37.

Finally, Mr. Knapton compares the requested billing rates of Class Counsel attorneys with the "2015 Real Rate Report Snapshot" rates of the third quartile⁶ of attorneys in similar positions at their firms (i.e., partner or associate), with similar levels of experience, in the same metropolitan areas.⁷ who bill on a contingency basis are typically "awarded rates by courts at about 1.2 to 1.3 times the current, prevailing non-contingent rates because of the risk of contingency."⁸ 39.

⁶ The third quartile is the quartile between the median billing rate and the highest 25 percent of billing rates. ECF No. 86-9 ¶ 44.

⁷ According to Mr. Knapton, the 2015 Real Rate Report Snapshot was created by TyMetrix/LegalVIEW by compiling anonymized data on over \$9.8 billion in legal fees billed and paid between 2012 and 2014 and was published by the Wolters Kluwer Company. ECF No. 86-9 ¶ 43.

⁸ Although Mr. Knapton builds this contingency multiplier into his lodestar calculation, [*71] see ECF No. 86-9 ¶ 50, the "contingent nature or risk involved in a particular case" is a factor for the Court to consider in assessing the reasonability of a multiplier after calculating the lodestar amount. *Ins. Brokerage*, 579 F.3d at 280.

Mr. Knapton reports that, of the 47 attorneys reporting billable hours in this matter, a total of 17 request billing rates higher than the relevant third-quartile 2015

Real Report

Snapshot rates. See id. ¶ 48. Of the 17 billing at high rates, all but John Yanchunis of

Morgan & Morgan (\$900 per hour), Daniel Herrera of Cafferty Clobes

Meriwether &

Sprengel LLP (\$600 per hour), and Kelly Tucker of Cafferty Clobes Meriwether & Sprengel

LLP (\$550 per hour) request billing rates lower than 1.3 times the relevant third-quartile

2015 Real Report Snapshot rates. See id.

Mr. Knapton gives his expert opinion that the "total reasonable & necessary lodestar is

\$3,387,328.75 based on 5,100.3 hours of time as reasonable and justified hourly rates,"

with a "reasonably expended and explained" number of hours that are "similar to what I

have seen for other class action matters that settle before trial" and reported work that was

"useful and of a type of ordinarily necessary to secure the final [*72] result obtained from

the litigation." Id. ¶ 50.

c. The number of hours submitted by Plaintiffs is reasonable

The Court finds that Plaintiffs' submission of 5,100.75 billable hours is reasonable for a

three year-old consumer class action involving claims under federal law and the laws of

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Id. ¶¶ 43-49. Mr. Knapton also opines that class action lawyers

Id. ¶

twelve separate states, though it accepts the number with hesitation. Plaintiffs'

submissions meet the Rode standard, providing "fairly definite information as to the hours

devoted to various general activities." Rode, 892 F.2d at 1190. As discussed, Plaintiffs

provide a breakdown, by attorney and paralegal, of the hours spent engaging in eleven

categories of legal work. See, e.g., ECF No. 86-2 Ex. 1. Plaintiffs also provide a

chronological description of the work performed, collectively, by Class Counsel, including

the investigation leading up to the drafting and filing of the first complaint, Plaintiffs'

response to Defendants' motion to dismiss, the drafting of amended complaints, continued

investigation and discovery, and the negotiations leading to this settlement. See ECF No.

86 at 7-10. However, Plaintiffs do not provide the specific dates of their services rendered,

as required by L. Civ. R. 54.2(a)(c).

Defendants argue, generally, that [*73] Plaintiffs' application for fees is insufficient

because some courts within the Third Circuit have approved attorneys' fees based on

more detailed documentation than Plaintiffs submit here, including itemized, hourly billing

records for each attorney. ECF No. 90 at 3-4 (citing cases). Defendants argue specifically

that the Court should not accept Plaintiffs' aggregate submission of 1,225.5 hours of

billable work for "Analysis/Strategy/Meetings" without further documentation of the precise

number of meetings, dates, times, individuals present, and descriptions of "what was

actually done" at the meetings. ECF No. 90 at 6. The Court does not deny that Plaintiffs

could submit further documentation, and Plaintiffs have offered to submit detailed time

records for the Court's in camera review if so required. ECF No. 105 at 6. But "it is not

necessary" for the Court to "know the exact number of minutes spent nor the precise

activity to which each hour was devoted nor the specific attainments of each attorney" in

order to determine whether the number of hours billed was reasonable. Rode, 892 F.2d at

1190. In any event, as Plaintiffs suggest, "what was actually done" at these meetings likely

includes protected attorney [*74] work product. ECF No. 105 at 9. The Court will not require Plaintiffs to submit further documentation of their meetings. Defendants also suggest that the 679.1 total hours of "Research" reported by Plaintiffs is an unreasonable number because Class Counsel attorneys were already "presumably[] intimately familiar" with the relevant issues in this matter, reducing their need to conduct research. ECF No. 90 at 6-7. The Court agrees with Plaintiffs, however, that "[l]egal research is part of the job." ECF No. 105 at 9. Particularly in a multi-state class action involving federal and state law statutes, consolidated cases, a motion to dismiss, and an amended complaint, Class Counsel is expected to conduct a significant amount of legal research. Given the lack of individual and task-based detail in Plaintiffs' billing summaries, the Court finds that Plaintiffs' submission of 5,100.75 billable hours is reasonable but accepts the number with some hesitation.

d. The billing rates submitted by Plaintiffs are high for the relevant community. To repeat, the average requested billing rate for Class Counsel attorneys is \$664.15 per hour, ECF No. 86-9 ¶ 28, with individual rates (including for paralegals) ranging [*75] from \$150 to \$1,100 per hour. See *id.* ¶ 30. Partners request a mean rate of \$745 per hour, while associates request a mean rate of \$423 per hour. ECF No. 90 at 9-10. The Court

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2016 U.S. Dist. LEXIS 97188, * determines whether these fees are reasonable by assessing the "experience and skill of the prevailing party's attorneys" and comparing "their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." Rode, 892 F.2d at 1190. Courts in this district have approved a wide range of billing rates as reasonable, and both Plaintiffs and Defendants cite cases where courts confirmed fee rates similar to the ones they seek. See, e.g., ECF No. 105 at 10 (citing *In re Merck & Co. Vyturin ERISA Litig.*, 2010 U.S. Dist. LEXIS 12344, 2010 WL 547613 (D.N.J. Feb. 9, 2010) (approving rates up to \$835 per hour)); ECF No. 90 at 10 (citing, e.g., *Port Drivers Federation 18, Inc. v. All Saints*, 2011 U.S. Dist. LEXIS 93700, 2011 WL 3610100, at *4 (D.N.J. Aug. 16, 2011) (reducing partner's billing rate from \$595 to \$475 per hour and citing cases approving a range of \$250 to \$400 per hour)). See also *Saini v. BMW of North America, LLC*, 2015 U.S. Dist. LEXIS 66242, 2015 WL 2448846, at *15 (D.N.J. May 21, 2015) (approving average rates of \$421.73 and \$540.31 in class action against BMW for failure to provide warranties). As discussed, Plaintiffs also argue, through the Knapton Declaration, that the requested billing rates for most Class Counsel attorneys are lower than the third-quartile rates in the geographic [*76] areas where the attorneys are located. See ECF No. 86-9 ¶ 48; ECF No. 86-9 Ex. 9 (Real Report Snapshot "High-Level Data Cuts" for U.S. cities). Under this analysis, the requested billing rates are reasonable. Defendants, however, argue that a more appropriate comparison is between the requested billing rates and the 2015 Real Report Snapshot rates for partners and associates practicing "General Liability" law in New York and Philadelphia, the practice area and two cities that best correspond with the legal work in this matter and geographic location of this Court. ECF No. 90 at 8-9 (citing ECF No. 86-9 Ex. 7 (Real Report Snapshot "Practice Area Analysis: General Liability")). Defendants urge the Court to average the Real Report

Snapshot rates for New York and Philadelphia partners and associates practicing "General Liability" law, arriving at mean and top-quartile partner rates of \$425 and \$609 per hour, respectively, and mean and top-quartile associate rates of \$284 and \$345 per hour, respectively. Id. at 10.

The Court agrees with Defendants that the average Class Counsel billing rate of \$664.15

is higher than the average rate approved by many recent courts in this district. Defendants

do not [*77] calculate the effect their proposed mean and top-quartile "General Liability"

rate adjustments would have on the lodestar. Using the Knapton Declaration's fee

schedule, ECF No. 86-9 Ex. 2,9

the Court calculates that Class Counsel partners billed a

total of 3,542.1 hours; that the "associate class," including associates, law clerks, local

counsel, and of-counsel attorneys, billed a total of 1,323.55 hours; and that paralegals

billed a total of 234.7 hours. Adjusting all associate and partner billing rates to the mean

and top-quartile rates proposed by Defendants would result in lodestars of \$1,917,673.40

and \$2,649,473.15, respectively. Id.

9 There are several discrepancies between the hours reported in the Class Counsel affidavits and the hours used by Mr.

Knapton to calculate Plaintiffs' lodestar of 3,387,328.75. Most notably, John A. Yanchunis of Morgan & Morgan reports that he

billed 38.3 hours at a rate of \$900 per hour and that Teresa Ponder, a paralegal, billed 84.2 hours at a rate of \$150, for a firm

lodestar of \$47,100. ECF No. 86-5 ¶ 17; ECF No. 86-5 Ex. B (time report).

The Knapton Declaration calculates Plaintiffs'

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proposed lodestar and billable hour totals based on 96.5 hours [*78] from Mr. Yanchunis at \$900 per hour and 32.7 hours from Ms. Ponder at \$150 per hour, for a firm lodestar of \$91,755. See ECF No. 96-9 Ex. 2.

As discussed, the Court may apply a multiplier to the lodestar "to account for the

contingent nature or risk involved in a particular case and the quality of the attorney's

work." Rite Aid, 396 F.3d at 306. The multiplier "need not fall within any pre-defined range,

provided that the District Court's analysis justifies the award," id., but courts "routinely find

in complex class action cases that a lodestar multiplier between one and four is fair and

reasonable." Saini, 2015 U.S. Dist. LEXIS 66242, 2015 WL 2448846, at *16 (approving

multipliers of 1.09 and 1.13); see also Boone v. City of Philadelphia, 668 F. Supp. 2d 693,

714-15 (E.D. Pa. 2009) (approving multiplier of 2.3); McCoy v. Health Net, Inc., 569 F.

Supp. 2d 448, 479 (D.N.J. 2008) (approving multiplier of 2.3). Because Plaintiffs report a

total of \$133,358.30 in expenses, ECF No. 86 at 2, the portion of the total \$2,320,000

award attributable to attorneys' fees alone is \$2,186,641.70. The lodestar multiplier for

Defendants' proposed mean rate fee, obtained by dividing \$2,186,641.70 by \$1,917,673.40, would be approximately 1.14. This multiplier falls well within the range

approved by courts in this Circuit for complex, multi-state cases such as this one.

3. The percentage cross-check supports an award in [*79] the lodestar range. Having determined a range of attorneys' fees under a lodestar analysis, the Court now

cross-checks this analysis using the percentage-of-recovery method. See Ins. Brokerage,

579 F.3d at 280; Saini, 2015 U.S. Dist. LEXIS 66242, 2015 WL 2448846, at *16 (performing percentage-of-recovery cross-check after adopting lodestar

method to award attorneys' fees).

The Third Circuit has identified a non-exhaustive list of factors that a district court should

consider in its percentage-of-recovery analysis:

(1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial

objections by members of the class to the settlement terms and/or fees requested by counsel; (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) the awards in similar cases.

Rite Aid, 396 F.3d at 301 (quoting Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195

n.1 (3d Cir. 2000)). The Court need not apply the Gunter factors in a formulaic way and

may afford some factors more weight than the others. Id. at 302.

The Court finds the Gunter factor to be especially relevant in this case. As discussed, the

settlement agreement does not create a class fund of defined size, and the total benefit to

N14 Class members [*80] will depend on the number and type of claims ultimately

received and approved. Additionally, as discussed, the settlement agreement provides

some Class Members with nonmonetary benefits, including a warranty extension on their

Class Vehicles. At the July 14, 2016 fairness hearing, Class Counsel stated that it could

not give a precise value of the settlement, and that even estimating an "approximate" value

would be difficult. Counsel stated, however that a value of between \$10 and \$30 million

would be a reasonable estimate. The Third Circuit has recognized that fee percentage-of-recovery

fee awards commonly range from 19 percent to 45 percent of the settlement fund. GM Truck Prods., 55 F.3d at 822. Using the rough \$10-\$30 million settlement

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estimate, a reasonable percentage-of-recovery fee in this case would be between

\$1,900,000 and \$13,500,000. The fee award sought by counsel and the lodestars calculated under Defendants' proposed New York-Philadelphia mean and fourth-quartile

billing rates all fall within this range.

For the second factor, the Court incorporates its Girsh analysis of Class member

objections and notes that no Class members have objected to the proposed Class Counsel

award. This factor weighs in [*81] favor of fee approval. The Court also finds that the third

and fourth, and sixth Gunter factors weigh in favor of approving a fee award within the

ranges sought by Plaintiffs and Defendants. As discussed, Class Counsel spent 5,100

hours over three years litigating this case, survived a motion to dismiss, and obtained a fair

and reasonable settlement in a complex, multi-state consumer class action involving

uncertain legal issues. The fifth Gunter factor -- risk of nonpayment -- weighs in favor of

approving the award sought by Plaintiffs because Class Counsel undertook this case on a

contingency basis and accepted the potential risk of non-payment. ECF No. 86 at 20-21.

Finally, with regard to the sixth Gunter factor, the \$2,230,000 award sought by Plaintiffs

and Defendants' proposed lodestar calculations are similar to awards approved in similar

cases. See, e.g, Henderson v. Volvo Cars of N. Am., LLC, 2013 U.S. Dist. LEXIS 46291,

2013 WL 1192479, at *13 (D.N.J. Mar. 22, 2013) (approving award of \$3,000,000 in

attorneys' fees in class action providing class members with reimbursements and warranty

extensions in connection with alleged defects in automobile transmission systems);

O'Keefe v. Mercedes-Benz USA, LLC, 214 F.R.D. 266, 304 (E.D. Pa. 2003) (approving

award of \$4,896,783 in attorneys' fees in class action involving allegedly defective rear liftgate

hatch in [*82] automobiles).

4. The expenses sought by Plaintiffs are reasonable

In further support of their petition for a \$2,320,000 award, Plaintiffs submit that Class

Counsel incurred a total of \$133,358.30 in expenses. ECF No. 86 at 2.10 "Counsel for a

class action is entitled to reimbursement of expenses that were adequately

documented
and reasonably and appropriately incurred in the prosecution of the class
action." In re
Safety Components Int'l, Inc., 166 F. Supp. 2d 72, 108 (3d Cir. 2001)
(citing Abrams v.
Lightolier, Inc., 50 F.3d 1204, 1225 (3d Cir. 1995)). Courts have held that
photocopying
expenses, telephone and facsimile charges, postage, and expert witness fees
are all
reasonably incurred in the prosecution of a large litigation. See id.
(citing cases).
10 Again, Plaintiffs indicate that this amount has increased by \$15,549.32
since the filing of their motion for attorneys' fees and
costs, see ECF No. 105 at 1, but the Court will perform its analysis using
the \$133,358.30 number in the original motion.
Plaintiffs submit expense reports through the Class Counsel declarations,
breaking
expenses down into categories such as "Filing/Misc. Fees," "Mediation Fees,"
"Postage,"
"Photocopying," "Expert Fees," and "Transportation/Meals/Lodging." See,
e.g., ECF No.
86-2 ¶ 11, Ex. 2 (Cafferty Clobes Meriwether & Sprengel, LLP Expense Report
[*83]
through March 21, 2016). Some firms provide itemized lists of individual
expenses. See,
e.g, ECF No. 86-3 Ex. 2 (Markun Zusman Frenier & Compton, LLP "Pre-bill" for
Tom
Monreal). Although Defendants challenge the level of detail provided by
Plaintiffs and the
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necessity of some expenses, see ECF No. 90 at 11 (questioning, as example, Markun

Zusman Frenier & Compton, LLP's request for reimbursement for travel, meals, and hotels

for an "investigation" trip to Oregon because this matter does not involve claims under

Oregon law),¹¹

the Court finds that Class Counsel's expenses are adequately documented, proper, and reasonable. The proposed expense amount supports the award Plaintiffs

seek.

¹¹ The Court observes that Markun Zusman Freniere & Compton, LLP maintains an office in Portland, Oregon. See ECF No.

86-3 Ex. 3 (overview of firm).

5. The Court approves an award of fees and expenses in the amount of \$2,100,000

As discussed, courts have approved a wide range of awards for attorneys' fees and

expenses in cases similar to this one. This Court will award Plaintiffs a total of \$2,100,000

in attorneys' fees and expenses. This award represents an attempt by the Court to

reconcile Plaintiffs' proposed [*84] fee submissions with Defendants' objections to the

amount of detail in Class Counsel's billing records, the high billing rates of Class Counsel

attorneys relative to other attorneys working on similar matters in this community, the

potential application of a modest lodestar multiplier, and the difficulty of estimating an

accurate percentage-of-recovery calculation against which to cross-check the Parties'

proposed lodestar calculations.

CONCLUSION

The Court finds that the proposed settlement between Plaintiffs and Defendants is fair,

adequate, and reasonable. Plaintiffs' motion for final approval of the N14 Class settlement,

final approval of Class Counsel, and certification of the N14 Class is granted. Plaintiffs'

motion for an award of attorneys' fees and expenses is granted in part:

Plaintiffs are

awarded a total of \$2,100,000 in attorneys' fees and expenses and service awards of

\$4,000 each for the eighteen Class Representatives is granted. An appropriate order

follows.

DATE: 26 July 2016

/s/ William H. Walls

William H. Walls
Senior United States District Court Judge

ORDER

Walls, Senior District Judge

This matter having come before the Court on Plaintiffs' Motion for Final Approval of Settlement [*85] and Related Relief, ECF No. 92, and Plaintiffs' Motion for Attorneys' Fees and Expenses, ECF No. 86, for the reasons expressed in the accompanying Opinion, it is hereby ORDERED that:
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1. The Court hereby certifies a class solely for the purposes of settlement under Federal Rules of Procedure 23(a) and

23(b)(3) as defined in the Settlement Agreement and Release, ECF No. 69-3

Ex. 1, as amended by the Court's Orders

of June 15, 2016, ECF No. 89, and June 21, 2016, ECF No. 95;

2. The individuals who submitted timely notices of their intent to opt out of the settlement class, see ECF No. 107-1 Ex.

C, are hereby excluded from the settlement class and are not bound by the terms of the Settlement Agreement and

Release or this Order;

3. The Court hereby grants final approval to the Settlement Agreement and Release, ECF No. 69-3 Ex. 1, as amended

by the Court's Orders of June 15, 2016, ECF No. 89, and June 21, 2016, ECF No. 95;

4. Defendants shall pay Class Counsel, as appointed in the Court's January 6, 2016 Order, ECF No. 72, the sum of

\$2,100,000 as attorneys' fees and expenses; and

5. Defendants shall pay \$4,000 each to the Named Plaintiffs Joshua Skeen, Laurie Freeman, Scott Lamb, Gina

Romaggi, Emmanuel Nomikos, Gregory Abbott, Vicki [*86] Blasucci, Scott

Bookhout, Michelle Colberg, Kevin

Kebabjian, Marta Motel, Ginger Roach, James Stoecker, Heather Swango,

Patricia Curran, Maryanne Howland, Candi

Sossa, and Richard Kahn as service awards.

Date: 26 July 2016

/s/ William H. Walls

William H. Walls

Senior United States District Court Judge

Citibank, N.A., etc., Appellant, vs. Martin and Jitka Olsak,

Appellees.

No. 3D15-1032

COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

208 So. 3d 227; 2016 Fla. App. LEXIS 17683; 41 Fla. L. Weekly D

2658

November 30, 2016, Opinion Filed

PRIOR HISTORY: [**1] An Appeal from the Circuit Court for Monroe County, Lower

Tribunal No. 09-1063-K. Donald C. Evans, Senior Judge.

CASE SUMMARY:

OVERVIEW: HOLDINGS: [1]-In a foreclosure action, reversal was required because the

trial court based its standing conclusion exclusively on an expert's legal opinions regarding

matters of questionable relevance, and opinion testimony of experts amounting to

conclusions of law was inadmissible because the determination of such questions was

exclusively within the trial court's province; [2]-Furthermore, while the expert testified that

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trust documents did not allow for inclusion of notes that had been endorsed in blank, the borrower was not a party to those trust documents and therefore lacked standing to challenge them.

OUTCOME: Reversed and remanded.

CORE TERMS: mortgage, legal conclusions, endorsement, foreclosure, endorsed, blank,

expert witness, inception, holder, final judgment, legal opinions, attorney-in-fact,

substantial evidence, promissory note, expertise, borrower, involuntarily, impermissibly,

questionable, post-trial, conclusory, relevance

LexisNexis(R) Headnotes

Civil Procedure > Justiciability > Standing

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Appeals > Standards of Review > Substantial Evidence

[HN1] Generally, the determination of whether a plaintiff has standing is a legal issue

subject to de novo appellate review. To the extent that the trial court's standing

determination involves factual findings, an appellate court upholds such findings only if

supported by competent, substantial evidence.

Civil Procedure > Justiciability > Standing

Real Property Law > Financing > Mortgages & Other Security Instruments > Foreclosures

Contracts Law > Negotiable Instruments > Negotiation > Indorsement > Blank Indorsements

Contracts Law > Negotiable Instruments > Negotiation > Indorsement > Special Indorsements

Contracts Law > Negotiable Instruments > Transfers

[HN2] To have standing, a plaintiff who is not the promissory note's original payee must

have possession of the note at the inception of the foreclosure case. This plaintiff also

must provide the trial court with either an assignment in favor of the plaintiff or a note that

bears either an endorsement in blank or a special endorsement in favor of the plaintiff.

Evidence > Testimony > Experts > Admissibility

Civil Procedure > Appeals > Standards of Review > Reversible Errors

[HN3] Witnesses, even witnesses qualified as experts, generally are precluded from

providing testimony in the form of legal conclusions. Regardless of the expertise of the

witness, generally, and his familiarity with legal concepts relating to his specific field of

expertise, it is not the function of the expert witness to draw legal conclusions. That determination is reserved to the trial court. Opinion testimony of experts amounting to conclusions of law are inadmissible because the determination of such questions is exclusively within the court's province. And, it constitutes reversible error for a trial judge to rely upon expert testimony to determine questions of law.
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loan was originated. In addition, the Trust introduced into evidence a Wells Fargo "screen shot" purportedly showing that the loan was placed into the Trust on June 28, 2007. Olsak called one witness, Richard Kahn, a mortgage foreclosure fraud investigator and securitization auditor. Over the Trust's objections, Kahn, a non-lawyer whom the trial court treated as an expert witness, gave opinion testimony that the Trust documents did not allow for the Trust to acquire a note, like the Olsak Note, that had been endorsed in blank. [*229] Kahn also testified that the [**3] Olsak Note endorsements violated IRS provisions related to real estate mortgage investment conduits ("REMICs") such as the Trust. While

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Kahn was unable to identify who held the Olsak Note, he testified, in conclusory fashion,

that the Trust was not the holder of the Olsak Note.

After allowing for post-trial submittals by the parties, and relying exclusively on Kahn's

testimony, the trial court entered the final judgment on appeal concluding that the Trust

"[n]ever acquired any interest in either the Note or the mortgage" and, therefore, never

acquired standing to institute the action. Citibank timely appealed.

II. Standard of Review

[HN1] Generally, the determination of whether a plaintiff has standing is a legal issue

subject to de novo appellate review. Reynolds v. Nationstar Loan Servs., LLC, 190 So. 3d

219, 221 (Fla. 4th DCA 2016). To the extent that the trial court's standing determination

involves factual findings, we uphold such findings only if supported by competent,

substantial evidence. Verneret v. Foreclosure Advisors, LLC, 45 So. 3d 889, 891 (Fla. 3d

DCA 2010).

III. Analysis

[HN2] To have standing, a plaintiff who is not the promissory note's original payee must

have possession of the note at the inception of the foreclosure case. This plaintiff also

must provide the trial court with either an assignment in favor of the plaintiff or a note that

[**4] bears either an endorsement in blank or a special endorsement in favor of the

plaintiff. See McLean v. JP Morgan Chase Bank Nat'l Ass'n, 79 So. 3d 170, 173 (Fla. 4th

DCA 2012); see also § 673.3011, Fla. Stat. (2016) (stating that a "person entitled to

enforce" an instrument includes "[t]he holder of the instrument"); Wells Fargo Bank, N.A. v.

Morcom, 125 So. 3d 320, 321-22 (Fla. 5th DCA 2013). While the Trust had possession of

the Olsak Note bearing a blank endorsement, the trial court nonetheless determined that

the Trust never acquired any interest in the Olsak Note. The record reflects that the trial

court's conclusion was based exclusively on Kahn's testimony.

Specifically, Kahn opined that: (i) the terms of the Trust documents required all notes held

by the Trust to contain specific endorsement language not contained on the endorsed

Olsak Note; (ii) the language of the 2006 mortgage assignment did not comport with the requirements of the Trust documents; (iii) Wells Fargo's purported endorsement of the Olsak Note as attorney-in-fact for Orion Bank was invalid because Kahn had not located a recorded power of attorney document in which Orion Bank had appointed Wells Fargo as its attorney-in-fact; and (iv) the alleged infirmities regarding the Olsak Note's endorsements and 2006 mortgage assignment violated IRS rules governing REMICs.

At the outset, it bears noting [**5] that [HN3] witnesses, even witnesses qualified as experts, generally are precluded from providing testimony in the form of legal conclusions.

See Palm Beach Cty. v. Town of Palm Beach, 426 So. 2d 1063, 1070 (Fla. 4th DCA 1983)

("Regardless of the expertise of the witness, generally, and his familiarity with legal concepts relating to his specific field of expertise, it is not the function of the expert witness

to draw legal conclusions. That determination is reserved to the trial court."). Opinion

testimony of experts amounting to conclusions of law are inadmissible because the

determination of such questions is exclusively within the court's province. Thundereal

Corp. v. Sterling, 368 So. 2d 923, 928 (Fla. 1st DCA 1979) (internal quotations and

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208 So. 3d 227, *; 2016 Fla. App. LEXIS 17683, **;

41 Fla. L. Weekly D 2658

citations [*230] omitted). And, it constitutes reversible error for a trial judge to rely upon

expert testimony to determine questions of law. *Devin v. City of Hollywood*, 351 So. 2d

1022, 1026 (Fla. 4th DCA 1976).

Kahn's testimony was devoid of facts to assist the trial court in making its own legal

conclusions regarding the Trust's standing. Rather, Kahn simply provided legal opinions -often

of dubious relevance and in conclusory fashion -- related to the Trust's operating

documents and the IRS tax code's treatment of REMICs. Interestingly, when Kahn was

asked on cross-examination if an endorsed-in-blank note is a transferrable instrument, the

trial court sustained Olsak's [**6] objection that the question called for a legal conclusion.

We are compelled to reverse the trial court's determination that the Trust lacked standing,

because the trial court based its standing conclusion exclusively on Kahn's legal opinions

regarding matters of questionable relevance.

Furthermore, Kahn testified that the Trust documents did not allow for inclusion of notes

that had been endorsed in blank. Olsak, however, is not a party to those Trust documents

and therefore, lacks standing to challenge same. *Castillo v. Deutsche Bank Nat'l Trust Co.*,

89 So. 3d 1069 (Fla. 3d DCA 2012) (Mem). [HN4] Florida courts have repeatedly held that

borrowers cannot defeat a foreclosure plaintiff's standing by relying upon trust documents

to which the borrower is not a party. *Id.*

Similarly, Kahn testified that certain IRS and banking provisions would have precluded the

Trust from receiving favorable tax treatment if the Trust owned the Olsak loan. Absent a

relevant factual basis, however, this legal opinion, while certainly interesting, has

questionable probative value on the dispositive issue in this case: whether the Trust

actually held the Olsak Note at the inception of the case.

On remand, the trial court must determine, along with any other contested issues, whether

the Trust [**7] had standing to bring the action at the case's inception.

McLean, 79 So. 3d

at 173. In making this determination, any facts upon which the trial court relies should be

supported by competent, substantial, relevant evidence, and not merely legal conclusions

of a party's expert.

IV. Conclusion

Because the record on appeal reflects that the trial court impermissibly relied upon

Appellees' expert's legal conclusions, we reverse the trial court's final order involuntarily

dismissing the Trust's claim, and remand for further proceedings consistent with this

opinion.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

(Central Islip)

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Kahn V. Bmw Of North America, Llc 2:14cv2463

Kahn V. Bmw Of North America, Llc

PLAINTIFF: Richard Kahn

DEFENDANT: BMW of North America, LLC

DOCKET CASE NUMBER: 2:14cv2463

FILING DATE: 4/17/2014

JURISDICTION: Diversity

JUDGE: Arthur D. Spatt

REFERRED TO: Magistrate Judge Anne Y. Shields

NATURE OF SUIT: 370 Fraud

FILING TYPE: Civil - Class Action

CAUSE: Diversity-Fraud28 USC 1332

JURY DEMAND: Plaintiff

DEMAND: \$ 5,000,000

STATUS: Case Closed

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