

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

PATRICIA WECKWERTH, PATRICIA CRUZ,
MICHELLE FALK, CYNTHIA GARRISON,
INDHU JAYAVELU, MICHAEL KNOTTS,
WALDO LEYVA, AMANDA MACRI,
DANIELLE TROTTER, and PAMELA
PRITCHETT, individually, and on behalf of a
class of similarly situated individuals,

PLAINTIFFS,

v.

NISSAN NORTH AMERICA, INC.,

DEFENDANT.

Case No. 3:18-cv-00588

Judge Eli Richardson
Magistrate Judge Alistair E. Newbern

DECLARATION OF JAMES C. SHAH IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARDS

I, James C. Shah, declare as follows:

1. I am a partner at the law firm of Shepherd, Finkelman, Miller & Shah, LLP ("SFMS" or the "Firm"). I am admitted to practice in California, Pennsylvania, New Jersey, New York and Wisconsin, as well as in multiple federal district and circuit courts. SFMS was appointed as Class Counsel along with other firms by this Court in its July 16, 2019 Order (ECF 102) preliminarily approving the proposed settlement ("Settlement") of this litigation (the "Litigation").¹

2. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs and Class Representative Service Awards.

¹ Unless otherwise noted, all capitalized terms herein shall have the same meaning as in the Settlement Agreement ("Settlement Agreement") (ECF 74-2).

3. Since its inception, SFMS has actively participated in all aspects of the case, including, but not limited to: (1) case investigation; (2) drafting of the Complaint; (3) communicating with the representative plaintiff; (4) discovery; (5) legal research; (6) drafting of motions and briefs; (7) court appearances; (8) participating in case strategy decisions; (9) communicating with Class Members throughout the course of the Litigation; (10) participating in mediations and Settlement negotiations; (11) communicating with defense counsel; (12) participating in documenting the Settlement; (13) communicating with Class Members and the Settlement Administrator; and (14) preparing the approval documents. Thus, I am fully familiar with the proceedings. If called upon, I am competent to testify that the following facts are true and correct to the best of my knowledge, information, and belief.

4. SFMS has dedicated significant time and resources to prosecuting the Litigation on behalf of the Class. The Firm's legal services were performed on a wholly contingent fee basis.

5. This declaration generally summarizes the work performed by SFMS for Plaintiffs and the Class in this Litigation. As demonstrated below, SFMS has worked diligently to perform numerous tasks related to this matter at each phase of the Litigation, including initial case investigation, filing of the initial Complaint, motion practice, discovery, Settlement negotiations, motions for Settlement approval and assistance with Settlement administration for the Class Members.

6. Before initiating any action, Class Counsel conducted a thorough investigation of the claims, both legal and factual, which allowed Plaintiffs' Counsel to better evaluate the factual claims regarding Nissan's representations and omissions concerning the functioning of the CVTs. Among other tasks, SFMS researched publicly available materials and information

provided by the National Highway Traffic Safety Administration concerning consumer complaints about the CVTs and reviewed and researched consumer complaints and discussions of transmission problems in online articles and forums, in addition to various manuals and technical service bulletins discussing the alleged defect. Finally, SFMS conducted research into the various causes of action and other similar automotive actions and developed a litigation plan based upon Knotts' and Class Members' reported experiences with their Nissan Versa vehicles.

7. Along with co-counsel from Pearson, Simon & Warshaw, LLP ("Pearson Simon"), we filed *Knotts v. Nissan North America, Inc.*, No. 17-cv-05049 (D. Minn) on November 7, 2017, in the District of Minnesota, on behalf of a nationwide class and a Minnesota class of owners and lessees of 2012 and 2013 Nissan Versa vehicles, alleging express warranty claims, implied warranty claims, and violations of Minnesota consumer protection statutes.

8. On January 5, 2018, Nissan filed a Motion to Dismiss and Motion to Strike or Dismiss the Class Allegations in *Knotts* ("Motions").

9. Plaintiff Knotts filed his Opposition to the Motions on February 14, 2018, and Nissan filed its replies in support of the Motions on February 27, 2018. The Court held oral argument on the Motions on March 30, 2018.

10. On October 10, 2018, the Court issued a decision granting in part and denying in part the Motion to Dismiss and denying, in its entirety, the Motion to Strike or Dismiss Class Allegations. Specifically, the Court permitted the following claims to proceed: (1) breach of implied warranty; (2) unjust enrichment; and (3) claims under the Minnesota Consumer Fraud Statutes; specifically, Minnesota Deceptive Trade Practices Act. Minn. Stat. § 325D.44, *et seq.*, deceptive trade practices (injunctive relief and attorneys' fees), and Minn. Stat. § 325F.68, *et seq.*, and prevention of consumer fraud (damages, injunctive relief, and attorneys' fees).

11. Additionally, the Court granted Knotts leave to amend his claims asserted under the Minnesota False Advertising Statute, which he elected to do by filing an Amended Complaint on November 9, 2018.

12. The Parties negotiated and entered into a protective order in January 2019. Nissan then moved to dismiss the amended Minnesota False Advertising Statute, which motion was fully briefed and argued on February 6, 2019.

13. In January 2019, Plaintiffs received and reviewed over 10,000 pages of discovery documents and data and were in the process of negotiating a discovery schedule when the mediation process began. The documents included spreadsheets of warranty and customer complaints, owners' manuals, maintenance manuals, warranty documents, technical documents, field reports and testing documents.

14. On February 19, 2019, following the contested motion practice in *Knotts* and the exchange of thousands of pages of documents and data, counsel for Plaintiffs in each of the pending cases involving Nissan Versas and Sentras, and Defendant participated in an all-day mediation before Mr. Hunter R. Hughes III, a highly-respected mediator, in Atlanta, Georgia.

15. Although the Parties did not settle at the first mediation session, they continued their Settlement negotiations telephonically with the assistance of the mediator. On April 9, 2019, the Parties conducted a second in-person, all-day mediation session in Chicago, Illinois. At the close of this second session, the Parties had agreed on the principal terms of the proposed Class relief. After the Parties had agreed on the framework and material terms for Settlement and relief for the class in Chicago, they then began negotiating, through telephonic conferences, via email, and with the assistance of Mr. Hughes, and ultimately agreed upon an appropriate request for service awards and Plaintiffs' attorneys' fees and expenses.

16. SFMS was involved in the negotiations and documenting of the Settlement, participating in hundreds of communications with co-counsel, as well as multiple calls involving defense counsel and the Settlement Administrator, and making meaningful substantive contributions at all phases of the process.

17. Plaintiff Knotts was informed and engaged throughout the mediation and Settlement process.

18. In May 2019, the Parties completed the documentation of the formal terms of their agreement, subject to Court approval, to resolve the Litigation.

19. SFMS and Pearson Simon also worked with counsel from the case involving the Altima vehicles to obtain important additional information from Nissan further supporting the proposed Settlement.

20. The Settlement is an excellent result as it provides the Class with substantial, meaningful monetary and other relief.

21. Plaintiffs remain convinced their case has merit but recognize the substantial risk that comes along with continued litigation. Based on extensive investigation and confirmatory discovery, Plaintiffs believe they could obtain Class certification, defeat all dispositive motions filed by Defendant, and proceed to a trial on the merits.

22. Nonetheless, all complex class actions are uncertain in terms of ultimate outcome, difficulties of proof and duration, and this Litigation is no different. There is always the possibility that Plaintiffs may not prevail if litigation continues. Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to prosecute the claims through trial and appeal and have taken into account the uncertain outcome and risk of litigation, as well as difficulties and undue delay inherent in such litigation. Further litigation would be

costly, complex, and time consuming and could include dispositive motions, contested Class certification proceedings and appeals, costly merits and Class certification expert reports and discovery, and trial. Each step toward trial would likely be subject to Defendant's vigorous opposition and appeal. Further litigation presents no guarantee for recovery, let alone a recovery greater than that provided by the Settlement. The Parties would likely spend significant time and resources on damage calculations. Furthermore, both Parties would spend significant additional resources in expert discovery producing competing damage analyses. The costs and risks associated with continuing to litigate would require extensive resources and Court time. Class Counsel believe the Settlement confers substantial benefits upon the Class Members and have determined the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

23. At all times, the months'-long negotiations and extensive efforts, which ultimately resulted in the Settlement presented to this Court, were adversarial, non-collusive, and conducted at arm's length.

24. As set forth above, SFMS worked with the Settlement Administrator to finalize the Notice documents and facilitate the Notice.

25. SFMS also assisted in preparing and presented to the Court the Motion for Entry of a Preliminary Approval Order, filed in June 6, 2019, which was supported by, *inter alia*, the declaration of the undersigned.

26. On June 21, 2019, SFMS and Pearson Simon, along with counsel for Nissan, filed a joint status report and motion for stay of all proceedings in the *Knotts* case, and informed the Minnesota Court of the Settlement and motion for preliminary approval. The motion to stay the *Knotts* case was granted on June 26, 2019.

27. On June 21, 2019, this Court directed the Parties to file a joint supplemental brief, which clarified some aspects of the Settlement Agreement, and set forth the estimate of Plaintiffs' expert, Lee M. Bowron, ACAS, MAAA, as to the value of the warranty extension and reimbursement benefit provided by the proposed Settlement.

28. This Court granted the Unopposed Motion for Preliminary Approval on July 16, 2019 (ECF 102).

29. Almost three million Notices were mailed directly to Class Members and the Settlement website, <http://www.sentraversacvtsettlement.com>, contains electronic versions of the Claim Form that can be submitted online, important Court documents, and answers to frequently asked questions.

30. SFMS has spoken with dozens of Settlement Class Members to answer their questions and will continue to do so. The comments from Class Members in response to the Settlement have been overwhelmingly positive.

31. On September 3, 2019, SFMS and Pearson Simon and counsel for Nissan filed a joint status report in the *Knotts* case to inform the Minnesota Court that this Court had granted Preliminary Approval of the Settlement to which Plaintiff Knotts is a party.

32. On December 2, 2019, SFMS and Pearson Simon and counsel for Nissan filed a joint status report in the *Knotts* case to inform the Minnesota Court that the Class Notice had been disseminated and that this Court had moved the date for the hearing for final approval to March 6, 2020.

33. SFMS maintained detailed time records regarding the work performed in connection with the prosecution of the Litigation. Attached hereto as Exhibit "1" is a time summary chart reflecting the significant time that SFMS has dedicated to the Litigation. This

chart was completed by SFMS based upon the records created contemporaneously during the pendency of the Litigation.

34. The total number of hours spent by the attorneys, paralegals and law clerks working on behalf of SFMS relating to the Litigation is 616.60. As reflected in Exhibit “1,” through December 30, 2019, SFMS has accumulated a lodestar totaling \$405,697.00.

35. The hourly rates range from \$175 for certain paralegal work up to \$875 for experienced senior litigation counsel. Based on my knowledge and experience, the hourly rates charged by SFMS are within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. The hourly rates have been routinely approved by courts throughout the United States. *See, e.g., Riaubia v. Hyundai Motor America, Inc.*, 2:16-cv-05150-CDJ (E.D. Pa. Dec. 20, 2019) (approving fee request with hourly rates up to \$875 for experienced class counsel) [Dkt 65]; *In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, No. CV 09-MD-2034, 2019 WL 4645331 (E.D. Pa. Sept. 24, 2019) (approving fee request with hourly rates up to \$950 for experienced class counsel); *In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation*, MDL No. 2540 (D.N.J.) [Dkt 54]; *Q+Food v. Mitsubishi Fuso Truck of America, Inc.* (D.N.J.), 3:14-cv-06046 [Dkt 70]; *In re: Ford Motor Co. Spark Plug and 3-Valve Engine Products Liability Litigation*, Case No. 1:12-md-02316-BYP (N.D. Oh. 2016) [Dkt. 122]; *Corson v. Toyota Motor Sales U.S.A., Inc.*, Case No. 1:12-cv-8499-JGB (C.D. Ca. 2016) [Dkt. 107]; *Allison Gay v. Tom’s of Maine, Inc.*, Case No. 0:14-cv-60604-KMM (S.D. Fl. 2016) [Dkt. 43]; *Trewin v. Church and Dwight, Inc.*, Case No. 3:12-cv-01475-MAS-DEA (D.N.J. 2015) [Dkt. 68]; *Golden Star, Inc. v. Mass Mut. Life Ins. Co.*, Case No. 3:11-30235-MGM (D. Mass. 2015) [Dtk. 55]; *Butler National Corp. v. The Union Central Life Insurance Co.*, Case No. 1-1:12-cv-00177-SJD-KLL (S.D. Oh. 2014) [Dkt. 55]; *In re Whirlpool Corp.*

Front Loading Washer Products Liability Litigation, Case No. 1:08-WP-65000 (N.D. Oh. 2016) [Dkt. 656]; and *Henderson v. Volvo Cars of North America, LLC*, 2013 WL 1192479 (D.N.J. March 22, 2013).

36. As reflected in Exhibit “2,” SFMS, to date, has also expended a total of \$14,267.84 in unreimbursed expenses in connection with the prosecution of the Litigation. The expenses include court filing and process fees, mediation expenses, copying costs, postage charges, telephone charges, computer research charges, and travel expenses.

37. These expenses are reflected in the books and records of SFMS and are a true and accurate summary of the expenses incurred for this case. The expenses for which reimbursement is sought all were necessarily incurred and are reasonable in amount.

38. My partners and I, along with my firm’s legal staff, made a concerted effort to perform all work in a thorough and efficient manner.

39. SFMS has a lengthy history of representing consumers, employees, businesses and other clients in class action and other commercial litigation. A true and correct copy of the SFMS Firm resume is attached as Exhibit “3.”

40. I am one of the firm’s founders, and I presented the appellate arguments in a significant automotive defect case, arguing on behalf of plaintiff in *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168 (9th Cir. 2010), where the court reversed a denial of class certification and held that there is no requirement that a majority of class members’ vehicles manifested the results of the defect.

41. SFMS is currently serving as Co-Lead Class Counsel in several pending cases, including: *BK Trucking Co. v. Paccar Engine Co., et al.*, No. 1:15-cv-02282-RMB-AMD (D.N.J.) (defective diesel emissions control technology); *T.J. McDermott Transportation Co.*,

Inc. v. Cummins, Inc., et al., 2:14-cv-04209-MCA-LDW (defective diesel emissions control technology); and *Patlan v. BMW of North America, Inc.*, 2:18-cv-09456-CCC-MF (D.N.J.)(defective blower motors).

42. A representative sample of the Firm’s recent automotive settlements includes:

- Co-Lead Counsel: *Riaubia v. Hyundai Motor America, Inc.*, 2:16-cv-05150-CDJ (E.D.PA) (nationwide settlement of defective Smart Trunks);
- Co-Lead Counsel: *In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation*, MDL No. 2540 (D.N.J.) (Hon. Chief Judge Jerome B. Simandle) (\$60 million common fund settlement of claims involving defective diesel emissions control technology);
- Co-Lead Counsel: *Q+Food v. Mitsubishi Fuso Truck of America, Inc.* (D.N.J.), 3:14-cv-06046 (Hon. Douglas E. Arpert) (\$17.5 million common fund settlement of claims involving defective diesel emissions control technology);
- Co-Lead Counsel: *In re: Ford Motor Co. Spark Plug and 3-Valve Engine Products Liability Litigation* (N.D. Oh.), 1:12-md-02316 (Hon. Benita Y. Pearson) (nationwide settlement of engine defect claims);
- Co-Lead Counsel: *Chandran v. BMW of North America, LLC, et al.*, Case No. 2:08-CV-02619 (D.N.J.) (Hon. Katharine S. Hayden) (nationwide settlement of tire defect claims); and
- Co-Lead Counsel: *Henderson, et al. v. Volvo Cars of N.A., LLC*, 2:09-cv-04146 (D.N.J.) (Hon. Claire C. Cecchi) (nationwide settlement of defective transmission claims).

43. SFMS’s attorneys have frequently served as lead counsel or co-lead counsel in significant complex class actions as well as led qui tam cases of national significance, including most recently, in *United States ex rel. Arnstein and Senousy v. Teva Pharmaceuticals USA, Inc.*, No. 1:13-cv-03702-CM-OTW (S.D.N.Y.) (\$54 million settlement of claims that “speaker programs” were used to pay physician speakers unlawful compensation).

44. SFMS also has a history of vigorously representing the interests of its clients in all matters, including trials of class actions. Indeed, SFMS has tried, as lead or co-lead, three class

action cases in the past several years, including trials in the Northern District of California (*Bowerman, et al. v. Field Asset Services, LLC*, Case No. C13-00057 WHO (N.D. Ca. 2017)), as well as the District of Massachusetts (*Healthcare Strategies, Inc., et al v. ING Life Insurance and Annuity Company*, Case No. 3:11-cv-00282 (WGY) (D. Conn. 2013) (a Connecticut case that was tried in the District of Massachusetts)), and the District of Colorado (*CGC Holding Company, LLC, et al. v. Sandy Hutchens, et al.* (Civil Action No. 11-cv-01012-RBJ (D. Col. 2017))).

45. The Class Representative, Michael Knotts, played an instrumental role with respect to the commencement and prosecution of this Litigation. At the outset of the case, Knotts shared his experiences with Class Counsel and worked with Class Counsel to provide evidence and an understanding of the facts that served as the basis of his claims against Defendant and also reviewed the draft complaint and provided input prior to its filing. Throughout the course of the Litigation, Knotts worked closely with Class Counsel and provided assistance with the technical and factual issues and input into the mediation and Settlement process. Knotts does not have any interests that are at odds with other Class Members. He diligently reviewed and agreed to the terms of the Settlement before it was executed. I believe that the requested \$5,000 Service Award is more than warranted under the circumstances.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed this 23rd day of January, 2020 at Philadelphia, PA.

/s/James C. Shah
James C. Shah