

**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 MELISSA S. WEINER IN SUPPORT OF PLAINTIFFS' MOTION  
FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE  
AWARDS**

I, Melissa S. Weiner, declare as follows:

1. I am a partner at the law firm of Pearson, Simon & Warshaw, LLP ("PSW" or the "Firm"). I am admitted to practice in Minnesota and New York, as well as in multiple federal district and circuit courts. PSW 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.<sup>1</sup>

2. PSW was appointed one of the Class Counsel in the above-captioned litigation (the "Litigation"). I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs and Class Representative Service Awards.

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<sup>1</sup> 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, PSW 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 Michael Knotts, the representative plaintiff in the Minnesota action; (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 settlement 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. PSW 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 PSW for Plaintiffs and the Settlement Class in this litigation. As demonstrated below, PSW has worked diligently to perform tasks throughout the entire course of this 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. Specifically, PSW thoroughly investigated and researched the claims, 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, PSW 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, PSW conducted legal research into the various causes of action and other similar automotive actions and developed a litigation plan based upon Mr. Knotts and Class Members' reported experiences with their Nissan Versa vehicles.

7. Along with co-counsel from Shepherd, Finkelman, Miller & Shah, LLP ("SFMS"), 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 for deceptive trade practices and consumer fraud under Minnesota's consumer protection statutes. The specific consumer protection statutes are the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43 *et seq.* (claims for injunctive relief and attorneys' fees).

11. Additionally, the Court granted Knotts leave to amend his claims asserted under the Minnesota False Advertising Statute, Minn. Stat. § 325F.67 (claims for damages, injunctive relief, and attorneys' fees), 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 moved to dismiss the amended Minnesota False Advertising Statute claim. The 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 appropriate requests for service awards and Plaintiffs' attorneys' fees and expenses.

16. PSW 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. PSW and SFMS 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 Settlement 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 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. They 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, and 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, PSW worked with the Settlement Administrator to finalize the Notice documents and facilitate the Notice.

25. PSW 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, PSW and SFMS 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 in which Plaintiffs 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. PSW 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, PSW and SFMS 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. PSW maintained detailed, contemporaneously recorded time records regarding the work performed in connection with the prosecution of the Litigation. Attached hereto as Exhibit "1" is a summary chart reflecting the significant time that PSW has dedicated to this litigation. This chart was completed by PSW based upon the records created contemporaneously during the pendency of the Litigation.

33. The total number of hours spent by the attorneys, paralegals and law clerks working on behalf of PSW relating to the Litigation is 437.9. Through December 30, 2019, PSW has accumulated a lodestar totaling \$326,979.00

34. Prior to joining PSW, I was a Partner at Halunen Law. At Halunen Law, I managed this litigation, and the matter transferred with me to PSW when I left Halunen Law to become a partner at PSW. Halunen Law maintained detailed, contemporaneous time records, a summary of which is attached as Exhibit “2.” The total number of hours spent by the attorneys, paralegals and law clerks working on behalf of Halunen Law relating to the Litigation is 121.8. The total accumulated lodestar for Halunen Law through December 30, 2019 is \$69,532.50.

35. Accordingly, the total number of hours spent on this Litigation for Halunen Law and PSW combined is 559.7, equaling a total lodestar of \$396,511.50.

36. The hourly rates range from \$175 for certain paralegal work up to \$1,150 for experienced senior litigation counsel. Based on my knowledge and experience, the hourly rates charged by PSW 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 In re Nat’l Collegiate Athletic Ass’n Athletic Grant-In-Aid Cap Antitrust Litig.*, 14-md-02541-CW (NC) (N.D. Cal. Dec. 6, 2019).

37. As reflected in Exhibit “3,” PSW, to date, has expended a total of \$12,601.26. 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.

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

39. 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.

40. PSW 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 PSW Firm resume is attached as Exhibit "4."

41. Melissa S. Weiner, partner in the Minneapolis office of PSW has been working diligently on behalf of the Settlement Class in this matter. Ms. Weiner has litigated a diverse body of class actions—including consumer protection, product defect, intellectual property, food litigation, automotive, false advertising and Fair Credit Reporting Act claims.

42. Ms. Weiner currently chairs the Plaintiffs' Executive Committee ("PEC") in *In Re Santa Fe Natural Tobacco Company Marketing & Sales Practices and Products Liability Litigation*, 1:16-md-02695-JB-LF (D.N.M.), a case involving the false and deceptive marketing of tobacco products. In that role, she is solely responsible for leading and directing pretrial matters, including the delegation of common benefit work responsibilities to PEC members. She had a substantial role in strategizing and preparing the opposition to the motion to dismiss and was lead in arguing that motion, resulting in a 249-page order favorable to the plaintiffs. Additionally, Ms. Weiner leads all strategy related to class certification. Ms. Weiner has been named class counsel—and achieved significant results for consumers in deceptive labeling and product defect cases, including: *Frohberg v. Cumberland Packing Corp.*, No. 1:14-cv-00748-KAM-RLM (E.D.N.Y.); *Martin et al. v. Cargill, Inc.*, Civil No. 1:14-cv-00218-LEKBMK (D.

Haw.); *Gay v. Tom's of Maine, Inc.*, 0:14-cv-60604-KMM (S.D. Fla.); *Baharestan v. Venus Laboratories, Inc. d/b/a Earth Friendly Products, Inc.*, 315-cv-03578-EDL (N.D. Cal.); *Barron v. Snyder's-Lance, Inc.*, 0:13-cv-62496-JAL (S.D. Fla.).

43. Ms. Weiner also helped worked to effectuate a settlement in *In re IKO Roofing Shingles Products Liability Litigation*, No. 09-md-2104 (C.D. Ill.), a multidistrict litigation on behalf of consumers who purchased IKO shingles which allegedly over time began to deteriorate, causing damage to the underlying structures on which the shingles were installed. The plaintiffs overcame the defendants' motion to dismiss as well as motion for summary judgment and prevailed in two appeals before the Seventh Circuit.

44. Ms. Weiner was appointed to the plaintiffs' steering committee ("PSC") in *In Re Samsung Top-Load Washing Machine Marketing, Sales Practices & Product Liability Litigation*, 5:17-md-02792 (W.D. Okla.), a nationwide class action regarding a design defect in 2.8 million top loading washing machines, which resulted in a nationwide settlement. Ms. Weiner was also appointed to the PSC in *In Re Windsor Wood Clad Window Product Liability Litigation*, 16-MD-02688 (E.D. Wis.), a nationwide class action regarding allegedly defective windows. Ms. Weiner assisted lead counsel in successfully resolving the action.

45. Ms. Weiner was recently appointed as co-lead counsel in a multidistrict litigation concerning the allegedly false, deceptive, and misleading marketing of the humane treatment of dairy cows used to produce Fairlife-branded milk products. *In re Fairlife Milk Prods. Mktg. & Sales Practices Litig.*, MDL No. 2909, Master Case No. 19-cv-3924 (N.D. Ill.).

46. PSW's partners have held leadership roles in numerous significant cases. See Ex. 4. PSW's leadership experience in the largest and most complex cases demonstrates that it has the resources needed to litigate actions effectively and expeditiously. For example, the firm

recently served as co-lead counsel in *In re Credit Default Swaps Antitrust Litigation* (S.D.N.Y.), which settled claims against a dozen of the world's largest banks for a total of \$1.8 billion; *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D. Cal.), an international cartel case that settled for over \$473 million; and *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation* (N.D. Cal.), which settled damages claims for \$208 million, and which the firm took to trial—where it prevailed—on claims seeking injunctive relief. PSW attorneys currently serve as Class Counsel in *Trepte v. Bionaire, Inc.*, Los Angeles County Superior Court, Case No. BC540110, a settled certified class action alleging that the defendant sold defective space heaters. The complaint alleges that defendant breached the warranty and falsely advertised the safety of the heaters due to design defects that cause the heaters to fail. As a result of the failure, the heaters may spark, smoke and catch fire. PSW reached a significant result on behalf of the class. Additionally, in *Hart v. Central Sprinkler Corporation*, Los Angeles County Superior Court, Case No. BC176727, PSW attorneys served as class counsel in a consumer class action arising from the sale of nine million defective fire sprinkler heads. This case resulted in a nationwide class settlement valued at approximately \$37.5 million.

47. 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. Knotts provided additional facts and input on the amended complaint. Throughout the course of the Litigation, Knotts worked closely with Class Counsel and provided assistance with the 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 24th day of January, 2020 at Minneapolis, Minnesota.

/s/Melissa S. Weiner  
Melissa S. Weiner