IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

QUINTON BROWN, et al, individually and on behalf of the class they represent, Plaintiffs. vs. NUCOR CORPORATION and NUCOR STEEL-BERKELEY, Defendants.	)	CIVIL ACTION NUMBER: 2:04-22005-DCN

JOINT MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

The Parties submit this joint memorandum in support of their motion for preliminary approval of the settlement reached in this case. Specifically, the Parties request that the Court preliminarily approve their proposed Settlement Agreement as being sufficiently fair, reasonable, and adequate, and in the best interests of the Parties and in accordance with law, subject to the right of any class member to challenge the fairness, reasonableness or adequacy of the Settlement Agreement and to show cause why it should not be approved. The proposed Settlement Agreement is attached hereto as Exhibit A.

In addition, the Parties' joint motion requests that the Court: (1) approve the proposed Notice of Settlement submitted herewith; (2) direct Class Counsel to mail such Notice to the Settlement Class Members in accordance with the terms of the Settlement Agreement; (3) stay all other proceedings in the case until further Order of this Court, except as may be necessary to approve and implement the Settlement; (4) approve the schedule of events and procedures set forth in the Settlement Agreement for completing the final approval process; and, (5) schedule a

Final Fairness Hearing after the response deadline (which date will be included in the Notice of Settlement), at which time the Court can consider any objections by Settlement Class Members, if any, to the proposed Settlement and such other arguments and facts as may be pertinent to final approval of the Settlement.

INTRODUCTION

In December 2003, seven African-American employees of Nucor filed a lawsuit in the District of South Carolina alleging a pattern and practice of racially discriminatory promotions and a racially hostile work environment from December 2, 1999 forward at the Nucor Steel Berkeley plant. Specifically, Plaintiffs alleged that Nucor discriminated against African-American employees in violation of Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1866, 42 U.S.C. §1981. Nucor denied that it committed any racially discriminatory acts. In further response to the allegations, Nucor argued that it neither allows nor condones discrimination against African-Americans. Nucor also argued that promotional opportunities are equally afforded to all employees regardless of race.

The Parties have vigorously litigated the claims and defenses in this case over the last fourteen years, including formal and informal discovery of such allegations, preparation of briefs and evidentiary submissions relating to class certification, a renewed motion to decertify the class in light of the Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes,* 131 S. Ct. 2541 (2011), briefs and arguments in two different appeals of the class certification issues in this case, proceedings on Nucor's Petition For Certiorari to the Supreme Court, extensive discovery and statistical analysis on the merits on remand from both appeals, and a successful settlement mediation in October of this year.

As discussed above, this is not a case in which the Parties reached an early or easy settlement. The case has instead been hard-fought at every stage. Both sides worked diligently to gather and interpret information and to represent their clients in discovery, in litigating class certification, in preparation for trial, and later in mediation. The Mediator, Hunter Hughes, is a distinguished, highly respected professional who has had substantial experience in mediating complex class actions for many years. After reaching an agreement, the Parties continued to negotiate and finalize the procedural and logistical details needed to embody and document such agreement.

The Parties have now agreed to a settlement that provides monetary relief totaling $22,500,000 as well as injunctive relief, based on a class of African-Americans who are or were employed by Nucor Corporation or Nucor Steel Berkeley at the Nucor Berkeley manufacturing plant in Huger, South Carolina at any time between December 2, 1999 and April 27, 2011, in the beam mill, hot mill, cold mill, melting, maintenance, and shipping departments, and who may have been discriminated against because of Nucor's challenged practices (collectively with the Class Representatives, the "Settlement Class Members"). Excluded from the Settlement Class are all Nucor employees who have previously opted-out of this case. In addition to reimbursement of reasonable expenses, the Settlement also provides for attorneys' fees of up to ten million dollars for Class Counsel's work investigating the facts, litigating the case for the past fifteen years, negotiating the Settlement, and handling all post-settlement disputes and proceedings. Nucor has agreed that it will not object to attorneys' fees sought by Class Counsel of up to ten million dollars.

The Settlement represents a compromise of highly disputed claims. The Settlement allows the Parties to avoid the cost and uncertainty associated with a trial and any subsequent

appeal, and the class members are assured to get some compensation. As such, the Parties' settlement, which is embodied in the Settlement Agreement, satisfies the "fair, reasonable, and adequate" standard for final approval. See Federal Rule of Civil Procedure 23(e).

ESSENTIAL TERMS OF THE PROPOSED SETTLEMENT

The proposed Settlement Agreement provides monetary relief as well as injunctive relief:

I. MONETARY RELIEF:

In addition to the injunctive relief outlined below, Nucor will establish a Settlement Fund of $22.5 million dollars ($22,500,000) within ten (10) days after final approval of the Settlement, which will be used to pay individual Settlement Class Members' claims, incentive awards to the Class Representatives, reasonable attorneys' fees and expenses, and the cost of Class Notice and settlement administration.

The Fund will compensate Settlement Class Members who submit timely claims. Each Settlement Class Member's share will be determined on the basis of specific factors related to the different claims at issue in the case. Claims of alleged discrimination in promotions will be weighted on the basis of the following factors: the amount of pay difference and length of the backpay period associated with the promotion at issue; whether the claimant bid for one or more promotions that were awarded to persons of another race; whether there was alleged direct or circumstantial evidence of racial bias by the supervisors or managers involved with the promotion at issue; and, whether the claimant had the minimum qualifications required for the promotion at issue. Claims of an alleged racially hostile work environment will be weighted on the basis of the following factors: alleged frequency, severity and duration of the alleged racial hostility experienced; whether the alleged racial hostility was experienced directly or vicariously; whether the alleged racial hostility came from a supervisor or co-worker; whether the alleged

racial hostility was subjectively offensive to the claimant; whether the alleged racial hostility resulted in a tangible employment action; and, whether the alleged racial hostility was reported or known to, or otherwise redressed by, management.

Settlement Class Members must submit a Claim Form within 30 days of the Notice being mailed in order to be eligible to receive a monetary award. Once all Claim Forms are submitted and assessed, the settlement proceeds will be distributed as soon as practicable.

II. INJUNCTIVE RELIEF:

Nucor has agreed to the following with regard to Nucor Steel Berkeley:

A. Provide comprehensive training on its non-discrimination/harassment policy to all employees, supervisors and managers, including one annual training meeting conducted by outside counsel for Nucor and a Nucor human resource representative with expertise in identifying and preventing racial hostility and harassment of African-Americans;

B. Reiterate to employees Nucor's commitment to non-discrimination/harassment by electronically sending a copy of the non-discrimination/harassment policy to every employee annually, and by providing access to the non-discrimination/harassment policy on the Company intranet;

C. Include a provision in an appropriate policy providing that all complaints of discrimination and/or harassment will be investigated, how to properly investigate a discrimination and/or harassment complaint, including a requirement of written documentation, and stating that a report of discrimination and/or harassment does not require corroborating witnesses or evidence to be investigated; Nucor's harassment policy will include a prominent statement that employees can be terminated for racial harassment or hostility and/or for failing to timely or properly report racial harassment or hostility that has come to their attention;

D. Provide that all job vacancies in hourly jobs, as well as all salary jobs, which have been traditionally posted in the past, shall be posted physically and electronically for a period of at least 7 days so that they are electronically and physically accessible to Nucor employees currently employed at the time of the job posting;

E. Include a provision in an appropriate policy that all documentation relating to a job posting will be retained for 4 years after a teammate separates

from Nucor or 4 years after a decision is made not to hire/promote, whichever is later; and,

F. The job postings will provide selection criteria and job-related qualifications to be considered for each job opening that is posted.

The Settlement Agreement further provides that neither the terms set forth above in subsections A, B, C, D, E, and F nor the fact that Nucor has agreed to the terms shall constitute or be treated as an admission that Nucor has not already been sufficiently carrying out the actions identified in subsections A, B, C, D, E, and F.

RELEASE OF CLAIMS

If the Court grants final approval of the Parties' Settlement and the Settlement Agreement, and a Settlement Class Member files a Claim Form for benefits or does nothing at all, the individual will be precluded from filing their own lawsuit and will release Nucor from any liability alleged in *Brown, et al. v. Nucor Corporation, et al.*, Case No. 2:04-cv-22005-DCN and/or *Conyers, et al. v. Nucor Corporation, et al.*, Case No. 2:12-cv-3478-CWH-BM, as well as any claims relating to race arising under federal, state, or local law.

RIGHT TO OBJECT TO APPROVAL OF SETTLEMENT

Settlement Class members will have the right to object to the Settlement by the deadline defined in the Notice. Any written objection must state the specific reasons for objecting, including a written statement of any legal support for such objection and copies of any papers, briefs, or other documents upon which the objection is based.

Because the Class Representatives and Settlement Class Members have already been given the opportunity to opt-out of this case, they will not be provided any additional opt-out right, provided, however, that they will have the opportunity to object.

THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The proposed Settlement is a fair, reasonable, and adequate settlement of the Parties' claims and defenses in this case. The Settlement achieves a favorable result without the risks, costs, and delay of additional sustained litigation, appeals and remands. It was negotiated after lengthy litigation of the Class Representatives' claims, including an in-person mediation attended by all counsel in Charlotte, North Carolina.

I. Presumption in favor of settlement.

There is a "strong judicial policy favoring settlement." *Bennett v. Behring Corp.*, 737 F.2d 982, 984 (11th Cir. 1984); *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158-59 (4th Cir. 1991); *US Airline Pilots Ass'n v. Velez*, 2016 U.S. Dist. LEXIS 120714, **15-16 (W.D. N.C. 2016). In evaluating the settlement agreement, "[t]he Court must be guided by 'the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement.'" *Carnegie v. Mutual Sav. Life Ins. Co.*, 2004 WL 3715446, at *17 (N.D. Ala. Nov. 23, 2004) (quoting *Bennett*, 737 F.2d at 968). "Settlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits." *Miller v. Republic Nat'l Life Ins. Co.*, 559 F.2d 426, 428 (5th Cir. 1977). "Particularly in class action suits, there is an overriding public interest in favor of settlement." *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977); *see also* 2 Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 11.41 at 11-88 (3d ed. 1992) (citing cases) ("The law favors settlement, particularly in complex cases where substantial judicial resources can be conserved by avoiding formal litigation.").

Moreover, the Supreme Court has explained that "[i]n enacting Title VII, Congress expressed a strong preference for encouraging voluntary settlement of employment

discrimination claims." *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981). A district court's approval of a Rule 23 settlement will be reversed only for a clear abuse of discretion. *See BankAmerica Co Sec. Litigation*, 350 F.3d at 751-52 (quoting *Elliott v. Spearry Rand Co*., 680 F.2d 1225 (8th Cir. 1982) (per curiam)); *Isby v. Bayh,* 75 F.3d 1191 (7th Cir. 1996).

II. Standard for determining that a proposed settlement is fair, reasonable, and adequate.

"The Court's role is not to engage in a claim-by-claim, dollar by dollar evaluation, but to evaluate the proposed settlement in its totality." *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 673 (S.D. Fla. 2006). "To determine whether a proposed settlement is fair, reasonable, and adequate, the court must examine whether the interests of the class are better served by the settlement than by further litigation." Manual for Complex Litigation, Fourth, at § 21.61 at p. 309; *Bailey v. Great Lakes Canning. Inc*. 908 F.2d 38, 42 (6th Cir. 1990); *McDermott Inc. v. AmCyde,* 511 U. S. 202 (1994); *Air Line Stewards and Stewardesses Association v. Trans World Airlines*, 630 F.2d 1164 (7th Cir. 1980).

Courts primarily consider the strength of the case for the plaintiffs on the merits, balanced against the amount offered in the settlement. *Armstrong v. Board of School Directors of the City of Milwaukee,* 616 F.2d 305, 314 (7th Cir. 1980). With that in mind, the following factors are examined: "(1) the likelihood of success; (2) the range of possible recovery; (3) the point on or below the range of recovery at which settlement is fair, adequate and reasonable; (4) the complexity, expense, and duration of the litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved." *Bennett* 737 F.2d at 986; *Jiffy Lube*, 927 F.2d at 158-59; *Velez*, 2016 U.S. Dist. LEXIS 120714, *15 (W.D. N.C. 2016); *Synfuel Technologies Inc. v. DHL Express (USA Inc.)*,

463 F.3d 646 (7th Cir. 2006); *Armstrong,* 616 F.2d at 314. "[T]here is a strong presumption in favor of finding a settlement fair that must be kept in mind in considering the various factors." *Lomascolo v. Parsons Brinckerhoff, Inc.*, 2009 U.S. Dist. LEXIS 89136, 2009 WL 3094955, at *10 (E.D. Va. Sept. 28, 2009); *see also Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 828 (E.D.N.C. 1994) (citing *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975)).

As shown below, all six of the above-mentioned factors confirm that the Settlement reached in this case is fair, reasonable, and adequate, and should therefore be approved by the Court.

A. The likelihood of success at trial.

"The likelihood of success at trial is by far the most important factor when evaluating a settlement." *Knight v. Alabama,* 469 F. Supp. 2d 1016, 1032-33 (M.D. Ala. 2006). In evaluating the likelihood of success at trial, the Court should consider the merits of the class members' claims, the defenses raised by defendant, the manageability of the trial, the risks faced by the parties, the difficulty of prevailing, and the likelihood of appeal.

The Supreme Court has cautioned that in reviewing a proposed class settlement, a court should "not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.,* 450 U.S. 79, 88 n.14, 101 S. Ct. 993, 67 L. Ed. 2d 59 (1981). "Because the object of settlement is to avoid, not confront, the determination of contested issues, the approval process should not be converted into an abbreviated trial on the merits." *US Airline Pilots Ass'n v. Velez*, 2016 U.S. Dist. LEXIS 120714, **15-16 (W.D. N.C. 2016) (citing *Flinn v. FMC Corp.*, 528 F.2d 1169, 1172-73 (4th Cir. 1975)) (noting that the settlement hearing is not "a trial or a rehearsal of the trial"); *United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999).

Instead, courts have consistently held that the function of a judge reviewing a settlement is to determine whether the proposed settlement is reasonable "without substituting its business judgment for that of counsel, absent evidence of fraud or overreaching." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 455 (S.D.N.Y. 2004) (internal quotation marks and citations omitted).

Here, Plaintiffs could spend significant amounts of time and money preparing for and participating in a lengthy trial and recover nothing, or significantly less than the relief provided by the proposed Settlement. Likewise, Nucor could spend significant amounts of money and lose this case. In this circumstance, settlement is preferable to the risks of continued litigation faced by the Parties. The fact that settlement allows both Parties to avoid the risk and expense of further litigation is a factor in support of settlement approval.

Moreover, "victory -- even at the trial stage -- is not a guarantee of ultimate success" given the risks and expense of appeal. *In re Milken & Assoc. Sec. Litig.*, 150 F.R.D. 46, 53 (S.D.N.Y. 1993). Even if Plaintiffs succeeded at trial, they would most certainly face a challenging and lengthy appeal. Such an appeal could significantly alter any relief awarded at trial, and could even eliminate such relief altogether. Moreover, at the very least, an appeal would postpone any recovery or remedy for years, and could result in Nucor ultimately paying no damages at all. If Nucor prevails at trial, it would also likely face a lengthy appellate process with an uncertain outcome.

B. The range of possible recovery and the point at or below the range of possible recovery at which the settlement is fair, adequate and reasonable.

In assessing this factor, the Court should consider the damages that could be recovered at trial, Plaintiffs' likelihood of prevailing at trial, and other relevant factors to determine whether the settlement is fair to the class. *Carnegie*, 2004 WL 3715446, at *20; *see also In re Domestic*

Transp. Antitrust Litig., 148 F.R.D. 297, 319 (N.D. Ga. 21 1993). "In analyzing adequacy, courts must weigh the following factors against the settlement amount: (1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *Velez*, 2016 U.S. Dist. LEXIS 120714 at **16-17 (relying upon *Jiffy Lube*, 927 F.2d at 159).

Here, the Class Representatives sought both monetary and injunctive relief. The proposed settlement provides both forms of such relief. The injunctive relief relates directly to the challenged practices and is therefore an important part of the fair and reasonable Settlement. *See DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 291 (W.D. Tex. 2007) (finding that the proposed settlement was in the best interests of the class because of the substantial and immediate benefits provided to class members, including implementation of a new policy aimed at correcting the racial discrimination at issue, the risks and length of trial in class actions, and the likelihood of appeals and subsequent proceedings if the case proceeded on the litigation track); *Numismatic Guaranty Corp. of America*, No. 06-61677-CIV, 2008 WL 649124, at * 10 (S.D. Fla. Jan. 31, 2008) ("Where, as here, the injunctive relief addresses the very practices that gave rise to the suit - and indeed are at the core of the Plaintiffs' goals in pursuing the litigation – a court is justified in viewing such injunctive relief as a significant component of the settlement.").

The monetary fund is also a fair and reasonable compromise of the range of backpay and damages calculated by Plaintiffs' experts. Taking into consideration the risk of loss and the inevitable delay in any potential recovery, Plaintiffs' experts and Class Counsel concluded that the Settlement should be accepted because it allowed payment of sums to a relatively small class

of employees, as well as payment of reasonable fees, expenses and settlement administration costs agreed to by both sides.

C. The complexity, expense, and duration of litigation.

The complexity, expense and duration of the litigation of this case also weighs in favor of settlement. *See Carnegie,* 2004 WL 3715446, at *22 (finding the complexity, expense, and duration of continued litigation and possible appeals weigh in favor of the proposed settlement because expert testimony on complex actuarial methodologies would be mandatory and trial likely would consume several months and postpone conclusion of the action); *In re Metropolitan Life Derivative Litig.*, 935 F. Supp. 286, 293-94 (S.D.N.Y. 1996) (finding that settlement would undoubtedly be in the best interest of all the parties, in light of the effort and expense that would be required to take the case to and through trial). The circumstances here are similar to those found to favor settlement approval in *Velez*:

> The Settlement Agreement would put to final rest eight years of litigation between the East Pilots and West Pilots. These cases had been litigated with extensive motion practice by the time settlement was reached. Prior to settlement, the Parties engaged in a combination of formal and informal discovery, and counsel for the Parties conducted investigation relating to the potential claims and the underlying events and transactions. [I]t is clear that after numerous cases and years of litigation, the Parties are well aware of the important facts and the strength of their cases. The Parties hired an independent mediator, engaged in mediation over three days in January 2016, and continued negotiating in the weeks following the mediation sessions. It was only after those extensive negotiations that the Parties ultimately consummated the Settlement Agreement. It appears that negotiations were at arm's length, and there are no signs of collusion. Counsel for both sides have . . . ample experience in the type of case at issue here. Consequently, all the fairness factors favor final approval of the Settlement Agreement.
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> It is clear, based in part on the many years of litigation amongst the Parties, that there are viable competing claims that could have been litigated over years. Each of the Parties have weighed the ultimate success on the merits and the risks of establishing liability inherent in litigation. Each party thinks its case is strong, but recognizes the difficulties in proving and defending its claims. The anticipated duration of these consolidated cases weighs heavily in favor of settlement. The Parties have been litigating for over eight years and are still in the discovery process. The ordeal of additional discovery, dispositive motions, trial, and appeal would deplete the USAPA treasury. The hemorrhaging has to stop.

Velez, 2016 U.S. Dist. LEXIS 120714 at **15-17.

As in *Velez*, this is a complex and protracted case, requiring statistical and other experts who are extremely expensive. The experts on both sides of this case have opposing views and there has been substantial disagreement on a number of statistical matters and the resulting analyses of the data. Resolution of these differences would require that the Court decide between competing views on detailed and complex statistical methods and models. In addition, the Settlement spares the Parties the difficulties and risks that they would have faced in litigating the issue of damages. For these reasons, neither side could be sure which view would have been ultimately accepted by the Court and jury if this case went to trial.

D. The stage of the proceedings at which the Settlement was achieved.

In order to reach a fair settlement, the "parties must have an adequate appreciation of the merits of the case before negotiating." *In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 148 F.3d 283, 319 (3d Cir. 1998) (quotation marks omitted). Here, the Parties have had ample time and discovery to evaluate their positions in the case and believe this Settlement to be a fair resolution of all claims and defenses. Plaintiffs' counsel thoroughly investigated and prosecuted the merits of the claims involved in this litigation and Nucor's counsel thoroughly investigated and prosecuted the merits of the defenses involved in this

litigation. The Parties thoroughly litigated this matter, conducting scores of fact and expert depositions, reviewing voluminous documents, time and payroll records and compiling and analyzing multiple expert reports. Depositions included experts, Class Representatives, other Settlement Class Members, 30(b)(6) corporate representatives, executive vice-presidents, human resource management, and operations management. In addition, the Parties vigorously litigated certification of the class in both this Court and the Court of Appeals over a period of ten years.

The resulting Settlement is the product of arm's length negotiations and was executed by experienced counsel following lengthy, contested and substantial legal and factual investigation. This factor weighs heavily in favor of the Court's approval. *See e.g, Wineland*, 267 F. R.D. at 677 ("[T]he Settlement is the product of arm's length negotiations and, thus, is presumed to be fair and reasonable"). *See* 2 Herbert Newberg & Alba Conte, *Newberg on Class Actions* §11.41 at 11-88 (3d ed. 1992) (there is usually a presumption of fairness when a proposed settlement, which was negotiated at arm's length by counsel, is presented for approval); *Fisher Bros. v. Cambridge-Lee Indus. Inc.*, 630 F. Supp. 482, 488-89 (E.D. Pa. 1985); *In re McDonnell Douglas Equip. Leasing Sec. Litig.*, 838 F. Supp. 729, 738-39 (S. D.N.Y. 1993) ("courts have consistently refused to substitute their business judgment for that of counsel, absent evidence of fraud or overreaching"); *Carnegie v. Mutual Sav. Life Ins. Co.*, 2004 WL 3715446, at *19 (N.D. Ala. 2004) (finding proposed settlement fair because it was reached four years after the action was commenced, following extensive discovery and filing of affidavits from experts for both parties).

E. There has been no fraud or collusion between the Parties.

There is no basis for concern about fraud or collusion because the Settlement was achieved in good faith after arm's length negotiations, and intensive litigation and mediation. *See e.g.*, *Ashley v. Regional Transp. Dist. & Amalgamated Transit Union Div. 1001 Pension*

Fund Trust, No. 05-CV-01567-WYD-BNB, 2008 WL 384579, at *6 (D. Colo. Feb. 11, 2008) (finding that involvement by a mediator and a four-month negotiation period indicated no fraud or collusion). *See* Manual for Complex Litigation, Fourth, §21.612 at p. 313-14 ("Extended litigation between or among adversaries might bolster confidence that the settlement negotiations were at arm's length."). The Parties participated in negotiations with the assistance of an experienced mediator, Hunter Hughes. The Parties' negotiations were protracted and required multiple lengthy sessions, including a face-to-face meeting in October of 2017.

Under the supervision of the mediator, all negotiations were conducted at arm's length and in good faith. In sum, the Settlement is the non-collusive result of extensive factual and legal analysis and protracted arm's length negotiations between experienced and well-informed counsel under the supervision of an experienced mediator.

F. The adequacy of the proposed Notice and opportunity to object.

The Notice being provided to the Settlement Class Members includes all of the information required for Rule 23(b)(3) classes. The proposed Notice to be mailed to all Settlement Class Members also contains all of the elements necessary to allow them to decide whether to support or object to the proposed Settlement, including: (a) the nature of the action; (b) the definition of the class certified; (c) a description of the class claims, issues and defenses; (d) the identities of the Parties; (e) a summary of the terms of the proposed Settlement; (f) notice that the Settlement Class Member may object and appear at the Final Fairness Hearing; (g) information regarding the manner in which objections can be submitted; and (h) the binding effect of the class judgment and the scope of release of class and individual claims.

"All that the notice must do is fairly apprise the prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about

whether the settlement serves their interests." *UAW v. GMC*, 497 F.3d 615, 630 (6th Cir. 2007) (quotation marks omitted); *Wal Mart Stores, Inc. v. Visa U.S.A., Inc.,* 396 F.3d 96, 113-14 (2d Cir. 2005) ("[The settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings. Notice is adequate if it may be understood by the average class member.").

CONCLUSION

For the foregoing reasons, the Court should grant preliminary and final approval of the Parties' Settlement and enter the proposed Settlement Agreement.

Respectfully submitted this 26th day of December, 2017.

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