

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

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| <p>JACKSON COUNTY EMPLOYEES' )<br/> RETIREMENT SYSTEM, Individually and on )<br/> Behalf of All Others Similarly Situated, )<br/> <br/> Plaintiff, )<br/> <br/> vs. )<br/> <br/> CARLOS GHOSN, et al., )<br/> <br/> Defendants. )</p> <hr style="width: 45%; margin-left: 0;"/> | ) | <p>Civil Action No. 3:18-cv-01368<br/> <u>CLASS ACTION</u><br/> Hon. William L. Campbell, Jr.<br/> Magistrate Judge Alistair Newbern<br/> <br/> PLAINTIFFS' REPLY IN FURTHER<br/> SUPPORT OF MOTION FOR: (1) FINAL<br/> APPROVAL OF CLASS ACTION<br/> SETTLEMENT AND APPROVAL OF PLAN<br/> OF ALLOCATION; AND (2) AN AWARD<br/> OF ATTORNEYS' FEES AND EXPENSES</p> |
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Pursuant to the Court’s May 26, 2022 Order Preliminarily Approving Settlement and Providing for Notice (“Preliminary Approval Order”), and as a supplement to the initial filing made by Plaintiffs and their counsel on August 15, 2022 (ECF 247-254), Plaintiffs Jackson County Employees’ Retirement System and Providence Employees’ Retirement System (“Plaintiffs”) respectfully submit this Reply in Further Support of Motion for: (1) Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (2) an Award of Attorneys’ Fees and Expenses.

**A. No Class Member Has an Objection to Any Portion of the Settlement Whatsoever, While Thousands of Potential Class Members Have Submitted Claims**

Here, at the conclusion of an extensive Court-approved notice program, the Class’ response to the Settlement, Plan of Allocation, and counsel’s request for an award of attorneys’ fees and expenses has been overwhelmingly positive. Pursuant to the Preliminary Approval Order, more than 77,000 copies of the Notice of Proposed Settlement of Class Action (“Notice”) and Proof of Claim

and Release form (“Proof of Claim”) were sent to potential Class Members and their nominees.<sup>1</sup> In addition, the Summary Notice was transmitted over the *Business Wire* and published in *The Wall Street Journal* on June 24, 2022. Murray Decl., ¶12. Copies of the Notice, Proof of Claim, Stipulation of Settlement, Preliminary Approval Order, and other documents in support of the Settlement were also posted on a website dedicated to the Litigation. *Id.*, ¶14. The deadlines for submitting objections to any aspect of the Settlement, the Plan of Allocation, and/or Plaintiffs’ Counsel’s request for an award of attorneys’ fees and expenses have passed. To counsel’s knowledge, as of the date of this filing, not a single objection has been received to any aspect of the relief requested whatsoever.

In contrast to the complete lack of objections, as of the date of this filing, the Claims Administrator has received claims from over 4,000 potential Class Members who wish to participate in the Settlement.<sup>2</sup> The reaction of the Class – thousands of claims and no objections – demonstrates that the Class supports the Settlement, Plan of Allocation, and counsel’s attorneys’ fee and expense request and is the most powerful evidence that the Settlement is fair, reasonable, and adequate and that it should be approved. *See, e.g., In re Southeastern Milk Antitrust Litig.*, 2013 U.S. Dist. LEXIS 70163, at \*19 (E.D. Tenn. May 17, 2013) (“The lack of objections by class members in relation to the size of the class highlights the fairness of the settlements to unnamed class members and supports approval of the settlements.”); *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 906 (S.D.

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<sup>1</sup> See ¶¶4-11 to the Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date (“Murray Decl.”) (ECF 253), and ¶¶3-4 to the accompanying Supplemental Declaration of Ross D. Murray Regarding Notice Dissemination and Requests for Exclusion Received to Date.

<sup>2</sup> Pursuant to the Preliminary Approval Order, the deadline for submitting claims is September 14, 2022. ECF 243 at ¶19. Based on the Claims Administrator’s experience, a significant number, if not the majority, of claims are received in the last several days prior to the claim submission deadline.

Ohio 2001) (“[A] relatively small number of class members who object is an indication of a settlement’s fairness.”).

For the reasons set forth herein and in previously submitted memoranda and declarations, Plaintiffs respectfully submit that the \$36 million Settlement is a highly favorable result for the Class and that the Plan of Allocation is a fair and equitable method for distributing the Net Settlement Fund. Therefore, both should be approved as fair, reasonable, and adequate. Finally, the attorneys’ fees and expenses requested by Plaintiffs’ Counsel are reasonable under the circumstances and should be awarded in the amounts sought.<sup>3</sup>

**B. Defendants’ Dispute Regarding the Contours of a Contribution Bar Order Should Not Unduly Delay the Entry of Judgment or Class Members’ Recoveries**

On August 15, 2022, Defendants Nissan Motor Co., Ltd. (“Nissan”), Hiroto Saikawa (“Saikawa”), and Joseph G. Peter (“Peter”) filed a Motion for Entry of Contribution Bar Order (the “Bar Motion”), attaching a [Proposed] Contribution Bar Order for the Court’s consideration. ECF 245-246. On August 29, 2022, Defendants Ghosn and Kelly filed oppositions to the Bar Motion, including their own proposed bar orders. ECF 255-258. Nissan filed a reply on September 6, 2022. ECF 259-260. While Plaintiffs take no position on Defendants’ competing proposals, resolution of this dispute should not unduly delay entry of Judgment, which could prejudice Class Members by delaying their recoveries.

Resolution of the Bar Motion is *entirely* irrelevant to the question whether the Settlement achieved by Plaintiffs’ Counsel on behalf of the Class, including all of its terms, is fair, reasonable, and adequate. Regardless of whether Nissan seeks reimbursement from Ghosn, Kelly, or any related relevant insurance policies, the \$36 million Settlement Amount will not be impacted by a single

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<sup>3</sup> Proposed orders granting the relief sought herein are submitted herewith.

penny. Indeed, as Nissan points out (ECF 260 at ¶15), it has already paid the Settlement Amount, which is being held in escrow pursuant to the terms of the Stipulation of Settlement.

Moreover, the Stipulation of Settlement is explicit that how the Court, or any appellate court, may resolve the Bar Motion does not preclude the entry of, or delay the finality of, Judgment:

Any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to . . . a contribution or bar order . . . ***shall not in any way delay, affect, or preclude the time set forth above for the Judgment to become Final, or otherwise preclude the Judgment from becoming Final.***

ECF 241 at ¶1.10.

The Court’s resolution (including any appeal therefrom) of any objections to the Settlement or the proposed Final Judgment brought by Ghosn or Kelly on the basis that the Settlement or the proposed Final Judgment do not contain an appropriate order barring and restraining Defendants from commencing or prosecuting claims for contribution or indemnity against Ghosn or Kelly relating to the Released Claims, including the Court’s modification of the proposed judgment to reflect resolution of such objections, ***shall not be a basis for any Party to contend the Court has not entered “a judgment substantially in the form of Exhibit B attached hereto,”*** as required by ¶7.1(d).

*Id.* at ¶7.4.

Indeed, recognizing the likelihood of the Bar Motion, and the possibility that such a dispute could take years to be resolved should any party choose to appeal an order with which they disagreed, these provisions were specifically crafted to ensure that Class Members’ recoveries would not be delayed by intra-Defendant fighting, which has been endemic in this action.<sup>4</sup>

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<sup>4</sup> To the extent Kelly suggests the Court should not approve the Settlement ***unless*** his preferred version of a bar order is entered (*see* ECF 257 at 22), the Court should reject such an assertion. Aside from the contours of a bar order, which all parties agree should be entered in some form, and which the Preliminary Approval Order appropriately mandates will be entered (ECF 243 at ¶29), Kelly does not even have ***standing*** to object to the Settlement. *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 2008 WL 2566867, at \*3-\*4 (S.D. Tex. June 24, 2008) (“The general rule is that a non-settling defendant lacks standing to object to a partial settlement.”).

In sum, resolution of the Bar Motion is irrelevant to the Court's consideration of the remaining terms of the Settlement, and Plaintiffs respectfully submit that resolution of the Bar Motion should not unduly delay entry of Judgment.

DATED: September 12, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on September 12, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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# Mailing Information for a Case 3:18-cv-01368 Jackson County Employees' Retirement System v. Ghosn et al

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### **Manual Notice List**

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**Hiroshi Karube**

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