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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JEFFERY ETTER; SUSAN ETTER; PAUL KAHLER; FRAN CURTIS; MICHELLE CURTIS; LESLIE CRAWSHAW; RICHARD KAYLOR; BRIAN MCBRIDE; DENNIS OSHA; JAMES PEARCE; CRAIG POST; RAYMOND ROLLE, SR; EMIL VARGO; LEONARD SOMERVILLE; ORRENE SOMERVILLE; RICHARD SPEARS; ALICE KNIGHT; ALAN BURKHART; SANDRA BURKHART; GEORGE FREDERICK; KATHLEEN FREDERICK; ALAN GREAGER; and, LINDA GREAGER, individually, and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THETFORD CORPORATION, a Delaware corporation; NORCOLD, INC., a Delaware corporation; THE DYSON-KISSNER-MORAN CORPORATION, a Delaware corporation; and, DOES 1 to 50, inclusive,

Defendants.

Case No. 8:13-CV-00081-JLS-RNB

Assigned for all purposes to the Honorable Josephine Staton

SETTLING PLAINTIFFS' REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS TO CLASS REPRESENTATIVES

Date: September 16, 2016
Time: 2:30 p.m.
Courtroom: 10A

Date Action Filed: December 12, 2012
Removal Date: January 16, 2013

This document also relates to the following related action:

CHARLES CHOW, JOHN ROBINSON, RANDY DUPREE, RAY BURKHEAD, GORDON WILLIAMSON AND LINDA PIERSON, individually, and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NORCOLD, INC., a Delaware corporation; THETFORD CORPORATION, a Delaware corporation; THE DYSON-KISSNER-MORAN CORPORATION, a Delaware corporation; and DOES 1 to 50, inclusive.

Defendants.

Case No.: SACV14-06759

Assigned for all purposes to the Honorable Josephine Staton

Date Action Filed: August 28, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

I. INTRODUCTION

The fee petition filed by Class Counsel requesting an attorneys' fees award consistent with the Ninth Circuit's 25% benchmark should be approved. The fee requested is inherently reasonable given the results secured for the Class, the significant professional time and expense invested in the case to date by Class Counsel and risks presented. The petition requests 25% of the $36 million Monetary Fund secured by the settlement, which represents only 18% of the total settlement benefits when the additional non-monetary benefits are included. Viewed on a lodestar basis, the motion seeks a multiplier of 2.08, which is also well within reason for the reasons cited in the petition, especially since it is certain to drop once future work that is necessary for Class Counsel to perform over the next three years is considered. Class Counsel ask that the Court award the full $9 million fee requested and exercise its discretion to allocate it equitably between Class Counsel and Non-Settling Plaintiffs' Counsel ("NSP Counsel" or "Beard") based on their respective time, contributions, risks and conduct.

NSP Counsel's request that the Court award a fee less than the 25% benchmark is unwarranted. Just a few months ago, NSP Counsel fully supported the Court granting a fee award equal to the 25% benchmark. Mr. Beard called Class Counsel and proposed seeking the maximum fee, assigning 40% of the fee to NSP Counsel, and, in exchange, confirmed that NSP's would no longer delay matters by pursuing any further objections or appeals. (Robinovitch Decl. ¶84-85 and Exs. D-G (Doc. 480).) While Class Counsel declined Mr. Beard's offer to engage in such an arrangement, that does not justify any reduction from the benchmark.

NSP Counsel's request that the Court award them half of any fee award should also be rejected. For the Court to award NSP Counsel a positive multiplier, while Class Counsel receives a negative multiplier (less than their actual lodestar) would be unwarranted given that Class Counsel did far more work in this case, devoted more resources, took greater risks, and ultimately negotiated, advocated, and secured this settlement for the Class. In contrast, NSP Counsel actually enhanced the risks to the

Class, going so far as to suggest that the Class would be better off litigating this case in a bankruptcy court than accepting the settlement fund already secured. (Doc. 429 at 4.)

II. SUMMARY

In contrast to NSP Counsel's continued criticism of the settlement and Class Counsel, more than 45,100 Class members have now filed claims seeking immediate distribution of the settlement funds, while only 41 Class members have elected to exclude themselves, and only one Class member other than the Non-Settling Plaintiffs has objected. Robin Decls. (Doc. 510, 517.) The sole objection was unrelated to attorneys' fees. This confirms widespread support by the Class for the settlement and Class Counsel's work, despite NSP Counsel's continued negative remarks.

As demonstrated in their opening brief (Doc. 479) and the supporting Robinovitch Declaration (Doc. 480), Class Counsel's work in this case negotiating, securing, and then preserving the settlement in the face of substantial risks and pitfalls was exceptional. But for their efforts, there would be no settlement and Class members could easily find themselves unsecured creditors as Norcold pursued available alternative options to address class claims, pursuing their own low-dollar claims on individual bases should class certification have been denied, or with nothing at all should Defendants have prevailed on summary judgment or at trial. *See generally* Robinovitch Decl. at ¶¶ 26-44 (discussing risk factors and citing other cases where similar risks materialized). No facts or special circumstances justify a downward departure from the 25% benchmark. If anything, the facts and circumstances of the case show that an enhancement to the benchmark would be warranted had Class Counsel sought one.

In contrast, NSP Counsel's request that the Court only award a reduced 20% fee, of which they receive half, should be rejected. There is no basis for such an award when: (1) NSP Counsel did not secure the settlement fund for the Class; (2) NSP Counsel have less than half the lodestar time of Class Counsel, of which most was devoted to the pursuit of unsuccessful objections that were eventually overruled and other conduct that did not benefit the Settlement Class; (3) in April NSP's Counsel

themselves indicated support for an award equal to the 25% benchmark with Class Counsel receiving a greater share; (4) NSP Counsel's new proposal would illogically result in a *positive* multiplier for themselves while leaving Class Counsel with a *negative* multiplier, a gap which would only increase as Class Counsel remains obligated to do all future work over the next three years to implement and administer the settlement; (5) NSP Counsel's conduct of filing serial objections created the need for Class Counsel to spend significant additional time to protect the settlement and to and avoid further delays in the distribution to the Class; (6) Non-Settling Plaintiffs' and NSP Counsel's conduct since July 2014 sought to prejudice and disrupt a fair settlement and class notice process through biased and inaccurate media and/or internet postings aimed at the Class; and (7) Class Counsel had the added burden of carrying the vast majority of the litigation costs.

While NSP Counsel boldly claims that the settlement "would not exist without the efforts of Non-Settling Plaintiffs' Counsel and their Attorneys," nothing could be further from the truth. The settlement now before the Court was secured and protected by Class Counsel – not by NSP Counsel. Mr. Beard turned his back towards settlement negotiations in June 2014, ignored facts altogether and applicable risks, and ultimately played no role in helping to secure the settlement fund. He continues to refer to it as "paltry" and demand that it be rejected so the case can be placed back on a litigation track. While Mr. Beard did make positive contributions early in the litigation, at some point, he became more interested in his own vendettas against Defendants and their executives and not in securing a settlement in the range Defendants could be expected to pay before pursuing other options that would leave the Class with less. Had NSP Counsel had their way, the settlement discussions would have abruptly ended in June 2014, over thirty million dollars would have been immediately taken off the table, and class certification would have either been denied a few short days later, or if the motion were granted, Norcold would be pursuing reorganization with a bankruptcy judge while the instant claims withered on the vine.

Should the Court award NSP Counsel any fees, Class Counsel believes that those fees should be limited to Mr. Beard's positive contributions to this litigation – time spent before the day the settlement was reached on July 22, 2014. The Hagens Berman firm did not contribute any value to this case and should not be compensated for entering an appearance at the eleventh hour to attempt a hostile takeover and present an "alternative" settlement proposal that has never been before the Court. Certainly, no argument exists for Hagens Berman to claim any risk multiplier – they have never borne any risk at all.

III. ARGUMENT

A. NO FACTS JUSTIFY A DEPARTURE FROM THE NINTH CIRCUIT'S 25% BENCHMARK.

As shown in Class Counsel's opening papers, to date Class Counsel have devoted more than $4.4 million in professional time and expenses towards securing the settlement fund for the Class. Class Counsel accomplished this in the face of extraordinary risks on the merits with respect to class certification and with respect to Defendants' ability to seek protection in the bankruptcy courts to cleanse it of the class claims. The total value of the settlement, which includes a $36 million non-reversionary monetary fund, as well as the automatic provision of extended warranties to N6 and N8 owners in the Class, can be valued at more than $50 million and is fair and reasonable to the Class given the significant risks and other factors presented. *See Roberts v. Electrolux Home Prods*, 2014 WL 4568632, at *6,12 (C.D. Cal. Sept. 11, 2014) (granting final approval to settlement of washing machines prone to fire with $8 million cash fund and other non-monetary benefits totaling $35.5 million; awarding $8 million attorneys' fee equal to 21% of total fund and 1.23 lodestar multiplier). Class Counsel's request for $9 million in fees, to be allocated by the Court, represents 18% of the total settlement value and 25% of the settlement's monetary fund component.[1] The request,

[1] Contrary to Non-Settling Plaintiffs' suggestion, there is no "clear sailing agreement" in the Settlement Agreement. A "clear sailing agreement" is a provision in a settlement in which defendants agreed not to object to an award of attorneys' fees up to a certain amount. *See In re Toy-R-Us FACTA Litig.*, 295 F.R.D. 438, 458 (C.D. Cal. 2014) ("In general, a clear sailing agreement is one where the party paying the fee agrees not to contest the amount to be awarded by the fee-setting court so long as the award falls beneath a

therefore, is well within the standard for awarding fees in the Ninth Circuit and commensurate with the fees in other cases.[2] *See In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1047–48 (N.D. Cal. 2007) ("However, in most common fund cases, the award exceeds that benchmark. …nearly all common fund awards range around 30% ... [and] 'absent extraordinary circumstances that suggest reasons to lower or increase the percentage, the rate should be set at 30%.'")(internal citations omitted).

There is no basis for any downward departure from the Ninth Circuit's 25% benchmark, as Non-Settling Plaintiffs suggest. In cases like this, where the risk of non-payment is due to the Defendants' financial condition or threatened bankruptcy, courts routinely award *more than* the 25% benchmark fee (and positive multipliers), *not less*. This holds true even where the state of the Defendants' financial limitations results in the class receiving less than their desired "home run" settlement. This is because the risks faced in such situations are *enhanced*, not reduced.

In *Torrisi v. Tucson Elec. Power Co*., 8 F.3d 1370, 1376 (9th Cir. 1993), the Ninth Circuit found that the 25% benchmark applied and awarded a fee of $7.5 million (a 2.5 multiplier of a $3 million lodestar) with respect to a $30 million settlement, noting that in cases where the defendant's financial wherewithal added to the risk of non-recovery a downward departure from the benchmark was not warranted, rather the opposite was. As the Court there explained: "Moreover, it is a double contingency; first, they must prevail on the class claims, and then they must find some way to collect what they win." *Id.* at 1376-77. Numerous other cases are in accord:

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negotiated ceiling." citing *Weinberger v. Great Northern Nekoosa Corp.*, 925 F.2d 518, 520 n. 1 (1st Cir.1991).) Section VII of the Settlement Agreement in this case contains no such term. While Section VII permits applications for attorneys' fees up to the amount of the Ninth Circuit's 25% benchmark, it contains no language limiting any Defendants' ability to object to any fee petition should they wish to do so. After receiving Non-Settling Plaintiffs fee motion, Class Counsel promptly clarified this with defense counsel, informing them they could file an objection if they so choose.

[2] NSP Counsel's criticism of the opinions of Professor Brian Fitzpatrick here (Doc. 508 at p. 1, footnote 1) is misplaced. In their fee petition filed April 23, 2013 in *In re Toyota Unintended Acceleration Marketing Sales Practices Litig.*, No. 8:10 ml-2151 (C.D. Cal.)(Docket 3563), NSP counsel (Hagens Berman) had no difficulty holding up Professor Fitzpatrick as a well-respected authority on class action attorneys' fees when seeking a 25% fee and 2.48 multiplier and citing many similar risks.

- In *In re Heritage Bond Litig.*, 2005 WL 1594389, at *14 (C.D. Cal. June 10, 2005) the court awarded a 33 1/3 % fee in case where the Defendant had a limited ability to pay, various related entities were insolvent and all insurers except one disclaimed coverage;
- In *Hester v. Vision Airline, Inc.*, 2014 WL 3547643 at *11 (D. Nev. July 17, 2014) the court awarded a 30% fee noting "Class Counsel has achieved an exceptionally favorable result… in view of Vision's threatened bankruptcy, which would likely result in little recovery, if any";
- *In re EVCI Career College Sec. Litig*, 2007 WL 2230177, at *17 (S.D.N.Y. July 27, 2007), the Court awarded class counsel fees equal to 25% of the settlement fund, amounting to a 2.48 multiplier, noting "Given the Company's limited financial wherewithal and the wasting nature of its insurance policies, Lead Counsel maximized the Class's recovery. Accordingly, a lodestar multiplier of 2.48 is justified here, and is within the range found to be reasonable by courts that have used lodestar cross checks in complex class actions with outstanding results in the face of substantial risks";
- *In re Warner Commc'ns Sec. Litig.*, 618 F.Supp. 735, 746 (S.D.N.Y.1985) where defendant cited to risk of bankruptcy, the court approved the settlement noting that "certainty of payment of the settlement is advantageous to the class" and awarded fees that were slightly less than 25% of the settlement fund;
- *In re Safety Component Sec. Litigs*, 166 F. Supp. 2d 72 100 (D.N.J 2001) the court found that threat of non-payment from "D & O" insurance carrier "weigh[ed] overwhelmingly" in favor of approval of fee request of one-third of a common fund;
- In *Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000) the court awarded a 33 1/3% fee and 2.04 multiplier where: "The risk of nonpayment in this case was acute. The settlement represented more than Whitman Medical Corporation's total profits over the past five years.

…Whitman lacked significant unencumbered hard assets against which plaintiffs could levy had a judgment been obtained.";

- In *Maine State Retirement System v. Countrywide Financial Corp.*, 2013 WL 6577020, at *13 (C.D. Cal. Dec. 5 2013) the Court considered the risk the defendant would file bankruptcy in evaluating the reasonableness of a class settlement, ultimately approving it as fair, as well as class counsel's request for 17% of the $85 million gross settlement fund, plus nearly $3 million in litigation expenses; and
- In *McPhail v. First Command Financial Planning, Inc.*, No. 05-cv-179, 2009 WL 839841, at *7-8 (S.D. Cal. March 30, 2009), the court granted final approval of a $12 million settlement where the Defendant had limited available assets and would have been forced into bankruptcy if a judgment in the amount demanded ($175 million) were obtained. Considering this risk, the Court granted fees equal to 30% of the first $10 million recovered and 25% on the remaining $2 million.

Here the risks facing Class Counsel and the Class cannot be underestimated. As made clear throughout the mediation sessions, the risks of a bankruptcy filing to address the class claims were significant. Throughout the negotiations, Class Counsel had to carefully walk the line between securing a reasonable settlement fund for the Class and not pushing Defendants (or the case) over the edge to the point where the Class would be more likely to ultimately receive less if critical motions were denied or a bankruptcy filing resulted. *See* Robinovitch Decl. ¶¶ 28-44 (discussing risks presented). The settlement fund secured represents several years of Norcold's profits and is commensurate with the fail rate reported on the Incident Log. While more money is always sought, few companies can realistically provide the equivalent of full refunds for every product sold over a ten-year period. Despite NSP Counsel's statement that the merit risks present in this case were minimal, that is simply not true. Beard actually lost the *Reis* action at trial. In the Somerville's subrogation case, summary judgment was

granted in favor Norcold on statute of repose, economic loss doctrine and other grounds. NSP's counsel themselves note: "Up to 2010, they [defendants] had been universally successful in litigating claims on an individual basis." (Doc. 492 at 5.) In the midst of the mediation, an adverse decision in *Landen v. Electrolux Home Prods.*, No. 13-cv-1033 (C.D. Cal. July 1, 2014) was issued. Had this Court followed that decision at the motion hearing scheduled for just three days after the settlement was reached, the Class here would be receiving nothing. The declarations of Norcold's President Kevin Phillips and Independent Director Joseph Farnan make clear that Defendants remain prepared to promptly pursue other options they have to address the class claims if the settlement here is not completed. (Docs. 418, 419.) As Mr. Brandlin's Declaration makes clear, if that occurs, as unsecured creditors, the Class' chance of a receiving any recovery is low as all of Defendants' assets are pledged to secured creditors who would have priority. Brandlin Decl. at ¶¶ 11-33, 38-48, 58-66. (Doc. 334.) Therefore, to claim, as NSP Counsel does, that "the litigation risks," were and continue to be "negligible" is untrue.

Based on the foregoing, the requested $9 million fee is reasonable whether viewed under the percentage of the common fund method or the lodestar-plus-multiplier method. Both methods require the Court to consider the risks presented. There is no reason to discount the aggregate fee to 20% of the fund or to award Class Counsel a negative multiplier due to "negligible" risks, as Non-Settling Plaintiffs propose.

B. NON-SETTLING PLAINTIFFS' COUNSEL'S REQUEST THAT THEY BE ALLOCATED 50% OF ANY FEES AWARDED IS UNWARRANTED.

NSP Counsel's request that they be allocated half of any attorneys' fee award cannot be justified. Before addressing the NSP Counsel's request for such a division, it is necessary to correct certain facts presented in their filings, which incorrectly attempt to discount Class Counsel's contribution. (Docs. 492, 508.)

1. Correction of Relevant Facts.

a. The Case Not Initiated Solely by Beard.

Any suggestion by Mr. Beard that he alone originated and litigated all meaningful aspects of this case is inaccurate. In 2011, Mr. Beard was discussing another case with

Mr. Ridout when the topic of his individual *Reis v. Norcold* case came up. Mr. Ridout had prior class action experience, while Beard had none, and raised the idea of pursuing a separate class action against Norcold. *See* C. Ridout Declaration filed Sept. 9, 2016 Mr. Ridout then contacted other attorneys with extensive class action experience and the ability to finance such a case, including Zimmerman Reed ("ZR"). Starting in late December 2011, the three firms began collectively working together to develop the class claim theories, market for clients and to file the initial complaint. *Id.*

Many individual tort theories pursued by Mr. Beard in his individual tort cases were at odds with successful class action practice and therefore, it was ZR that worked primarily on developing the legal theories and class claims that had the best chance to survive a class certification challenge. Any suggestion that Beard alone was responsible for drafting the complaint or obtaining knowledge of Norcold's defective products, investigating facts or pursuing discovery is inaccurate. As shown on the Thompson Declaration (Doc. 106-1) there were nearly 100 cases already filed against Norcold by lawyers other than Beard dating back to at least 2003. Early on, other cases were investigated, reviewed and eventually discovery requests were served demanding the production of the prior fact and expert witness testimony from all of Defendants' other cases (including any Beard handled), so that testimony could be used to in this case. *See* Order granting Motion to Compel (Doc. 130). At the same time the complaint in this case was filed, another large class action firm, Seeger Weiss based in New York, was actively looking to bring a similar action. *See* Seeger Weiss website (showing marking materials dated December 27, 2012). It was Zimmerman Reed's effort, strategy, ingenuity and class action experience that strongly contributed to getting the case off the ground and expanded through the First Amended Complaint (Doc. 40).

While Beard may have learned certain facts about the subject defect during discovery in his individual *Reis* case, he was eventually fully compensated for that work by those other clients. This case does not provide an opportunity for him to bill again for that time or those expenses.

b. Beard Overstates his Role in the Case and Improperly Discounts Class Counsel's Contribution.

While it is certainly true that Beard contributed to the prosecution of the case through discovery up and until the time that the mediation started in June 2014, he hardly was "solely responsible" for doing all substantive and meaningful work, to Class Counsel's exclusion, as he suggests. After the case was filed, Mr. Robinovitch took the lead on the substantive legal work, development of case theories and the class certification motion plan, as well as on discovery, whereas Beard focused his efforts more on discovery. Throughout 2013 and until the settlement was reached in 2014, Robinovitch worked extensively on the case, along with Beard. Robinovitch Decl. ¶¶ 3, 7-26 and Exh. J. (Doc. 480.) In addition to doing the majority of the brief writing and legal research during this period, including that related to the class certification motions, Robinovitch played a major role in the discovery process with Beard. Mr. Beard did not hold a monopoly on the discovery process and development of the factual record here, as he suggests. Robinovitch drafted discovery requests and Plaintiffs' responses; reviewed documents produced; prepared the named plaintiffs for and defended nearly all of their depositions, many out-of-state; helped prepare the Plaintiffs' experts' (Orion Kieffer and Peter Layson) for depositions in Jacksonville, Florida with Beard and then defended those depositions; visited with Kieffer and Layson at AEGI's testing facility in Jacksonville to inspect cooling units, obtain demonstrations and learn facts about the subject defects; met with and helped secure the testimony of Plaintiffs' NHTSA expert, Alan Kam; and helped prepare for and attended the depositions of Defendants' employees Mary Pouliot, Bob Cutright and Jerry Alexander. *Id.* Beard's suggestion, therefore, that he "*alone* took the depositions of Defendants' corporate witnesses, conducted tests of exemplar Norcold refrigerators and interacted with experts" overstates his role and discounts Robinovitch's. NSP Brief at 6. (Doc. 492.)

While Beard now criticizes Class Counsel's time in this case and tries to downplay their contribution, his characterizations of what actually occurred at the time

are inaccurate. It is hardly "churning" a file for two lawyers to meet with their mechanical engineer expert witnesses, obtain demonstrations and then attend their depositions when their testimony is at the heart of the central disputes presented. Beard had no class experience, so it was important for someone who did to participate in their deposition preparation to best avoid creating a record full of individualized issues and pitfalls. The same holds true with other key depositions of Defendants' executives. Sending two lawyers with different backgrounds and expertise to prepare for and take such depositions is hardly excessive; in fact, it is the low end of the norm in complex litigation. For Beard to now claim that Robinovitch was a mere "minder" sent to "observe," instead of lending substantive contributions by helping to propose lines of inquiry, questions and exhibits, while avoiding Rule 23 pitfalls, is inaccurate. Further, the case ultimately had numerous fact, discovery and other disputes which implicated multiple facets of the case that crossed lines between discovery, motion practice, experts and in turn, attorney responsibility. Thus, it was more than reasonable to have the case staffed as it was, prior to two groups' split at the mediation. Tellingly, Mr. Beard never raised any such protests about Class Counsel's work, time or participation at the time of these events took place, claiming all billable time was exclusively his.[3]

[3] The other examples to which NSP refer also lack proper context. For example, when the initial class certification motion was filed on December 27, 2013 (Doc. 52) Mr. Beard reviewed the form of the briefs. When the class certification motion papers had to be refiled following the Court's April 24, 2014 Order (Doc. 116), substantial new work was done to reform the motion papers to more succinctly address the arguments, defenses and witness objections that Class Counsel were now aware from having the benefit of seeing the theories in Defendants' initial response (Doc. 73) expert reports (Docs. 75-78) , and to address new expert witness testimony not previously presented by the parties in their opening briefs (e.g., Alan Kam and William Boyde McMakin) (Docs. 92, 145). Despite any formatting issues, all of this new time benefitted the Class as helped to present a stronger motion that focused more succinctly on the key disputes, witness testimony and legal defenses presented by Defendants. *See* Ridout Decl., Sept. 9 2016.

NSP's reference to the January 22, 2015 discovery hearing before Magistrate Judge Block also lacks proper context. In December 2014, NSP's sought to delay matters far longer than eventually occurred through overly broad discovery requests, which appeared to disregard the Court's December 9, 2014 order (Doc. 275) that only granted NSP's "limited" additional discovery. As counsel of record in the case and for the proposed Class, whose interests were directly affected by the additional delays sought, Class Counsel properly participated in meet and confer sessions and tried to broker reasonable compromises between NSP's counsel and Defendants who were at polar ends of the dispute. While at the January 22, 2015 hearing, Magistrate Judge Block indicated

ZR and RLO were responsible for providing all other lawyer and paralegal support, since Beard, as a solo practitioner, had no such infrastructure. While Beard now feigns surprise to learn that others besides him were working on the case, and discounts their contributions as duplicative, that is not the case. He never protested working with Robinovitch, associates such as Brad Buhrow, or paralegals such as Stacy Bethea, with whom he was in regular contact on a near daily basis.

It is also significant that ZR and RLO were also responsible for financing the case since Beard indicated he lacked the ability to do so. This included paying for expert witness fees, deposition costs and the expenses for named plaintiffs to travel to California for depositions (i.e., Etters, McBride, Crawshaw, Pearce) and mediation fees. As shown below, Beard's attempt to take credit for many of these costs and represent them as his own, also distorts Class Counsel's contribution.

The work and time Class Counsel devoted to this case is commensurate with other cases of this nature. See *Roberts v. Electrolux Home Prods*. 2014 WL 4568632, at *6,12 (C.D. Cal. Sept. 11, 2014). The mere fact that Defendants eventually chose not to file certain motions does not mean that Class Counsel was unwise to prepare the case for the same, as well as future proceedings and trial. While Class Counsel's time did increase after the initial term sheet was reached in July 2014, that time was necessary to protect and secure the settlement benefits for the Class from NSP Counsel who were determined to disrupt the settlement at all costs. In addition to formal objections and oppositions filed with the Court, NSP Counsel sent biased communications to the

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that he wanted to discuss the remaining issues in dispute with counsel for NSP's and Defendants that does not refute that or render Class Counsel's attendance and participation improper. Class Counsel submitted their written positions on the matters to the Court and were never instructed not to attend the hearing in advance. (Docs. 278, 284.) Eventually, Magistrate Judge Block rejected or limited the scope of the vast majority of Beard's requests, and his order was far more consistent with the middle-of-the-road position Class Counsel's took than Beard's uncompromising position. (Docs. 288, 291.) Class Counsel's attempt to avoid longer delays and to help focus the supplemental discovery to what was actually needed, ultimately benefitted the Class and Class Counsel's work can in no manner be characterized as unnecessary or in conflict with the Class' interests as Mr. Beard improperly suggests. *See* Ridout Decl., Sept. 9 2016.

Settling Plaintiffs and the media to manufacture bad publicity. Some of the named plaintiffs ultimately complained of Beard's tactics (e.g., Fredericks, Greager) and ultimately requested that Mr. Beard withdraw as their counsel. It is NSP Counsel themselves that created the need for much of the extra work Class Counsel engaged in to protect the settlement for the Class. Defending the fairness of the settlement from NSP Counsel's constantly changing objections cannot be equated with inflated time records as NSP Counsel now suggests. The real irony is that without the successful efforts of Class Counsel's, NSP Counsel would have abandoned the very settlement from which they now seek fees.

In sum, Class Counsel do not dispute that Mr. Beard worked diligently on this case through the start of the mediation in June 2014, but to suggest that the case was predominantly litigated by him, and to discount Class Counsel's contribution through that point in time, is incorrect.

2. Any Fee Award to NSP Counsel Should Be Limited to Mr. Beard's Time Prior to July 22, 2014.

While Mr. Beard contributed to the case up and until the mediation in June / July 2014, at that point he became a staunch objector of the settlement doing more to object and pursue his own agenda than to offer constructive help that would benefit the Class. Should the Court award NSP Counsel any fees, Class Counsel believes that those fees should be limited to Mr. Beard's positive contributions to this litigation – time spent before the initial term sheet was executed on July 22, 2014 (approximately 1,058 hours). *See Dryer v. NFL*, No 09-2182, at *8-9 (D. Minn. Dec. 26, 2013) (Order on Attorneys' Fees) and *Dryer v. NFL*, No 09-2182, at *2 (D. Minn. Feb. 4, 2014)(Order on Attorneys' Fees)(reducing objectors' counsel's fees for time spent "on efforts to impede the settlement" and for doing "everything in their power to prevent the settlement from succeeding," as it did not accrue to the benefit of the class). Class Counsel have analyzed Mr. Beard's time and expense records and believe that his relative share of the lodestar pre-settlement at his specified rate amounts to 20.6% of the total lodestar. Any fee awards to Mr. Beard at all should be capped at the same.

C. THE STANDARD FOR OBJECTORS' COUNSEL TO RECEIVE FEES IS NOT SATISFIED.

1. Applicable Standard for Objector's Counsel to Be Awarded Fees.

After the mediation ended on July 22, 2014, NSP Counsel announced to the settling parties and Judge West that he would become an objector to the settlement. *See* Notice of Intent to Object filed August 21, 2014. (Doc. 176.) The standard for objectors to be awarded fees from a class action settlement is different than for class counsel. *See Rodriquez v. Disner*, 688 F.3d 645, 658-59 (9th Cir. 2012). Only where objections result in an increase to the common fund, may objectors' counsel claim entitlement to fees on the same equitable principles as class counsel. *Vizcaino v. Microsoft Corp.,* 290 F.3d 1043, 1051–52 (9th Cir. 2002). Conversely, objectors who do "not increase the fund or otherwise substantially benefit the class members" are not entitled to fees, even if they bring "about minor procedural changes in the settlement agreement." *Id.* at 1051; *see also Reynolds v. Beneficial Nat'l Bank,* 288 F.3d 277, 288 (7th Cir. 2002) (explaining that "[t]he principles of restitution that authorize" the award of fees to objectors "also require, however, that the objectors produce an improvement in the settlement worth more than the fee they are seeking; otherwise they have rendered no benefit to the class"); *In re TCT-LCD (Flat Panel) Antitrust Litig.*, 2013 WL 1365900, at * 14-16 (N.D. Cal. 2013)(denying objector's counsel's request for fees where work did not substantially benefit the class). The time Beard submits for work conducted after July 22, 2014, as well as Hagen's Berman's entire fee, should be governed pursuant to this standard. The Court should also consider and balance the additional work, burdens and delays created by their objections.

2. NSP Counsel Did Not Help Create The Pool of Settlement Benefits.

It is also inaccurate accurate for NSP's Counsel to say that the "settlement that is before the Court for final approval would not exist without the efforts of Non-Settling Plaintiffs and their attorneys." NSP Fee Brief at 1 (Doc. 492). While Mr. Beard certainly helped initiate and litigate this case through time of the mediation in June 2014,

during the six mediation sessions his role changed and he elected to become an objector. His time since that point has been focused primarily on undermining the settlement process and relentlessly pursuing a series of objections, which have now been overruled.[4] *See*, *Dryer*, *supra* (discounting time spent by former co-counsel trying to obstruct settlement). Plainly, Mr. Beard did not help secure the settlement fund now before the Court – he announced early in the mediation process personal animosity towards Defendants' Chairman, refused to review the financial information provided demonstrating serious risks (which were confirmed by an expert CPA, *see* Brandlin Decl. (Doc. 334)), walked out of the mediation and did not sign the Settlement Agreement. If Mr. Beard had his way there would be no settlement today, the initial offer of $33 million (and current $36 million) would have been withdrawn and Norcold would be pursuing the alternative remedies discussed in the Phillips and Farnan Declarations (Docs. 418-419). *See also* NSP Objection filed August 26, 2016 (Doc. 506). In their October 2, 2015 objection, NSP Counsel went so far as to indicate a preference for litigating the claims before the bankruptcy courts over accepting the current settlement. (Doc. 429 at 4.)

3. NSP Counsel Did Not Secure Modifications That Enhanced the Settlement. Instead, They Only Provided A Constantly Moving Target.

NSP Counsel did not help "reshape" and "improve" the settlement in any constructive manner. Mr. Beard never agreed to any settlement terms or any modifications negotiated to address concerns raised by the Court in its October 14, 2014 and June 15, 2015 orders. Instead, Class Counsel negotiated any modifications with Defendants to address any concerns raised by the Court only for Mr. Beard to then proceed to file a different series of objections each time, many taking positions that were inconsistent with his own prior positions. Eventually his arguments became circular and instead of being offered as constructive suggestions that could benefit the Class and

[4] Mr. Beard has filed no less than 8 different objections to the settlement: September 20, 2014 (Doc. 200); November 21, 2014 (Doc. 259); March 13, 2015 (Doc. 319); October 2, 2015 (Doc. 429); October 29, 2015 (Doc. 441); November3, 2015 (Doc. 445); November 23, 2015 (Doc. 451) and August 26, 2016 (Doc. 506).

advance this matter, represented little more than an attempt to continue to frustrate the settlement process through the presentation of a constantly moving target. *See Dryer v NFL, supra* at *3, fn. 5 (Order Dec. 26, 2013)(giving "no credence whatsoever to contention that certain counsel were wiling too quickly and cheaply and that the efforts of [objector's counsel] were significantly effective in increasing the [defendant's] final contribution to settlement beyond an amount that might otherwise have been obtained")

For instance, Mr. Beard cannot take credit for helping to secure the additional $3 million for the Monetary Fund in the summer of 2015: in his October 2, 2015 Objection (Doc. 429) he called the addition "paltry" and mere "window dressing", objected to it, and by then he had changed horses and was pursuing an "alternative" non-cash, injunctive settlement model that eliminated the majority of the current settlement Class (including most of the Non Settling Plaintiffs themselves), which was shown to not be viable in its promise to replace "every 1200 refrigerator" and based on incorrect data. *See* Docs. 429, 431, 433, 434. The additional $3 million added to the Monetary Fund in September 2015 was negotiated and secured solely by Class Counsel in response to which Mr. Beard's continued to object. NSP Objection filed Oct. 2, 2015 (Doc. 429).

Mr. Beard also cannot take credit for helping to secure any change in the Allocation Plan. His positions here too have been completely inconsistent. For instance, while he initially argued that N6 and N8 owners in the Class should get greater shares in the Monetary Fund, he later abandoned that position and proceeded to argue that they should not share in the monetary aspect of settlement fund at all and that warranties and inspections were sufficient compensation due to the reduced risk N6 and N8 owners face. *See* Objection, Oct. 2, 2015 at 20-21 (Doc. 429)("Non-Settling Plaintiffs agree with Settling Plaintiffs and Defendants that the fire risk associated with N6/N8 units is significantly less than the risk for Series 1200 units… Non-Settling Plaintiffs agree that a blanket replacement program for N6/N8 Series refrigerators is not necessary".). Then, a month later, NSP's Counsel changed course again and proceeded to argue in new

objections that N6 and N8 class members should be allocated greater shares to fund replacement cooling units. *See* Objection, Nov. 23, 2015 at 1-3, 5-6 (Doc. 451).

The same holds true with respect to the allocation of shares to former 1200 owners who alleged financial loss from the diminution of value of their RVs due to the presence of an undesirable Norcold refrigerator in them. Prior to the mediation, Beard fully supported having former 1200 series owners in the Class. Their allegations were specifically included in the complaint and supported by plaintiffs' discovery answers and deposition testimony. *See* FAC ¶29[5]; J. Etter Dep. at p. 123. As such, at the mediation, Defendants demanded a release from those Class members as part of any settlement. However, in October 2015, Beard changed course and suddenly argued that these Class members should receive nothing, going so far as to argue they lacked standing to have even filed a claim in the first place. Objection, Oct. 2, 2015 at 12 (Doc. 429)(" Though these persons are only allocated a single share, it is incomprehensible why they should get even that, since it is implausible that they even have standing to participate in a lawsuit against Defendants, having suffered no harm at all."). Again, this was entirely circular given Beard's and NSP's prior pursuit of these claims.

The other objections that NSP's Counsel presented to the Allocation Plan sought to add non-class members to the Settlement Class (those owning units manufacturing dates back to 1997), while removing others, despite the fact such claims were not specifically defined in the class definition in the operative Complaint in *Etter*. *See* FAC ¶78 (defining class period to "dates back the length of the longest applicable statute of

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[5] *See* First Amended Complaint ¶29 (Doc. 40):

> "29… Regardless of a manifested defect, each Plaintiff has been injured, *inter alia*, because their injuries consist of economic losses which include the diminished value of their RV which results once the full truth regarding the ongoing Norcold defective gas absorption refrigerators is made public. The information currently in the marketplace regarding the defective Norcold gas absorption refrigerators has caused the value of the RV's containing them to partially drop and once the full extent and complete truth about the defective Norcold gas absorption refrigerators and the continuing risk of fire despite recalls and retrofits is made public the value of any RV containing a Norcold gas absorption refrigerator will drop even more, causing further injury to Plaintiffs and the Class.

limitations for any claim asserted on behalf of that Class or Sub-Class from the date this action was commenced", which in no state extends to 1997).

In short, the vast majority NSP Counsel's time subsequent to the mediation has been spent pursuing a never-ending series of objections that created the need for thousands of hours of additional attorney time than had they acted in a more constructive and less combative manner.

4. NSP Counsel's Time After July 2014 Did Not Benefit the Class.

Much of the time Mr. Beard spent on this matter after the mediation did not benefit the Class.

a. Time Spent for False Attacks on Class Counsel.

Beard's time records show considerable time spent in the summer of 2014 on researching the *Dryer v NFL* and *Rocha v. FedEx* cases, only to inaccurately present the court's conclusions in those cases to the Court in effort to undermine Class Counsels' character and adequacy to represent the Class under Fed. R. Civ. P. 23(a)(4). In truth, those cases only showed the very opposite of what Beard presented them for. As previously reported, the Eighth Circuit upheld approval of the class settlement Zimmerman Reed helped secure, while also upholding the district court's order granting summary judgment in favor of Defendants. This work did not benefit the Class but certainly created the need for Class Counsel to spend time responding to these attacks.

b. Communications with the Somerville's Who Are Represented by Class Counsel.

Mr. Beard billed for multiple hours spent communicating with Orrene and Leonard Somerville in June 2015 some nine months *after* the Court ordered him to withdraw from their representation at the October 14, 2014 hearing due to a conflict of interest. *See* Notice of Withdrawal filed Nov. 10, 2014. (Doc. 233.) The Somerville's remain named Plaintiffs who signed the initial Settlement Agreements, have filed claims seeking to participate in the class settlement and have not filed any objections. The Somerville's continue to be represented by Class Counsel, thus, engaging in multiple

hours of conferences with them in June 2015 was not only improper conduct by Mr. Beard but cannot be said to have been for the benefit of the Class.[6]

Further, among the billable time NSP Counsel states was devoted to this case was that for: "…(13) regular contact and communication with Plaintiffs *and Class members*; and (14) the time spent communicating and *assisting Class members in the consideration of the Settlement*." (Doc. 492 at 15). NSP Counsel were not appointed by the Court to help notify the Class regarding the settlement and assist them in filing claims. This would appear to be at odds with the their role as staunch opponents of the settlement, as previously addressed at the October 14, 2014 hearing. If the advice provided was similar to which is stated in the eight objections that NSP have filed or along the lines of the highly critical but erroneous comments Mr. Etter published in May 2016, there may have been interference with the court-ordered notice and need for neutral communications.[7] Robinovitch Decl. at ¶¶ 93-94 and Exh. I (Doc. 480). It would not appear that this time benefitted the Class.

c. Time Spent Investigating Defendants' Insurance and Finances.

Significant time was spent by NSP Counsel pursuing objections and discovery that was inconsistent with the facts learned before or during the mediation. For instance, Mr. Beard confirmed in April 2014 that there was no insurance for the class claims (Docs. 109, 112), yet turned his back on that position to present objections claiming insurance existed. After seeking leave to conduct discovery, he could not present any evidence of coverage for the class claims. Order, June 15, 2015 at 19. (Doc. 402).

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[6] See *Williams v Quinn*, 2010 WL 3021576 (N.D. Ill. July 29, 2010). (Rule of professional responsibility governing communications with represented parties precluded attorney, who represented class members who objected to proposed settlement, from initiating contact with additional class members without first obtaining permission from the class counsel, who represented the class members, in class-action lawsuit).

[7] *See Fleury v. New Richmond*, 2007 WL 2349284 (N.D. Cal. Aug. 15 2007)(finding that there was "a real threat to the integrity of the lawsuit and potential settlement" when a named plaintiff published aggressive and misleading comments about the settlement and counsel). *See In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 2014 WL 4966072, at *30-31 (E.D.N.Y Oct. 3, 2014) ("courts have taken various curative actions to "prevent court-approved class notification materials from being nullified by competing and inaccurate information."

The same holds true with regard time spent addressing Defendants' financial condition and ability to pay more due to restrictive loan covenants in their financing agreement. This significance of the FCCR covenant was explained at length during the mediation sessions when Defendants' outside restructuring consultant from New Jersey came to the mediation, yet NSP Counsel chose to not attend or disregard the information provided. When it came time to submit his report on March 13, 2015, following the supplemental discovery period, the accountant that NSP Counsel hired failed to address that critical loan covenant which remained central to the analysis. *See* Lesch report ¶¶ 20-24(Doc. 319-1). *See also* Brandlin Decl. ¶45 (Doc. 334). As a result, much of the time spent during the supplemental discovery period was to create an incomplete report.

d. Time Generating Negative Media Publicity.

Mr. Beard's time records show significant time starting in September 2014 and continuing through at least November 2014 that was spent corresponding with and/or sending materials to (1) Mr. Etter about "RV postings" and "Forbes"; (2) reporters such as Mr. Fisher, to help generate negative publicity about the settlement. During this period, articles were published and several posts critical of the settlement and citing inaccurate facts were made on www.irv2.com by Mr. Etter. This did not assist the Class.

e. Researching a Non-Existent RICO Claim.

Mr. Beard's time records also show substantial time in the summer of 2015 devoted to researching RICO law and drafting some type of complaint. Perhaps this was for a different case, as the instant action has never had any RICO claim.

f. Time Spent on an "Alternative" Settlement Model That Was Never Accepted and Never Before this Court.

Finally, significant amounts of NSP Counsel's time was spent on presenting an alternative claims-made settlement that NSP Counsel claimed was "better," but has never been accepted or put before the Court for approval. Notably that proposal, while shown to be based on erroneous factual assumptions and to unfeasible in many respects given the true costs and limitations on Norcold's production capacity, excluded the majority of Class members from the ability to file a claim to share in the Monetary Fund

(all former 1200 series owners and all N6 and N8 owners), including many NSP's themselves (i.e., Richard Kahler, Emil Vargo). As such, it is unclear how devoting time to such matters can be said to be for the benefit of the current Settlement Class and recoverable from their settlement.

5. Even After Having Objections Overruled NSP and NSP Counsel Continue to Create Risks and Delays for the Class.

Even after having their objections overruled in the Court's Preliminary Approval Order (Doc. 468), Non-Settling Plaintiffs have continued to create risks, delays and try to impede the settlement process for the Class.

On April 7, 2016, Mr. Beard contacted Class Counsel and threatened to file further objections and appeals, delaying the distribution of any settlement proceeds unless Non-Settling Plaintiffs and NSP Counsel were paid the fees they demanded through a private agreement. Robinovitch Decl. ¶84-85 and Exhibits D - G (Doc. 480).

A few weeks later, in May 2016 after the internet banner notice was published on certain RV websites approved by the Court, Mr. Etter published negative and misleading comments about the settlement on one of those websites in effort to help drive and solicit objections. Among other things, his comments incorrectly indicated that the relief to N6 and N8 owners (informing them they would receive no share of the monetary fund instead of 5 shares, but only warranties), the scope of the release (telling class members that the settlement provided Defendants a complete release against future liability instead of a limited release), and stated continued disregard if Defendants were pushed into bankruptcy and the current settlement fund was lost, commenting "So what?" *See* Robinovitch Decl. at ¶¶ 93-94 and Exh. I (Doc. 480.)

6. As Objectors' Counsel, Hagens Berman Is Not Due Fees.

The Hagens Berman firm entered an appearance in this case as counsel for objectors very late in the proceedings – May 27, 2015 – and do not satisfy the above-referenced standard for an award of fees. Hagen Berman's initial action in the case was to send Class Counsel a letter on June 16, 2015 threatening to take over the litigation unless Class Counsel immediately abandoned the settlement and ceded control of the

case to them. *See* Robinovitch Decl. at ¶ 74 and Exhibit B (Doc. 480). While they claim to have conducted over $200,000 of billable work in this case, they have failed to produce time records describing what they actually did. From filings, however, it appears that all they did was propose an "alternative" claims-made / coupon settlement model that they claimed was "better," but: (1) was never accepted by Defendants; (2) has never been before the Court for consideration; (3) sought to eliminate the majority of the Class from the ability to share in the monetary benefits; (4) was shown to be based on incomplete facts and thus, unfeasible. *See* Plaintiffs' Reply in Support of Motion for Settlement Approval. (Doc. 431.) Other than that, all they did was join Beard in his continuing series of objections, which were ultimately overruled in the March 29, 2016 order. Such time does not satisfy the standard for objectors' counsel to be awarded fees.

D. IT WOULD BE INEQUITABLE TO AWARD NSP COUNSEL A POSITIVE MULTIPLIER AND CLASS COUNSEL A NEGATIVE MULTIPLIER.

NSP Counsel's proposal that they receive 50% of any fees awarded, resulting in them receiving a positive multiplier and Class Counsel a negative multiplier is unjust. Even without discounting any of NSP's fees for work done pursuing unsuccessful objections, NSP's fees would amount to approximately 31.7% of the total lodestar.[8] This figure will further drop, as Class Counsel still must do all of the future work to implement the settlement and defend it against appeals. As such, it would be inequitable to award NSP's counsel 50% of the fees.

E. NSP COUNSEL SEEK REIMBURSEMENT FOR EXPENSES THEY DID NOT INCUR.

The party that funds the litigation should be paid a multiplier because, like time advanced on a contingent basis, out of pocket expenses are advanced with the risk that they may never be reimbursed. Class Counsel's out of pocket expenses are significant and range from paying expert witness fees, to paying deposition costs, to paying

[8] In their fee petition, NSP's claim a total lodestar of $1,968,722.40 (Doc. 492 at 14), while Class Counsel's total lodestar through August 10, 2016 is $4,233,553.55 (Doc. 479 at 23-24). Thus, NSP's fees represent 31.7% of the total fees ($1,968,722.40 / $6,202,275.95) through that date. Excluding Hagen's Berman's lodestar NSP's counsel's fees represent 29.3 % of the total ($1,760,070.00 / $5,993,623.55).

plaintiffs' travel expenses to fly to California for depositions, to paying the mediators fees. In contrast, total expenses Mr. Beard claims exceed $74,189.52 (*see* Exhibit B to Mr. Beard's Declaration filed August 11, 2016 (Doc. 493-2)), but review of certain entries on show that the true number is really a small percentage of that.

1. Claiming Payments to Experts That Beard Did Not Make.

Mr. Beard claims that he paid $33,256.95 for expert witness fees to AEGI (Orion Kieffer and Peter Layson) and for their expert deposition. But to-date, Mr. Beard has not paid these experts anything for their services in this case. Instead, Class Counsel (Ridout Lyon & Ottoson) paid AEGI's initial $5,000 retainer, while a $33,256.95 balance remains outstanding. A copy of AEGI's invoices that were sent to Class Counsel on August 23, 2016, confirming this are attached to the Ridout Declaration.

2. Deposition Fees That Beard *Did Not* Actually Pay.

In his Declaration Mr. Beard claims that he paid the following amounts:

a. Transcription fee Jeff Etter deposition 8/8/13 $638.75

b. Transcription fee Susan Etter deposition 8/8/13 $283.70

c. Transcription fee Emil Vargo deposition 8/26/13 $540.05

d. Transcription fee Jerry Alexander deposition 9/20/13 $1,172.65

e. Transcription fee Harris deposition 12/10/13 $3,083.30

(Doc. 493-2 at 3). In truth, Mr. Beard *did not* pay these expenses; Class Counsel did. Copies of the checks Zimmerman Reed sent to the third-party court reporting companies for these costs are attached to the Ridout Declaration.

3. Charging for Case Expenses in *Other* Cases.

In his August 11, 2016 Declaration, Mr. Beard claims that he paid $1,620.00 in November 3013 for "Reis trial transcripts", but *Reis* was a separate, independent action which Beard tried to a defense verdict and which later settled. Any such expenses were incurred solely for purposes of that case and were the responsibility of Mr. Reis. For Mr. Beard to attempt to be reimbursed again for those same costs here is improper.

4. Air Travel for Other Cases.

In his Declaration, Beard claims that he should be reimbursed for the following:

10/15/13 travel expense air fare Dallas	$639.60
3/6/14 travel expense air fare SLC/Oak	$207.00

These expenses are believed to be for travel on matter other than for this case. No trips were taken to either Salt Lake City or Dallas for this case. Mr. Beard's *Dubose* case was venued in Salt Lake City and the flight may have been for that case. The only witness from Texas was Plaintiffs Dennis Osha who passed away after executing the original settlement agreement. Mr. Robinovitch travelled to Austin, Texas to prepare him for and defend his deposition in late September 2013.

5. Extra Air Travel and Rental Car Expenses.

Mr. Beard's declaration shows multiple air travel expenses from the same date being billed in the same amounts. For instance:

10/15/13 air fare Columbus Ohio	$639.60
10/15/13 air fare Dallas	$639.60

There was one trip to Columbus when Mr. Beard and Mr. Robinovitch went there for the Mary Pouliot and Bob Cutright depositions. There were no trips to Dallas. Mr. Beard also appears to have billed twice for airfare for the April 10, 2015 hearing:

4/10/15	Travel expense air fare Los Angeles	$446.00
4/10/15	Travel expense air fare LA	$520.00

In addition, Mr. Beard's declaration includes the following:

1/19/13	Travel expense Hertz rental 1/13-19	$530.66
1/21/14	Travel expense Hertz rental Jacksonville Florida	$530.66

There was one trip to Jacksonville for this case for expert depositions from January 14-17, 2014. To claim this expense twice is improper.

6. Travel to Jacksonville for AEGI Depositions.

As indicated, there was one trip to Jacksonville for this case when Mr. Beard and Mr. Robinovitch went to prepare and defend forensic engineers' Orion Kieffer and Peter

Layson for their expert depositions, and to inspect refrigerators and obtain demonstrations at their facility. The depositions occurred on January 15 and 16, 2014. Beard, however, brought his wife with him and stayed extra days in Florida for vacation. The following expenses reflect this:

1/19/13	Travel expense Hertz rental 1/13-19	$530.66
1/13/14	Travel expense air fare Jacksonville FL	$1,794.00
1/19/14	Travel Expense hotel Jacksonville FL 1/13-19, 2013	$2,290.45
1/21/14	Travel expense Hertz rental Jacksonville Florida	$530.66

IV. CONCLUSION

For all the above stated reasons, Class Counsel ask that the Court award the full $9 million fee requested and exercise its discretion to allocate it equitably between Class Counsel and NSP Counsel based on their respective time, contributions, risks and conduct as discussed above.

Respectfully submitted,

ZIMMERMAN REED, LLP

Dated: September 9, 2016

/s/Hart L. Robinovitch

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Responses, Replies and Other Motion Related Documents

8:13-cv-00081-JLS-RNB Jeffery Etter, et al. v. Thetford Corporation, et al.

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Case Number: 8:13-cv-00081-JLS-RNB
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Docket Text:
REPLY in support of NOTICE OF MOTION AND MOTION for Attorney Fees *and Costs, Reimbursement of Expenses and Service Awards to Class Representatives*[479] filed by Plaintiffs Ray Burkhead, Charles Chow, Randy Dupree, George Frederick, Kathleen Frederick, James Pearce, Linda Pierson, Craig Post, John Robinson, Gordon Williamson. (Robinovitch, Hart)

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