

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ANTHONY WILLIAMS, *et al.*

Plaintiffs,

V.

DUKE ENERGY CORPORATION, et al.

Defendants.

Case No.: 1:08-CV-00046

Judge Edmund A. Sargus

Magistrate Judge Norah M. King

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, APPROVING FORM AND MANNER OF NOTICE AND
SETTING DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT**

Plaintiffs Anthony Williams, BGR, Inc., Munafo, Inc. and Aikido of Cincinnati (collectively, the “Plaintiffs”)¹ on behalf of themselves and the Class they represent, respectfully move this Court to enter the proposed Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice and Setting Date for Hearing on Final Approval of Settlement (“Preliminary Approval Order”), attached hereto. The Preliminary Approval Order is sought for a settlement that was reached after years of litigation, was the result of arm’s length negotiations including mediation with Judge Sargus, and should be granted for these and other reasons as more fully set forth in the accompanying memorandum of law.

¹ Capitalized terms not defined herein are as stated in the Stipulation of Settlement of Class Action Settlement, dated October 20, 2015, attached as Exhibit A.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, APPROVING
FORM AND MANNER OF NOTICE AND SETTING DATE FOR SETTLEMENT
FAIRNESS HEARING**

Pursuant to Fed. R. Civ. P. 23(e), Plaintiffs Anthony Williams, BGR, Inc., Munafo, Inc. and Aikido of Cincinnati (collectively, the "Lead Plaintiffs")² on behalf of themselves and the Class³ they represent, respectfully submit this memorandum of law in support of their unopposed motion seeking, *inter alia*: (1) preliminary approval of the proposed Settlement; (2) authorization to provide notice of the proposed Settlement; and (3) scheduling of a Settlement Fairness Hearing.

I. PRELIMINARY STATEMENT

Plaintiffs have reached an agreement with Defendant Duke Energy Corporation, Duke Energy Ohio, Inc. (collectively "Duke" or "Defendants") and Related Parties⁴ to settle this Class Action on the terms set forth in the Stipulation. The primary component of the Settlement entails Defendants' payment of \$80,875,000. The Settlement, if approved, will resolve all of Plaintiffs' claims asserted against Defendants in this Class Action.

² Capitalized terms not defined herein are as stated in the Stipulation of Settlement of Class Action Settlement, dated October 20, 2015 ("Stipulation") attached as Exhibit A to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice and Setting Date for Settlement Fairness Hearing.

³ The Court certified the following class: "All ratepayers who received retail electric generation service from Duke Energy Ohio Corp. and/or Cinergy Corp. or their subsidiaries or affiliates at any time between January 1, 2005 and December 31, 2008 in the CG&E/Duke electric service territory and did not receive rebates under the side agreements."

⁴ "Related Parties" mean, with respect to each Defendant, its predecessors, successors, past, present or future parents, subsidiaries, affiliates, and each of their respective past or present officers, directors, shareholders, agents, partners, principals, members, employees, attorneys, advisors, auditors and accountants, insurers and reinsurers, and any firm, trust, corporation, or other entity in which any of the Defendants has or had a controlling interest.

The proposed Settlement is the culmination of more than seven years of litigation, and was reached at a time when the Parties to the Stipulation understood the strengths and weaknesses of their respective positions. Specifically, Plaintiffs, through their counsel, conducted an extensive investigation of their claims, filed an original complaint and two detailed amended complaints, briefed and argued a motion to dismiss, successfully convinced the Sixth Circuit to overturn the district court's order granting a motion to dismiss, undertook significant expert and fact discovery, briefed and argued a successful class certification motion, briefed and argued a summary judgment motion, and prepared for trial. The proposed Settlement occurred on the eve of trial.

Plaintiffs and Defendants engaged in extensive arm's-length settlement negotiations and participated in mediation under the supervision of this Court. This mediation ultimately resulted in the Stipulation. Plaintiffs, based upon their evaluation of the facts and applicable law and their recognition of the substantial risk and expense of continued litigation, submit that the proposed Settlement is in the best interests of the Class and will provide an immediate and meaningful recovery.

Before the Settlement Fairness Hearing, Plaintiffs will submit detailed papers supporting the proposed Settlement and will ask the Court to determine whether the proposed Settlement is fair, reasonable and adequate. At this time, however, Plaintiffs request only that the Court grant preliminary approval of the proposed Settlement so that notice may be provided to the Class. Specifically, Plaintiffs request that the Court enter the proposed Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice and Setting Date for Settlement Fairness Hearing (submitted herewith and as Exhibit 6 to the Stipulation), which, among other things, will:

- i. Preliminarily approve the Settlement as set forth in the Stipulation;
- ii. Approve the manner, form and content of the Summary Notice, Facebook Notice, Longform Notice electronic Proof of Claim form, and Postcard Notice including a perforated Proof of Claim form, attached as Exhibits 3, 4, 5, 7 and 8 to the Stipulation, respectively.
- iii. Designate Garden City Group, LLC to serve as Claims Administrator;
- iv. Schedule a Settlement Fairness Hearing as soon as reasonably possible to consider whether to finally approve the Settlement;
- v. Schedule dates for briefing relating to both final approval and a motion by Plaintiffs for an award of attorneys' fees and expenses, and an award of incentive payments for Lead Plaintiffs;
- vi. Establish procedures for the submission of objections to the Settlement; and
- vii. Establish other requirements and procedures necessary to effectuate the Settlement.

Given the immediate and substantial benefit of \$80,875,000 to the Class, and the risks in establishing Defendants' liability and proving damages, Plaintiffs respectfully submit that the proposed Settlement reflected in the Stipulation is not only fair, reasonable, and adequate, but represents an outstanding recovery, as further described below and as will be demonstrated in connection with seeking final approval of the Settlement.

II. FACTUAL BACKGROUND

Beginning in January 2008, Lead Plaintiffs brought suit against Duke alleging a civil RICO claim pursuant to 18 U.S.C. § 1962(c) and Ohio's Pattern of Corrupt Activity Act, Ohio

Rev. Code § 2923.31, *et seq.*, violations of the Robinson-Patman Act of 1936, 15 U.S.C. § 13, *et seq.*, and common-law claims of fraud and civil conspiracy.

On March 21, 2008, Duke filed a motion to dismiss. On May 30, 2008, Lead Plaintiffs filed an amended complaint, in part adding defendant General Motors Corp. Duke renewed its motion to dismiss on June 30, 2008. General Motors filed a motion to dismiss on August 25, 2008.

Lead Plaintiffs filed a motion to certify the class on October 31, 2008. On November 11, 2008, the Court stayed this motion until disposition of the motion to dismiss. On March 31, 2009, the Court granted Duke's and General Motors' motions to dismiss. Lead Plaintiffs appealed this decision to the Sixth Circuit on April 29, 2010.

On June 4, 2012, the Sixth Circuit reversed the district court's decision granting Duke's motion to dismiss and remanded the case to the district court for further proceedings.

On March 31, 2014, following motions and briefing, the Court certified a class generally consisting of ratepayers who received retail electric generation service from Duke between January 1, 2005 and December 31, 2008 and did not receive rebates under the side agreements. The class was divided into two subclasses: Residential Ratepayers and Non-Residential Ratepayers.

On September 18, 2013, Lead Plaintiffs filed a Second Amended Complaint with Jury Demand. This complaint dropped General Motors as a defendant and all claims against it. The Court scheduled a jury trial to begin on July 27, 2015.

Fact discovery concluded on October 15, 2014 with over 65,000 pages of documents produced and 27 witnesses deposed. All discovery concluded on February 11, 2015; Lead Plaintiffs had four experts and Defendants had four experts.

Defendants filed a summary judgment motion, which both sides argued on June 3, 2015. On June 16, 2015, with the summary judgment motion pending, the Parties engaged in mediation with the aid of and before this Court. Additional sessions took place before this Court on June 23, 2015 and July 20, 2015. The Parties had also engaged in prior, unsuccessful mediation efforts: on December 6, 2012, with Magistrate Judge Norah McCann King acting as mediator; on January 25, 2014, with Magistrate Judge Norah McCann King acting as mediator; and on March 13, 2015 before Eric Green, a mediator agreed to by the Parties.

III. ARGUMENT

A. The proposed Settlement warrants preliminary approval.

Preliminary approval of a class action settlement is the first step in a three-step approval process; the second step is providing notice of the settlement to class members, and the third step is holding a Settlement Fairness Hearing to determine whether the settlement is fair, reasonable, and adequate.⁵ During the preliminary approval proceedings, “the questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final approval.”⁶ Instead, the Court should only evaluate whether the proposed settlement “appears to be the product of serious, informed, non-collusive negotiation, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.”⁷ In essence, the Court

⁵ *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 372 (S.D. Ohio 2006) (noting that “Rule 23(e) requires three steps for the approval of a proposed class action settlement: (1) The Court must preliminarily approve the proposed settlement; (2) Members of the class must be given notice of the proposed settlement; and (3) A fairness hearing must be held, after which the court must determine whether the proposed settlement is fair, reasonable, and adequate.”); *see also Amos v. PPG Industries*, No. 2:05-cv-70, 2015 WL 4881459, at *1 (S.D. Ohio Aug. 13, 2015).

⁶ David F. Herr, ANNOTATED MANUAL FOR COMPLEX LITIGATION (Fourth) §21.662 (2012).

⁷ *Hyland v. Homeservices of Am., Inc.*, No. 3:05-CV-612-R, 2009 WL 2525587, at *2 (W.D. Ky. Aug. 17, 2009) (citing *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y.1997)); *see also Bautista v. Twin Lakes Farms, Inc.*, No. 104-CV-483, 2007 WL 329162, at *4 (W.D. Mich. Jan. 31,

must preliminarily determine that the settlement is sufficiently fair, reasonable and adequate so that it can “direct the preparation of notice of certification, proposed settlement, and date of the final fairness hearing” to all those affected by it.⁸

1. The proposed Settlement was reached after serious, informed, and arm’s-length negotiations.

Arm’s-length negotiations conducted by competent counsel constitute prima facie evidence of a fair settlement.⁹ Notably, “[t]he participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm’s length and without collusion between the parties.”¹⁰

In this case, the Settlement was the result of intensive, arm’s-length negotiations between experienced attorneys who have extensive class action litigation experience and who have extensive knowledge of the legal and factual issues of this case. The Parties’ respective counsel are experienced in the litigation, certification, trial, and settlement of class actions cases. There is no evidence that any collusion or illegality existed during the settlement process. Settlement negotiations in this case took place over the course of six mediation sessions and initial agreement was ultimately reached through the mediation efforts of this Court. After the initial

2007) (“The court’s role in reviewing settlements must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between the negotiating parties, and that the settlement taken as a whole is fair, reasonable, and adequate to all concerned.”) (internal quotes omitted).

⁸ *In re Skechers Toning Shoe Products Liab. Litig.*, No. 3:11-MD-2308-TBR, 2012 WL 3312668, at *7 (W.D. Ky. Aug. 13, 2012); see also *In re Prandin Direct Purchaser Antitrust Litig.*, No. 2:10-CV-12141-AC-DAS, 2014 WL 8335997, at *3 (E.D. Mich. Oct. 2, 2014) (“The ultimate approval of a class action settlement requires a finding that the settlement is fair, adequate, and reasonable.”); see also *Brotherton v. Cleveland*, 141 F. Supp. 2d 894 (S.D. Ohio 2001); see also *In re Southern Ohio Correctional Facility*, 173 F.R.D. 205, 211 (S.D. Ohio 1997).

⁹ *Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001); see also 1 Herbert B. Newberg & Alba Conte, *NEWBERG ON CLASS ACTIONS* § 11.41 at 90 (4th Ed. 2002); see also *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 906 (S.D. Ohio 2001) (The absence of any evidence suggesting collusion or illegality “lends toward a determination that the agreed proposed settlement was fair, adequate and reasonable.”).

¹⁰ *Bert v. AK Steel Corp.*, No. 1:02-CV-467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008).

agreement was reached, counsel for both Parties spent significant time exchanging, reviewing, and analyzing additional data for the Settlement. Both Parties' counsel support the Settlement as fair and reasonable.¹¹

2. The proposed Settlement falls within the range of reasonableness and warrants issuance of notice and a Settlement Fairness Hearing.

Although Plaintiffs believe that the claims asserted in the Class Action are meritorious and the Class would likely prevail at trial, continued litigation against the Defendants poses significant risks that make any recovery for the Class uncertain. The fairness and adequacy of the Stipulation is underscored by consideration of the obstacles that the Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of both trial and potential post-trial proceedings if the case moves forward in litigation.¹²

Here, if the litigation were to continue, Plaintiffs would face a number of high stakes risks before trial that could limit, or even eliminate their claims, including a possible summary judgment ruling in favor of Defendants, a possible defense jury verdict, and possible adverse rulings in post-trial proceedings. Despite these real and significant risks, Lead Plaintiffs and Rule 23 Class Members will receive compensation under the proposed Settlement for each day during the Class Period that they paid Defendants for electric generation service. For example, Residential Class Members who paid tariffed rates for the entire Class Period and make a claim will receive as a settlement payment under the currently proposed Plan of Allocation a minimum

¹¹ See also *Amos v. PPG Industries*, 2015 WL 4881459, at *1 (noting that the Southern District of Ohio “recognizes that the settlement of class action is generally favored and encouraged.”) (internal citations omitted).

¹² See *Amos*, 2015 WL 4881459, at *1 (“In general, most class actions are inherently complex, and settlement avoids the costs, delays, and multitude of other problems associated with them.”) (internal citations and quotations omitted); *Brotherton*, 141 F. Supp. 2d at 905 (noting that adding any further delay to an 11-year-old case “would not substantially benefit class members” and would support a finding that the settlement was fair, reasonable, and adequate); *Miracle v. Bullitt Cnty., Ky.*, No. CIV.A. 05-130-C, 2008 WL 3850477, at *6 (W.D. Ky. Aug. 15, 2008) (The “uncertainty of the outcome of the litigation makes it more reasonable for the plaintiffs to accept the settlement offer from the defendant”).

in the range of \$40 and, depending upon the claims rate, a maximum in the range of \$400.¹³ Non-Residential Class Members who paid tariffed rates for the entire Class Period and make a claim will receive a minimum in the range of \$300 and, depending upon their usage and the claims rate, a maximum in the range of \$6,000, as a settlement payment.¹⁴ Courts in the Southern District have recognized the benefit of the present value of money and that “secur[ing] a substantial benefit for the Class in a highly complex action, undiminished by further expenses, and without delay, costs and uncertainty of protracted litigation” favors approving a proposed settlement.¹⁵ The proposed Settlement in this case also creates a Class Benefit Fund, which will provide additional direct benefits to Class Members through energy-related programs designed to leverage settlement dollars.

When considering the Settlement and Stipulation, Plaintiffs weighed the certainty of an immediate cash recovery for the Class against the significant legal challenges Plaintiffs faced. When these circumstances are taken into account and appropriately weighed, the proposed Settlement is fair, reasonable, and adequate.

3. The proposed Settlement has no obvious deficiencies.

There are no grounds to doubt the fairness of the proposed Settlement, nor are there any obvious deficiencies in the Settlement, such as unduly preferential treatment of the Lead Plaintiffs or excessive attorney compensation.¹⁶ Lead Plaintiffs, like all other Class Members, will receive their *pro rata* distribution from the Settlement Fund in accordance with a Plan of

¹³ These estimates are based on the best information currently available, but could change significantly. Lead Plaintiffs are in the process of receiving database information from Duke that will allow them to finalize minimum and maximum settlement figures. It is anticipated that final dollar amounts will be determined within the next thirty days.

¹⁴ *Id.*

¹⁵ *In re Broadwing*, 252 F.R.D. at 374 (S.D. Ohio 2006).

¹⁶ *Thacker v. Chesapeake Appalachia, L.L.C.*, 259 F.R.D. 262, 271 (E.D. Ky. 2009).

Allocation that will be presented to the Court for approval. They will also seek incentive payments for their role as class representatives that are in line with compensation provided in comparable cases. Class counsel will apply for attorneys' fees and costs, the amount of which is subject to the Court's determination.

Accordingly, nothing in the course of this Class Action, the settlement negotiations, or the Stipulation itself raises fairness concerns. Plaintiffs therefore request that the Court preliminarily approve the Settlement and set a date for the Settlement Fairness Hearing.

B. The proposed form and manner of notice to the Class is reasonable and also should be approved.

Under Rule 23(e) of the Federal Rules of Civil Procedure, the Court must "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement.¹⁷ Notice of a proposed settlement to class members must be the "best notice practicable."¹⁸ "[B]est notice practicable" means "individual notice to all members who can be identified through reasonable effort."¹⁹

Here, the form of the notice to be disseminated to all persons who fall within the definition of the Class and whose names and addresses can be identified with reasonable effort from or through Defendant Duke's records is almost identical to the successful Class Certification Notice Plan this Court approved earlier this year.²⁰ Garden City Group, LLC ("GCG"), the Claims Administrator, will disseminate a postcard notice ("Postcard Notice")²¹ to potential Class Members via regular U.S. Mail. The Postcard Notice will be a trifold postcard that includes a perforated card that will serve as a claim form for Class Members to complete and

¹⁷ Fed. R. Civ. P. 23(e)(1).

¹⁸ Fed. R. Civ. P. 23(c)(2)(B).

¹⁹ *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173, 94 S. Ct. 2140, 2150, 40 L. Ed. 2d 732 (1974).

²⁰ See Order Approving Plaintiffs' Class Certification Plan and Directing Dissemination of the Class Action Notice to the Class (Doc. No. 219).

²¹ See Stipulation at Exhibit 5.

mail back to GCG for processing.²² In addition to mailing the Postcard Notice, GCG will also:

- (1) publish a Longform Notice²³ on the Class Website, which is located at www.dukeclassaction.com;
- (2) make available on the Class Website an electronic Proof of Claim form;
- (3) advertise the Summary Notice and Class Website through geographically-targeted ads on social media websites such as Facebook;
- (4) issue a press release of approximately 1,000 words over PR Newswire's Ohio and Midwest Region Hispanic newswire containing the content of the Summary Notice;²⁴
- (5) email an electronic version of the Postcard Notice to potential Class Members, sent to email addresses Duke had for some of the potential Class Members; and
- (6) circulate the notice in the *Cincinnati Enquirer*, *Dayton Daily News*, *Hillsboro Gazette* and *Wilmington News Journal*.

In addition, Rule 23(h)(1) of the Federal Rules of Civil Procedure requires that “[n]otice of the motion [for attorneys’ fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.”²⁵ Here, notice of the proposed Settlement satisfies the requirements of Rule 23(h)(1), as it notifies Class Members that Plaintiffs’ Counsel will apply to the Court for attorneys’ fees of no more than 24% of the Settlement Fund, after costs and expenses, and expenses of no more than \$2,000,000 plus the costs of settlement administration and any interest on the above amounts.²⁶ As will be shown in more detail in the briefing on this issue, the proposed fee amount is well within the range of reasonable attorneys’ fees awarded for similar complex class action matters in the Sixth Circuit as well as other federal

²² Class Members will also have the ability to submit claims electronically through the Class Website.

²³ See Stipulation at Exhibit 4.

²⁴ See Stipulation at Exhibit 8.

²⁵ Fed. R. Civ. P. 23(h)(1).

²⁶ See Stipulation at Exhibits 4, 5, and 8.

district courts.²⁷

This proposed notice plan complies with Fed. R. Civ. P. 23 and due process because, among other things, it informs Class Members of: (1) the nature of the action; (2) the essential terms of the settlement, including the definition of the Class and the claims asserted; (3) the binding effect of a judgment if a Class Member does not request exclusion; (4) the process for objection and/or exclusion, including the time and method for objecting or requesting exclusion and that Class Members may make an appearance through counsel; (5) information regarding Lead Plaintiffs' request for an incentive award and reimbursement of attorneys' fees and expenses; and (6) how to make inquiries.²⁸

Accordingly, the Settlement Notice and Summary Notice "fairly apprise the prospective members of the class of the terms of the proposed [S]ettlement and of the options that are open to them in connection with the proceedings."²⁹ The manner of providing notice, which includes individual notice by mail to all Class Members who can be reasonably identified, represents the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23.³⁰ Thus, the notice plan is reasonable and should be approved.³¹

²⁷ *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, No. 10-CV-14369, 2015 WL 1498888, at *15, 2015 WL 1498888 (E.D. Mich. Mar. 31, 2015) *appeal filed*, (noting that "[c]ourts have noted that the range of reasonableness in common fund cases is from 20 to 50 percent of the common fund."); *In re Countrywide Fin. Corp., Customer Data Sec. Breach Litig.*, MDL No. 1998, 2009 WL 5184352 (W.D. Ky. Dec. 22, 2009) (noting that a 25% fee award generally is the benchmark attorney fee award in a class action when the fees are taken out the common fund); *Trombley v. Nat'l City Bank*, 826 F. Supp. 2d 179, 205-06 (D.D.C. 2011) (approving 22-25% of recovery, and citing cases with range of 20-33%); *Bebchick v. Washington Metro Area Transit Comm'n*, 805 F.2d 396 (D.C. Cir. 1986) (approving fee award of 25% of recovery).

²⁸ See Fed. R. Civ. P. 23(c)(2)(B).

²⁹ *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 114 (2d Cir. 2005).

³⁰ *Frost v. Household Realty Corp.*, 61 F. Supp. 3d 740, 745 (S.D. Ohio 2004); *see also Weinberger v. Kendrick*, 698 F.2d 61, 71 (2d Cir. 1982) (Notice sent to individuals' last known address and notice published in the *Wall Street Journal* constituted adequate notice, even though some members of the class did not receive actual notice); *Jordan v. Global Natural Res. Inc.*, 102 F.R.D. 45, 51 (S.D. Ohio 1984) (due process does not require actual notice to all class members, and constructive notice by publication will suffice to inform potential class members).

C. Scheduling a Settlement Fairness Hearing is appropriate.

The last step in the settlement approval process is a Settlement Fairness Hearing at which time the Court may hear all evidence and argument necessary to make its final settlement evaluation.³² Proponents of the Settlement may offer argument in support of final approval. In addition, Class Members who have properly objected to the Settlement may be heard at this hearing. The Court will determine through the Settlement Fairness Hearing whether the Settlement should be approved, and whether to enter a judgment and order of dismissal under Rule 23(e). The Parties request that the Court set a date for a Settlement Fairness Hearing at the Court's convenience, within 180 days after the Court's preliminary approval of the Settlement.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court preliminarily approve the class action Settlement in this case.

Respectfully submitted,

s/ W.B Markovits

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³¹ See Fed. R. Civ. P. 23(c)(2)(A).

³² Fed. R. Civ. P. 23(e)(2).

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CERTIFICATE OF SERVICE

I certify that on October 21, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record in this matter who are registered on the CM/ECF.

s/ W.B. Markovits
W.B. Markovits (0018514)
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