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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DOLORES GRANILLO, et al., Plaintiffs, v. FCA US LLC, Defendant.	Civil Action No. 3:16-cv-153-FLW-DEA **PROPOSED BRIEF OF AMICI CURIAE CENTER FOR AUTO SAFETY AND PUBLIC CITIZEN, INC. IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT**

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INTEREST OF AMICI CURIAE

Center for Auto Safety (CAS) and Public Citizen, Inc. are consumer advocacy organizations with strong interests in auto safety and consumer protection more generally. Both organizations have a special interest in the subject of this brief: plaintiffs' unopposed request that the Court impose extreme and unnecessary discovery, disclosure, and sanctions requirements on absent class members who object to the proposed class settlement.

CAS is a nonprofit consumer research and advocacy organization founded in 1970. With a mission to improve the safety, efficiency, reliability, and cost to consumers of vehicles, CAS advocates before the Department of Transportation, before Congress, and in courts to help reduce motor vehicle deaths, injuries, and crashes. To this end, CAS has been involved in a number of lawsuits as a party or as an amicus promoting vehicle safety, consumer protection, and the role of the civil justice system in facilitating those goals. *See, e.g.*, *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017) (amicus brief); *Ctr. for Auto Safety v. Volkswagen AG*, No. 3:15-cv-06002 (N.D. Cal. filed Oct. 16, 2015) (action seeking injunctive relief against car companies for defrauding consumers by manipulating vehicle emissions tests); *Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 793 F.2d 1322 (D.C. Cir. 1986) (challenge to an administrative rule involving fuel economy).

Public Citizen, Inc. is a nonprofit consumer advocacy organization founded in 1971, with members in all 50 states. Public Citizen works before Congress, administrative agencies, and courts for the enactment and enforcement of laws protecting consumers, workers, and the general public. Of particular relevance here, Public Citizen believes that class actions are an important tool for seeking justice where a defendant's wrongful conduct has harmed many people and resulted in injuries that are large in the aggregate but may not be cost effective to redress individually. Public Citizen additionally believes that the interests of both named and absent class members, defendants, the judiciary, and the public at large are best served by adherence to the principles incorporated in Federal Rule of Civil Procedure 23 and due process. Accordingly, Public Citizen has appeared as amicus curiae in many cases raising issues about class actions and class-action settlements. *See, e.g., Cal. Pub. Emps.' Ret. Sys. v. ANZ Secs., Inc.*, 137 S. Ct. 2042 (2017); *Armstrong v. Nat'l Football League*, 137 S. Ct. 607 (2016) (denying petition for writ of certiorari); *Dow Chem. Co. v. Stephenson*, 539 U.S. 111 (2003).

INTRODUCTION AND SUMMARY OF ARGUMENT

On February 9, 2018, with defendant's consent, plaintiffs moved for preliminary approval of a class-action settlement, based on a proposed settlement class. *See* Doc. 85. The proposed settlement and class notice, if approved by this Court, will allow the settling parties to subject objectors to extraordinary discovery

and unnecessary disclosure requirements, under the threat of severe sanctions for non-compliance. The Court should reject the proposed settlement on this basis. Such requirements would conflict with class action, discovery, and due process principles, and they would have an inappropriate chilling effect on absent class members who might otherwise play a vital role in advising the Court on shortcomings of the proposed settlement.

Three specific aspects of plaintiffs' proposal concern amici. First, the plaintiffs ask the Court to provide class counsel and defendant's counsel pre-approval to subject objectors to depositions and other discovery requests on an expedited basis, and without any individualized showing of need. *See* Order Granting Preliminary Approval of Class Settlement ¶ 27 (Doc. 85-3) (Proposed Order); *also* Lurie Decl. in Support of Motion for Preliminary Approval of the Class Action Settlement, at exh. 1, § VI, ¶ 2 (Doc. 85-2) (Proposed Agreement). Second, plaintiffs ask the Court to require absent class members to disclose, as a condition of objecting, any other class-action cases in which either the objector or the objector's attorney has submitted an objection. The proposed order would also require even pro se objectors to identify the *legal* grounds for their concerns, even concerns based on fairness. Proposed Order ¶¶ 23-24; *also* Proposed Agreement, at exh. 1, § VI, ¶ 1. Finally, plaintiffs ask the Court to create a sui generis regime that would threaten objectors and their attorneys with sanctions, including rejecting the

objection for failure to comply with technical specifications and taxing the cost of discovery to the objector or the objector's counsel if the objection is "frivolous or made for improper purpose." Proposed Order ¶¶ 26-27; *also* Proposed Agreement, at exh. 1, § VI, paras. 1-2. The proposed long-form notice incorporates these provisions. *See* Proposed Agreement, at Exhibit A-3, ¶ 20 (Proposed Notice).

Combined, these requirements would impose unusual burdens on objectors. The Court, however, has a duty to protect absent class members, including by considering their objections, not to make such participation more difficult and not to chill absent class members from participating at all. For that reason, the Court should deny plaintiffs' motion for preliminary approval.[1]

ARGUMENT

I. Objectors play a vital, constitutionally-protected role in class actions.

When absent class members receive notice of a proposed Rule 23(b)(3) class-action settlement and do not think the settlement is appropriate, they generally have two options: object or opt out. Those who stay in the class and object pursue legitimate and important goals by seeking to block or improve the proposed settlement. When they raise their hands to participate, objectors are usually the only ones who can achieve these goals. Individuals who opt out do not

[1] Amici do not take a position on any aspect of plaintiffs' motion other than the provisions in the Proposed Settlement, Proposed Notice, and Proposed Order addressed in this brief.

have standing to object because they are no longer in the class. *See Mayfield v. Barr*, 985 F.2d 1090, 1093 (D.C. Cir. 1993). The named parties, at this stage, are seeking approval of a settlement to which they have already agreed, not trying to improve that settlement. Indeed, by the time objectors learn of a proposed settlement, the litigation has virtually ceased being adversarial, a problem that is even more pronounced if the settlement is tied to a settlement class rather than a previously certified one. In a related context, the Third Circuit observed that "[i]n seeking court approval of their settlement proposal, plaintiffs' attorneys' and defendants' interests coalesce and mutual interest may result in mutual indulgence. The parties can be expected to spotlight the proposal's strengths and slight its defects." *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1310 (3d Cir. 1993); *see also In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 789 (3d Cir. 1995) (noting, in the context of a settlement class, that when "the issue of certification is never actively contested, the judge never receives the benefit of the adversarial process"); *see generally Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 847 (1999) (recognizing that "in settlement-only class actions the procedural protections built into the Rule to protect the rights of absent class members are never invoked in an adversarial setting").

Due to these and other aspects of class-action litigation, this Court bears a special responsibility toward absent class members in considering the proposed

settlement class and ensuring that any settlement is fair, reasonable, and adequate. *See generally Gen. Motors Corp.*, 55 F.3d at 784, 805. In this context, the district judge acts as a "'fiduciary' of the class." *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 318 (3d Cir. 2005) (quoting *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001)).

To aid courts in fulfilling their fiduciary role, objectors—not the settling parties—can give "courts … independently-derived information about the merits to oppose proposed settlement." *Gen. Motors Corp.*, 55 F.3d at 803. Indeed, "[w]hen there are objecting class members, the judge's task is eased because he or she has the benefit of an adversary process: objectors versus settlors (that is, versus class counsel and the defendant)." *Redman v. RadioShack Corp.*, 768 F.3d 622, 629 (7th Cir. 2014). Thus, objectors can bring real value to class actions. Objectors have driven both the improvement of settlement agreements and the development of important principles regarding class action litigation. *See, e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997); *Larson v. AT & T Mobility LLC*, 687 F.3d 109 (3d Cir. 2012); *Gen. Motors Corp.*, 55 F.3d 768; *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975).

Importantly, absent class members' right to object is constitutionally protected. To satisfy due process standards, courts are required to afford absent class members notice, an opportunity to be heard, and the chance to "develop a

record in support of [their] contentions." *Greenfield v. Villager Indus., Inc.*, 483 F.2d 824, 831-33 (3d Cir. 1973); *see also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 306 (3d Cir. 1998). Nonetheless, objectors are often mistrusted for the mere fact of their objections. Those who exercise this right are often treated with disdain. *See* 4 William B. Rubenstein, *Newberg on Class Actions* § 13:20 (5th ed. Dec. 2017 update) ("[T]here are few actors in the pantheon of American adjudication more disliked than objectors to class action settlements.").

For this reason and others, objectors face significant challenges in bringing their concerns to the attention of the courts. Objectors usually learn of a proposed settlement only after the parties have spent significant time and resources negotiating it, presenting it to the court, and sending out class notice. *See, e.g.*, *Amchem Prods., Inc.*, 521 U.S. at 599-602, 606; *Larson*, 687 F.3d at 123-24. Thus, from the moment they enter the litigation, objectors must battle enormous momentum in favor of settlement approval. *See generally Gen. Motors*, 55 F.3d at 788, 799. Even understanding the value of objecting can be challenging for absent class members. When, as the parties propose here, a settlement notice is presented at the same time as a class notice, that combination can look to class members like a "fait accompli." *Id.* at 789 (quoting *Mars Steel Corp. v. Cont'l Ill. Nat'l Bank and Trust Co. of Chicago*, 834 F.2d 677, 680-81 (7th Cir. 1987)).

This Court's role in protecting the right to object, despite these hurdles, is especially important in cases like this one, "where settlement negotiations precede class certification, and approval for settlement and certification are sought simultaneously." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534 (3d Cir. 2004). In these situations, courts must "be even more scrupulous than usual when examining the fairness of the proposed settlement" in order "to ensure that class counsel has engaged in sustained advocacy through the course of the proceedings, particularly in settlement negotiations, and has protected the interests of all class members." *Id.* at 534 (internal quotation marks and citations omitted).

II. The Court should not approve the extreme and unnecessary discovery, disclosure, and sanctions rules that plaintiffs propose.

Through the Proposed Agreement, Proposed Order, and Proposed Notice, the settling parties have asked the Court to create an inappropriate and burdensome set of discovery, disclosure, and sanctions rules. If plaintiffs' motion is granted, these documents would provide the Court's pre-approval for discovery from objectors on an expedited basis, with no showing of need. Citing as a guide the Federal Rules of Civil Procedure, but not other established class-action principles, the documents would permit the parties' attorneys to "take the objecting Class Member's deposition," "seek any documentary evidence or other tangible things that are relevant to the objection," and lodge unspecified "expedited discovery requests." Proposed Order ¶ 27.

Plaintiffs' proposed documents would also require absent class members to make up-front disclosures simply to preserve the right to be heard. Reasonably, most aspects of the proposed disclosures regard the objector's standing and the basis for any objections. Amici do not take issue with these aspects of the proposed disclosures. Amici are concerned, however, that the settling parties also want all objectors to identify, up-front, the "legal grounds for the position(s)," *id.* ¶ 23, and provide "a detailed list of any other objections submitted by the objector, or the objector's counsel, to any class action settlements … in the United States in the previous 5 years," or a statement that no such objections exist, *id.* ¶ 24.

The Proposed Order backs up these extraordinary discovery and unnecessary disclosure requirements with a strict sanctions regime. A potential objector whose papers are not "in *complete accordance* with [the Proposed Order's] deadlines and specifications, [would] be deemed to have waived any objections to the Settlement." *Id.* ¶ 26 (emphasis added). "Failure by an objector to appear for a deposition or comply with *expedited* discovery requests" would allow the Court to ignore the objection and deny the objector his or her constitutionally-protected "opportunity to be heard." *Id.* ¶ 27 (emphasis added). Further, the parties seek a one-way fee-shifting rule. Under plaintiffs' proposal, the Court could tax the cost of discovery to an objector or objector's attorney if the objection is "frivolous or made for an improper purpose." *Id.*

Together, these aspects of the settling parties' proposal will intimidate absent class members and serve as roadblocks for those who seek to object to a proposed settlement that would determine their rights and release their claims. The Court should reject the Proposed Agreement, Notice, and Order as long as they include discovery provisions, require disclosures regarding legal grounds and litigation history, and threaten sanctions.

A. The Court should not give the parties advance permission to seek discovery or require unnecessary disclosures from objectors; objectors must be protected from discovery burdens.

Courts and parties rarely impose the burden of discovery requests, expedited or otherwise, on absent class members. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810 n.2 (1985). In the rare instances that they do, those requests are limited not only by the Federal Rules of Civil Procedure, to which the Proposed Order's objector provisions refer, but also by class-action principles that the Proposed Agreement, Proposed Order, and Proposed Notice ignore. In general, parties seeking discovery from absent class members must make an affirmative showing of need to ensure the request is not designed "to take undue advantage of the class members or … to reduce the number of claimants." *In re Modafinil Antitrust Litig.*, 837 F.3d 238, 257 (3d Cir. 2016) (quoting *Clark v. Universal Builders, Inc.*, 501 F.2d 324, 340-41 (7th Cir. 1974)). These principles continue to apply when an absent class member objects to a proposed settlement and the

parties seek discovery from that person. Before allowing such discovery of an absentee, the Court should require an individualized, "strong showing" of need and narrow tailoring. *See Corpac v. Rubin & Rothman, LLC*, No. 10-CV-4165, 2012 WL 2923514, at *2-3 (E.D.N.Y. July 18, 2012) (denying request for deposition of objector when request was motivated by parties' concern regarding objector's counsel's motivation).

The limits on discovery of absent class members are not simply prudential; they are a fundamental aspect of class-action litigation. Most importantly, they are tied to class members' due process rights. *Phillips Petroleum Co.*, a Supreme Court case discussing such rights, is instructive. In *Phillips*, the Supreme Court considered a state-court class-action defendant's claim that the state court lacked personal jurisdiction over out-of-state class members, unless those individuals affirmatively consented. *Phillips Petroleum Co.*, 472 U.S. at 803-04, 806. The Supreme Court decided that for class actions regarding claims "for money damages or similar relief," the Due Process Clause does not require such affirmative consent, though it does require that absent class members receive "notice plus an opportunity to be heard and participate in the litigation," the right to opt out, and adequate representation. *Id.* at 811-812. In reaching this conclusion, the Supreme Court distinguished defendants (whose due process rights are different) from absent class members. *Id.* at 809-811. An essential distinction that the Court

recognized is that "absent plaintiff class members are not subject to [certain] burdens imposed on defendants." *Id.* at 810. For example, the Court stated, it was "convinced" that the burdens of "discovery, counterclaims, cross-claims, or court costs" "are rarely imposed upon plaintiff class members." *Id.* at 810 n.2. In other words, the Court suggested, if discovery of absent class members were routine, the Due Process Clause could require additional protections for absent class members.

The mechanics of federal class-actions reinforce the limits on parties' ability to seek discovery from absent class members. Although objectors may be considered parties in other aspects of litigation, *see generally Devlin v. Scardelletti*, 536 U.S. 1, 9-10 (2002), objectors are not supposed to be treated like parties for the purpose of discovery. Their ability to conduct their own discovery is more limited than that of parties. *See Cmty. Bank of N. Va.*, 418 F.3d at 316 (contemplating that discovery by objectors "may be appropriate if lead counsel has not conducted adequate discovery or if the discovery conducted by lead counsel is not made available to objectors"). This limit on objectors' role further signals the inappropriateness of the settling parties' efforts to subject objectors to discovery requests that may be at least, if not more, burdensome than the types of requests the parties could serve on each other.[2]

[2] By referencing sanctions for any failure to comply with expedited requests, the Proposed Order and Proposed Agreement suggest that the settling parties intend to bind objectors to response deadlines that are even shorter than those that

The Court should also reject plaintiffs' proposal because in large part, the contemplated discovery requests and disclosures will fall short of the most basic discovery tenets: that requests be relevant, proportional, reflective of "the parties' relative access to relevant information," not unduly burdensome, and not interposed for an improper purpose. Fed. R. Civ. P. 26(b)(1), 26(g)(1)(B). This Court cannot presume, for example, that information about an objector's past litigation experience, or that of his or her attorneys, is always—or ever—relevant to the merits of that objector's claim. The suggestion that every objector must compile this information—or affirmatively state that it does not exist—seems designed to open objectors to ad hominem attacks, generate inappropriate inquiries into attorney-client relations, or act simply as another trip wire, linked to the threatened denial of a class member's objection. *Cf. In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 587 (3d Cir. 1984) (stating, in a fee dispute arising from a class-action settlement, "[w]e fail to see how motives of the objectors, other than the obvious financial one of maximizing their recovery, would make any fact of consequence to the determination of reasonable fees more or less probable").

Further, the Proposed Order would allow duplicative and therefore unnecessary requests. If objectors establish their standing to object through the proposed up-front disclosure, it is especially difficult to imagine that the parties

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would ordinarily apply to parties under the Federal Rules of Civil Procedure. *See* Proposed Order ¶ 27; Proposed Agreement, § VI, ¶ 2.

should need, as a routine matter, a deposition or other discovery from an objector—especially on an expedited basis.

B. The proposed sanctions regime is extreme, unfair, and in conflict with established principles of moderation.

Equally inappropriate is the proposed regime for sanctioning objectors who make procedural or substantive mistakes. In their Proposed Agreement, the parties identify the most extreme type of sanctions available—loss of the right to object—and imply that it should be the default for any small error, including missing an expedited discovery deadline or failing to adequately identify the legal basis for an objection. In their unopposed motion for preliminary approval, plaintiffs also seek authority for imposing the costs of discovery on objectors who raise frivolous objections. *See* Proposed Order ¶¶ 26-27.

This proposed sanctions regime conflicts with the principles of moderation that otherwise limit this Court's sanctions authority. Although parties may sometimes lose their "day in court" for litigation errors, punishing a party by dismissing an action with prejudice is not a default sanction, but rather a "drastic" measure that courts impose only after consideration of six factors. *Knoll v. City of Allentown*, 707 F.3d 406, 409 & n.2 (3d Cir. 2013); *see generally* Fed. R. Civ. P. 37(b)(2)(A)(i)-(vii) (listing a range of possible sanctions for failure to comply with discovery orders). Even sanctions under Federal Rule of Civil Procedure 11 are permitted only in "exceptional circumstance," because such sanctions "are 'in

derogation of the general American policy of encouraging resort to the courts for peaceful resolution of disputes.'" *Doering v. Union Cty. Bd. of Chosen Freeholders*, 857 F.2d 191, 194 (3d Cir. 1988); *see generally* Fed. R. Civ. P. 11(c)(4) (requiring that a sanction be limited to what is necessary for deterrence).

In the class action context specifically, the Third Circuit has established that class members cannot automatically be denied their rights for missing deadlines; even the need to establish a claims cutoff date "must not be so rigid as to preclude recovery by a deserving claimant." *In re Orthopedic Bone Screw Prods. Liab. Litig*, 246 F.3d 315, 329 (3d Cir. 2001) (concluding that the district court abused its discretion in dismissing a class member's claim due to late filing of paperwork).

The sanctions provisions that plaintiffs propose are thus not fair or reasonable on their own terms. They are made even more unfair by their chilling effect.

C. The Proposed Notice will unduly chill objections by threatening burdensome discovery, disclosures, and sanctions.

Notice to absent class members is an essential part of absentees' due process rights; its purpose is not only to educate individuals about the litigation, but also to apprise them of their rights. *See Phillips Petroleum Co.*, 472 U.S. at 812; *Larson*, 687 F.3d at 126; *Prudential*, 148 F.3d at 306.[3] Plaintiffs' Proposed Notice would

[3] An illustrative class-action notice published by the Federal Judicial Center is instructive. The notice's objector provisions focus on informing potential

turn this requirement on its head. The expansive wording of the Proposed Notice, suggesting that the parties have far-reaching authority to seek disclosures and discovery under a threat of harsh sanctions for non-compliance, will significantly chill the participation of potential objectors.

Rather than helping class members understand their rights, the Proposed Notice will intimidate them by emphasizing the hurdles to exercising those rights: burdensome, up-front disclosures; submission to unpredictable discovery requests, on an expedited basis; and the possibility of fee payments or other severe sanctions for non-compliance. These points could easily scare away potential objectors, as well as attorneys who might otherwise represent them. *Cf. United States v. Manzo*, 712 F.3d 805, 810 (3d Cir. 2013) (cautioning that in interpreting a statute allowing prevailing criminal defendants to seek attorneys' fees and costs from the government, "a court should be wary of awarding fees and costs so as not to 'chill the ardor of prosecutors and prevent them from prosecuting with earnestness and vigor'"). An objector reading the Proposed Notice can reasonably assume that compliance requires a day or more off from work and family duties to attend a

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objectors that they can "give reasons" why the Court should not approve a settlement and assures them that the "Court will consider [their] views." Fed. Judicial Ctr., *Products Liability Class Action Certification and Settlement: Full Notice* 8 (2002), https://www.fjc.gov/content/products-liability-class-action-certification-and-settlement-full-notice. The notice says that objectors need only submit a letter to the court and to the parties' attorneys. *Id.* at 9.

deposition, as well as time to draft required disclosures, prepare for a deposition, and respond to expedited discovery requests. A day off to respond to an attorney's demand is a luxury that many Americans cannot easily afford. Even a statement of "legal grounds" can be challenging for an objector without legal expertise. *See Rhodes v. Olson Assocs., P.C.*, 308 F.R.D. 664, 668 (D. Colo. 2015) (rejecting proposed requirement for objectors to submit detailed statements of the factual and legal bases for their objections, with a list of legal authority to be presented at the hearing, because that requirement would be "too onerous for lay class members, whose objections may be valid notwithstanding the fact that they cannot provide" the requested legal information). And if potential objectors (reasonably) decide that they need the assistance of counsel to comply with the proposed requirements and avoid sanctions, that assistance may cost more than they can afford, or than the objection and risk of discovery is worth to them.

The chilling effect of the Proposed Notice is exacerbated by the lack of certainty it provides about the applicable standards or potential costs entailed. *Cf. Nationalist Movement v. City of York*, 481 F.3d 178, 186-87 (3d Cir. 2007) (finding unconstitutional due to its chilling effect a requirement that organizations seeking event permits agree in advance to pay a fee that is only quantified later; whose amount could depend on others' reactions to the permit-holder; and whose amount could easily be increased through abuse). Because the Proposed Order

would provide blanket permission for unspecified, unusual, and expedited discovery requests, backed by potential sanctions, even potential objectors represented by counsel would have a difficult time estimating exactly what compliance with the proposed requirements involves. On the whole, the Proposed Notice's objector provisions appear designed to frighten off objectors.

Notably, the Judicial Conference of the United States has taken a very different approach to objectors. With proposed amendments to Federal Rule of Civil Procedure 23 on track to take effect in December 2018, the Judicial Conference zeroed in on an actual problem that sometimes occurs in class-action settlements: payments to objectors seeking only a payoff. The new Rule 23(e)(5) would require court approval of any payment made for forgoing or withdrawing an objection or appeal from a judgment of approval. *See* Memorandum from James C. Duff, Judicial Conference of the United States, to Chief Justice of the United States and Assoc. Justices of the Supreme Court, Re: Transmittal of Proposed Amendment to the Federal Rules of Civil Procedure (Oct. 4, 2017), first attachment at 14, 25-27, *contained in* http://www.uscourts.gov/sites/default/files/2017-10-04-Supreme-Court-Package_0.pdf (proposed Rule 23 amendment and associated Committee Note) [hereinafter Rule 23 Revisions]; *see also Pending Rules and Forms Amendments*, United States Courts, http://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments.

In the areas that plaintiffs seek to address—disclosures, discovery, and sanctions—the Rule 23 Revisions would support the work of objectors, not seek—as plaintiffs do—to make objecting more difficult and risky. For example, rather than subjecting objectors to discovery, the Rule 23 Revisions specify the information the *parties* must submit to the Court and note the importance of it to class members as they make "decisions whether to object or opt out." Rule 23 Revisions, first attachment at 18-19, 25 (Committee Note regarding subdivision (e)(1) and (e)(5)). Additionally, although one amendment aims "to clarify that objections must provide sufficient specifics to enable the parties to respond to them and the court to evaluate them," *id.* at 25 (Committee Note regarding subdivision (e)(5)(A)), the Rule 23 Revisions do not require objections to include legal reasoning or disclosures about objectors' or their counsel's litigation history. To the contrary, the committee note reminds courts that they "should take care … to avoid unduly burdening class members who wish to object, and to recognize that a class member who is not represented by counsel may present objections that do not adhere to technical legal standards." *Id.* Finally, far from a sanctions regime to address objectors' mistakes, the Rule 23 Revisions recognize that "[g]ood-faith objections can assist the court" and "[i]t is legitimate for an objector to seek payment for providing such assistance under Rule 23(h)." *Id.* (Committee Note regarding subdivision (e)(5)(B)).

As this Court considers plaintiffs' unopposed motion for preliminary approval, the Rule 23 Revisions are an important backdrop. They suggest the appropriate approach: The Court should focus on supporting the rights of objectors and reject the settling parties' request that the Court stymie objectors' participation.

CONCLUSION

For the foregoing reasons, the district court should deny plaintiffs' motion for preliminary approval.

Dated: February 23, 2018

Respectfully submitted,

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