

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: PORSCHE CARS NORTH
AMERICA, INC. PLASTIC COOLANT
TUBES PRODUCTS LIABILITY
LITIGATION**

Civil Action No.: 2:11-MD-2233

**Judge Gregory L. Frost
Magistrate Judge E. A. Preston Deavers**

This document relates to:

ALL ACTIONS

**JOINT MOTION FOR APPEAL BOND TO SECURE COSTS INCURRED DURING
PENDENCY OF APPEAL AND REQUEST FOR EXPEDITED BRIEFING SCHEDULE**

The Representative Class Plaintiffs (“Plaintiffs”) and Defendant Porsche Cars North America, Inc. (“PCNA”) jointly move the Court to issue an appeal bond under Fed. R. App. P. 7 securing the costs associated with the appeal of the Court’s Final Approval Order (Dkt. No. 181) by objector Mary Ellen Kalange (“Ms. Kalange”) to the Sixth Circuit Court of Appeals. Based upon the authority and underlying facts below, the parties move the Court to require Ms. Kalange to post an appeal bond in the amount of \$176,474.50 within 14 days of the date the Court issues its Order, if this Motion is granted. A Memorandum in Support is attached below.

Pursuant to this Court’s authority under S.D. Ohio Civ. R. 1.1(c), Plaintiffs and PCNA also move this Court to issue an expedited briefing schedule to resolve the issue of an appeal bond. As set forth below, Ms. Kalange’s meritless appeal is delaying payment that could already be in the hands of people who filed approved claims, so the resulting delay, and other good cause argued more fully below, supports expedited briefing on this issue. Accordingly, Plaintiffs and PCNA propose that the Court allow Ms. Kalange 14 days to file any opposition and provide that any reply is filed within 7 days after Ms. Kalange’s opposition is filed.

/s/ Mark H. Troutman

Gregory M. Travalio (0000855)

gtravalio@isaacwiles.com

Mark H. Troutman (0076390)

mtroutman@isaacwiles.com

Isaac, Wiles, Burkholder & Teetor, LLC

Two Miranova Place, Suite 700

Columbus, Ohio 43215

(614) 221-2121 (telephone)

(614) 365-9516 (facsimile)

One of Class Counsel for Plaintiffs

MEMORANDUM IN SUPPORT

Pursuant to Fed. R. App. P. 7, the Court should enter an Order requiring Ms. Kalange to post an appeal bond to secure the costs that Plaintiffs and PCNA will incur during Ms. Kalange's appeal, including those related to preparation and transmission of the record, filing and briefing costs, incremental administration costs, and attorneys' fees and costs. *See* Fed. R. App. P. 39(e).

The following itemization supports the parties' request:

- 1) Plaintiffs and PCNA have each incurred the cost related to preparation of the final fairness hearing transcript in the amount of \$237.25 for a total cost of \$474.50. Declaration of Mark Landes ("Landes Decl."), ¶6; Declaration of William F. Kiniry, Jr., ("Kiniry Decl."), ¶6.
- 2) Plaintiffs and PCNA will each incur approximately \$1,000 each in filing and briefing costs, for a total cost of \$2,000. Landes Decl., ¶7; Kiniry Decl., ¶7.
- 3) PCNA will incur an estimated, additional expense of \$25,000 for settlement administration. Kiniry Decl, ¶8.
- 4) Plaintiffs and PCNA will each incur approximately \$5,000 of other costs related to likely mediation and travel for oral argument, for a total cost of \$10,000. Landes Decl., ¶5; Kiniry Decl., ¶5.
- 5) Plaintiffs will incur approximately \$75,000 in attorneys' fees in order to oppose Kalange's objection on appeal. Landes Decl., ¶3-4.
- 6) PCNA will incur approximately \$64,000 of attorneys' fees in order to oppose Kalange's objection on appeal. Kiniry Decl., ¶¶3-4.

Thus, the parties jointly seek an Order from the Court requiring Ms. Kalange to post an appeal bond in the amount of \$176,474.50, in accordance with the authority and facts offered below.

I. BACKGROUND

On March 19, 2014, the Court granted final approval of the class action settlement that fully resolved this complex multidistrict litigation after three years of hard-fought and contentious litigation. The settlement was reached only after months of arms-length and hotly contested settlement negotiations, including four, full-day mediation sessions with a highly

respected and experienced mediator. The fairness and adequacy of the settlement is not only reflected by the cash benefits it provides to the class in light of the risk and uncertainty of further litigation, but by the overwhelming support it has received from Settlement Class Members. To date, approximately 5,841 Settlement Class Members have filed claims, and claims continue to be submitted as the claims period remains open until December 12, 2014. The mediator has expressly supported the settlement, the parties support the settlement, and after receiving notice under the Class Action Fairness Act, not a single state Attorney General objected to the settlement.

After the Court granted Final Approval of the settlement, only a single objector appealed the Court's decision: Mary Ellen Kalange. *See* Dkt. No. 184. As the Court likely recalls, Ms. Kalange appeared in person at the Final Fairness hearing to offer her position on why the Court should reject the settlement. The Court allowed Ms. Kalange unlimited time to express her concerns and allowed the parties to address any questions she raised. Transcript of Fairness Hearing Proceedings dated March 10, 2014, at 17:2-12 [Dkt. No. 186] ("Transcript"). In her written objection filed before the Final Fairness Hearing, Ms. Kalange advanced three positions: 1) that Dr. Ing h.c.F. Porsche Aktiengesellschaft ("Porsche AG") has not registered with the National Highway Transportation Safety Administration ("NHTSA"), and this claim should survive because the settlement failed to release Porsche AG; 2) that the Settlement Class Members' compensation is insufficient so that a recall is warranted; and, 3) that she should receive more compensation because she has faced "catastrophic engine failure."¹

¹ The three objections gleaned by the parties from Ms. Kalange's Objection to the Settlement Agreement were neither cleanly separated nor clearly articulated in her written objection. The manner in which the parties understand and interpret her objections is intended to reflect the proceedings of the Final Fairness Hearing and to give Kalange the benefit of the doubt. After this Court's Final Fairness Hearing, Ms. Kalange submitted what she entitled

After careful consideration of Ms. Kalange's objections, the Court held that none of her objections affected the Court's conclusion that the settlement is fair and reasonable, and found no reason to delay compensation to the thousands of Settlement Class Members who submitted claims based upon her desire to "punish" PCNA and PAG. *See* Dkt. No. 152, p. 6. The Court observed that, "Ms. Kalange's objections ignore the reality that, absent the Settlement, it would be several years and a substantial amount of legal fees before the case was resolved, all with no guarantee that Settlement Class Members would receive any recovery." *Id.* at 6-7. The Court also noted that Ms. Kalange could have chosen to opt out of the settlement and pursue punitive damages at her own cost and expense, but chose not to. *Id.* at 6. Rather than accept the compensation under the settlement, on April 18, 2014, Ms. Kalange appealed the Court's order granting final approval of the settlement. *See* Dkt. No. 185. Ms. Kalange's appeal is delaying compensation to many Settlement Class Members who have already submitted valid claims and wish to receive settlement benefits.²

II. STANDARD FOR APPEAL BONDS UNDER FED. R. APP. P. 7

Under Fed. R. App. P. 7, the Court "may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal." Rule 7

"Objector's Addendum to Fairness Hearing" on March 11, 2014; however, this Court struck her Addendum because it was untimely. *See* Dkt. Nos. 177-78. Ms. Kalange's untimely submission was an improper attempt to take a second bite at the apple. The parties' generous interpretation of Ms. Kalange's objections is not intended to waive any arguments by the parties on appeal that she did not properly raise objections in the District Court.

² In accordance with S.D. Ohio Civ. R. 7.3(b), on May 28, 2014, and again on May 29, 2014, Plaintiffs' counsel telephoned Ms. Kalange in an effort to discuss the content of this Motion. She never returned their calls. Even though this Motion only questionably falls under the purview of S.D. Ohio Civ. R. 7.3(b) requiring a meet-and-confer before filing, Ms. Kalange's failure to return Plaintiffs' calls further supports the parties' joint request for an Order requiring Ms. Kalange to post an appeal bond in order to proceed with her appeal.

protects the rights of the appellees. See *In re Cardizem CD Antitrust Litig.*, 391 F.3d 812, 818 (6th Cir. 2004); *Adsani v. Miller*, 139 F.3d 67, 75 (2d Cir. 1998). Any amount required by the district court as an appeal bond is only reviewed for abuse of discretion. *In re Cardizem*, 391 F.3d at 818 (citing *Fed. Prescription Serv., Inc. v. Am. Pharm. Ass'n*, 636 F.2d 755, 757 n.2 (D.C. Cir. 1980)).

Courts typically consider four factors when evaluating whether to issue an appeal bond under Fed. R. App. P. 7, which include:

- 1) the appellant's financial ability to post a bond;
- 2) the risk that the appellant would not pay appellees' costs if the appeal is unsuccessful;
- 3) the merits of the appeal; and
- 4) whether the appellant has shown any bad faith or vexatious conduct.

Gemelas v. Dannon Co., Inc., No. 1:08 CV 236, 2010 WL 3703811, at *1 (N.D. Ohio Aug. 31, 2010). Each of these factors is discussed below and each supports the grant of an appeal bond by the Court.

In addition, the Court may also impose a bond in an amount that covers prospective attorneys' fees and administrative costs incurred in handling the appeal if the appeal is taken in bad faith or if the underlying action contains a fee-shifting provision. *Id.*; see also *In re Cardizem*, 391 F.3d at 815-18 (affirming \$174,429 bond that included \$50,000 in projected attorney fees and approximately \$123,000 in class administrative expenses as appropriate costs on objector who appealed final settlement order where underlying class action involved fee-shifting provisions); *Azizan v. Federated Dep't Stores, Inc.*, 499 F.3d 950, 959-60 (9th Cir. 2007); *Young v. New Process Steel, LP*, 419 F.3d 1201, 1202-03 (11th Cir. 2005). As the Northern District of Ohio held in the *Gemelas* case, Ohio Rev. Code § 1345.09(F)(2) is a fee-

shifting provision that allows for attorneys' fees to be included in the appeal bond amount. *Gemelas*, 2010 WL 3703811, at *1 (ordering bond of \$275,000 that included \$250,000 in attorney fees). Under the applicable authority and based upon the record, the Court should enter an Order requiring Ms. Kalange to post an appeal bond, including all costs and attorneys' fees on appeal.

III. LAW AND ARGUMENT

Each of the factors that courts evaluate weighs heavily in favor of requiring an appeal bond in this case. Unless Ms. Kalange provides a bond to the Court, her baseless appeal will significantly delay compensation for many Settlement Class Members and allow her to evade the significant costs she will force the parties to incur while she appeals from out-of-state.

A. The parties can prove each of the four factors that courts consider when evaluating whether to require an appeal bond.

1. Ms. Kalange has demonstrated the financial ability to pay a bond.

Ms. Kalange's own testimony at the Fairness Hearing suggests that she has the financial ability to pay an appeal bond required by the Court. In articulating the background of her claim, she recounted that her Class Vehicle broke down while towing one of her family's other Porsche vehicles (a 911SC "show car") to an annual Porsche parade. Transcript, at 19:13-23; 21:13-14. She stated that she purchased her Class Vehicle new for approximately \$110,000. *Id.* at 19:2-4. She referred at the Final Fairness Hearing to her family's owning at least two Porsches (Transcript, at 21:11-14), and she referenced a 2007 Mercedes Benz E350 in her Addendum filed regarding the Fairness Hearing. Objector's Addendum to Fairness Hearing, at 1 n.1 [Dkt. No. 177] (ultimately stricken on grounds that it was untimely (Dkt. No. 178)). Finally, publicly available information shows her home to be valued at more than \$700,000, which she shares with her husband who is an orthodontist. *See, e.g.*, 2014 Tax Assessment Notice for 1257 E.

Brightwater Lane, Boise, Idaho, a true and correct copy of which is attached as Exhibit 1 (assessing Ms. Kalange's home at \$743,600);³ Website of John T. Kalange, DDS, MS, *available at*, <http://www.kalangeortho.com/Dr-Kalange.aspx> (last visited May 30, 2014). Moreover, Ms. Kalange also represented to the Court that she is a member of two state bars and had previously clerked for the Seventh Circuit and Ninth Circuit Court of Appeals. Transcript, at 15:7-21. Based on her legal experience and sophistication, Ms. Kalange is or should be aware that her appeal may require her to pay a bond.

This evidence demonstrates for the Court Ms. Kalange's financial ability to pay a bond if she wants to pursue her appeal.⁴ In the absence of any indication that she cannot pay a bond, this factor weighs strongly in favor of issuing a bond. *Fluery v. Richemont N. Am.*, No. C-05-4525, 2008 WL 4680033, at *7 (N.D. Cal. Oct. 21, 2008); *see also In re Pharm. Ind. Average Wholesale Price Litig.*, 520 F.Supp. 2d 274, 279 (D. Mass. 2007) (imposing a bond when no undue hardship to objector, especially in light of public policy in preventing frivolous objections from holding up class settlements).

2. There is significant risk that Ms. Kalange would never pay the parties' costs after the Court's Final Approval Order is affirmed by the Sixth Circuit.

If Ms. Kalange is unsuccessful, it is likely that the parties will never see the costs to

³ The value of Ms. Kalange's home may even be higher, based on various real estate firms' valuations. *E.g.* Zillow Website, *available at*, http://www.zillow.com/homes/1257-East-Bridgewater-Lane,-Boise,-Idaho_rb/ (last visited on May 30, 2014) (estimating property value at \$1,136,113); Homefacts Website, *available at*, <http://www.homefacts.com/address/Idaho/Ada-County/Boise/83706/1295-E-Brightwater-Ln/38776943.html> (last visited on May 30, 2014) (estimating property value at \$905,279).

⁴ If Ms. Kalange suggests that she lacks the means to post an appeal bond, this Court should allow expedited discovery with regard to Ms. Kalange's personal assets that she could use to pay the costs associated with an unsuccessful appeal. If such a right is granted, the parties expect to inquire into all bank accounts, retirement or investment accounts, real property, and business interests for which she maintains an interest.

which they are entitled stemming from Ms. Kalange's appeal. Ms. Kalange hails from Idaho, which is across the country and outside the territorial jurisdiction of the Court and the Sixth Circuit Court of Appeals. *See Fleury*, 2008 WL 4680033, at *7; *In re Initial Public Offering Sec. Litig.*, 728 F.Supp. 2d at 293 n.17. The costs of the appeal are likely to be quite significant, and without any evidence that she would pay them, the Court should not place the risk of non-payment on the Plaintiffs and the Defendant.

3. Ms. Kalange's appeal has no merit and lacks any evidence to support her claims.

As the Court has already found, Ms. Kalange's objections are entirely without merit and her appeal will undoubtedly be unsuccessful. In evaluating whether to require an appeal bond under Fed. R. App. P. 7, the Court should take into account the likelihood that the objector's appeal will be successful. *See In re Cardizem*, 391 F.3d at 817-18; *Adsani*, 139 F.3d at 79 ("A district court, familiar with the contours of the case appealed, has the discretion to impose a bond which reflects its determination of the likely outcome of the appeal."). Moreover, because the legal hurdle Ms. Kalange faces in trying to upset the parties' settlement is an abuse of discretion, her likelihood of success is virtually non-existent. *See, e.g., Bailey v. Great Lakes Canning, Inc.*, 908 F.2d 38, 42 (6th Cir. 1990) (standard for review of approved settlement is abuse of discretion).

Ms. Kalange makes no showing that the settlement was not fair to the class as a whole, which is, of course, the only basis on which she can object. As discussed in Plaintiffs' Motion for Final Approval and other filings in support of the settlement, the settlement benefits here are substantial in light of the parties' claims and defenses. Settlement Class Members who file valid claims are entitled to reimbursement for past, or payment towards future, repair or replacement of their vehicles' plastic coolant pipes, depending on the mileage of their vehicles and whether

they purchased them new or used. The notice of the settlement in and of itself is also a benefit to Settlement Class Members who may have otherwise not been aware of any potential problem with their coolant pipes.

In her written objection and orally at the final Fairness Hearing, Ms. Kalange argued that the Court should refuse approval unless Defendants agree to a recall; however, as the Court noted, such relief is outside the ability of the Court to order. *See, e.g., Wash v. Ford Motor Co.*, 130 F.R.D. 260, 266-67 (D.D.C. March 26, 1990) (avoiding entanglement with a regulatory scheme designed and intended to oversee motor vehicle recalls, especially given the supervision and resources required in a recall); *Lilly v. Ford Motor Co.*, No. 00 C 7372, 2002 WL 84603, at *5 (N.D. Ill. Jan. 22, 2002) (Congress did not intend for courts to order recalls of vehicles over several model years). Thus, no Court can order what she wants.

Ms. Kalange's objection that the settlement does not adequately compensate the class is entirely without merit. Although she claims to have suffered extraordinary damages not suffered by other Cayenne owners, she presented no evidence to the Court that her "catastrophic" engine failure stems from anything related to the coolant system.⁵ Moreover, to the extent that any such idiosyncratic damages did result from the coolant system, she was free to opt out of the settlement.

Ms. Kalange also improperly suggests that Plaintiffs never released PAG. Transcript, at 21: 18, 26-28, 35. As pointed out to her at the Final Fairness Hearing, Paragraph 18 of the Final Settlement Agreement and Release defines "Released Claims" in a manner that unquestionably

⁵ Ms. Kalange did claim at the Final Fairness Hearing that she had an invoice that said the diagnosis for her engine failure was "[d]ue to fractured coolant tubes." Transcript, 22: 23-25. However, she did not provide the invoice with her original objection nor did she provide it to the Court at the Fairness Hearing. Also, Ms. Kalange admitted that on the day her engine suffered damage, her husband was using the vehicle to tow a trailer loaded with another car on a day in which "there were record temperatures in Boise." *Id.* at 20: 20-21.

released PAG. Transcript, at 44: 7-9. “Released Claims” are those that “were asserted or could have been asserted in the Action,” and it is undeniable that the Plaintiffs’ Complaint asserted claims against PAG.

Finally, Ms. Kalange spent a great deal of time at the Final Fairness Hearing alleging that Porsche AG was not properly registered with the NHTSA. Transcript, 27-28; 33-36. However, she never connected this allegation with the Court’s approval of the settlement as fair and reasonable to the class. Moreover, even if this allegation were true, it is irrelevant to the approval of the settlement, and beyond the authority of the Court to address.

Ms. Kalange’s objections lack merit and have minimal, if any, chance of success on appeal. Thus, this factor favors the grant by the Court of an appeal bond.

4. Ms. Kalange has shown her vexatious and bad faith conduct in seeking to “punish” Porsche to the detriment of the class as a whole.

The Court has already acknowledged that Ms. Kalange merely seeks to punish those she believes have wronged her. *See* Dkt. No. 152. Holding up a fair and reasonable settlement involving thousands of Settlement Class Members, however, on the basis of meritless objections in a vain attempt to “punish” Porsche, can only be described as vexatious and bad faith. Although Ms. Kalange is a trained lawyer, her objections refuse to acknowledge that the settlement in this case, like all settlements, resulted from a resolution of disputed claims—claims that PCNA disputes to this day. Similarly, she persists in her objection that the Court should have ordered a recall of all class vehicles despite the complete lack of any authority that would enable a court to do so.

The Settlement will get significant amounts of money into Settlement Class Members’ pockets and avoid the significant risk of litigation going forward. Because Ms. Kalange is a lawyer, she should understand the lack of merit in her appeal and the consequences to the class

of her actions. *See* Section III(A)(3) above. In addition, Ms. Kalange had the benefit of her day in court during which the parties addressed each of her objections and concerns in detail and explained the background leading up to the settlement. This is not a case of a misunderstanding or a *pro se* litigant who is unaware of the applicable legal standards and factual issues in the case. Rather, Ms. Kalange understands the law, and even though it does not support her appeal in any respect, she chose to go forward with her baseless appeal. Under any circumstances, and particularly those present in this case, persisting in advancing these meritless positions would be considered in bad faith and vexatious.

5. Public policy further supports that the Court should require a bond before Ms. Kalange proceeds with her appeal.

Significant public policy reasons support the issuance of an appeal bond; otherwise settlement class members whose payments are being delayed by a frivolous objector are without remedy. As one court held, “there are public policy reasons to prevent frivolous objectors from threatening to hold up class certifications,” which is precisely what will occur if Ms. Kalange’s appeal goes forward without an appeal bond to protect Plaintiffs. *In re Pharm. Ind.*, 520 F.Supp. 2d at 279. Similarly, another case required an appeal bond in the amount of \$13.5 million based upon the “highly detrimental impact of an appeal of the settlement agreement as to the entire class.” *Allapattah Servs., Inc.*, 2006 WL 1132371, at *1. Based upon her testimony at the fairness hearing, Ms. Kalange brings her objections only out of self interest in seeking to punish Porsche and secure a new Cayenne. *See, e.g.*, Hearing Transcript, at 30:23-31:4; 36:7-19. Thus, the interest of the class as a whole further supports imposition of an appeal bond under Fed. App. R. P. 7.⁶

⁶ Notably, the parties are seeking nowhere near the \$13.5 million ordered by at least one court for an appeal bond.

B. The Court should require Ms. Kalange to post an appeal bond in the amount of \$176,474.50.

Plaintiffs request that the Court issue an Order requiring an appeal bond in the amount of \$37,474.50 in costs, plus \$139,000 of attorneys' fees associated with opposing Ms. Kalange's objections for the benefit of the class. As established above, the Sixth Circuit authority allows the Court to require a bond for these amounts. As set forth below, the facts support requiring a bond in the amount of \$176,474.50.

As a starting point, courts regularly require appeal bonds in the amount of \$25,000 as "reasonable" cost estimates of a case on appeal (not including attorneys' fees). *See In re Ins. Brokerage Antitrust Litig.*, MDL Docket No. 1663, 2007 WL 1963063, at *3-5 (D. N.J. July 2, 2007) (recognizing that delineated costs for appeal bond showing is unnecessary then following line of case law requiring \$25,000 appeal bond); *In re Diet Drugs Prods. Liab. Litig.*, No. 99-cv-20593, 2000 WL 1665134, at *6 (E.D. Pa. Nov. 6, 2000) (rejecting more delineated showing before requiring appeal bond of \$25,000 for costs). Other courts require appeal bonds in higher amounts. *See, e.g., In re Compact Disc.*, MDL Docket No. 1361, 2003 WL 22417252, at *2 (D. Maine Oct. 7, 2003) (requiring \$35,000 appeal bond). These cases all hold that Rule 7 does not require plaintiffs to make any "showing of costs for a bond motion." *In re Ins. Brokerage*, 2007 WL 1963063, at *3. Nonetheless, based upon the higher appeal bond amount requested here, the following sections of this motion should satisfy the Court that the requested amount is appropriate in this case.

1. The Court should include \$237.25 for the cost of the fairness hearing transcript as part of the appeal bond for each of Plaintiffs and Defendant.

Under Fed. R. App. P. 39(e)(1), "preparation and transmission of the record" is explicitly provided as a cost that can be included in an appeal bond. \$237.25 will cover all costs of

transcribing and forwarding the transcript to the Sixth Circuit. Given the express authority the Federal Rules of Appellate Procedure, the Court should include \$237.25 in the appeal bond requested by the parties for each side, for a total of \$474.50. Landes Decl., ¶6; Kiniry Decl., ¶6.

2. **Each party will incur at least \$1,000 in expenses related to preparation and filing their appellate briefs, so an additional \$2,000 should be added to the amount of the appeal bond.**

The parties' costs incurred in filing the appeal are also recoverable and thus should be included as part of the appeal bond. Such costs include those associated with printing and reproducing briefs, appendices, records, and court reporter transcripts. *See, e.g., Hirschensohn v. Lawyers Ins. Corp.*, No. 96-cv-7312, 1997 WL 307777, at *1 (3d Cir. 1997). As confirmed by Plaintiffs' Class Counsel and PCNA, they have estimated the cost of their preparation and filing briefs at approximately \$1,000. Landes Decl., ¶7; Kiniry Decl., ¶7. Thus, the Court should require Ms. Kalange to post an appeal bond that includes these amounts for costs that will be incurred in preparing and filing their appellate briefs.

3. **PCNA will incur approximately \$25,000 of incremental costs in settlement administration, which should also be included in the appeal bond.**

Under Fed. R. App. P. 39(e)(3), parties may obtain an appeal bond that includes a "bond to preserve rights pending appeal," which would include the additional costs that PCNA will incur during the pendency of her appeal. Claims management and coordination of the case beyond the dates required by the terms of the parties' settlement will dictate the additional costs PCNA will ultimately have to pay the Settlement Administrator, The Garden City Group. Claims management costs include items such as maintenance of the class list, responding to class member communications and additional confirmation of addresses for when checks are ready to be sent. The Garden City Group estimates that if the appeal extends beyond that contemplated

by the parties' agreement, thereby effectively extending the time The Garden City Group would be involved in the administration of the Settlement, the approximated added monthly cost would be \$3,000-\$3,500. Thus, it is estimated PCNA could ultimately have to pay \$25,000 for settlement administration costs due to the appeal. Kiniry Decl., ¶8. Thus, the Court should include an additional \$25,000 as part of the appeal bond in order for Kalange to proceed with her appeal.

4. Additional travel and other costs borne by the parties' counsel will be approximately \$5,000 per party, so an additional \$10,000 should be added to the appeal bond.

As cited above, Fed. R. App. P. 39(e)(3) allows for recovery of costs to preserve the parties' rights on appeal. As Plaintiffs and PCNA have estimated, costs associated with travel, mediation, briefing, oral argument, research, and file administration will be approximately \$5,000 for each party. Landes Decl., ¶5; Kiniry Decl., ¶5. These are real costs that will be borne by both Plaintiffs and PCNA, which they should be entitled to recover once the appeal has been resolved in their favor. Consequently, the Court should include \$10,000 in the appeal bond to cover these costs.

5. Because attorneys' fees are part of the costs included in the appeal bond, the Court should add \$75,000 in attorneys' fees for Plaintiffs and \$64,000 in attorneys' fees for Defendant.

Finally, the Court should include \$139,000 of attorneys' fees that the parties will incur in opposing Ms. Kalange's objection on appeal. Plaintiffs brought claims under a myriad of statutes involving fee shifting provisions, including, without limitation consumer protection statutes, and the Sixth Circuit and the Northern District of Ohio have held that attorneys' fees are properly included in the total amount of an appeal bond under Fed. R. App. P. 7. *See* Section II above. Based upon their experience in resolving objections on appeal, Plaintiffs have estimated

that they will incur \$75,000 in attorneys' fees associated with Ms. Kalange's appeal. Landes Decl., ¶¶3-4. PCNA has estimated that it will incur approximately \$64,000 of attorneys' fees if Ms. Kalange proceeds with her appeal. Kiniry Decl., ¶¶3-4.

The parties' estimate for attorneys' fees includes:

- a) \$45,000 for writing appellants' opening appeal brief, using a blended hourly rate of \$500 for Plaintiffs' counsel, the Sixth Circuit's 30-page limit, and a conservative 3-hour-per-page time guideline based on Plaintiffs' counsels' experience and on various courts' jurisprudence on the number of hours that is reasonable for brief writing. *See, e.g., United States ex rel. Berglund v. Boeing Co.*, No. 03:02-cv-193-AC, 2012 U.S. Dist. LEXIS 73552 (D. Or. May 24, 2012) (approving 4.5 hours per page); *Gaines v. Douglas Cty. Sch. Dist.*, 3:04-cv-00541-LRH-RAM, 2009 U.S. Dist. LEXIS 82112 (D. Nev. Aug. 24, 2009) (approving 4.5 hours per page); *Taucher v. Rainer*, 292 F. Supp. 2d 111 (D. D.C. 2003) (3.3 hours per page); *Maldonado v. Houstoun*, 256 F.3d 181 (3d Cir. 2001) (approving 120 hours to prepare a 41 page brief). Landes Decl., ¶3(a); Kiniry Decl., ¶3(a).
- b) using the same logic as in subsection (a), \$22,500 for writing this 15-page appeal bond motion and brief for Plaintiffs and \$10,000 for Defendant. Landes Decl., ¶3(b); Kiniry Decl., ¶3(b).
- c) for preparation for and oral argument on the appeal, at an estimate of 10 hours at \$500 per hour for Plaintiffs totaling \$5,000. Landes Decl., ¶3(c).
- d) for preparation for and oral argument on the appeal, at an estimate of 5 hours at \$500 per hour for Defendant totaling \$2,500. Kiniry Decl., ¶3(c).
- e) four hours of travel time to and from oral argument at half the hourly rate, or \$250 per hour for Plaintiffs, totaling \$1,000. Landes Decl., ¶3(d).
- f) eight hours of travel time to and from oral argument at \$500 per hour for Defendant, totaling \$4,000. Kiniry Decl., ¶3(d).
- g) five hours of administrative time associated with filing notices of appearance, obtaining the Fairness Hearing Transcript, and finalizing and filing briefs at \$250 per hour for Plaintiffs, for a total of \$1,500. Landes Decl., ¶3(e).
- h) five hours of administrative time associated with filing notices of appearance, obtaining the Fairness Hearing Transcript, and finalizing and filing briefs at \$500 per hour for Defendant, for a total of \$2,500. Kiniry Decl., ¶3(e).

As such, the Court should include in the bond \$139,000, as a conservative and reasonable estimate of prospective attorneys' fees that will be incurred by the parties in connection with Kalange's appeal.

IV. CONCLUSION

Ms. Kalange has prevented finality for this case and thousands of class members based upon her individualized, unmeritorious arguments. The class will bear considerable expense in waiting for individual checks that total in some cases up to \$1,800. Instead of opting out, Ms. Kalange now holds settlement benefits hostage to her personal desire to "punish" Porsche, her baseless demand for a new Porsche, and her meritless objections. Given these facts, an appeal bond could hardly be more justified. As such, to protect the appellees in this baseless appeal, the Court should issue an Order requiring Ms. Kalange to post an appeal bond in the amount of \$176,474.50 within 14 days of the date this Court issues its Order, if granted.

Respectfully submitted,

Class Counsel for Representative Class Plaintiffs:

Niall P. McCarthy

Niall P. McCarthy

Justin T. Berger

Eric J. Buescher

Cotchett, Pitre & McCarthy, LLP

840 Malcolm Road, Suite 200

Burlingame, California 94010

Gregory M. Travalio

Gregory M. Travalio (0000855)

Mark H. Troutman (0076390)

Isaac, Wiles, Burkholder & Teetor, LLC

Two Miranova Place, Suite 700

Columbus, Ohio 43215

Shennan Kavanagh

Shennan Kavanagh

Gary E. Klein

Klein Kavanagh Costello, LLP

85 Merrimac Street, 4th Floor

Boston, Massachusetts 02114

Adam J. Levitt

Adam J. Levitt

John Tangren

Grant & Eisenhofer P.A.

30 North LaSalle Street, Suite 1200

Chicago, Illinois 60602

Dated: May 30, 2014

Counsel for PCNA:

William F. Kiniry, Jr.

William F. Kiniry, Jr.

DLA Piper LLP (US)

One Liberty Place

1650 Market Street, Suite 4900

Philadelphia, PA 19103

Terrance M. Miller

Terrance M. Miller

Bryan R. Faller

Porter Wright, Morris & Arthur LLP

41 South High Street

Columbus, OH 43215-6194

Dated: May 30, 2014

CERTIFICATE OF SERVICE

I certify that, on May 30, 2014, I sent the foregoing with all of its ancillary documents via Federal Express, to the following individual:

Mary Ellen Kalange
1257 E. Brightwater Lane
Boise, Idaho 83706

I further certify that, on May 30, 2014, I filed the foregoing via the Court's CM/ECF system, and therefore an electronic copy will be delivered to the following counsel of record:

Fletcher V. Trammell
Bailey Perrin Bailey
440 Louisiana Street, Suite 2100
Houston, TX 77002

Jeffrey M. James
Banker Lopez Gassler
Suite 1500
501 East Kennedy Boulevard
Tampa, FL 33602

William E. Hoese
Joseph Kohn
Craig W. Hillwig
Kohn Swift & Graf PC
One South Broad Street, Ste. 2100
Philadelphia, PA 19107

Justin T. Berger
Eric J. Buescher
Niall P. McCarthy
Cotchett, Pitre & McCarthy, LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010

James M. Evangelista
David James Worley
Evangelista & Associates, LLC
Suite 700
One Glenlake Parkway
Atlanta, GA 30328

William Craft Hughes
Hughes Ellzey LLP
2700 Post Oak Boulevard, Suite 1120
Houston, TX 77056

Mark D. Landes
Gregory M. Travaglio
Mark H. Troutman
Isaac, Wiles, Burkholder & Teetor, LLC
Two Miranova Place, Suite 700
Columbus, OH 43215

Christopher J. McGinn
Law Office of Christopher J. McGinn
75 Raritan Ave.
Suite 220
New Brunswick, NJ 08904

Craig M. Patrick
Patrick Law Firm, P.C.
3333 Lee Parkway, Suite 600
Dallas, TX 75219

Steven Marchbanks
Premier Legal Center, A.P.C.
610 Newport Beach Center, Suite 1200
Newport Beach, CA 92660

Shennan Kavanagh
Gary E. Klein
Klein Kavanagh Costello LLP
85 Merrimack St, Suite 414
Boston, MA 02114

Daniel A. Schlanger
Schlanger & Schlanger, LLP
1025 Westchester Avenue
Suite 108
White Plains, NY 10604

Adam J. Levitt
John Tangren
Grant & Eisenhofer P.A.
30 North LaSalle Street, Suite 1200
Chicago, IL 60602

Lawrence C. Mann
Greg Wix
Bowman and Brooke LLP
50 West Big Beaver
Troy, MI 48084

/s/ Mark H. Troutman

Mark H. Troutman