

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

DOUGLAS LYNCH, JARIEL ARIAS, KYLE JOHNSON, JANNA LAVERDIERE, ROBERT MAHON, and JEFFREY SANDERS, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

MOTOROLA MOBILITY LLC d/b/a MOTOROLA and LENOVO (UNITED STATES) INC.,

Defendants.

Case No. 1:16-cv-4524

The Honorable Gary Feinerman

SUPPLEMENTAL DECLARATION OF MARK R. MILLER IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENTS CLASSES AND PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

I, Mark R. Miller, declare as follows:

1. I am a partner at Wexler Wallace LLP, and along with Girard Gibbs LLP, I am interim class counsel for Plaintiffs Douglas Lynch, Jariel Arias, Kyle Johnson, Janna Laverdiere, Robert Mahon, and Jeffrey Sanders. I submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Certification of Settlements Classes and Plaintiffs' Motion for an Award of Attorneys' Fees, Expenses, and Service Awards. I have personal knowledge of the facts stated herein and, if called upon to do so, could and would testify competently thereto.¹

¹ Capitalized terms used in this declaration have the same meaning as set forth in the settlement agreement (attached as Exhibit A to the Declaration of Scott Grzencyk in Support of Plaintiffs' Motion for Preliminary Approval of Proposed Class Action Settlement, Conditional Certification of Settlement Class, and Approval of Notice Plan (ECF No. 69, "Grzencyk Declaration").

I. Background

2. Plaintiffs filed this case because Motorola failed to provide the warranty service promised under its express warranty and to otherwise administer its warranty in a reasonable manner. Motorola was acquired in 2014 by Lenovo, a company based in China. Plaintiffs believe that overly aggressive cost-cutting by Lenovo decimated Motorola's warranty servicing capability and led to lengthy delays, confusion, and complete breakdowns in warranty service. Plaintiffs and their counsel—Girard Gibbs LLP and Wexler Wallace LLP—pursued this litigation with the goal of remedying those deficiencies.

3. Like many consumer class actions, this case presented a number of obstacles that could have prevented Plaintiffs from succeeding. Motorola sought to dismiss the complaint on numerous grounds and also moved to strike Plaintiffs' class action allegations. As the Court noted during the August 17, 2017, preliminary approval hearing, Motorola "did have some very serious arguments in favor of at least partial dismissal, and in particular with respect to the viability of the various classes that were asserted in the complaint." Aug. 17, 2017 Hr'g Tr. at 10:8-11. With respect to certifying this case as a class action, the Court explained that, had the parties litigated, "there would have been non-trivial obstacles in the way of the plaintiffs certifying a class in the Rule 23 setting." *Id.* at 10:15-17.

4. Class Counsel were nonetheless able to negotiate a settlement that includes injunctive relief that will address the primary complaints of Motorola warranty customers. The settlement also provides monetary relief to those groups of Motorola customers for whom providing classwide could be negotiated, using Motorola's records.

5. The settlement negotiations took months to complete. Motorola has been acquired by Lenovo, a company based in China. Motorola was hesitant to offer cash

compensation, or to agree to other key terms that Plaintiffs proposed. Because Motorola's parent company is located overseas, it often took weeks—and in some instances over a month—for Motorola to respond to Plaintiffs' proposals. (Although this case was only filed in 2014, three different in-house counsel have been responsible for the case at one time or another). Motorola requested several continuances of scheduled status hearings as its attorneys waited for authority or attempted to resolve settlement-related issues. Class Counsel were able to work through these issues and ultimately negotiate a settlement that provides broad injunctive relief and cash compensation to any class member who makes the minimal effort of filing a claim.

II. Class Member Response to the Settlement

6. The response of class members to the settlement has been positive. Over 5% of Damages Class Members have submitted claims, and Plaintiffs expect to receive additional claims by the December 6, 2017 deadline. A five percent claims rate is typical in consumer class actions, where response rates are often much lower.

7. As of November 6, 2017, none of the 375,000-plus Settlement Class Members has objected to the Settlement. KCC Report. In addition, none of the 21,775 Damages Class Members has asked to be excluded from the Damages Class. In my experience, the absence of objections or opt-outs in a class of this size is rare and a favorable reflection on the settlement.

III. Wexler Wallace's Attorneys' Fees and Expenses

8. After the Court granted preliminary approval on August 17, 2017, the parties discussed a possible negotiated resolution of Plaintiffs' fee request. The parties have exchanged good faith proposals and counter-proposals, but were unable to reach agreement.

A. Attorneys' Fees

9. In prosecuting and successfully resolving this case, Wexler Wallace spent 388.8 hours of attorney, paralegal, and law clerk time, with a resulting lodestar of \$182,391.00. The firm's lodestar reflects efficient staffing, hours that were reasonably expended for the benefit of the classes, and rates that are consistent with prevailing market rates. For example, as reflected below, 97% of Wexler Wallace's time was spent by two attorneys: me and Mr. Prom.

10. Wexler Wallace's lodestar is conservative. I thoroughly reviewed the firms' detailed time reports and exercised billing judgment. Time spent reviewing Wexler Wallace's fee records is not, for example, reflected in the firm's lodestar.

11. In addition, the lodestar only reflects time spent through August 17, 2017—the date the Court preliminarily approved the settlement. Since that time, Mr. Prom and I have worked with co-counsel at Girard Gibbs and Motorola to implement the Notice Plan and prepare the final approval papers. I anticipate that Wexler Wallace will continue to spend time on this matter preparing the December 20 supplemental submission, responding to objections (if any), appearing at the December 21 fairness hearing, and working with Motorola on any issues that may arise with class member claims. None of this time is reflected in the firm's lodestar calculation for the purposes of this submission.

12. While Wexler Wallace's lodestar is, as discussed in more detail below, based on time that was reasonably expended, the firm and co-counsel Girard Gibbs have agreed to request attorneys' fees that are less than the firms' combined lodestar.

1. Litigation Team

13. Wexler Wallace is a nationally-recognized leading firm in complex class action and multidistrict litigation, and attorneys at the firm have been recognized by their peers as well

as by legal organizations. Wexler Wallace has substantial experience representing plaintiffs in class actions and multidistrict litigation. Attorneys at the firm have been appointed to numerous leadership positions in class action cases across the country, where they have successfully settled numerous matters or tried those cases to verdict. Additional information about the firm and its attorneys can be found on the firm's resume, which was previously filed as ECF 68-1.

14. Wexler Wallace staffed this case with experienced class action attorneys who performed tasks based on their skills, expertise, and experience.

15. Mark R. Miller: I am a partner at Wexler Wallace, where I have specialized in complex class action and multidistrict litigation for over a decade, and have substantial experience representing plaintiffs in all phases of complex litigation, including a wide variety of consumer protection, antitrust, securities, banking regulation, business, and contractual class-action cases. In this matter, I appeared before the Court on numerous occasions, helped draft pleadings, legal briefs, and discovery requests and responses, and regularly conferred with Motorola regarding the litigation and settlement, including in-person meetings.

16. Adam Prom: Mr. Prom is an associate with the firm who has litigated consumer class actions throughout the country. In this matter, he helped draft pleadings, legal briefs, and discovery requests and responses; and he assisted with settlement negotiations.

17. In addition to the above, another attorney, paralegals, and a law clerk at Wexler Wallace performed minimal amounts of legal research, client intake, and other tasks.

2. Work Performed

18. The firm's lodestar is based the following hours expended by Wexler Wallace's professionals:

Name	Title	Experience	Hours	Rate	Lodestar
Mark Miller	Partner	13 years	200.0	\$600	\$120,000.00
Bethany Turke	Partner	11 years	0.2	\$600	\$110.00
Adam Prom	Associate	4 years	178.9	\$340	\$60,826.00
Rose Campo	Paralegal	N/A	0.1	\$150	\$15.00
Brian Micic	Law Clerk	N/A	9.6	\$150	\$1,440.00
Total:			388.8	\$513²	\$182,391.00

19. The summary information in this chart was drawn from detailed time records that were contemporaneously maintained by the professionals at Wexler Wallace. I have carefully reviewed the time records and exercised billing judgment to eliminate any duplication and work that was not performed for the benefit of the class, which resulted in a reduction of the firm's lodestar. I believe that the time recorded in this matter is reasonable in light of the needs of the case and the services we performed.

20. At the August 17, 2017, preliminary approval hearing, the Court stated that it did not require daily time records. I have not attached daily time records but have instead summarized my firm's time and divided it into five categories:

Category	Hours
Investigation / Complaint	10.0
Case Management Before Motion to Dismiss Filing	58.5
Case Management and Motion Practice After Motion to Dismiss Filing	133.3
Discovery	63.2
Settlement Negotiations	123.8

21. **Investigation / Complaint**: On April 21, 2016, Plaintiff Douglas Lynch filed a class action complaint alleging that Motorola failed to provide warranty service consistent with its warranty obligations. Before and after the filing of the complaint, Wexler Wallace assisted

² Blended rate for all attorneys. Does not include rates for paralegals or law clerks.

Girard Gibbs with research into Motorola's warranty program the federal and state law applicable to Plaintiff Lynch's claims.

22. After the filing of the complaint, Wexler Wallace continued to speak with consumers who, like Mr. Lynch, reported receiving inadequate warranty service from Motorola. Wexler Wallace assisted Girard Gibbs with research into the legal remedies available to these individuals. On May 18, 2016, Class Counsel filed an amended complaint adding additional plaintiffs that broadened the scope of the putative classes.

23. **Case Management Before Motion to Dismiss Filing:** Among other tasks, Mr. Prom and I met with the Girard Gibbs attorneys to plan case strategy, and I attended the initial case management hearing in Chicago.

24. **Case Management and Motion Practice After Motion to Dismiss Filing:** Motorola filed its motion to dismiss on July 17, 2016. Mr. Prom and I researched and drafted sections of Plaintiffs' opposition. Motorola's motion also sought to strike Plaintiffs' class action allegations. Although the litigation did not proceed to the contested class certification stage, Wexler Wallace strategized with Girard Gibbs to develop arguments in support of class certification. Along with Mr. Elias at Girard Gibbs, I attended and argued the motion to dismiss hearing on behalf of Plaintiffs.

25. Wexler Wallace also helped prepare Plaintiffs' motion for appointment of Girard Gibbs and Wexler Wallace as interim class counsel. The Court granted the motion on August 29, 2016.

26. Girard Gibbs and Wexler Wallace continued to manage the litigation. Mr. Prom and I attended several status conferences with the Court in late 2016 and early 2017 and also met with Motorola to discuss settlement and overall case status.

27. **Discovery**: Prior to entering into a term sheet and focusing on settlement, Class Counsel pursued both party and non-party discovery and responded to discovery from Motorola.

28. In the summer of 2016, the parties exchanged initial disclosures under Fed. R. Civ. P. 26(a)(1) and prepared a confidentiality order. Girard Gibbs and Wexler Wallace drafted discovery requests, including two sets of documents requests, interrogatories, and a Federal Rule of Civil Procedure 30(b)(6) deposition notice. To prepare their requests, the firms researched the types of evidence they would need to litigate the case through trial, including class certification.

29. Wexler Wallace assisted Girard Gibbs in responding to Motorola's discovery requests, which included twenty-three document requests and nineteen interrogatories served on each of the seven named plaintiffs. Motorola requested, for example, all documents "relating to any injury or damage" suffered by Plaintiffs and "all documents" that support each of Plaintiffs' claims.

30. In December 2016, after numerous meet and confer sessions, Plaintiffs filed a motion to compel the production of documents responsive to Plaintiffs' Second Set of Requests for Production of Documents and provide a witness to testify in response to Plaintiffs' Notice of Deposition Pursuant to Fed. R. Civ. P. 30(b)(6). The Court directed the parties to continue to meet and confer, which they did. The parties resolved the dispute. Motorola produced additional documents pursuant to the compromise.

31. Wexler Wallace also assisted Girard Gibbs with meet and confers regarding subpoenas served on third-party resellers of Motorola devices such as AT&T, Best Buy, Sprint, T-Mobile, U.S. Cellular, Verizon, and Walmart.

32. **Settlement**: At a January 24, 2017, in-person meeting among Mr. Girard, Mr. Grzenczyk, myself, and counsel for Motorola, the parties agreed to the basic structure of the

settlement. Over the course of the next several months, Plaintiffs exchanged drafts of a settlement term sheet with Motorola and met and conferred with Motorola's counsel on key issues, including whether Motorola would provide cash compensation or coupons. Class Counsel reviewed the discovery provided by Motorola to identify several types of claims for which it would be possible to provide monetary compensation on a class-wide basis. While Motorola argued that it would still have individualized defenses to these claims, the parties were able to negotiate specific relief and a claims administration procedure that allows class members to obtain monetary relief while preserving Motorola's ability to present its defenses in a streamlined fashion during the claims process.

33. The parties next moved to reducing the term sheet to a written settlement agreement. Wexler Wallace worked with Mr. Grzenczyk to draft the initial version of the settlement and went through several rounds of revisions with Motorola. Mr. Grzenczyk, Mr. Prom, and I also met and conferred with Motorola concerning the terms of the settlement, the class definitions, the inclusion of future warranty claimants, and the notice and claims process, and performed the necessary legal research.

34. During the settlement negotiations, Class Counsel usually provided feedback to Motorola within a week, often within days. Motorola, on the other hand, often took weeks—sometimes of a month—to provide feedback to Plaintiffs. The Court scheduled several status conferences, many of which needed to be continued because Motorola had not responded to Plaintiffs' settlement proposals. Plaintiffs worked diligently and professionally with Motorola's experienced counsel to manage the case and move the settlement forward under the circumstances.

35. Once the parties finalized the settlement agreement, Wexler Wallace assisted with drafting the motion for preliminary approval, which was submitted on August 14, 2017. Along with Mr. Grzenczyk, I participated in the preliminary approval hearing on August 17, 2017, and the court preliminarily approved the settlement later that day.

3. Hourly Rates

36. Wexler Wallace’s requested rates are its customary rates, which the firm has charged and been paid in non-contingent matters. The firm’s customary rates have been approved by numerous courts in class actions throughout the country. In addition, based on my professional experience and my knowledge of the type and caliber of the work performed in this matter, I believe Wexler Wallace’s billing rates are commensurate with the rates charged by other firms, including Girard Gibb, with similar experience and expertise in the field.

37. And as set forth in Plaintiffs’ motion, the case law and studies regarding hourly rates in the Chicago area for consumer class action litigation support Wexler Wallace’s proposed rates.

B. Expenses

38. Wexler Wallace incurred a total of \$1,034.29 in unreimbursed out-of-pocket expenses this matter. The expenses were necessary to our representation of Plaintiffs in this matter.

Expense Type	Expenses
Court Fees	\$498.55
Third-Party Subpoena Costs	\$110.00
Research	\$425.74
Total	\$1,034.29

39. The firm's expenses were for filing fees, hearing transcript fees, service of a subpoena, and legal research for Plaintiffs' opposition to Motorola's motion to dismiss and settlement briefing. These expenses are reflected in Wexler Wallace's books and records.

IV. Service Awards

40. Plaintiffs have requested the payment of \$600 each in recognition of their service during the litigation, which led to a settlement benefitting hundreds of thousands of class members. In my opinion, the modest service awards are warranted to acknowledge the efforts of these individuals and the benefit their service has provided to the class.

41. Each of the Plaintiffs spent significant time discussing their claims with Class Counsel. These discussions allowed Class Counsel to identify the appropriate claims to include in the complaint. Throughout the litigation, each of the Plaintiffs has remained active and available, and has responded to questions from Class Counsel.

42. Each Plaintiff produced documents in response to Defendants' document requests, and cooperated with Class Counsel in the preparation of responses to Defendants' interrogatories.

43. Plaintiffs also discussed the terms of the proposed Settlement, asked questions, and ensured that they fulfilled their obligations as class representatives to ensure that the settlement was fair and reasonable. In my opinion, each Plaintiff put the interests of the class ahead of their own throughout this process.

44. Wexler Wallace has made no promises to any Plaintiff regarding the receipt of service awards. To the contrary, Plaintiffs were informed that it will be up to the Court to decide whether service awards are appropriate and, if so, in what amount.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed November 8, 2017, in Chicago, Illinois.

/s/ Mark R. Miller
Mark R. Miller

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed using this Court's CM/ECF service, which will send notification of such filing to all counsel of record on this 8th day of November 2017.

/s/ Mark R. Miller
Mark R. Miller