UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 1:16-cv-21606-TORRES

WILLIAM BURROW, OMA LOUISE BURROW, SUZANNE M. BEDWELL, individually and as mother and next friend of R.Z.B., a minor, and ERNEST D. BEDWELL, individually and as father and next friend of R.Z.B., a minor,

Plaintiffs,

v.

FORJAS TAURUS S.A. and BRAZTECH INTERNATIONAL, L.C.,

Defendants.
_____/

Class Action

PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES AND INCENTIVE AWARD AND INCORPORATED MEMORANDUM OF LAW

Plaintiffs, William Burrow, Oma Louise Burrow, and Ernest D. Bedwell, individually and on behalf of all others similarly situated, ("Plaintiffs"), by and through undersigned counsel, move the Court for an order approving Class Counsel's Attorney Fees and Plaintiffs' Incentive Awards as set forth in the Settlement Agreement, and file this Memorandum of Law in Support thereof.

In support of the motion, Plaintiffs state as follows:

I. LEGAL STANDARD FOR AWARDING CLASS ACTION ATTORNEY FEES IN COMMON BENEFIT CASES

A. Timing of this Motion

Plaintiffs are filing this motion in a timely manner under Rule 23 of the Federal Rules of Civil Procedure. Rule 23(h) establishes the procedures required for an award of attorney's fees in class actions. As for notice, Rule 23(h)(1) states that "[n]otice of the motion [for attorney's fees]

must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." Fed. R. Civ. P. 23(h)(1). Although "reasonable manner" is not specific about when notice must be given, courts interpreting Rule 23(h) have observed that the right to object to the fee motion under Rule 23(h)(2) necessarily means that courts must give notice of the attorney's fee motion itself. The leading case on this issue is *In re Mercury Interactive Corp. Securities Litig.*, 618 F.3d 988, 989 (9th Cir. 2010), where the Ninth Circuit interpreted "[t]he plain text of" Rule 23(h) to "require [ ] that any class member be allowed an opportunity to object to the fee 'motion' itself, not merely to the preliminary notice that such a motion will be filed." *Id.* at 993–94 (quoting Fed. R. Civ. P. 23(h)(2)).

The Advisory Committee's notes support the Ninth Circuit's interpretation of Rule 23(h), stating that "[i]n setting the date objections are due, the court should provide sufficient time after the full fee motion is on file to enable potential objectors to examine the motion." Fed. R. Civ. P. 23 advisory committee's note to 2003 amendment. The Seventh Circuit and Eleventh Circuit follow the Ninth Circuit's *Mercury* decision. *Redman v. RadioShack Corp.*, 768 F.3d 622, 637–38 (7th Cir. 2014); *Muransky v. Godiva Chocolatier*, Inc., 922 F.3d 1175 (11th Cir. 2019)("[W]e conclude the District Court erred by requiring class members to object before they could assess the attorney's fee motion…"). Here, any objections to the settlement must be filed by July 15, 2019, which provides absent class members with more than 30 days to review this motion before having to file any objection. Accordingly, this application complies with the timing component of Rule 23(h).

B. Independent Role of the Court

Under Fed. R. Civ. P. 23(h), the court may award reasonable attorney's fees and costs as authorized by law or by the parties' agreement. See F.R.C.P 23(h). While the parties' agreement

is indisputably a basis upon which the Court may award attorneys' fees and costs under Rule 23(h), the Court "is not bound by the agreement of the parties as to the amount of attorneys' fees." *See Piambino v. Bailey*, 610 F.2d 1306, 1328 (5th Cir. 1980). Rather, the Court has an independent responsibility to "assess the reasonableness of attorneys' fees proposed under a settlement of a class action . . .." *Id*.

C. Attorney Fees in Common Benefit/Fund Actions

Unlike other circuits that consider the lodestar of Class Counsel and the percentage-approach when evaluating class action attorney fees in common benefit actions, the Eleventh Circuit is a pure percentage-approach jurisdiction. "It is well established that when a representative party has conferred a substantial benefit upon a class, counsel is entitled to an allowance of attorneys' fees based upon the benefit obtained." *In re Checking Account Overdraft Litigation*, 830 F.Supp.2d 1330, 1358 (S.D.Fla.,2011)(citing *Camden I Condominium Assn. v. Dunkle,* 946 F.2d 768, 771 (11th Cir.1991); *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478, 100 S.Ct. 745, 62 L.Ed.2d 676 (1980). "The common benefit doctrine is an exception to the general rule that each party must bear its own litigation costs." *Id*. The doctrine serves the "twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *In re Gould Sec. Litig.,* 727 F. Supp. 1201, 1202 (N.D.Ill.1989) (citation omitted); *see also Ramey v. Cincinnati Enquirer, Inc.,* 508 F.2d 1188, 1195 (6th Cir.1974).

The Supreme Court, the Eleventh Circuit, and trial courts within this District have all noted that "[a] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as whole." *In re Sunbeam Sec. Litig.,* 176 F.Supp.2d 1323, 1333 (S.D.Fla.2001) (citing *Boeing Co. v. Van Gemert,*

444 U.S. 472, 100 S.Ct. 745, 62 L.Ed.2d 676 (1980)); *see also Camden I,* 946 F.2d at 771 ("Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval.").

In *Camden I,* the Eleventh Circuit held that "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I,* 946 F.2d at 774. Judge King recognized and explained the mandatory nature of using the percentage approach in *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1362–63 (S.D. Fla. 2011), where he ultimately approved an attorney fee equal to 30% of the benefits obtained for the class, and held:

> The lodestar approach should not be imposed through the back door via a "cross-check." Lodestar "creates an incentive to keep litigation going in order to maximize the number of hours included in the court's lodestar calculation." *In re Quantum Health Resources, Inc*., 962 F. Supp. 1254, 1256 (C.D.Cal.1997). In *Camden I*, the Eleventh Circuit criticized lodestar and the inefficiencies that it creates. 946 F.2d at 773–75. In so doing, the court "mandate[d] the exclusive use of the percentage approach in common fund cases, reasoning that it more closely aligns the interests of client and attorney, and more faithfully adheres to market practice." *Goldberger v. Integrated Resources, Inc*., 209 F.3d 43, 50 (2d Cir.2000) (emphasis added); *see also* Alba Conte, Attorney Fee Awards § 2.7, at 91 fn. 41 ("The Eleventh ... Circuit[ ] repudiated the use of the lodestar method in common-fund cases"). Under *Camden I*, courts in this Circuit regularly award fees based on a percentage of the recovery, without discussing lodestar at all. See, e.g., *David v. American Suzuki Motor Corp*., 2010 WL 1628362 (S.D.Fla. Apr. 15, 2010).33 "[A] common fund is itself the measure of success and represents the benchmark on which a reasonable fee will be awarded.... In this context, monetary results achieved predominate over all other criteria." *Camden I*, 946 F.2d at 774 (citations and alterations omitted). This Court will not deviate from that approach, for all of the reasons set forth above and in the excellent analyses presented in Plaintiffs' expert declarations.

Id., 830 F. Supp. 2d at 1362–63.

Just weeks ago, the Eleventh Circuit clarified that "[t]he common-fund doctrine applies to class settlements that result in a common fund even when class counsel could have pursued attorney's fees under a fee-shifting statute." *Muransky v. Godiva Chocolatier, Inc.*, 922 F.3d 1175 (11th Cir. 2019). The Court went on to affirm the trial court's attorney's fee award of 33% of the common fund without reference to class counsels' lodestar. *Id*.

D. The Value of the Common Benefit Supports Plaintiffs' Requested Fee Award

Unlike many class actions, the parties here examined the actual cost and value of each component of the Settlement Agreement to quantify for the class and the Court the value of the benefits obtained. Section III, F(4) of the Settlement Agreement sets forth the following agreed-upon values for the various components of this settlement per class member: (a) $50 cash Inconvenience Payment, (b) $80 for shipping to and from Braztech in connection with obtaining Enhanced Warranty Service, and (c) $19 for inspection, cleaning, certification, labor, and parts (if necessary) provided as part of the Enhanced Warranty Service. Thus, the combined monetary value of the proposed Settlement to each individual class member is conservatively $149.

When the $149 value is multiplied by the 254,563 Class Revolvers at issue, the combined value of these components of the Settlement equates to $37,929,887. In addition, the Settlement Agreement creates a lifetime Enhanced Warranty and repair program, which adds substantially more value to the class than what has been quantified.

Class Counsel negotiated attorney's fees and litigation costs of $5,553,000. When Class Counsel's litigation costs of $178,644.35 (*See* Ex. 1, Buck Dec. at ¶9) are deducted, the actual attorney fee is slightly less than $5,400,000, which equates to 14.2% of the $37,929,887 monetary settlement value.

Furthermore, as mentioned above, Plaintiffs negotiated a settlement that provides for the

Enhanced Warranty to be available to the class indefinitely. In other words, every Class Revolver can undergo the Enhanced Warranty Service procedure at any point in time into the future with no deadline. Only the Inconvenience Payment has a time limit. The parties agree that this indefinite claim period is an important component of the settlement and has tremendous value to the class, but they also agree that such a value cannot be easily quantified. Plaintiffs highlight this indefinite nature of the class relief for the Court because it constitutes an additional, substantial benefit to the class over and above the "hard number" values set forth in the Settlement Agreement. Similar indefinite benefits have been given significant value in other settlements. *Carter v. Forjas Taurus, S.A.*, 701 Fed.Appx. 759, 767 (11th Cir. 2017)(citing to an extended enhanced warranty program without a termination date as having a total value in excess of $200 million).

Even without considering the indefinite nature of the Enhanced Warranty Program, the negotiated attorney fees are well below the percentages typically awarded in cases of this nature. Indeed, a percentage of the common benefit of less than 15% is half of other attorney fee awards. *See, e.g., Carter v. Forjas Taurus, S.A.*, 701 Fed.Appx. 759, 767 (11th Cir. 2017)(affirming award of 27.7% of $30 million cash fund); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295-96 (11th Cir. 1999) (affirming fee award of 33 1/3% of settlement value); *Wolff v. Cash 4 Titles*, No. 03-cv-22778, 2012 WL 5290155, at *5 (S.D. Fla. Sept. 26, 2012) (approving 33% award, and noting "[t]he requested fee is entirely consistent with fee awards in comparable cases nationwide, within the Eleventh Circuit, and within the Southern and Middle Districts of Florida."); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1204 (S.D. Fla. 2006) (approving 31 1/3% fee award); *Black v. Winn-Dixie Stores, Inc.*, No. 09-cv-502, 2011 WL 13257526, at *5 (M.D. Fla. June 17, 2011) (approving 30% fee award payable from common fund);

As for timing of the attorney fee payment, the Settlement Agreement allows Defendants to

pay in equal monthly installments over the five months following the Effective Date. Because the attorney fee that has been negotiated is well below the amounts regularly awarded in such cases, this Court should finally approve the negotiated fee.

E. The *Johnson* Factors Support the Attorney's Fee

The Eleventh Circuit has observed that, in considering attorney fee awards, "[t]he district court may also consider the individual circumstances of each case using the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir.1974), *abrogated on other grounds Blanchard v. Bergeron*, 489 U.S. 87, 109 S.Ct. 939, 103 L.Ed.2d 67 (1989)." *Carter v. Forjas Taurus, S.A.*, 701 Fed. Appx. 759, 767 (11th Cir. 2017)(internal citations omitted). The *Johnson* Factors are as follows:

(1) Time and labor required;

(2) Novelty and Difficulty of the issues presented;

(3) Skill to perform the legal service properly;

(4) Preclusion of other Employment by the Attorney(s) due to acceptance of the case;

(5) The Customary Fee;

(6) Whether the Fee was Fixed or Contingent;

(7) Time limitation imposed by the client or circumstances;

(8) The Amount involved and the results obtained;

(9) The Experience, Reputation and Ability of the Attorneys;

(10) The "undesirability" of the Case;

(11) The Nature and Length of the Professional Relationship with the Client;

(12) Awards in Similar Cases.[1]

[1] Factors number 7 and 11 are inapplicable to the facts of this case and therefore are not addressed.

A review of each of the *Johnson* Factors fully supports the modest Attorney Fee negotiated by the parties.

1. *Johnson* Factor No. 1: Time and labor required

Although the lodestar of class counsel is not relevant to attorney fees awarded in a common fund settlement, *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1362–63 (S.D. Fla. 2011), there was indeed considerable time and effort expended by Class Counsel.

First, obtaining service in this action required perfecting service in Brazil on Forjas Taurus, S.A. Class Counsel conducted extensive research into the complex procedures for completing such foreign service under The Inter-American Service Convention. The procedure required Class Counsel to obtain a translation of the Complaint and all exhibits into Portuguese, submitting proper forms with the U.S. Department of Justice, obtaining the signature and stamp of the U.S. Department of Justice, obtaining the signature and stamp of the U.S. District Court for the Southern District of Florida, completing delivery to the Ministry of Justice in Brazil, and finally completing service of process on the entity in accordance with Brazilian rules of civil procedure. All of this required a significant amount of work by Class Counsel plus the engagement of vendors for translation and service at substantial cost, before the start of the case.

Forjas Taurus initially objected to all discovery, arguing that, as a Brazilian company, it was not subject to the discovery procedures of the U.S. courts. Class Counsel was forced to file, brief, and prevail on a motion to compel to even begin the discovery process necessary to prosecute this action.

Additionally, once Forjas Taurus produced documents, the majority of them were written in Portuguese. Class Counsel had to have the documents translated before their importance could even be evaluated. This process proved to be both time consuming and expensive.

Class Counsel also had to fight for discovery. Plaintiffs filed multiple motions to compel seeking the production of documents from both Defendants. Defendants also submitted voluminous privilege logs seeking to keep hundreds of documents from being produced. Class counsel had to negotiate and litigate the scope of such privileges, ultimately prevailing on a motion to compel requiring production of numerous documents that had been withheld from discovery on the basis of work product. Depositions required translators and took much longer as a result of the language barriers. Depositions occurred in opposite geographic corners of the United States—taking place in Florida and Alaska. Class Counsel also retained experts, obtained exemplar class revolvers for testing, and covered all costs of the litigation. Class Counsel's firearms expert conducted inspections of numerous Class Revolvers using x-ray technology and requiring careful disassembly of some revolvers.

In settlement discussions, Class Counsel also fought hard on behalf of the class. The negotiation was not an easy process. Over the course of three months, the parties engaged in five separate mediation sessions. More than once, Plaintiffs and Class Counsel "walked away from the table" because the class benefits were deemed to be insufficient.

This case certainly was not a class action that was settled prematurely and without adequate discovery of the true facts. As a result, the time and labor required to litigate this matter was extensive and certainly supports the negotiated attorney fee.

2. *Johnson* Factor No. 2: Novelty and Difficulty of the Questions

The difficulty occasioned by this case also mitigates in favor of approving the attorney fee negotiated between the parties. First, firearms are complex devices that require significant expertise to determine whether they suffer from any defects that make them unreasonably dangerous. Experts had to be retained at considerable costs to initially evaluate a potential defect.

Plaintiffs were forced to purchase numerous additional revolvers to conduct comparison inspections and testing. Defendants challenged the certifiability of a class, contending, initially, that the defects (if they existed at all) were isolated occurrences that did not lend themselves to class treatment. Moreover, very few cases against firearm manufacturers have ever been certified as class actions.

Overall, this matter was extremely complex to litigate from both a liability and class certification standpoint. As a result, the negotiated attorneys' fee should be approved as appropriate.

3. *Johnson* Factor No. 3: Skill Requisite to Perform the Legal Service Properly

To litigate this case successfully, Class Counsel had to be well versed in two distinct areas of the law—class actions and product liability law. Moreover, this particular case presented some unique and daunting challenges.

First, filing a product defect suit against a foreign company through the Inter-American Convention is a complex and difficult task in and of itself. Class Counsel navigated the international service issues and then, through motion practice, overcame objections by the Brazilian manufacturer about participating in discovery.

Second, there was not one but two class actions filed on overlapping theories. Class counsel were forced to work together only after Taurus moved to consolidate the first-filed Burrow action with the Bedwell action that had been filed in the Alaska District Court. In the end, Class Counsel was able to draft a consolidated complaint which appropriately addressed all members of the putative class.

Third, and as mentioned above, the documents and the majority of the Defendants' depositions were in Portuguese. The language barrier required not only translation of documents

but also real-time interpreters at depositions, which more than doubled the time necessary to take testimony. The nuances between Portuguese and English had to be studied and considered. This process made an already arduous task even more difficult.

Fourth, this matter required a clear understanding of class action jurisprudence and the complexities of class certification from not only a litigation and negotiation standpoint but also from a settlement standpoint. Crafting and negotiating a publication notice program for a class of over 250,000 gun owners that satisfies due process concerns was one of many complex issues that had to addressed by class counsel acting on behalf of the class.

4. *Johnson* Factor No. 4: Preclusion of Employment by the Attorney Due to Acceptance of the Case

The fourth *Johnson* factor considers preclusion of employment by the attorney due to acceptance of the case. This factor also weighs in favor of approving the agreed upon attorney fees and costs of $5,553,000.00. Unlike many class actions which often include teams of larger plaintiff firms, the class here was represented by six modest sized law firms. There was no firm with more than twelve lawyers representing the class. As a result, the workload and the expenses had to be carried by these firms at a substantial risk and to the exclusion of other employment. For example, the Varnell & Warwick firm with four lawyers and the Badham & Buck firm with seven lawyers operated as co-lead counsel. Taking on a case like this means that each firm necessarily had to forego other projects of similar size and/or commitment. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1365 (S.D. Fla. 2011) ("It is uncontroverted that the time spent on the Action was time that could not be spent on other matters. This factor too supports the requested fee.").

5. *Johnson* Factor No. 5: The Customary Fee

As explained above in Section I.C., the fee agreed upon by the parties is well below "the customary fee for similar work" in other national class actions. Indeed, in order to procure what is an important settlement to public safety, Class Counsel agreed to accept a fee far less than what could have been justified based on substantial precedent in this Circuit for other class actions.

6. *Johnson* Factor No. 6: Fixed or Contingent Fee

Class Counsel litigated this matter contingent on its success. Fairly compensating attorneys in class actions is important because absent class actions, most individual claimants would lack the resources to litigate, as individual recoveries are often too small to justify the burden and expense of litigation. *In re Telectronics Pacing Systems, Inc*., 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001) ("Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling ... claimants to pool their claims and resources" to "achieve a result they could not obtain alone."). While the individuals who were injured as a result of the drop fire incidents may have been able to obtain counsel to represent them, such individual cases would have likely resulted in individual settlements without any relief or knowledge of the alleged defects ever reaching the class members. This action will potentially save lives, and it would not have been possible if Class Counsel had not been willing to take the risk of doing vast amounts of work and expending thousands of dollars with no guarantee of recovery. Cases like this one should be encouraged by fairly compensating Class Counsel who take such cases on contingency.

7. *Johnson* Factor No. 8: Amount Involved and Results Obtained

The benefits of the settlement are fully addressed in the Memorandum of Law in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement and Approval of Notice Plan. Suffice it to say, however, Plaintiffs had to two primary goals at the outset of this litigation:

(1) to determine whether a defect exists in the Class Revolvers; and (2) to have the allegedly defective Class Revolvers made safe so that no others are injured. This settlement achieves both of these goals. Effectively, this Settlement provides a level of safety to class members that no trial could provide. Providing only a damages payment, by itself, would leave the potentially dangerous Class Revolvers in the public domain. Class members, and those around them, could be injured as a result of future drop-fire incidents. This would have been the likely result at trial because Courts typically lack the authority to force a recall or repair procedure. Likewise, a cash settlement with no recall/repair program would not have achieved the goals of the litigation and would not have adequately protected class members and the general public.

Instead, the settlement that has been negotiated provides extensive notice to the public and to owners of the revolvers of the potential for danger and the need for inspection and repairs. It encourages class members to submit their Class Revolver for inspection and repair. The certification program, which will provide proof that a revolver has undergone the Enhanced Warranty Procedure, ensures that future and potential owners will be able to know that the safety mechanisms in a particular revolver have been inspected and repaired. And, if the Class Revolver cannot be repaired, a replacement revolver will be provided. The safety of the class members has been kept paramount.

The Settlement pays all of the shipping and repair costs, and the class members receive a fully functional, safe and professionally-cleaned revolver, as well as an $50 Inconvenience Payment. Furthermore, there is no deadline for utilizing the Enhanced Warranty Program. This indefinite duration ensures that all current and future owners will have an opportunity to have their revolvers inspected and repaired. In the end, the revolvers will be fixed free of charge, and class members are able to keep their revolvers and be adequately compensated for their trouble in

utilizing the Enhanced Warranty. The amount at issue and the results obtained certainly support the negotiated attorney fee in this case.

8. *Johnson* Factor No. 9: Experience, Reputation, and Ability of the Attorneys

The class was represented by six law firms: Varnell & Warwick, PA; Badham & Buck, LLC; Paul, Knopf Bigger; Brockwell Smith, LLC; Swiney & Bellenger, LLC; and Flanigan & Bataille. Each carries an excellent reputation, and this Court has observed the abilities of these firms on display throughout this litigation. Although detailed experience and firm resumés are attached, Plaintiff will address each firm's experience briefly here.

The lawyers at Varnell & Warwick are highly respected within the consumer law community not only within the state of Florida, but around the United States. Their combined experience in class action matters on behalf of consumers is unique for such a small firm. Janet Varnell is recognized as a leader in the consumer protection bar. She was named as the Consumer Advocate of the Year for 2009 by the National Association of Consumer Lawyers and is the 2019 recipient of Consumer Lawyer of Year by the Florida Bar. Mr. Warwick and Ms. Varnell were named Trial Lawyer of the Year in 2018 by the Public Justice Foundation for their work against internet "tribal" lenders who were charging interest rates exceeding 100%. The firm also has a substantial appellate practice. Recently, the firm prevailed on appeal before the Supreme Court of the United States in a case addressing the scope of Federal removal jurisdiction under the Class Action Fairness Act. See, *Home Depot U. S. A., Inc. v. Jackson*, 2019 WL 2257158, at *2 (U.S., 2019). See Ex. 2, Warwick Decl.

The Badham & Buck firm has a commercial litigation and class action practice. The firm is routinely recognized among the top civil litigation law firms in Alabama by publications such as *Super Lawyers* and *Best Lawyers*. *Super Lawyers* has repeatedly selected Brannon Buck as one

of the "Top 10" and "Top 50" lawyers in Alabama. The firm handles both plaintiff and defense cases and does so effectively. In a 2011 trial, Mr. Buck and his partner, Percy Badham, received the largest contested jury verdict ever awarded in Madison County, Alabama. Mr. Buck has tried a variety different types of cases, including business disputes and personal injury claims, in state and federal courts and in arbitrations. Mr. Buck has a selective class action practice and has settled multiple nationwide class actions. Mr. Buck is well respected by his peers. He has been elected three times to the Alabama State Bar Board of Bar Commissioners, and he has served on the State Bar Executive Council and Disciplinary Commission, among other various leadership appointments. *See* Ex. 1, Buck Decl.

Greg Brockwell of Brockwell Smith, LLC is a business trial lawyer who has also been recognized by numerous lawyer rating publications. Mr. Brockwell has a long history of handling complex commercial litigation and class actions. He is on the Board of Directors of the Alabama Association for Justice and chairs the "Business Torts" section of the association. He is a frequent presenter on business litigation topics at legal conferences and has nine published articles addressing various issues in commercial litigation. *See* Ex. 3, Brockwell Decl.

Paul Knopf Bigger (PKB) is a law firm headquartered in Florida, with offices in Winter Park and Tampa, that focuses on products liability, consumer protection, fraud, medical malpractice, qui tam, and other areas of high-impact public interest litigation. PKB attorneys have prosecuted many complex products liability actions, received more than $100 million in verdicts and hundreds of millions in settlement funds on behalf of people injured by defective and unreasonably dangerous products. In particular, Mr. Knopf has handled numerous product liability cases against firearm manufacturers in cases involving serious injuries. *Super Lawyers* has identified Mr. Knopf as a "Rising Star" in the Florida legal community, and was named a

"Top 40 Under 40" in 2011 by the National Trial Lawyers. *See* Ex. 4, Knopf Decl.

Vincent Swiney of Swiney & Bellenger has a robust personal injury practice and, like the other counsel for the Plaintiffs, has received accolades from *Super Lawyers* and other attorney-rating publications. Mr. Swiney's professional reputation is evidenced by his service on the Board of Directors for the Birmingham Bar Foundation and numerous other professional leadership positions. He is also an Adjunct Professor at the Cumberland School of Law. *See* Ex. 5, Swiney Decl.

Chris Bataille is a partner in the Alaska law firm of Flanigan and Bataille based in Anchorage, Alaska. Mr. Bataille and his partner, Mike Flanigan, each have more than 30 years of experience litigating complex personal injury, product liability and professional negligence actions. Over the last decade and a half, a significant focus of Mr. Bataille's practice has been in the field of consumer protection law, where he has acted as lead counsel in numerous consumer protection class action cases. Mr. Bataille has served on the board of the Alaska Association for Justice since 2015. See Ex. 6, Bataille Decl.

9. *Johnson* Factor No. 10: "Undesirability" of the Case

Determining the "undesirability" of a case is not an easy task. However, the risk factors associated with litigating this type of action make this case undesirable for most lawyers. First, the costs, the potential for an extraordinary amount of work, and the uncertainty of outcome are all unattractive features of a case of this nature. The experts necessary to prove that the revolvers contain a defect which renders them unreasonable dangerous is an expensive component. Any case that includes a battle of experts will be expensive. The stakes are even higher when the battle of the experts occurs in a class action relating to over 250,000 firearms. Moreover, a well-funded, foreign defendant with no physical presence in the U.S. makes the plaintiffs' task even more

difficult. Well-funded Defendants are often willing and able to run up the costs of litigation in order to avoid a class judgment. All of these circumstances make a case of this nature undesirable to most firms.

Second, class actions involving product defect theories are often appealed both at the class certification stage and again after trial. A risk of dual appeals requires the litigation team to have appellate law experience and causes additional expense and delay. Most lawyers are unwilling to wait to get paid and to carry the costs of such litigation over such a long period of time.

Third, the size of the class also makes this matter undesirable to most firms. With approximately 255,000 class members, Class Counsel would have been required to pay for notice to the class had the case been certified but not settled. Obviously, whether a case can or will be certified or settled is unknowable at the outset of the litigation. The publication notice program that Class Counsel would have had to pay for would likely have cost upwards of $500,000 given the geographic disbursement of the class. This amount would not be recoverable if Plaintiffs were not ultimately successful on the merits or if certification was later reversed. This additional cost makes this type of case too risky for most law firms, and therefore undesirable.

10. *Johnson* Factor No. 12 – Awards in Similar Cases

As stated above in Section I(D), a percentage of less than 15% is substantially below amounts regularly negotiated for attorney fees in similar class actions.

When all of the relevant *Johnson* factors are considered, the negotiated attorney fee is easily supported. This Court should grant Plaintiff's Motion and approve the award of attorney's fees and costs pursuant to Rule 23(h).

II. PLAINTIFF'S INCENTIVE AWARDS ARE PROPER

Traditionally, class representatives are compensated for the time and effort in bringing the litigation on behalf of others through what is termed an "incentive award." Many courts have addressed incentive awards to class representatives as a means to encourage litigants to bring class litigation, which will further the public policy underlying the statutory scheme.

Incentive awards are common in class action litigation where, as here, a common benefit has been created for the class. Incentive awards compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation. *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218-19 (S.D. Fla. 2006)(citing *In re Southern Ohio Corr. Facility,* 175 F.R.D. 270, 272-76 (S.D.Ohio 1997)). Incentive awards serve an important function, particularly where the named plaintiffs participated actively in the litigation. *Id.* (citing *Denney v. Jenkens & Gilchrist,* 230 F.R.D. 317, 2005 WL 388562, at *31 (S.D.N.Y. Feb.18, 2005)).

While the Eleventh Circuit has not expressly set forth guidelines for courts to use in determining incentive awards, there is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action. *Allapattah Servs.*, 454 F. Supp. 2d at 1218-19. In fact, "'[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.'" *Ingram v. Coca-Cola Co.,* 200 F.R.D. 685, 694 (N.D.Ga.2001); *In re Linerboard Antitrust Litig.,* 2004 WL 1221350, at *18-19 (E.D.Pa. June 2, 2004) (awarding $25,000 for each of the five class representatives); *In re Lease Oil Antitrust Litig.,* 186 F.R.D. 403, 449 (S.D.Tex.1999) (granting awards of between $1,000 and $10,000); *In re Residential Doors Antitrust Litig.,* 1998 WL 151804, at *11 (E.D.Pa. Apr.2, 1998) (awarding an incentive award of

$10,000 to each of the four Class representatives); *In re Plastic Tableware Antitrust Litig.,* 1995 WL 723175, at *2 (E.D.Pa. Dec.4, 1995) (granting award of $3,000); *In re Domestic Air Transp. Antitrust Litig.,* 148 F.R.D. 297, 357 (N.D.Ga.1993) (granting award of $2,000 to plaintiffs that produced documents and awarding $5,000 to plaintiffs that were also deposed).

In *Cook v. Niedert*, 142 F.3d 1004 (7th Cir. 1998), the Seventh Circuit provided a list of some pertinent considerations when evaluating an incentive award:

> Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit. . . . In deciding whether such an award is warranted, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.

Cook, 142 F.3d at 1015 (citation omitted).

Incentive awards are frequently approved in class actions where, as here, the Plaintiffs were involved in discovery and litigation activities. Extensive involvement encompasses producing documents, responding to discovery requests, sitting for depositions, attending or testifying at court hearings, participating in settlement negotiations, and consulting with class counsel on litigation strategy. *See, e.g.*, *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d. 766, 787 (N.D. Ohio 2010) (approving incentive awards of $5,000 to plaintiffs who substantially contributed to litigation and testified at the fairness hearing); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 258–59 (D.N.J. 2005) (approving $10,000 incentive awards to plaintiffs who worked closely with counsel and were crucial to settlement, $3,000 incentive award to plaintiff who produced documents, appeared for deposition, and attended the fairness hearing, and $1,000 incentive award to plaintiff who only played a minor role in settlement negotiations); *In re Domestic Air Transp. Antitrust Litig*., 148 F.R.D. 297, 357–58 (N.D. Ga. 1993) (approving incentive awards of $5,000

to plaintiffs who appeared for deposition and $2,500 to plaintiffs who produced documents in discovery).

Here, Plaintiffs and their counsel negotiated a Service Award to the Class Representatives in an amount not to exceed $7,500.00 per individual Class Representative (William Burrow, Oma Louise Burrow and Ernest D. Bedwell). The incentive award is well within the appropriate range given the cases cited above. The named Plaintiffs put in substantial time representing the class in this matter, including preparing extensive discovery responses, depositions, participating by phone in several days of mediation, and regular meetings and phone conferences with Class Counsel. The Plaintiffs accepted these burdens in order to protect the safety of other owners of Class Revolvers and those around them. They have played a vital role in forcing a critical safety recall program. Accordingly, the full incentive award set forth in the Settlement Agreement to the three Class Representatives should be approved by this Court.

CERTIFICATE OF COUNSEL

Pursuant to Local Rule 7.1(a)(3), Counsel for Plaintiffs certify that they have conferred with counsel for Defendants regarding this motion, and have been advised that Defendants do not oppose the relief requested in this motion.

Respectfully submitted this 10th day of June, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of June, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Brian W. Warwick
Brian W. Warwick

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

WILLIAM BURROW, OMA LOUISE BURROW, SUZANNE M. BEDWELL, and ERNEST D. BEDWELL,	)	
Plaintiffs,	)	**Case No: 1:16-cv-21606-EGT**
v.	)	
FORJAS TAURUS S.A. and BRAZTECH INTERNATIONAL, L.C.,	)	**CLASS ACTION**
Defendants.	)	

DECLARATION OF BRANNON J. BUCK

I, Brannon J. Buck, hereby declare as follows:

1. My name is Brannon J. Buck. I am over the age of 18 years and have personal knowledge of the facts and information contained in this declaration and am competent to testify as to the matters stated herein.

2. I am a founding partner in the law firm of Badham & Buck, LLC, counsel of record for Plaintiffs in the matter styled *William and Oma Louise Burrow, Suzanne M. Bedwell, individually and as mother and next friend of R.Z.B., a minor, and Ernest D. Bedwell, individually and as father and next friend of R.Z.B., a minor, v. Forjas Taurus S.A. and Braztech International, LC*, Case No. 16-CV-21606 (the "Burrow Action").

3. I respectfully submit this declaration in support of the Plaintiffs' Motion for Approval of Attorneys' Fees and Incentive Award.

4. Badham & Buck is a law firm in Birmingham, Alabama that focuses on complex commercial litigation and class actions. The attorneys of Badham & Buck regularly practice in

federal court, representing plaintiffs and defendants in a wide range of commercial or "business tort" cases. In the class action arena, Badham & Buck attorneys have been appointed class counsel in cases certified in both state and federal courts. The firm is routinely recognized among the top civil litigation law firms in Alabama by publications such as *Super Lawyers* and *Best Lawyers*. *Super Lawyers* has repeatedly selected me as one of the "Top 10" and "Top 50" lawyers in Alabama. In a 2011 trial, my partner, Percy Badham, and I received the largest contested jury verdict ever awarded in Madison County, Alabama on behalf a business client in a case involving misappropriation of trade secrets. I have tried a variety different types of cases, including business disputes and personal injury claims, in state and federal courts and in arbitrations. I have been elected three times to the Alabama State Bar Board of Bar Commissioners, and I have served on the State Bar Executive Council and Disciplinary Commission, among other various leadership appointments.

5. I received B.A., with honors, from Davidson College in 1994. In 1997, I received a Juris Doctorate, *magna cum laude*, from the University of Alabama School of Law and was inducted into the *Order of the Coif*. I am currently admitted to practice in Alabama state courts, in all three federal district courts in Alabama, and in the United States Court of Appeals for the Eleventh Circuit.

6. In the past ten years, Badham & Buck has been named class counsel in the following cases:

- *C. Rachelle Roach, et al. v. Provant Health Solutions, LLC*; In the United States District Court for the Middle District of Florida; Case No. 8:14-cv-1663-T-23MAP;
- *Patrick Moore, et al. v. Comcast Corporation, et al.*; In the United States District Court for the Northern District of Alabama; Case No. 7:06-cv-809-UWC;
- *Jack Meadows v. ResortQuest International, Inc.*; In the Circuit Court of Tuscaloosa County, Alabama; Case No. CV-2009-900370; and

- *Tim McAdams, et al. v. Monier, Inc.;* In the Superior Court of California, Placer County; Case No. SCV 16410.

7. I have never been found to be inadequate or unqualified to serve as class counsel. There is no conflict of interest between the proposed class in this case and myself or my firm.

8. Badham & Buck has the expended the substantial financial and personal resources to litigate this case on behalf of the class. The firm has taken a leading role among Plaintiffs' counsel in prosecuting the claims in this case. That work has been on-going for more than 3 years. Because of the complexity and magnitude of this case, the expense associated with funding the litigation costs, and the relatively small size and limited resources of my law firm, the pursuit of the claims on behalf of the proposed class here necessarily meant that we had to forego other business opportunities for which we did not have the man-power or financial resources to participate.

9. Counsel for the Plaintiffs have collectively incurred and paid $178,644.35 in litigation expenses associated with the prosecution of this action to date. These expenses include, among others, costs related to the service of process on Forjas Taurus in Brazil, fees for translating documents from Portuguese to English for use in court, deposition costs, including interpreter fees for communicating with Brazilian witnesses, expert consulting fees, and travel costs.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated June 6, 2019.

BRANNON J. BUCK

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

WILLIAM BURROW, OMA LOUISE BURROW, SUZANNE M. BEDWELL, individually and as mother and next friend of R.Z.B., a minor, and ERNEST D. BEDWELL, individually and as father and next friend of R.Z.B., a minor, **Plaintiffs,** **v.** **FORJAS TAURUS S.A. and BRAZTECH INTERNATIONAL, L.C.,** **Defendants.**	**Case No: 1:16-cv-21606-EGT** **CLASS ACTION**

DECLARATION OF BRIAN W. WARWICK

I, Brian W. Warwick, declare as follows:

1. I am a partner in the law firm of Varnell & Warwick, PA ("V&W"), counsel of record for Plaintiffs in this matter. I respectfully submit this declaration in support of Plaintiffs' Motion for Approval of Attorneys' Fees and Incentive Award.

2. V&W is a law firm headquartered in Florida that focuses on consumer protection, environmental protection, civil rights and other areas of high-impact public interest litigation. The attorneys of V&W have been appointed lead or co-lead class counsel in more than 50 class action cases certified in both state and federal courts across the nation including cases within this District. They have prosecuted a variety of multi-million-dollar disputes. The defendants in these cases have included governmental entities and international companies such as AT&T, Asplundh, Bank of America, Capital One, Citibank, Discover Bank, General Electric Capital Corp., HSBC, Home Depot, Progressive Insurance, State Farm Insurance, and Sallie Mae.

3. Since starting V&W in 2001, I have concentrated my practice on consumer financial protection litigation. Throughout my career, I have been engaged in complex litigation and frequently litigate under Federal and state consumer protection statutes.

4. I received a B.A., in Finance from the College of St. Francis in Joliet, Illinois in 1994. In 1999, I received my J.D. from Cumberland School of Law and my MBA from Samford University in Birmingham, Alabama.

5. After graduation from law school I served as Law Clerk to the Honorable Champ Lyons, Jr. on the Alabama Supreme Court.

6. I am currently admitted in the following state and federal courts: Supreme Court of the United States (2004); State of Florida (2002); State of Alabama (1999-Alabama Bar license currently on inactive status); United States District Court, Southern District of Florida (2011); United States District Court, Middle District of Florida (2005); United States District Court, Northern District of Florida (2011); United States District Court of Colorado (2007); Tenth Circuit Court of Appeals (2010); Eleventh Circuit Court of Appeals (2008); and, Federal Circuit Court of Appeals (2010).

7. I have written the following publications related to class action litigation: Class Action Settlement Collusion: Let's Not Sue Class Counsel Quite Yet, American Journal of Trial Advocacy, Vol. 22:3 (Spring 1999); Claim Jumpers Beware: Alabama Takes Another Look at Class Action Certification, American Journal of Trial Advocacy, Vol. 22:1 (Summer 1998).

8. I have been a guest speaker on class action matters on several occasions for the National Consumer Law Center ("NCLC").

9. Along with my partner, Janet Varnell, I received the "2018 Trial Lawyer of the Year Award" from the Public Justice Foundation in Washington D.C. This nationally recognized

award was presented for our class action work protecting consumers in the payday loan industry in the matter of *Inetianbor v. CashCall*, in the United Stated District Court, Southern District of Florida. The *CashCall* case involved payday lenders using tribal land to attempt to circumvent usury laws for internet loans. Florida consumers were charged between 90% and 300% interest on these loans. The complex issues involved in this matter included an arbitration clause that required arbitration under tribal law, a choice of law provision that dictated tribal law and numerous competing class actions. The matter was appealed twice to the Eleventh Circuit and once to the Supreme Court of the United States. Ultimately, Florida consumers received millions of dollars in terminated loans and refunds.

10. Varnell & Warwick has been named Class Counsel in the following cases:

- *Allen v. AT&T,* In the United States District Court, Eastern District of Oklahoma, CIV-00- 023-S;
- *Baez v. LTD Financial Services, L.P.,* In the United States District Court, Middle District of Florida, 6:15-cv-1043;
- *Bayhylle, et al. v. Jiffy Lube International*, In the District Court for Cherokee County, Oklahoma, CJ-2002-352;
- *Bennett v. Coggin Cars, LLC*, In the Circuit Court of Duval County, Florida, 2004-CA- 002883;
- *Briles v. Tiburon Financial, LLC, et al.,* In the United States District Court, District of Nebraska, 8:15-cv-00241
- *Brown v. Johnson Distributors, et al.,* In the General Court of Justice Superior Court Division, State of North Carolina, County of Mecklenburg, 16-CVS-3445;
- *Bryant v. World Imports U.S.A., Inc., d/b/a World Imports,* In the Circuit Court of Duval County, Florida, 2015-CA-005185;
- *Burrow, et al. v. Forjas-Taurus SA and Braztech International, L.C.*, In the United States District Court, Southern District of Florida, 1:16-cv-21606-EGT;
- *Covey v. American Safety Council, Inc. d/b/a Florida Online Traffic School*, In the Circuit Court of Orange County, Florida, 10-CA-009781;

- *Ebreo v Vystar Credit Union,* In the Circuit Court of Duval County, Florida, 2014-CA-000365;

- *Ferrari v. Autobahn, Inc., et al.,* In the United States District Court for the Northern District of California, 4:17-CV-00018-YGR;

- *Friedman v. Guthy-Renker,* In the United States District Court, Central District of California, 2:14-cv-06009.

- *Gagnon v. Kia Autosport of Pensacola, Inc., et al.,* In the Circuit Court of Escambia County, Florida, 2014-CA-000084;

- *Grant v. Ocwen Loan Servicing, LLC,* In the United States District Court, Middle District of Florida, 3:15-cv-01376-MMH-PDB;

- *Gjolaj v. Global Concepts Limited, Inc.,* United States District Court, Southern District of Florida, 1:12-cv-23064;

- *Law Offices of Henry E. Gare, P.A. v Healthport Technologies, LLC,* In the Circuit Court of Duval County, Florida, 2011-CA-010202;

- *Hardy v. N.S.S. Acquisition Corp.*, In the Circuit Court of Palm Beach County Florida, CL-99- 8628 AO;

- *Holt v. HHH Motors, Inc.,* In the Circuit Court of Duval County, Florida, 2012-CA-010179;

- *Inetianbor v. CashCall and John Paul Reddam*, United Stated District Court, Southern District of Florida, 13-60066 – CIV – COHN – Seltzer.

- *Ioime, et al., v. Blanchard, Merriam, Adel & Kirkland, P.A.,* In the United States District, Middle District of Florida, 5:15-cv-13-Oc-30PRL;

- *Jackson v. Worthington Ford of Alaska, Inc.,* In the Superior Court for the State of Alaska, Third Judicial District at Anchorage, 3AN-13-08258;

- *Kearney, et al., v. Direct Buy Associates, et al.,* In the Superior Court of the State of California for the County of Los Angeles, Central Civil West, BC539094;

- *Kilby, et al., v. Camaron at Woodcrest, LLC, et al.,* In the Circuit Court of Leon County Florida, 2013-CA-001300;

- *Koster, et al. v. Fidelity Assurance Associates, LLC, et al.,* In the Circuit Court of Lake County Florida, 2010-CA-003482;

- *Lankhorst v. Independent Savings Plan Company d/b/a ISPC,* In the United States District Court, Middle District of Florida, 3:11-cv-390-MMH-JRK;

- *McClure v. Avenue Motors, LTD*, In the Circuit Court of Duval County, Florida, 07-CA-009207;

- *Napoleon v. Worthington Imports of Alaska, Inc. d/b/a Mercedes Benz of Anchorage,* In the Superior Court for the State of Alaska, Third Judicial District at Anchorage, 3AN-14-09617 CI;

- *Newlin v. Florida Commerce Credit Union*, In the United States District Court, Northern District of Florida, 4:11-cv-00080-RH-WCS;

- *Neese, et al. v. Lithia Chrysler Jeep of Anchorage, Inc., et al.,* In the Superior Court in Anchorage Alaska, 3AN-06-4815;

- *Palasack v. Asbury Auto Group*, In the Circuit Court of Pulaski County, Arkansas, CV02-12712;

- *Page v. Panhandle Automotive, Inc.,* In the Circuit Court of Bay County, Florida, 11-CA-1611

- *Parish v. California Style, Inc., et al.*, In the District Court of Sequoyah County, Oklahoma, CJ- 00-342;

- *Petersen v. American General Life Ins. Co.*, United States District Court, Middle District of Florida, Case No. 3:14-cv-100-J-39JBT.

- *Peterson v. Progressive Corporation*, In the Court of Common Pleas, Cuyahoga County, Ohio, CV-03-510154;

- *Pool, et al. v. Rexall Sundown*, In the District Court of Sequoyah County, Oklahoma, CJ-2002-1253;

- *Plummer v. United Auto Group, Inc., et al.*, In the Circuit Court of Pulaski County, Arkansas, CV02-11804;

- *Prindle v. Carrington Mortgage Services, LLC,* In the United States District Court, Middle District of Florida, 3:13-cv-01349;

- *Reynolds v. Jim Moran & Associates*, In the Circuit Court of Wakulla County Florida, 04-CA- 259;

- *Riley v Home Retention Services, Inc. et al.,* United States District Court, Southern District of Florida, 2014-CV-20106;
- *Matthew W. Sowell, P.A. v. Bactes Imaging Solutions, Inc.*, In the Circuit Court of Duval County, Florida, 09-CA-018050;
- *St. John v. The Progressive Corporation*, In the Common Pleas Court of Cuyohoga County, Ohio, 392581;
- *Tate v. Navy Federal Credit Union,* In the Circuit Court of Duval County, Florida, 14-CA-000756;
- *Webb v. Touch of Class Catalog, Inc.*, In the District Court of Sequoyah County, Oklahoma, Case No. CJ-2000-306;
- *West v. City Auto Group-Tallahassee, LLC d/b/a City Hyundai*, In the Circuit Court of Leon County, Florida, 2012-CA-042109;
- *Williams v. New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing, Inc.*, United States District Court, Middle District of Florida, 3:17-cv-570-25JRK;
- *Williams v. Tallahassee Property Investors, LLC and Apartment Management Consultants, L.L.C.*, In the Circuit Court of Leon County, Florida, 2015-CA-002097;
- *Wood, Atter & Wolf, P.A. v. Record Reproduction Service, Inc.,* In the Circuit Court of Duval County, Florida, 2015-CA-00763;
- *Wood, Atter & Wolf, P.A. v. Star-Med, LLC,* In the Circuit Court of Duval County, Florida, 2016-CA-6096;
- *Wood, Atter & Wolf, P.A. v. University of Florida Jacksonville Physicians, Inc.,* In the Circuit Court of Duval County, Florida, 16-2014-CA-005771.

11. V&W also performs considerable appellate work on consumer class action matters throughout the United States. For example, in 2018 alone the firm litigated seven appeals. Two in the Eleventh Circuit: *LTD Financial Services, L.P. v. Liznelia Baez,* Appeal No. 17-13842-F (appeal of class action jury verdict); and *Sellers v. Rushmore Loan Management Services, LLC*, Appeal No. 18-11420 (an appeal of class certification); one in Florida State Court: *Katrina Bushnell v. Portfolio Recovery Assoc., LLC,* In the District Court of Appeal, Second District of

Florida, Case No. 2D17-0429 (amicus brief on attorney fees in consumer cases); one in the Ninth Circuit: *Amy Friedman v. Pamela Behrend v. Guthy Renker LLC and WEN by Chaz Dean, Inc.*, Case No. 17-56456 (defending a class settlement from objectors), one in the Court of Appeals for the Federal Circuit: *Grober, Voice International, Inc. v. Mako Products, Inc.*, Case No. 17-1507 (discovery abuse in patent case); and one in the Fourth Circuit: *Home Depot USA v. Jackson*, 880 F3d 165 (4th Cir. 2018) (removal by third-party counterclaim defendants under the Class Action Fairness Act).

12. On May 28, 2019, the firm received a win for consumers in the Supreme Court of the United States in the matter of *Home Depot USA Inc. v. Jackson*, 2019 WL 2257158 --- S. Ct. --- (2019). The issue in the Jackson case was whether a third-party counterclaim defendant could remove a class action counterclaim from state court under either the general removal statutes or under the language of the Class Action Fairness Act. Justice Thomas writing for the majority held to the strict construction of the statutes and federal court jurisdiction was not further expanded.

13. This is a considerable amount of appellate work for a relatively small firm and indicates the firm's high level of experience and expertise in both consumer and appellate law.

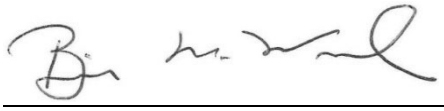
13. Varnell & Warwick also employs attorneys Janet R. Varnell, David K. Lietz and Mathew Peterson.

14. Due to the small size of my firm, taking on cases like this requires that other matters cannot be taken as a result of the time and financial investment necessary. In other words, the firm had to forego other litigation opportunities as a result of committing to litigate this important case.

I declare under penalty of perjury of the state of Florida that the foregoing is true and correct to the best of my knowledge, and that I could competently testify to these facts if called as a witness.

Executed in Lady Lake, Florida.

Dated: June 10, 2019.



Brian W. Warwick

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

WILLIAM BURROW, OMA LOUISE BURROW, SUZANNE M. BEDWELL, individually and as mother and next friend of R.Z.B., a minor, and ERNEST D. BEDWELL, individually and as father and next friend of R.Z.B., a minor,	**Case No: 1:16-cv-21606-EGT**
Plaintiffs,	**CLASS ACTION**
v.	
FORJAS TAURUS S.A. and BRAZTECH INTERNATIONAL, L.C.,	
Defendants.	

DECLARATION OF GREGORY A. BROCKWELL

I, Gregory A. Brockwell, hereby declare as follows:

1. My name is Gregory A. Brockwell. I am over the age of 18 years and have personal knowledge of the facts and information contained in this declaration and am competent to testify as to the matters stated herein.

2. I am a founding partner in the law firm of Brockwell Smith LLC, counsel of record for Plaintiffs in the matter styled William and Oma Louise Burrow**,** SUZANNE M. BEDWELL, individually and as mother and next friend of R.Z.B., a minor, and ERNEST D. BEDWELL, individually and as father and next friend of R.Z.B., a minor, v. Forjas Taurus S.A. and Braztech International, LC, Case No. 16-CV-21606 (the "Burrow Action").

3. I respectfully submit this declaration in support of the Plaintiffs' Motion for Approval of Attorneys' Fees and Incentive Award.

4. Brockwell Smith LLC is a law firm in Birmingham, Alabama that, in large part, focuses on litigation of business torts and commercial claims. The attorneys of Brockwell Smith LLC regularly practice in federal court, representing plaintiffs and defendants in a wide range of commercial or "business tort" cases.

5. I received a B.A., with honors, from the University of Alabama in 1998. In 2002, I received a Juris Doctorate from the University of Alabama School of Law. I am currently admitted to practice in Alabama state courts, in all three federal district courts in Alabama, and in the United States Court of Appeals for the Eleventh Circuit.

6. In 2002, I began my career with a regional personal injury defense firm with offices located in Alabama, Florida, Mississippi, and Tennessee. While there, I spent approximately six years defending corporations in wrongful death and serious injury cases (including products liability cases) and was made a partner of the firm.

7. In 2008, I chose to leave that practice in order to change my focus to business litigation. I joined the Birmingham law firm of Leitman, Siegal & Payne, PC ("LSP"), as a shareholder and eventually became President of the firm. LSP has a long history of handling complex commercial litigation and class actions. While at LSP, I served as class co-counsel in the case of *Perdue v. Green*, In the Circuit Court of Montgomery County, Alabama, CV-2010-900013, affirmed on appeal at 127 So.3d 343 (Ala. 2013).

8. In 2017, I chose to leave LSP to form Brockwell Smith LLC. My practice continues to focus on litigation of business torts and commercial claims, though I also continue to handle some products liability cases as well as other cases involving wrongful death and serious personal injury.

9. I am active in Bar activities. I serve as a Board member of the "Business Torts & Antitrust" section of the Alabama State Bar. I serve on the Board and as the head of the "Business Torts" section of the Alabama Association for Justice. I have published several articles on business litigation topics and am frequently asked to speak at CLE seminars. I hold an AV rating from Martindale Hubbell. Among other acknowledgments, for many years I have been recognized as a "Super Lawyer" in the area of business litigation, and I am also recognized in the "Best Lawyers in America" in construction litigation.

10. I have never been found to be inadequate or unqualified to serve as class counsel. There is no conflict of interest between the proposed class in this case and myself or my firm.

11. My firm has expended significant financial and personal resources to litigate this case, and we have had to turn-down other work because of the time and financial resources required of this case.

12. Along with the firm of Swiney & Bellenger, LLC, I was responsible for the initial investigation of the Burrow incident and engagement with the Burrows. I attended multiple meetings with the Burrows and conducted extensive "due diligence" investigation to identify potential defendants, identify possible liability theories, and determine a strategy for service of the Brazilian defendant. Once it became clear that this would be a class action case, I also was responsible for engaging experienced class counsel (Badham & Buck) to take the lead on the class aspects of the case. When it became apparent that the case would need to be filed in Florida, we worked together to identify and engage Florida co-counsel (Paul Knopf Bigger). Along with Badham & Buck, I identified and retained a consulting expert and arranged for transport and inspection of the Burrow revolver as well as the purchase and inspection of exemplars. Along with

Badham & Buck, I sent a pre-suit notice letter to the defendants and was involved in all pre-suit activities that followed. Along with Badham & Buck and Knopf Bigger, I prepared the complaint. I was then responsible for effecting service of the complaint on the Brazilian defendant. Since the filing of the complaint, I have worked hand-in-hand with all co-counsel on all aspects of the case, have made multiple out-of-state trips for depositions and mediation and court proceedings, have taken multiple depositions, have participated in all strategy sessions, and have participated in all pleadings, motions, and briefs.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated June 6, 2019.

Gregory A. Brockwell

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

WILLIAM BURROW, OMA LOUISE BURROW, ERNEST D. BEDWELL, AND SUZANNE BEDWELL **Plaintiffs,** **v.** **FORJAS TAURUS S.A. and BRAZTECH INTERNATIONAL, L.C.,** **Defendants.**	)	**Case No: 1:16-cv-21606-TORRES** **CLASS ACTION**

DECLARATION OF ANDREW F. KNOPF

I, Andrew F. Knopf, declare as follows:

1. I am the managing partner of Paul Knopf Bigger, PLLC ("PKB") law firm and counsel of record for Plaintiffs in this matter. I respectfully submit this declaration in support of the Plaintiffs' Motion for Approval of Attorneys' Fees and Incentive Award.

2. PKB is a law firm headquartered in Florida, with offices in Winter Park and Tampa, that focuses on products liability, consumer protection, fraud, medical malpractice, qui tam, and other areas of high-impact public interest litigation. PKB attorneys have prosecuted many complex products liability actions, received more than $100 million in verdicts and hundreds of millions in settlement funds on behalf of people injured by defective and unreasonably dangerous products. *Super Lawyers* recognized me a "Rising Star" in the Florida legal community, and I was named a "Top 40 Under 40" in 2011 by the National Trial Lawyers.

3. Since joining the plaintiffs' bar in 2004, I have concentrated my practice on complex products liability litigation. Throughout my career, I have been engaged in many cases

involving defective and unreasonably dangerous firearms, including several cases involving "drop-fire" defects substantially similar to the defect at issue in the instant case. I have tried defective products cases to verdict, including cases in which "drop-fires" were alleged and proven.

10. PKB employs twelve (12) attorneys and at least half of them actively litigate products liability cases.

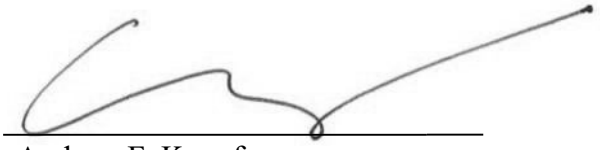
11. I have never been found to be inadequate or unqualified to serve as class counsel. There is no conflict of interest between the proposed class and myself or my firm.

12. My firm has expended the necessary financial and personnel resources to litigate this case on behalf of the class. The resources necessary for our active participation in this case have required us to forego work on other potential cases that we would have otherwise pursued.

I declare under penalty of perjury of the state of Florida that the foregoing is true and correct to the best of my knowledge, and that I could competently testify to these facts if called as a witness.

Executed in Winter Park, Florida.

Dated: June 6, 2019.



Andrew F. Knopf

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

WILLIAM BURROW, OMA LOUISE BURROW, SUZANNE M. BEDWELL, individually and as mother and next friend of R.Z.B., a minor, and ERNEST D. BEDWELL, individually and as father and next friend of R.Z.B., a minor, **Plaintiffs,** **v.** **FORJAS TAURUS S.A. and BRAZTECH INTERNATIONAL, L.C.,** **Defendants**	**Case No: 1:16-cv-21606-EGT** **CLASS ACTION**

DECLARATION OF JOHN VINCENT SWINEY II

I, John Vincent Swiney II, hereby declare as follows:

1. My name is John Vincent Swiney II. I am over the age of 18 years and have personal knowledge of the facts and information contained in this declaration and am competent to testify as to the matters stated herein.

2. I am a founding partner in the law firm of Swiney & Bellenger, LLC, counsel of record for Plaintiffs in this matter.

3. I respectfully submit this declaration in support of the Plaintiffs' Motion for Approval of Attorneys' Fees and Incentive Award.

4. Swiney & Bellenger, LLC is a law firm in Homewood, Alabama that focuses on civil litigation, personal injury, and Social Security disability law. The attorneys of Swiney & Bellenger, LLC regularly practice in both federal and state courts, as well as federal administrative proceedings, representing plaintiffs in a wide range of civil tort cases.

5. I received a Bachelor of Arts degree from Auburn University in 1999, and a Juris Doctor degree from Cumberland School of Law of Samford University in 2002. I am currently admitted to practice in the state courts of both Alabama and Tennessee, as well as all three federal district courts in Alabama, and in the United States Court of Appeals for the Eleventh Circuit.

6. In 2002, I began my legal career with a small insurance defense firm representing businesses and insurance companies in a variety of civil cases. Approximately seven months later, I joined a larger, regional insurance defense firm with offices located in Alabama, Florida, Mississippi, and Tennessee, and for almost the next five years I defended corporations in serious injury cases and construction defect litigation.

7. In 2007, I chose to leave that practice to represent plaintiffs in both state and federal courts in Alabama, Tennessee, Louisiana, and Kentucky. For over five years, I handled, and tried to verdict, a variety of cases ranging from personal injury, to medical malpractice, to the Federal Employers Liability Act, to products liability.

8. In 2012, I chose to join a small general practice firm where I stayed until forming Swiney & Bellenger, LLC in 2014. As stated above, Swiney & Bellenger, LLC regularly practices in both federal and state courts, as well as federal administrative

proceedings, representing plaintiffs in a wide range of civil tort cases.

9. I currently serve as a member of the Board of Directors of the Birmingham Bar Foundation and have been appointed to the Grievance Committee for the Birmingham Bar Association as well as the Character & Fitness Committee, the Digital Communications Committee, the Pro Bono Celebration Task Force, and the Strategic Planning Task Force for the Alabama State Bar. I am a Past Chair of the Alabama State Bar Workers' Compensation Section, the Birmingham Bar Association Workers' Compensation Section, and the Alabama Association for Justice Workers' Compensation Section. I am also a Past Member of the Executive Committee of the Birmingham Bar Association. I regularly speak at Continuing Legal Education Seminars on various topics and I hold an AV rating from Martindale Hubbell in the areas of Workers' Compensation, Litigation, and Social Security.

10. I have never been found to be inadequate or unqualified to serve as class counsel. There is no conflict of interest between the proposed class in this case and myself or my firm.

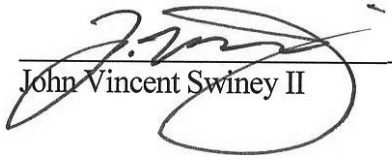
11. My firm has committed the necessary financial and personal resources to litigate the case on behalf of the class.

12. Along with the firm of Brockwell Smith LLC, I assisted in the initial investigation of the Burrow incident and engagement with the Burrows. I attended meetings with the Burrows and assisted in the investigations to identify potential defendants, identify possible liability theories, and determine a strategy for service of the Brazilian defendant. Once it became clear that this would be a class action case, I also assisted in engaging experienced class counsel (Badham & Buck) to take the lead on the class aspects of the case. When it became apparent that the case

would need to be filed in Florida, we worked together to identify and engage Florida co-counsel (Knopf Bigger). Since the filing of the complaint, I have worked with all co-counsel on various aspects of the case, have made multiple out-of-state trips for mediation, and have participated in numerous strategy sessions.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated June 6, 2019.



John Vincent Swiney II

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

WILLIAM BURROW, OMA LOUISE BURROW, SUZANNE M. BEDWELL, individually and as mother and next friend of R.Z.B., a minor, and ERNEST D. BEDWELL, individually and as father and next friend of R.Z.B., a minor,	**Case No: 1:16-cv-21606-EGT**
Plaintiffs,	**CLASS ACTION**
v.	
FORJAS TAURUS S.A. and BRAZTECH INTERNATIONAL, L.C.,	
Defendants.	

DECLARATION OF CHRIS BATAILLE IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

I, Chris Bataille, being first duly sworn upon oath, swear and affirm as follows:

1. I am a practicing attorney and a partner with the law firm of Flanigan & Bataille. I have been an active member in good standing of the Alaska Bar Association since June of 1984. I was licensed to practice before the United States District Court for the District of Alaska in April of 1985 and before the Ninth Circuit Court of Appeals in December of 1989. Prior to the forming of the law firm of Flanigan & Bataille in March of 2011, from October of 2004 through February of 2011, I was a partner with the law firm

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of Walther & Flanigan, along with my current partner, Michael Flanigan, and attorneys Dale Walther and Howard Meyer. The law firm of Walther & Flanigan handled complex civil litigation in the fields of personal injury, product liability, professional and medical negligence, product liability and consumer protection. Prior to joining the law firm of Walther & Flanigan, I was in private practice in Fairbanks, Alaska from 1985-2004. My solo practice focused on personal injury, employment law, insurance bad faith, and professional negligence litigation.

2. The law firm of Flanigan & Bataille, which includes myself, Michael Flanigan, paralegal Jessica Rasor and administrative assistant Devon Rofidal, provides legal services involving complex civil litigation, including personal injury, medical and professional malpractice, business torts, insurance disputes, ERISA and consumer actions, including consumer class actions. My partner, Michael Flanigan, has remained a member in good standing with the Alaska Bar Association since his admission to the Alaska Bar in 1977. Mr. Flanigan was admitted to practice before the United States District Court for the District of Alaska in 1977 and before the Ninth Circuit Court of Appeals in 1990. In 2004, Mr. Flanigan was admitted to the Washington State bar. Mr. Flanigan has over 35 years of experience litigating complex civil matters before both state and federal courts.

3. In addition to the present class action, I have served as class counsel in a number of consumer class actions in Alaska including the following: *Neese et. al. v. Lithia et. al.*, Case No. 3AN-06-13341 Civil; *Jackson et. al. v. Worthington Ford of Alaska, Inc.*,

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Case No. 3AN-13-08258 Civil; *Napoleon v. Worthington Imports of Alaska, Inc. d/b/a/ Mercedes Benz of Anchorage*, Case No. 3AN-14-9617 Civil; and *Rainsbarger et. al. v. Alaska USA Federal Credit Union et al.*, Case No. 3AN-16-9908 Civil.

4. I was initially contacted and then retained by the Bedwell plaintiffs to investigate and pursue claims on their behalf arising from the drop fire discharge of their Rossi revolver. I oversaw the initial investigation of the facts surrounding the drop fire incident, including communications with State of Alaska officials regarding the forensic evaluation of the revolver. Mr. Flanigan and I made the decision to obtain additional revolvers of the same make and model as the Bedwell revolver and implemented a strategy to obtain them. After receipt of exemplar revolvers, I made arrangements with a qualified gunsmith to test the exemplar revolvers. After the testing of the exemplar revolvers demonstrated another misfire, Flanigan & Bataille entered into a representation agreement with the law firm of Varnell & Warwick, a law firm specializing in class action litigation with whom Flanigan & Bataille had previously partnered in the handling of consumer class action cases in Alaska.

5. Following the execution of the joint representation agreement between Flanigan & Bataille and Varnell & Warwick, I drafted the Bedwells' state personal injury complaint and worked with Brian Warwick in the drafting of the federal class action complaint and, subsequently, the amended complaint. Following the filing of the federal class action complaint, I remained involved in the drafting of discovery requests and

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responses in both the federal and state law actions and the drafting of numerous pleadings in the state and federal actions. I, along with co-counsel, consulted with firearms experts regarding the defects supporting this class action. My office was instrumental in scheduling depositions in Alaska, including the depositions of the plaintiffs and the state of Alaska representatives involved in the drop fire incident and the forensic evaluation of the revolver. I met with the plaintiffs and the plaintiffs' expert gunsmith before their depositions to assist them prepare for their depositions and attended the six depositions held in Alaska. In addition, I consulted with various witnesses in the specialized fields at issue in this action and participated in numerous meet and confer meetings with defense counsel throughout the state and federal litigation. I also reviewed the written discovery produced by the parties and reviewed many of the deposition transcripts of witnesses, whether or not I was present at the deposition.

6. I, along with the other counsel representing the class representatives, attended two full days of mediation on September 11 and 12, 2018. During these two days of mediation, substantial progress was made toward settlement but did not result in agreement on the final settlement terms. Among the terms agreed to, however, was that the owners of the Rossi model revolvers identified in the Amended Complaint manufactured from January 2005 through December 2016 would fall within the putative class. The parties further agreed that the Defendants would immediately put into effect a warning program through which the Defendants would notify members of the putative

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class by means of publication and, where possible, direct mail and email, about the existence of safety defects in the revolvers and the potential for the revolvers to fire when dropped. The parties agreed that my firm and other counsel for the Plaintiffs would remain involved in the preparation of the warning notices and the administration of the initial warning program.

7. The parties reconvened at a subsequent mediation on October 4, 2018 to try and reach a final settlement, including the terms of an agreement on a repair or replace program for the revolvers and additional benefits to the putative class. While I did not personally attend the second mediation session, I maintained telephonic communication with the plaintiffs' attorneys who were physically present at the mediation.

8. As a product of the second mediation session, the parties were able to reach an agreement regarding the terms of settlement and, subsequently, moved for and obtained preliminary court approval of the settlement terms.

9. I have never been found to be inadequate or unqualified to serve as class counsel.

10. There is no conflict of interest between the proposed class and myself or my firm.

11. I am able and willing to litigate this case on behalf of the proposed class.

12. Flanigan & Bataille has the necessary financial and personnel resources to litigate this case on behalf of the class.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 7th day of June, 2019.

By: /s/ Chris Bataille
CHRIS BATAILLE, ABA# 8406011

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