

Elizabeth J. Cabraser (State Bar No. 83151)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415.956.1000
Facsimile: 415.956.1008
E-mail: ecabraser@lchb.com

Plaintiffs' Lead Counsel

*(Plaintiffs' Steering Committee Members Listed on
Signature Page)*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CHRYSLER-DODGE-JEEP
ECODIESEL® MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

This Document Relates to:

ALL ACTIONS

Case No. 3:17-md-02777-EMC

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
ATTORNEYS' FEES AND COSTS
UNDER FED. R. CIV. P. 23(e), 23(h),
AND PRETRIAL ORDER NOS. 3 AND 4**

Hearing: May 3, 2019
Time: 10:00 a.m.
Courtroom: 5, 17th Floor

The Honorable Edward M. Chen

TABLE OF CONTENTS

	Page
NOTICE OF MOTION AND MOTION	viii
MEMORANDUM AND POINTS OF AUTHORITIES	1
INTRODUCTION	1
BACKGROUND AND PROCEDURAL HISTORY	3
I. This Case Was Risky, Complex, and Intensively Litigated.....	3
II. The Settlement Provides Meaningful Relief to the Class.	5
III. Class Members Endorse the Settlement and Are Poised to Make It a Success.	6
IV. The Settlement Claims Process is Straightforward and Streamlined.....	7
ARGUMENT	7
I. The Settlement Class Satisfies All Requirements of Rule 23 and Should be Certified.	7
A. Rule 23(a)(1): The Class is sufficiently numerous.	8
B. Rule 23(a)(2): There are common questions of law and fact.....	8
C. Rule 23(a)(3): The Settlement Class Representatives’ claims are typical of other Class Members’ claims.	8
D. Rule 23(a)(4): The Settlement Class Representatives and Class Counsel have and will “fairly and adequately” protect the interests of the Settlement Class.	9
E. Rule 23(b)(3)—Predominance: Common issues of law and fact predominate.....	9
F. Rule 23(b)(3)—Superiority: Class treatment is superior to other available methods for the resolution of this case.....	10
II. The Settlement is Fair, Reasonable, and Adequate.....	11
A. Rule 23(e)(2)(A): The Class Representatives and Class Counsel have and continue to zealously represent the Class.....	11
B. Rule 23(e)(2)(B): The Settlement is the product of good faith, informed, and arm’s-length negotiations.	12
C. Rule 23(e)(2)(C): The Settlement provides significant immediate benefits in exchange for the compromise of strong claims.	12
1. Plaintiffs’ claims were strong, but significant risk remained and, absent a settlement, any potential relief was years away.	14
2. The claim process is straightforward and convenient.	15
3. Class Counsel’s requested attorneys’ fees and costs are reasonable and will not reduce the benefits available to the Class.	15
D. Rule 23(e)(2)(D): The Settlement treats Class Members equitably relative to one another.....	16

TABLE OF CONTENTS
(continued)

		Page
3	E. The Settlement satisfies the Ninth Circuit’s approval factors.....	16
4	1. The Parties settled only after significant discovery and motion practice.	16
5	2. Class Counsel unanimously endorse the Settlement.	17
6	3. The presence of government participants favors final approval.	17
7	4. Though early, the Class’ initial response has been positive.....	17
8	III. Class Counsel’s Requested Fee is Fair, Reasonable, and Appropriate.	18
9	A. Class Counsel obtained substantial benefits for the Class.	21
10	B. The Settlement resulted from Class Counsel’s zealous representation in complex and risky litigation.....	21
11	C. The Settlement provides significant non-monetary relief in addition to the cash compensation.	23
12	D. Class Counsel’s requested fee percentage falls well below the benchmark and compares favorably to awards in similarly valued settlements.	24
13	E. Class Counsel carried considerable financial burden in prosecuting this complex litigation.	26
14	F. A lodestar cross-check confirms the requested fees are reasonable.	26
15	1. Class Counsel expended a reasonable number of hours advancing this complex and hard-fought litigation.	27
16	2. Class Counsel billed reasonable rates for those hours.	28
17	3. Class Counsel’s performance and the results achieved justify a reasonable lodestar multiplier.	29
18	IV. Class Counsel’s Expenses are Reasonable and Appropriate.....	29
19	V. The Settlement Class Representatives Have Earned, and Public Policy Supports, the Requested Service Awards.....	31
20	CONCLUSION.....	31

TABLE OF AUTHORITIES

Page

Cases

<i>Alexander v. FedEx Ground Package Sys., Inc.</i> , No. 05-CV-00038-EMC, 2016 WL 3351017 (N.D. Cal. June 15, 2016)	25, 29
<i>Beesley v. Int'l Paper Co.</i> , No. 3:06-CV-703-DRH-CJP, 2014 WL 375432 (S.D. Ill. Jan. 31, 2014)	30
<i>Bellinghausen v. Tractor Supply Co.</i> , 306 F.R.D. 245 (N.D. Cal. 2015)	27
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)	18, 24
<i>Buccellato v. AT&T Operations, Inc.</i> , No. C10-00463-LHK, 2011 WL 3348055 (N.D. Cal. June 30, 2011)	29
<i>Ellsworth v. U.S. Bank, N.A.</i> , No. 3:12-CV-02506-LB, 2015 WL 12952698 (N.D. Cal. Sept. 24, 2015)	18
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	passim
<i>In re Anthem, Inc. Data Breach Litig.</i> , No. 15-MD-02617-LHK, 2018 WL 3960068 (N.D. Cal. Aug. 17, 2018)	19
<i>In re Bluetooth Headset Prods. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011)	2, 16, 21, 29
<i>In re First Databank Antitrust Litig.</i> , 209 F. Supp. 2d 96 (D.D.C. 2002)	22
<i>In re Gulf Oil/Cities Service Tender Offer Litigation</i> , 142 F.R.D. 588 (S.D.N.Y. 1992)	22
<i>In re High-Tech Employee Antitrust Litig.</i> , No. 11-CV-02509-LHK, 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015)	25
<i>In re Ins. Brokerage Antitrust Litig.</i> , 579 F.3d 241 (3d Cir. 2009)	19
<i>In re Mego Fin. Corp. Sec. Litig.</i> , 213 F.3d 454 (9th Cir. 2000)	15, 31
<i>In re NASDAQ Mkt.-Makers Antitrust Litig.</i> , 187 F.R.D. 465 (S.D.N.Y. 1998)	22
<i>In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.</i> , No. 4:14-MD-2541-CW, 2017 WL 6040065 (N.D. Cal. Dec. 6, 2017)	19, 26
<i>In re Netflix Privacy Litig.</i> , No. 5:11-CV-00379 EDJ, 2013 WL 1120801 (N.D. Cal. Mar. 18, 2013)	19
<i>In re Omnivision Techs., Inc.</i> , 559 F. Supp. 2d 1036 (N.D. Cal. 2008)	21
<i>In re Online DVD-Rental Antitrust Litig.</i> , 779 F.3d 934 (9th Cir. 2015)	31

TABLE OF AUTHORITIES
(continued)

		Page
1		
2		
3	<i>In re Oracle Sec. Litig.</i> ,	
4	852 F. Supp. 1437 (N.D. Cal. 1994)	23
5	<i>In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, &</i>	
6	<i>Prod. Liab. Litig.</i> ,	
7	No. 810ML02151JVSMOX, 2013 WL 12327929 (C.D. Cal. July 24, 2013)	24
8	<i>In re VISA Check/Master Money Antitrust Litig.</i> ,	
9	297 F. Supp. 2d 503 (E.D.N.Y. 2003)	22
10	<i>In re Volkswagen & Audi Warranty Extension Litig.</i> ,	
11	89 F. Supp. 3d 155 (D. Mass. 2015)	24
12	<i>In re Wal-Mart Stores, Inc. Wage & Hour Litig.</i> ,	
13	No. 06-02069 SBA, 2011 WL 31266 (N.D. Cal. Jan. 5, 2011)	18
14	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> ,	
15	19 F.3d 1291 (9th Cir. 1994).....	26
16	<i>In re: Cathode Ray Tube (CRT) Antitrust Litig.</i> ,	
17	No. 1917, 2016 WL 4126533 (N.D. Cal. Aug. 3, 2016).....	31
18	<i>In re: Takata Airbags Products Liability Litigation</i> ,	
19	Case No. 15-MD-2599 (S.D. Fla.)	24
20	<i>In re: Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.</i> ,	
21	No. 2672 CRB (JSC), 2017 WL 3175924 (N.D. Cal. July 21, 2017).....	23
22	<i>In re: Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.</i> ,	
23	895 F.3d 597 (9th Cir. 2018).....	21
24	<i>In re: Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.</i> ,	
25	No. 2672 CRB (JSC), 2016 WL 4010049 (N.D. Cal. July 29, 2016).....	9
26	<i>In re: Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.</i> ,	
27	No. 2672 CRB (JSC), 2016 WL 6248426 (N.D. Cal. Oct. 25, 2016), <i>aff’d</i> , 995	
28	F.3d 597 (9th Cir. 2018).....	12, 15, 17, 23
	<i>In re: Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.</i> ,	
	No. 2672 CRB (JSC), 2017 WL 1047834 (N.D. Cal. Mar. 17, 2017).....	21, 27, 29
	<i>Kerr v. Screen Extras Guild, Inc.</i> ,	
	526 F.2d 67 (9th Cir. 1975).....	29
	<i>Kim v. Space Pencil, Inc.</i> ,	
	No. C 11-03796 LB, 2012 WL 5948951 (N.D. Cal. Nov. 28, 2012).....	15
	<i>Laguna v. Coverall N. Am., Inc.</i> ,	
	753 F.3d 918 (9th Cir. 2014) (Chen, J. dissenting), <i>vacated after settlement</i> ,	
	772 F.3d 608 (9th Cir. 2014).....	20
	<i>Lopez v. Youngblood</i> ,	
	No. CV-F-07-0474 DLB, 2011 WL 10483569 (E.D. Cal. Sept. 2, 2011)	18
	<i>Marshall v. Holiday Magic, Inc.</i> ,	
	550 F.2d 1173 (9th Cir. 1977).....	12

TABLE OF AUTHORITIES
(continued)

		Page
1		
2		
3	<i>Miller v. Ghirardelli Chocolate Co.</i> ,	
4	No. 12-CV-04936-LB, 2015 WL 758094 (N.D. Cal. Feb. 20, 2015)	18
5	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	
6	221 F.R.D. 523 (C.D. Cal. 2004)	17
7	<i>Nobles v. MBNA Corp.</i> ,	
8	No. C 06-3723 CRB, 2009 WL 1854965 (N.D. Cal. June 29, 2009)	14
9	<i>Ontiveros v. Zamora</i> ,	
10	303 F.R.D. 356 (E.D. Cal. 2014)	16, 17
11	<i>Palmer v. Stassinis</i> ,	
12	233 F.R.D. 546 (N.D. Cal. 2006)	8
13	<i>Pan v. Qualcomm Inc.</i> ,	
14	No. 16-CV-01885-JLS-DHB, 2017 WL 3252212 (S.D. Cal. July 31, 2017)	24
15	<i>Parsons v. Ryan</i> ,	
16	754 F.3d 657 (9th Cir. 2014)	8
17	<i>Pierce v. Rosetta Stone, Ltd.</i> ,	
18	No. C 11-01283 SBA, 2013 WL 5402120 (N.D. Cal. Sept. 26, 2013)	12
19	<i>Pokorny v. Quixtar, Inc.</i> ,	
20	No. C 07-0201 SC, 2013 WL 3790896 (N.D. Cal. July 18, 2013)	18
21	<i>Rainbow Bus. Sols. v. MBF Leasing LLC</i> ,	
22	No. 10-CV-01993-CW, 2017 WL 6017844 (N.D. Cal. Dec. 5, 2017)	18, 19
23	<i>Rodriguez v. Hayes</i> ,	
24	591 F.3d 1105 (9th Cir. 2010)	8
25	<i>Rosales v. El Rancho Farms</i> ,	
26	No. 1:09-CV-00707-AWI, 2015 WL 4460635 (E.D. Cal. July 21, 2015), <i>report</i>	
27	<i>and recommendation adopted</i> , 2015 WL 13659310 (E.D. Cal. Oct. 2, 2015)	12
28	<i>Six Mexican Workers v. Arizona Citrus Growers</i> ,	
	904 F.2d 1301 (9th Cir. 1990)	21
	<i>Slaven v. BP Am., Inc.</i> ,	
	190 F.R.D. 649 (C.D. Cal. 2000)	8
	<i>Staton v. Boeing Co.</i> ,	
	327 F.3d 938 (9th Cir. 2003)	18, 24, 29
	<i>Stetson v. Grissom</i> ,	
	821 F.3d 1157 (9th Cir. 2016)	29
	<i>Stockwell v. City & Cty. of San Francisco</i> ,	
	749 F.3d 1107 (9th Cir. 2014)	8
	<i>Trosper v. Styker Corp.</i> ,	
	No. 13-CV-0607-LHK, 2014 WL 4145448 (N.D. Cal. Aug. 21, 2014)	10
	<i>Tyson Foods, Inc. v. Bouaphakeo</i> ,	
	136 S. Ct. 1036 (2016)	9

TABLE OF AUTHORITIES
(continued)

	Page
<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043 (9th Cir. 2002).....	18, 21, 26
<i>Wakefield v. Wells Fargo & Co.</i> , No. 3:13-cv-05053 LB, 2015 WL 3430240 (N.D. Cal. May 28, 2015).....	29
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338 (2011).....	8
<i>Weeks v. Kellogg Co.</i> , No. CV 09-08102 MMM RZX, 2013 WL 6531177 (C.D. Cal. Nov. 23, 2013)	19
<i>Williams v. MGM-Pathe Commc’ns Co.</i> , 129 F.3d 1027 (9th Cir. 1997).....	18, 24
<i>Willner v. Manpower Inc.</i> , No. 11-cv-02846-JST, 2015 WL 3863625 (N.D. Cal. June 22, 2015)	29
<i>Wolin v. Jaguar Land Rover N. Am., LLC</i> , 617 F.3d 1168 (9th Cir. 2010).....	10

Rules

Fed. R. Civ. P. 23(a)(1)	8
Fed. R. Civ. P. 23(a)(2)	8
Fed. R. Civ. P. 23(a)(3)	8
Fed. R. Civ. P. 23(a)(4)	9
Fed. R. Civ. P. 23(b)(3).....	9, 10
Fed. R. Civ. P. 23(e).....	18
Fed. R. Civ. P. 23(e)(2)(C).....	13
Fed. R. Civ. P. 23(e)(2)(C)(i)	15
Fed. R. Civ. P. 23(e)(2)(C)(ii).....	15
Fed. R. Civ. P. 23(e)(2)(C)(iii).....	15
Fed. R. Civ. P. 23(h)	29

Other Authorities

Theodore Eisenberg & Geoffrey P. Miller, <i>Attorney Fees and Expenses in Class Action Settlements: 1993–2008</i> , 7 J. Empirical Legal Stud. 248 (2010)	25
Theodore Eisenberg, Geoffrey Miller, and Roy Germano, <i>Attorneys’ Fees in Class Actions 2009-2013</i> , 92 N.Y.U. L. Rev. 937 (2017)	19, 25, 26, 29

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 3, 2019 at 10:00 a.m. or at such other date and time as the Court may set, in Courtroom 5 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, Plaintiffs' Lead Counsel, on behalf of Settlement Class Counsel and all counsel performing common benefit services under the provisions of PTO 4, will and hereby do move the Court for an order: (1) confirming the certification of the Settlement Class¹ and appointment of Settlement Class Counsel and the Settlement Class Representatives; (2) granting final approval to the Amended Consumer and Reseller Dealership Class Action Settlement Agreement and Release (Dkt. No. 508) (the "Settlement" or "Class Action Settlement"); (3) approving the award of \$59 million for attorneys' fees and \$7 million for expenses arising from the claims resolved by the Settlement; and (4) awarding the Settlement Class Representatives service awards of \$5,000 each. This Motion is based on and supported by the Memorandum of Points and Authorities, the Declarations of Lead Counsel Elizabeth J. Cabraser, class action fee expert Brian T. Fitzpatrick, and Notice and Claims Administrator Steven Weisbrot, as well as the activities and events in these MDL proceedings to date.

¹ Here, and in the Memorandum and Points of Authorities, capitalized terms have the meaning ascribed in the Settlement unless otherwise indicated.

MEMORANDUM AND POINTS OF AUTHORITIES

INTRODUCTION

The proposed Class Action Settlement is a significant win for the Class and the environment. The Settlement, along with the interrelated and simultaneously negotiated US-CA Consent Decree (Dkt. No. 484), repairs approximately 100,000 Class Vehicles to ensure their compliance with emissions regulations, protects the repaired vehicles with a robust extended warranty, and fairly compensates Class Members with cash payments up to \$3,075. *See, e.g.*, Dkt. No. 508-1 at 2. The cash compensation alone “*exceed[s]* the economic harm suffered” by the Class under Plaintiffs’ damages theory “in nearly all cases.” Declaration of Ted Stockton in Support of Preliminary Approval, Dkt. No. 491-3 ¶ 46 (emphasis added). If all Class Members participate, this will result in approximately \$307,460,800 in compensation, plus extended warranty benefits worth an additional \$239.5 million. *See* Dkt. No. 508 ¶ 4.12; Declaration of Kirk Kleckner in Support of Motion for Preliminary Approval, Dkt. No. 491-4 ¶¶ 1, 6. Separately, the Settlement also requires Defendants to pay all costs of notice and administration as well as Class Counsel’s reasonable attorneys’ fees and costs as approved by the Court. *See* Dkt. No. 508 ¶¶ 5.6, 8.4, 11.1. In other words, no Court-awarded attorneys’ fees and costs, notice and administration costs, or other costs of effectuating the Settlement (including the emissions repairs and warranty) will be deducted from the Class Member payments described above. *Id.* The combination of these benefits makes the Class Members whole and marks an excellent result for a compromise of vigorously contested and intensively litigated claims.

The Class agrees. In preliminarily approving the Settlement, the Court noted that the “benefits to individual class members are substantial and likely to gain their attention.” Dkt. No. 526 at 13. The Class Members’ initial response bears this out. In the few weeks since the beginning of the notice program, more than 23,000 Class Members have already registered their interest in the Settlement by signing up on the Settlement Website. *See* Declaration of Steven Weisbrot (“Weisbrot Decl.”) ¶ 21. This is a remarkable start given that the claims period will not officially open for at least two more months and will not close for nearly two years after that. *Id.* A consortium of 49 state attorneys general has also endorsed the Settlement and incorporated the

1 Settlement’s “appropriate and reasonable” “restitution payments to consumers” into its own
2 multistate Consent Judgment with Fiat Chrysler. *See* Dkt. No. 518 at 2.

3 The PSC fought hard to secure these benefits for the Class. For nearly two years, the
4 parties engaged both in intensive, simultaneous, and parallel tracks of arm’s length negotiations
5 and “extraordinarily difficult [and] complex” litigation. *See, e.g.*, January 23, 2019, Hr’g Tr.,
6 Dkt. No. 519 at 5:19-20. For the substantial results Class Counsel achieved for the Class, and for
7 the extensive work required to secure them, Class Counsel seek \$59 million in attorneys’ fees and
8 \$7 million in litigation costs. Under a conservative valuation of the constructive common fund—
9 85% of the cash compensation (to reflect the minimum participation threshold), plus 50% of the
10 warranty value (to account for the government’s shared role in securing it), plus the separately
11 paid notice, administration, and attorneys’ fees and costs—the requested fees represent
12 approximately 13% of the Settlement value. Calculated as a percentage of the *total* potential
13 value of the Settlement, the fee percentage drops to 9.6%. Both percentages fall well below the
14 Ninth Circuit’s 25% benchmark as well as the mean and median percentages awarded in similarly
15 valued “megafund” settlements. *See, e.g., In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d
16 935, 942 (9th Cir. 2011) (the Ninth Circuit’s “benchmark” for attorneys’ fees in common fund
17 class actions is 25%); Declaration of Brian Fitzpatrick T. Fitzpatrick (“Fitzpatrick Decl.”) ¶¶ 14-
18 15, 21-26. Either percentage would be appropriate under the Ninth Circuit’s factors and the
19 particular facts of this case. *Id.* ¶¶ 21-36. This is further confirmed by a lodestar cross-check,
20 which yields a multiplier of 1.17, less than half the average in settlements of comparable size and
21 complexity. *Id.* ¶¶ 34-36.

22 Plaintiffs thus respectfully request that the Court certify the Settlement Class, grant final
23 approval to the Settlement, and approve an aggregate award of \$66 million—\$59 million in fees
24 and \$7 million in costs—to be allocated by Lead Counsel among Settlement Class Counsel and
25 additional counsel performing common benefit work for the Class under Pretrial Order Nos. 3 and
26 4.

BACKGROUND AND PROCEDURAL HISTORY

The Court is very familiar with this litigation. In the interest of efficiency, Plaintiffs will not repeat the entire history, much of which is detailed in Plaintiffs' preliminary approval briefing (Dkt. No. 491), the Court's preliminary settlement orders (Dkt. Nos. 526-27), and the Court's order on the first motions to dismiss (Dkt. No. 290), which are incorporated by reference herein. A few points, however, bear emphasis.

I. This Case Was Risky, Complex, and Intensively Litigated.

A lot happened in the two years between the government NOVs and the filing of the proposed Settlement. Consumer plaintiffs across the country filed over a dozen class action complaints. Dkt. No. 1. The Department of Justice commenced litigation. This MDL was formed and the PSC appointed. Dkt. Nos. 1, 173. The PSC hit the ground running and heeded the Court's direction to move with dispatch—toward both settlement and trial at once—and, in so doing, reached an excellent, principled resolution.

The PSC packed much more into these months than the timeline might suggest. Once consolidated, Class Counsel filed comprehensive Amended, First Amended, and Second Amended Consolidated Consumer Class Action Complaints that refined and developed the complex allegations in this technical, multi-party fraud case. *See* Dkt. Nos. 186, 225, 310. Each complaint spanned hundreds of pages and presented detailed claims under federal law and the laws of all 50 states. *Id.* The allegations were thorough, as were the challenges mounted against them. Both Fiat Chrysler and Bosch moved to dismiss the First Amended Complaint (Dkt. Nos. 231-32), which Class Counsel opposed in a 75-page opposition brief (Dkt. No. 249). In a 129-page order, the Court upheld Plaintiffs' nationwide RICO claim and granted leave to amend and clarify as to state common law fraud and consumer protection claims. Dkt. No. 290. Plaintiffs then filed a 438-page Second Amended Complaint, which added approximately 30 pages of detailed factual allegations (and amended many of the state law claims) based on the documents analyzed and depositions taken at that time. Dkt. No. 310. A second round of motions to dismiss followed—this one even more intense than the last. All told, the two rounds comprised 301 pages

1 of argument across 19 briefs, which were further developed at three lengthy hearings. *See* Dkt.
 2 Nos. 231-32, 249, 257-58, 314-15, 337, 344-45, 367, 376, 380, 382, 458-59, 465-66, 470.²

3 That's a lot of ink. But it was spilled for good reason: the issues addressed were
 4 numerous and complex. Dkt. No. 526 at 13. On RICO, for example, Defendants raised
 5 "difficult" questions (*id.*) related to causation, statutory displacement, and convergence—all of
 6 which had "pretty strong arguments on either side of the equation." October 26, 2018 Hr'g Tr.,
 7 Dkt. No. 455 at 5:8-9. Had any of those challenges prevailed, Plaintiffs would have lost
 8 considerable leverage, and as the Court observed, would have faced a much more difficult
 9 landscape at class certification. *Cf. id.* at 28:17-29:2. Other significant challenges were raised
 10 relating to jurisdiction, preemption, standing, and damages. *See* Dkt. No. 526 at 13.

11 Class certification briefing proved an equally rigorous undertaking. Plaintiffs moved to
 12 certify a nationwide class under RICO and the MMWA, as well as separate state classes under the
 13 common law fraud and consumer protection statutes of all 50 states. Dkt. No. 327. The Parties
 14 submitted 780 pages of class certification briefing (and thousands of pages of exhibits), including
 15 18 highly technical briefs on liability and damages experts, and prepared to present their
 16 arguments in what Defendants had argued should be a multi-day class certification hearing. *See*
 17 Dkt. Nos. 327, 360, 362, 378, 385-87, 416, 418, 421, 426, 434, 436-37, 439, 447, 456, 461.

18 Throughout this motion practice, the Parties conducted extensive discovery, including
 19 nearly 100 depositions. After negotiating comprehensive discovery protocols, the PSC served
 20 Fiat Chrysler with 37 interrogatories, 130 document requests, and 188 requests for admission, and
 21 Bosch with 45 interrogatories, 56 document requests, and 34 requests for admission. *See*
 22 Declaration of Elizabeth J. Cabraser ("Cabraser Decl.") ¶ 5. In response, Defendants produced
 23 approximately **5.28 million** pages of documents, and the PSC reviewed and analyzed over 4
 24 million of them (excluding duplicate documents from the review) through a massive, around-the-
 25 clock effort. *Id.* ¶ 6. To effectively analyze these productions, PSC attorneys were required to
 26 understand the workings of profoundly complicated emissions treatment system technology and

27
 28 ² RICO's trebling provision, it turns out, applies not just to damages, but also to briefs.

1 the legal complexities of multiple claims, and to master the difficulties and nuances of working
 2 with documents written in German and Italian. The massive research, review, and analysis efforts
 3 informed Plaintiffs' complaint amendments and their strategy for class certification and
 4 dispositive motion briefing; assisted Class Counsel in identifying and selecting deponents; and
 5 helped Class Counsel prepare for and conduct 31 affirmative depositions of Defendants'
 6 engineers, executives, and experts. *Id.* ¶¶ 21-23 (further detailing the multi-layer document
 7 analysis efforts and the role of that analysis in the litigation).

8 While the litigation pressed forward with full steam, settlement negotiations began shortly
 9 after the Court's appointment of Lead Counsel and the Settlement Master. *Id.* ¶ 12. The PSC's
 10 settlement working group engaged in complex arm's-length negotiations with Fiat Chrysler and
 11 Bosch, facilitated by the Settlement Master, in an effort to resolve the consumer claims alongside
 12 the government litigation. *Id.* ¶ 13. Throughout the process, the PSC pushed hard on two fronts:
 13 (1) to provide significant cash compensation to the class members, and (2) to offer a broad
 14 extended warranty to protect the vehicles moving forward. *Id.* In the end, Class Counsel
 15 obtained both, a remarkable result in the context of vigorously contested claims and pending
 16 dispositive motions.

17 **II. The Settlement Provides Meaningful Relief to the Class.**

18 Class Members paid a premium for EcoDiesel Vehicles that were fuel efficient, powerful,
 19 and environmentally friendly. Through this Settlement, they get them, and will be compensated
 20 in full for the economic harm incurred in purchasing and driving them before a fix was
 21 developed. First, Class Members are entitled to an emissions repair (also referred to as an
 22 Approved Emissions Modification or "AEM") which will ensure the Vehicles' compliance with
 23 emissions regulations. Second, Fiat Chrysler will provide an Extended Warranty lasting the
 24 greater of 10 years from sale or 4 years from the emissions repair that covers all the parts and
 25 systems affected by the emissions repair. The Extended Warranty alone provides \$239.5 million
 26 in value to the Class. Dkt. No. 491-4 ¶¶ 1, 6. Third, Defendants will pay up to \$307,460,800 in
 27 cash to the Class. Eligible Owners may receive a payment of \$3,075 (or \$2,460 if a former owner
 28 makes a claim on the same vehicle), and Eligible Former Owners, Lessees, and Former Lessees

all stand to receive \$990. Again, these payments “*exceed* economic harm suffered” under Plaintiffs’ EcoDiesel Premium damages theory “in nearly all cases.” See Dkt. No. 491-3 ¶ 46 (emphasis added). As an added and significant benefit, none of this relief for the Class will be reduced to pay attorneys’ fees or to reimburse expenses incurred by Settlement Class Counsel in prosecuting this litigation. Class Counsel’s fees and costs will be paid by Defendants separately from, and in addition to, the Class benefits.³

The Settlement Class that is eligible for these benefits is defined in the Settlement, the Motion for Preliminary Approval, and the Court’s Order Granting Preliminary Approval. See Dkt. Nos. 491, 508, 526. The Class includes all current owners and lessees of an Eligible Vehicle, and certain former owners and lessees as limited by relevant temporal bookmarks. See Dkt. No. 508 at ¶ 2.19. These exclusions are designed to limit the number of claims on a particular vehicle, and thus provide compensation sufficient to incentivize current owners and lessees to participate in the Settlement and effectuate the Settlement’s goal of environmental remediation. *Id.* (defining class); Dkt. No. 507 at 2-5 (explaining rationale for exclusions); Dkt. No. 526 at 6 (same).

III. Class Members Endorse the Settlement and Are Poised to Make It a Success.

Class Members are already engaged with the Settlement and are registering their interest on the Settlement Website at an impressive rate. Following preliminary approval, the Parties worked diligently with respected class notice provider and settlement administrator Angeion Group LLC to effectuate the Court-approved Notice Program. Angeion has successfully delivered more than 130,000 notices by mail, and another 115,000 by email, using sophisticated techniques designed to evade spam filters. Weisbrot Decl. ¶¶ 6-10. Additional efforts to re-deliver the small percentage of blocked or undeliverable communications are underway. *Id.* Notice is also ongoing through an extensive print and digital media campaign featuring targeted

³ As discussed below, the Parties have agreed that Class Counsel would seek, and the Defendants would not oppose, an aggregate award of \$66 million for attorneys’ fees and costs to be paid in addition to the compensation available to the Class. The Parties’ discussions regarding attorneys’ fees and costs were facilitated by Settlement Master Feinberg and commenced only after the Settlement terms were finalized.

internet banner advertisements, social media, and print publication in national industry magazines and newspapers. *Id.* ¶¶ 11-17.

Though early, Class Members' response to this notice program has been positive. Angeion notes that the "level of engagement for the digital and social media advertising campaigns" are high, and that the "Facebook campaign's click through rate is considerably more robust than industry averages." *Id.* ¶ 17. Furthermore, just weeks into the Notice Program, and with months to go before the claims period even begins, more than 23,000 class members have registered on the Settlement Website. *Id.* ¶ 21. This "very high engagement rate" underscores the attractiveness of the Settlement's benefits and bodes well for its implementation. *Id.*

IV. The Settlement Claims Process is Straightforward and Streamlined.

The Parties have designed a simple claims process to help ensure that the Class' strong interest in the Settlement translates to high participation. Class Members will submit their claims through a short paper claim form or through an online claims portal that will be available on the Settlement Website (www.EcoDieselSettlement.com) upon final approval. To complete a claim, Class Members need only provide their name, contact information, vehicle information, and basic supporting documentation to confirm their status as a current or former owner or lessee of an Eligible Vehicle. Once the claim is verified for completeness and eligibility, Fiat Chrysler will extend an offer to eligible Class Members. Former owners and lessees will be paid after they accept the offer. Current owners and lessees will schedule an emissions repair appointment at a dealership convenient for them, and will be paid within weeks of getting that repair. Class Counsel remain available to assist all Class Members throughout the claims process.

ARGUMENT

I. The Settlement Class Satisfies All Requirements of Rule 23 and Should be Certified.

In its Preliminary Settlement Order, the Court carefully analyzed each of the relevant factors under Rule 23(a) and (b)(3) and concluded that "certification of a settlement class is appropriate." Dkt. No. 526 at 8-10. This remains true.

A. Rule 23(a)(1): The Class is sufficiently numerous.

Rule 23(a)(1) is satisfied where, as here, “the class is so numerous that joinder of all class members is impracticable.” Fed. R. Civ. P. 23(a)(1). The Settlement Class includes more than 100,000 members dispersed across the United States. Joinder would be impracticable, and “the numerosity requirement has thus been met.” Dkt. No. 526 at 9; *accord Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000) (numerosity is typically satisfied when the class exceeds 40 members); *Palmer v. Stassinis*, 233 F.R.D. 546, 549 (N.D. Cal. 2006) (“Joinder of 1,000 or more co-plaintiffs is clearly impractical.”).

B. Rule 23(a)(2): There are common questions of law and fact.

“Federal Rule of Civil Procedure 23(a)(2) conditions class certification on demonstrating that members of the proposed class share common ‘questions of law or fact.’” *Stockwell v. City & Cty. of San Francisco*, 749 F.3d 1107, 1111 (9th Cir. 2014). “[E]ven a single question of law or fact common to the members of the class will satisfy the commonality requirement.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369 (2011) (citation omitted). Here, the commonality requirement is satisfied because Plaintiffs’ claims and alleged injuries all “arise from [FCA’s] and Bosch’s common course of conduct.” Dkt. No. 526 at 9 (citation omitted).

C. Rule 23(a)(3): The Settlement Class Representatives’ claims are typical of other Class Members’ claims.

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (quoting Fed. R. Civ. P. 23(a)(3)). “Like the commonality requirement, the typicality requirement is ‘permissive’ and requires only that the representative’s claims are ‘reasonably co-extensive with those of absent class members; they need not be substantially identical.’” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). Here, all Class Members’ claims, including those of the Settlement Class Representatives, “are based on the same pattern of [FCA’s] and Bosch’s wrongdoing.” Dkt. No. 526 at 9 (citation omitted). All Class Members “were subject to the same misconduct and suffered the same injury.” *Id.* Typicality is satisfied.

D. Rule 23(a)(4): The Settlement Class Representatives and Class Counsel have and will “fairly and adequately” protect the interests of the Settlement Class.

Rule 23(a)(4)’s adequacy requirement is met where, as here, “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Adequacy entails a two-prong inquiry: “(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Hanlon*, 150 F.3d at 1020. Both prongs are readily satisfied here. The Settlement Class Representatives “are entirely aligned [with the Settlement Class] in their interest in proving that [FCA and Bosch] misled them and share the common goal of obtaining redress for their injuries.” *In re: Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, (“*Volkswagen*”) No. 2672 CRB (JSC), 2016 WL 4010049, at *11 (N.D. Cal. July 29, 2016). The Settlement Class Representatives have been active participants in this litigation. They have provided documents and information, consulted with Class Counsel throughout the case, and sat for depositions. Furthermore, Class Counsel—all of whom were selected by the Court “after a vigorous and careful selection process” (Dkt. No. 526 at 10)—have undertaken an enormous amount of work, effort, and expense in this litigation to date and demonstrated their willingness to devote the considerable human and financial resources necessary to see it through to a successful outcome. “[T]he adequacy requirement has been met.” Dkt. No. 526 at 10.

E. Rule 23(b)(3)—Predominance: Common issues of law and fact predominate.

“The predominance inquiry ‘asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted). Thus, “[w]hen common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022 (citation omitted).

Before reaching the proposed Settlement, the Parties extensively briefed two motions to dismiss and a class certification motion in the litigation context. Based on that briefing and the arguments raised in the Plaintiffs' preliminary approval motion, the Court already held that "predominance is satisfied" here because: (1) the Defendants "perpetrated the same fraud in the same manner against all Class Members"; (2) the Plaintiffs alleged "a common and unifying injury . . . aris[ing] solely from" the Defendants' "use of the defeat devices"; (3) the Class is unified by a nationwide "federal RICO claim," and (4) "there are common patterns on the certain key elements among the various state laws." Dkt. No. 526 at 10-11. There is no reason to disturb this well-reasoned conclusion.

F. Rule 23(b)(3)—Superiority: Class treatment is superior to other available methods for the resolution of this case.

Superiority asks "whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. In other words, it "requires the court to determine whether maintenance of this litigation as a class action is efficient and whether it is fair." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175-76 (9th Cir. 2010). Under Rule 23(b)(3),

the Court evaluates whether a class action is a superior method of adjudicating plaintiff's claims by evaluating four factors: "(1) the interest of each class member in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against the class; (3) the desirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action."

Trosper v. Styker Corp., No. 13-CV-0607-LHK, 2014 WL 4145448, at *17 (N.D. Cal. Aug. 21, 2014) (citation omitted).

Class treatment here is far superior to the litigation of tens of thousands of individual consumer actions. *Hanlon*, 150 F.3d at 1023; *see also Wolin*, 617 F.3d at 1176 ("Forcing individual vehicle owners to litigate their cases, particularly where common issues predominate for the proposed class, is an inferior method of adjudication."); Dkt. No. 526 at 11 ("[C]lass action treatment is superior to other methods and will efficiently and fairly resolve the controversy."). Moreover, trial management issues are moot "because the case will not be tried,"

1 and, in any case, any such “trial of a class action would be manageable, at least for most if not all
2 claims.” Dkt. No. 526 at 11-12. Superiority is satisfied.

3 * * *

4 The Settlement Class meets all relevant requirements of Rule 23. Plaintiffs thus request
5 that the Court confirm the certification of the Settlement Class and the appointment of Settlement
6 Class Counsel and the Settlement Class Representatives.

7 **II. The Settlement is Fair, Reasonable, and Adequate.**

8 In preliminarily approving the Settlement, the Court carefully analyzed all factors under
9 recently amended Rule 23(e)(2), as well as the additional considerations identified by the Ninth
10 Circuit, and concluded that the “proposed settlement between the parties is sufficiently fair,
11 adequate, and reasonable to warrant preliminary approval.” Dkt. No. 526 at 15. Nothing has
12 changed since then. All applicable factors weigh in favor of final approval.

13 **A. Rule 23(e)(2)(A): The Class Representatives and Class Counsel have and**
14 **continue to zealously represent the Class.**

15 The Class Representatives and Class Counsel have zealously prosecuted this action on
16 behalf of the Class for almost two years, and will continue to do so throughout the administration
17 of the Settlement to secure and deliver its benefits. As detailed above, Class Counsel engaged in
18 significant motion practice and discovery efforts to prosecute the Class claims. The Settlement
19 Class Representatives were also actively engaged—each produced numerous documents, sat for a
20 lengthy deposition, and regularly communicated with counsel up to and including evaluating and
21 approving the proposed Settlement. See Declaration of Elizabeth J. Cabraser in Support of
22 Motion for Preliminary Approval, Dkt. No. 491-1 ¶¶ 11-15. Each of them was consulted on the
23 terms of the Settlement, and has expressed their support and continued willingness to protect the
24 Class until the Settlement is approved and its administration completed. *Id.* The Class was and
25 remains well represented.

B. Rule 23(e)(2)(B): The Settlement is the product of good faith, informed, and arm's-length negotiations.

As this Court already concluded, the proposed Settlement arises out of serious, informed, and non-collusive negotiations facilitated by Court-appointed Settlement Master Feinberg over the course of nearly eighteen months. *See* Dkt. No. 526 at 13. A settlement process facilitated by a court-appointed mediator weighs heavily in favor of approval. *Rosales v. El Rancho Farms*, No. 1:09-CV-00707-AWI, 2015 WL 4460635, at *16 (E.D. Cal. July 21, 2015), *report and recommendation adopted*, 2015 WL 13659310 (E.D. Cal. Oct. 2, 2015) (“[T]he ‘presence of a neutral mediator [is] a factor weighing in favor of a finding of non-collusiveness.’”) (citation omitted)); *Pierce v. Rosetta Stone, Ltd.*, No. C 11-01283 SBA, 2013 WL 5402120, at *5 (N.D. Cal. Sept. 26, 2013) (same). So too does the participation of government entities in negotiations. *See Volkswagen*, No. 2672 CRB (JSC), 2016 WL 6248426, at *14 (N.D. Cal. Oct. 25, 2016) (government participation in negotiations weighed “heavily in favor” of approval), *aff’d*, 895 F.3d 597 (9th Cir. 2018); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) (“The participation of a government agency serves to protect the interests of the class members, particularly absentees, and approval by the agency is an important factor for the court’s consideration.”) (citation omitted). Multiple government agencies, including the Department of Justice, the Environmental Protection Agency, the California Air Resources Board, and the California Attorney General were an integral part of the multifaceted negotiations here. The Settlement is a key point of interrelated resolutions negotiated with and approved by the federal government, the State of California, and the 49-state consortium of state attorneys general. The procedurally fair manner in which this Settlement was reached weighs strongly in favor of granting final approval.

C. Rule 23(e)(2)(C): The Settlement provides significant immediate benefits in exchange for the compromise of strong claims.

The Settlement secures strong relief for the Class, as detailed throughout this brief. *See, e.g.*, Background § II, *supra*. Along with the US-CA Consent Decree, the Settlement offers (1) an emissions repair that delivers to Class Members the emissions-compliant vehicles they thought

1 they were buying originally, and adds to that (2) an Extended Warranty to protect against future
 2 harm, and (3) close to, if not significantly more than, full monetary compensation for the amount
 3 Class Members overpaid for their vehicles before the emissions repair became available. *See*,
 4 *e.g.*, Dkt. No. 491-3 ¶ 46.

5 On this last point, the Court previously observed that Plaintiffs' class certification experts
 6 calculated that the Class' conjoint-based overpayment damages were approximately \$930 million,
 7 and, alternatively, that their EcoDiesel premium damages totaled approximately \$472 million. *See*
 8 Dkt. No. 526 at 14 (citing Report of Colin B. Weir in Support of Plaintiffs' Motion for Class
 9 Certification, Dkt. No. 327-4 ¶¶ 60-63). However, Plaintiffs' alternative, conjoint damages
 10 model was, at that stage of the litigation, simply "demonstrative" and was to be altered if, for
 11 example, a fix became available for the Class Vehicles, as it now has. *See, e.g.*, Dkt. No. 421 at
 12 3, 5, 13. In other words, the choice-based analysis upon which the damages model was built
 13 presumed that the vehicles sold as environmentally compliant could not become so, and was
 14 presented primarily to demonstrate the reliability of the methodology for class certification—not
 15 to provide a final calculation of damages available at trial. Similarly, the EcoDiesel premium
 16 damages presented in Mr. Weir's report calculated the overpayment over the *entire* lifespan of all
 17 the Class Vehicles, and thus did not account for an emissions repair that, once available (as it now
 18 is), would deliver to Class Members the vehicles they thought they were purchasing originally.

19 Nevertheless, even assuming that the combination of the emissions repair, the extended
 20 warranty, and the cash secured by the Settlement did not deliver all the benefits theoretically
 21 available at trial, they would still reflect a fair, reasonable, and adequate compromise of
 22 Plaintiffs' claims, especially considering (i) the costs, risks, and delay of trial and appeal; (ii) the
 23 effectiveness of the proposed distribution plan; and (iii) the terms of the separately negotiated
 24 proposed award of attorney's fees. *See* Fed. R. Civ. P. 23(e)(2)(C). The Settlement makes
 25 specified compensation available now, not years from now. Repairs and payouts will commence
 26 upon final approval by *this* Court: they will not be delayed or held hostage by appeal. Payments
 27 that are soon, certain, and substantial merit approval as fair, adequate, and reasonable.
 28

1 **1. Plaintiffs’ claims were strong, but significant risk remained and,**
 2 **absent a settlement, any potential relief was years away.**

3 Plaintiffs believed in the strength of their case and were prepared to take it all the way to
 4 trial. But, as detailed above, there were many hurdles ahead. *See, e.g.,* Background § II, *supra*.
 5 From the beginning of the litigation to the end, Defendants conceded nothing. According to
 6 Defendants’ motions to dismiss and class certification briefing, the Court lacked jurisdiction, the
 7 Plaintiffs had no standing, their state law claims were preempted, their RICO claims were
 8 statutorily displaced (and otherwise flawed), all their claims were overwhelmed by individual
 9 issues, and their factual allegations could not be proved.⁴ As the Court observed, many of these
 10 issues were “difficult” and even “[d]amages were potentially problematic in light of Defendants’
 11 position that there was an easy repair for the vehicles at issue,” Dkt. No. 526 at 13-14—a position
 12 that was vindicated once the regulators approved the AEM. Plaintiffs prevailed on some of these
 13 issues, but the second motion to dismiss and the class certification motion remained pending, and
 14 a summary judgment motion was forthcoming. Assuming their claims survived to trial,
 15 moreover, Plaintiffs would still have to prove an intricate and technical multi-party fraud, among
 16 many other things. And if Plaintiffs prevailed at trial, they would have to re-litigate virtually all
 17 of these issues in the inevitable appeals.

18 To put it plainly, Plaintiffs had no guarantee that they would make it to trial, win at trial,
 19 and win on appeal. Even if they did, relief for the Class was likely years away—meaning that the
 20 environmental harm posed by the excess emissions would continue unabated for the foreseeable
 21 future. The Settlement eliminates this risk, cuts through the delay, and provides immediate and
 22 significant benefits. This factor strongly favors final approval. *See Nobles v. MBNA Corp.*, No.
 23 C 06-3723 CRB, 2009 WL 1854965, at *2 (N.D. Cal. June 29, 2009) (“The risks and certainty of
 24 recovery in continued litigation are factors for the Court to balance in determining whether the

25 _____
 26 ⁴ A further consideration is the involvement of foreign defendants, including FCA N.V.
 27 (Netherlands), Bosch GmbH (Germany), and VM Motori S.p.A. (Italy). Plaintiffs’ allegations
 28 against these companies implicate, at least in part, actions taken in Europe. Additional risks thus
 arise should Plaintiffs have to prove the propriety of the Court’s personal jurisdiction over these
 entities, or that U.S. law extends to reach their extraterritorial conduct.

Settlement is fair.”) (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000)); *Kim v. Space Pencil, Inc.*, No. C 11-03796 LB, 2012 WL 5948951, at *5 (N.D. Cal. Nov. 28, 2012) (“The substantial and immediate relief provided to the Class under the Settlement weighs heavily in favor of its approval compared to the inherent risk of continued litigation, trial, and appeal, as well as the financial wherewithal of the defendant.”); *Volkswagen*, 2016 WL 6248426, at *12; Fed. R. Civ. P. 23(e)(2)(C)(i).

2. The claim process is straightforward and convenient.

The Settlement framework provides an emissions repair, a robust extended warranty, and substantial monetary compensation through a straightforward claims process designed to be as convenient as possible. *See* Background § IV, *supra*; *see also* Dkt. No. 508-4. Class Members have and will receive information about the Settlement benefits through the Court-approved Notice Program. To obtain those benefits, Class Members will submit a simple Claim Form and receive an offer once their eligibility is verified. Former owners and lessees will get paid after accepting the offer, and current owners and lessees will get paid after scheduling and receiving an emissions repair at a dealership convenient to them. The Settlement’s method for processing claims and distributing relief is fair and reasonable. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii).

3. Class Counsel’s requested attorneys’ fees and costs are reasonable and will not reduce the benefits available to the Class.

Class Counsel’s fee request is detailed below, but in this context it is worth highlighting that any Court-awarded attorneys’ fees or costs will be paid separately by Defendants and will not be deducted from the compensation available to the Class. These fees and costs were separately negotiated only after the Settlement terms were agreed upon, a practice routinely approved by courts as in the Class’ best interest. *See Volkswagen*, 2016 WL 6248426, at *23. Plaintiffs’ success in persuading Defendants to pay fees and costs separately has significant monetary value to the Class Members, who otherwise could have such fees and costs deducted from their recoveries. The “terms of . . . [the] proposed award of attorneys’ fees” are fair and reasonable. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii).

D. Rule 23(e)(2)(D): The Settlement treats Class Members equitably relative to one another.

The proposed Settlement fairly and reasonably allocates benefits among Eligible Owners, Lessees, Former Owners, and Former Lessees. See Dkt. No. 526 a 14 (“[T]he settlement reasonably differentiates among class members.”). All Class Members are eligible for compensation that accords with their EcoDiesel premium damages, and current owners are provided extra incentive to “to bring their vehicles in for repair” (*id.*)—a necessary feature to accomplish the Settlement’s objective of repairing the Class Vehicles and mitigating future pollution. This factor, too, counsels in favor of granting final approval.

E. The Settlement satisfies the Ninth Circuit’s approval factors.

The Ninth Circuit has identified a number of additional factors for courts to consider when evaluating the fairness, reasonableness, and adequacy of a class action settlement. Those factors include: (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement. *In re Bluetooth*, 654 F.3d at 946. Many of these—*e.g.*, the strength of plaintiffs’ case, the risk and duration of further litigation, and the amount offered—overlap with the Rule 23(e)(2)(C) factors and are addressed above. The remainder favor final approval as well.

1. The Parties settled only after significant discovery and motion practice.

Class Counsel “carefully investigated the claims before reaching a resolution” through dozens of affirmative depositions, voluminous written discovery, and analysis of millions of pages of documents. They also tested those claims through significant motion practice. Class Counsel were therefore well-positioned to evaluate the strengths and weaknesses of the case and to negotiate a fair and reasonable Settlement. See *Ontiveros v. Zamora*, 303 F.R.D. 356, 371 (E.D. Cal. 2014). They have done so.

2. Class Counsel unanimously endorse the Settlement.

In considering whether to grant final approval, courts are entitled to give “considerable weight” to the opinions of experienced class counsel who are familiar with the litigation. *Id.* (citing *Hanlon*, 150 F.3d at 1026); *see also Volkswagen*, 2016 WL 6248426, at *14 (“Courts afford ‘great weight to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.’”) (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)). The ten-firm PSC here represents a deep bench of experienced class action litigators who uniformly conclude that the Settlement provides an excellent outcome in the face of the uncertainties in continued litigation.

3. The presence of government participants favors final approval.

As detailed above, the private Plaintiffs litigated and resolved this case alongside the Department of Justice and the California Attorney General. They were also in regular contact with a consortium of the attorneys general of the remaining 49 states, who endorsed the Settlement and incorporated its “appropriate and reasonable” “restitution payments to consumers” into their own Consent Judgment with Fiat Chrysler. See Dkt. No. 518 at 2. The involvement of these government participants, all of whom support the Settlement, “weighs heavily in favor of final approval.” *Volkswagen*, 2016 WL 6248426, at *14.

4. Though early, the Class' initial response has been positive.

The Class is already showing their support for the Settlement. Indeed, only weeks into the Notice Program, and with several months before the claims period officially opens, more than 23,000 Class Members have already registered on the Settlement Website. Weisbrot Decl. ¶ 21. In contrast, no Class Member has yet objected to the Settlement and only one has sought to be excluded. *Id.* Once the Notice Program concludes and the relevant deadlines have passed, Class Counsel will provide a full accounting of all the information outlined in the District’s Procedural Guidance. For now, however, this factor strongly supports final approval, and Class Counsel have every reason to believe it will stay that way.

* * *

The Settlement is fair, reasonable, and adequate, and merits final approval.

III. Class Counsel's Requested Fee is Fair, Reasonable, and Appropriate.

“[L]awyer[s] who recover[] a common fund . . . [are] entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In deciding whether a requested fee amount is appropriate, the Court’s role is to determine whether such amount is “fundamentally ‘fair, adequate, and reasonable.’” *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)).

When a settlement establishes a common fund or calculable monetary benefit for a class, it is both appropriate and preferred to award attorneys’ fees based on a percentage of the monetary benefit obtained. See *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); Fitzpatrick Decl. ¶¶ 11-13. This is true even in a “claims made or class reversion” settlement, and in such cases, “it is appropriate to award class fund attorneys’ fees based on the gross settlement fund” available to the class. See, e.g., *Lopez v. Youngblood*, No. CV-F-07-0474 DLB, 2011 WL 10483569, at *12 (E.D. Cal. Sept. 2, 2011) (citing *Williams v. MGM-Pathe Commc’ns Co.*, 129 F.3d 1026 (9th Cir. 1997)).⁵ For the purpose of appraising a fee percentage, moreover, the constructive common fund also includes the ascertainable value of non-monetary relief⁶ (here, the Extended Warranty) and, if paid separately by the defendants (as here), the cost of notice and settlement administration,⁷ and attorneys’ fees.⁸

⁵ See also, e.g., *Rainbow Bus. Sols. v. MBF Leasing LLC*, No. 10-CV-01993-CW, 2017 WL 6017844, at *2 n.1 (N.D. Cal. Dec. 5, 2017) (“Fairness of the fee should be determined by the amount made available to the class, not the amount actually paid in claims.”); *Miller v. Ghirardelli Chocolate Co.*, No. 12-CV-04936-LB, 2015 WL 758094, at *5 (N.D. Cal. Feb. 20, 2015) (“Ninth Circuit precedent requires courts to award class counsel fees based on the total benefits being made available to class members rather than the actual amount that is ultimately claimed.”); *Ellsworth v. U.S. Bank, N.A.*, No. 3:12-CV-02506-LB, 2015 WL 12952698, at *4 (N.D. Cal. Sept. 24, 2015) (same); *In re Wal-Mart Stores, Inc. Wage & Hour Litig.*, No. 06-02069 SBA, 2011 WL 31266, at *5 n.5 (N.D. Cal. Jan. 5, 2011) (“With respect to the amount of the fund created, ‘attorneys for a successful class may recover a fee based on the entire common fund created for the class, even if some class members make no claims against the fund so that money remains in it that otherwise would be returned to the defendants.’”) (citation omitted).

⁶ See, e.g., *Rainbow Bus.*, 2017 WL 6017844, at *1 (The fund from which a fee percentage is calculated includes “the total benefit made available to the settlement class, including costs, fees, and injunctive relief.”); *Miller*, 2015 WL 758094, at *5 (“When determining the value of a settlement, courts consider both the monetary and nonmonetary benefits that the settlement confers.”); *Pokorny v. Quixtar, Inc.*, No. C 07–0201 SC, 2013 WL 3790896, *1 (N.D. Cal. July 18, 2013) (“The court may properly consider the value of injunctive relief obtained as a result of

Applying these principles to this case, the constructive common fund established by the Settlement includes: (1) the cash compensation available to the Class (\$307.5 million, Dkt. No. 508 ¶ 4.12); (2) the consumer value of the Extended Warranty (\$239.5 million, Dkt. No. 491-4 at 1, 5);⁹ (3) the separately paid attorneys' fees and costs (\$66 million, if awarded by the Court); and (4) the separately paid cost of notice and settlement administration (\$1.5 million, Dkt. No. 491-2 ¶ 53). Together, these benefits total approximately \$615 million. Class Counsel's requested fees represent 9.6% of this fund. This falls far below this Circuit's 25% benchmark, as well as the mean and median percentages awarded in comparable "megafund" settlements. Fitzpatrick Decl. ¶¶ 23-26 (discussing empirical analyses showing a mean and median awarded percentages 17.8% and 19.5%); *see also In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-MD-2541-CW, 2017 WL 6040065, at *2 (N.D. Cal. Dec. 6, 2017) (citing Theodore Eisenberg, Geoffrey Miller, and Roy Germano, *Attorneys' Fees in Class Actions 2009-2013*, 92 N.Y.U. L. Rev. 937, 947 (2017) ("Eisenberg-Miller 2017") (Empirical analysis shows that "21% was the midpoint for fees where the recovery exceeded \$100 million.")).

settlement in determining the appropriate fee."); *In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EDJ, 2013 WL 1120801, at *7 (N.D. Cal. Mar. 18, 2013) (settlement value "includes the size of the cash distribution, the *cy pres* method of distribution, and the injunctive relief").

⁷ *See, e.g., Weeks v. Kellogg Co.*, No. CV 09-08102 MMM RZX, 2013 WL 6531177, at *29 (C.D. Cal. Nov. 23, 2013) (It is "proper to include [the cost of notice and settlement administration] in the value of the class action settlement" where plaintiffs "successfully negotiated a provision that required defendants to bear" those costs and "thus ensured that more money would be available to pay claimants."); *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *8-9 (N.D. Cal. Aug. 17, 2018) ("These costs 'of providing notice to the class can reasonably be considered a benefit to the class' in this case. The same is true of the other administrative costs (such as processing claim forms and operating a call center to answer Settlement Class Members' questions) that contribute to 'distribut[ing] [the] settlement award in a meaningful and significant way.'").

⁸ *See, e.g., Rainbow Bus.*, 2017 WL 6017844, at *1 (holding that the common fund includes costs and fees, if paid separately); *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 283 (3d Cir. 2009) (approving a fee award based on a total settlement value that included, *inter alia*, attorneys' fees to be paid independent of the common fund).

⁹ Although Fiat Chrysler estimates that the Extended Warranty will cost it approximately \$105 million (Dkt. No. 508 ¶ 4.12), "the standard is not how much money a company spends on purported benefits, but the value of those benefits to the class." *In re Anthem*, 2018 WL 3960068, at *8.

1 Notwithstanding the above, in a different case, this Court has expressed concern that the
 2 Circuit’s practice of “using the full fund theoretically available as a basis for evaluating the
 3 reasonableness of a negotiated fee award,” may, under some circumstances, “divorce the class
 4 counsel’s incentives from the best interests of the class.” *Laguna v. Coverall N. Am., Inc.*, 753
 5 F.3d 918, 937 (9th Cir. 2014) (Chen, J. dissenting), *vacated after settlement*, 772 F.3d 608 (9th
 6 Cir. 2014). Those circumstances are not present here. As the Court already observed, there is “a
 7 strong incentive to ensure that there is a high participation/claims rate,” given that Fiat Chrysler
 8 faces “penalties of more than \$6,000 per vehicle” if it fails to achieve “85% participation” in the
 9 Settlement. Dkt. No. 526 at 6-7, 13. This feature, in combination with the “substantial” and
 10 attention-grabbing benefits available to the Class, alleviates any concerns about the fairness of
 11 evaluating Class Counsel’s fee request based on the full value of the Settlement fund. *See id.*; *see*
 12 *also* Dkt. No. 519 at 30 (“[T]he incentives are structured such that we do have parallel incentives
 13 now on everybody’s part to maximize the cars to get fixed. There is no perverse incentive.”);
 14 Fitzpatrick Decl. ¶¶ 16-17.

15 Nevertheless, even if the Court were inclined to discount the value of the constructive
 16 common fund, the resulting percentage would remain reasonable and appropriate under the facts
 17 of this case. If, for example, the Court reduced the cash component to only 85% of the cash
 18 available to the Class (to reflect the minimum participation threshold) and cut the warranty value
 19 by 50% (to account for the government’s shared role in securing it), Class Counsel’s fee request
 20 would rise to only 13% of the Settlement value. Take out the warranty altogether, and the fee
 21 percentage is still 17.7%. In other words, even under the most conservative valuations of the
 22 Settlement, Class Counsel’s requested fee percentage remains well below or (at worst) in line
 23 with the average awards in comparable cases. Fitzpatrick Decl. ¶¶ 23-26.

24 The reasonableness of Class Counsel’s request is further confirmed by the traditional
 25 factors analyzed in this Circuit. These factors include: (1) the results achieved by class counsel;
 26 (2) the complexity of the case and skill required; (3) the risks of litigation; (4) the benefits to the
 27 class beyond the immediate generation of a cash fund; (5) the market rate of customary fees for
 28 similar cases; (6) the contingent nature of the representation and financial burden carried by

counsel; and (7) a lodestar cross-check. *See, e.g., Volkswagen*, No. 2672 CRB (JSC), 2017 WL 1047834, at *1 (N.D. Cal. Mar. 17, 2017) (citing *Vizcaino*, 290 F.3d at 1048-52); *see also Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); Fitzpatrick Decl. ¶ 14 (listing factors). Each of these factors supports Class Counsel's request in this case.

A. Class Counsel obtained substantial benefits for the Class.

The benefit Class Counsel secured for the Class is the single most important factor in evaluating the reasonableness of a requested fee. *In re Bluetooth*, 654 F.3d at 942; *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). It weighs heavily in favor of approving Class Counsel's fees here.

As the Court already concluded, "the benefits available to class members are substantial, and likely to gain their attention." Dkt. No. 526 at 13; *see also* Dkt. No. 519 at 33 ("The compensation to the class is considerable. It is substantial."). That is true. The Settlement provides immediate and meaningful relief to the Class, including cash payments up to \$3,075, an emissions repair, a valuable Extended Warranty, and a guarantee that none of these benefits will be reduced by Class Counsel's attorneys' fees and costs. Economist Ted Stockton concluded that the cash compensation alone "exceed[s] economic harm suffered based on the economic overpayment model" advanced by Plaintiffs "in nearly all cases." Dkt. No. 491-3 ¶ 46 (emphasis added). It is "highly unusual" for a class action settlement to recover what is, by some measures, close to if not all of what the class could recover at trial. *See Volkswagen*, 895 F.3d 597, 610 (9th Cir. 2018). That this Settlement achieves such relief through the compromise of strongly contested claims is a remarkable result and strongly supports the requested fees.

B. The Settlement resulted from Class Counsel's zealous representation in complex and risky litigation.

This was a complex case, both factually and legally. *See, e.g.,* Dkt. No. 519 at 5:19-20 (MR. FEINBERG: . . . As Your Honor has pointed out, this has been an extraordinarily difficult, complex litigation."). The subject matter was highly technical. The claims implicated multiple defendants (foreign and domestic) in a multi-part conspiracy lasting many years. The litigation required an enormous amount of discovery, including millions of pages of documents and nearly

1 100 depositions. And the complicated legal issues spawned hundreds of pages of contested
2 briefing and expert battles.

3 It was a risky case, too. As the Court observed, “[d]ifficult issues were raised . . . on
4 Plaintiffs’ RICO claim,” “the standing issue was far from clear,” “class certification was not
5 guaranteed, particularly given the number of state law claims being brought,” and “[d]amages
6 were potentially problematic.” Dkt. No. 526 at 13-14. These are but a few of the hurdles that
7 Plaintiffs faced both at the outset of the litigation and at its resolution.

8 That Class Counsel achieved such substantial relief in the face of this complexity and risk
9 speaks to their skill, effort, and dedication to the Class.

10 This conclusion is not undermined by the presence of the government plaintiffs. In fact,
11 in many ways, their presence made both the litigation and the settlement efforts more complex.
12 See Dkt. No. 519 at 5:2-8 (recognizing complexity of global resolution given the US-CA consent
13 decree, consumer Settlement, and collateral proceedings from State Attorneys General). And,
14 though the government shared the litigation burden (at least in the case against the FCA
15 defendants), this simply is not a situation where the plaintiffs piggybacked on the efforts of
16 government counsel. Compare *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 488
17 (S.D.N.Y. 1998) and *In re VISA Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 523-
18 24 (E.D.N.Y. 2003) with *In re First Databank Antitrust Litig.*, 209 F. Supp. 2d 96, 101 (D.D.C.
19 2002). Indeed, the consumer litigation here pre-dates the government litigation, and the two have
20 moved forward collaboratively, in tandem, since consolidation. Like plaintiffs’ counsel in *In re*
21 *Gulf Oil/Cities Serv. Tender Offer Litig.*, Class Counsel cannot “be cast as jackals to the
22 government’s lion, arriving on the scene after some enforcement or administrative agency has
23 made the kill.” 142 F.R.D. 588, 597 (S.D.N.Y. 1992). Instead, Class Counsel did much of the
24 work “on their own,” and working hand-in-hand with the government, “made the kill.” *Id.*

25 Notwithstanding the above, skeptics may argue that this case was destined for success and
26 presented little risk in light of the substantial relief secured in *Volkswagen*. But *Volkswagen* was,
27 in many ways, *sui generis*. As Judge Breyer observed in that case, “*Volkswagen admit[ted]* to
28 installing and failing to disclose the defeat devices in its TDI diesel engine vehicles,”

1 Volkswagen, 2016 WL 6248426, at *10, and later pleaded guilty to criminal charges related to
 2 that offence. Defendants made no such admission here and instead mounted a staunch defense
 3 over two years of intensive litigation. Moreover, any suggestion that diesel emissions cases are
 4 simple or easy is quickly dispelled by a glance at similar lawsuits. In the wake of *Volkswagen*, at
 5 least six other diesel emissions cases have been filed across the country. *See, e.g., Counts v.*
 6 *General Motors LLC*, No. 1:16-cv-12541 (E.D. Mich.); *Bledsoe et al. v. FCA USA LLC et al.*, No.
 7 2:16-cv-14024 (E.D. Mich.); *In re: Mercedes-Benz Emissions Litigation*, 2:16-cv-00881 (D.N.J.);
 8 *Fenner v. General Motors LLC*, No. 2:17-cv-11661 (E.D. Mich.); *Gamboa v. Ford Motor Co.*,
 9 No. 2:18-cv-10106 (E.D. Mich.); *Rickman v. BMW of North America LLC*, No. 2:18-cv-04363
 10 (D.N.J.). Not one of them has been resolved, and some face dismissal.

11 Class Counsel's skilled advocacy in resolving a complex and risky case strongly supports
 12 their fee request. *See, e.g., Hanlon*, 150 F.3d at 1029 (The "complexity and novelty of issues"
 13 can justify upward departure from benchmark); *In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1450–
 14 51 (N.D. Cal. 1994) (same); Fitzpatrick Decl. ¶¶ 27-28.

15 **C. The Settlement provides significant non-monetary relief in addition to the**
 16 **cash compensation.**

17 As described above, the Settlement secures an array of benefits. Chief among them is the
 18 emissions repair that finally delivers to Class Members the emissions-compliant vehicles they
 19 thought they were buying in the first place. These repairs will mitigate future environmental
 20 harm from excess emissions, while "provid[ing] the added benefit of minimizing the potential
 21 waste" of removing the cars from the roads altogether. *See Volkswagen*, No. 2672 CRB (JSC),
 22 2017 WL 3175924, at *3 (N.D. Cal. July 21, 2017). This significant (but unquantifiable) non-
 23 monetary relief supports Class Counsel's request. *Id.*

24 So does the substantial Extended Warranty. As explained above, the value of the
 25 Extended Warranty to the Class can be, and has been, reliably calculated "within a reasonable
 26 degree of professional certainty" by economist Kirk Kleckner, whose valuations have been
 27 accepted and relied upon in a number of large automotive class actions. *See* Dkt. No. 491-4 at 1-
 28 5 (outlining his methodology); *see also, e.g., In re Volkswagen & Audi Warranty Extension Litig.*,

89 F. Supp. 3d 155, 169 (D. Mass. 2015) (accepting Kleckner’s warranty valuations); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 810ML02151JVSFMOX, 2013 WL 12327929, at *9 n.10 (C.D. Cal. July 24, 2013) (finding Kleckner’s warranty valuation to be “both reliable and relevant”); *In re: Takata Airbags Products Liability Litigation*, Case No. 15-MD-2599 (S.D. Fla.), Dkt. No. 2162 (order granting motion for final approval of BMW settlement, supported by Dkt. No. 2033-2, declaration of Kirk Kleckner on warranty valuation), Dkt. No. 2385 (order granting motion for final approval of Honda and Nissan settlements, supported by Dkt. No. 2256-4, declaration of Kirk Kleckner on warranty valuation); Dkt. No. 3121 (order denying motion to exclude testimony of Kirk Kleckner on warranty valuation). Thus, for fee-setting purposes, the warranty value is most properly considered as part of the fund secured by the Settlement. *Staton*, 327 F.3d at 974 (When “accurately ascertained,” the value of “injunctive relief” is included “as part of the value of a common fund for purpose of applying the percentage method of determining fees.”). If the Court were inclined not to consider it in the Settlement valuation, however, this significant non-monetary relief would—at a minimum—strongly support a fee award of 17.7% of the remaining fund. *Cf. Pan v. Qualcomm Inc.*, No. 16-CV-01885-JLS-DHB, 2017 WL 3252212, at *12 (S.D. Cal. July 31, 2017) (concluding that “substantial” non-monetary relief *that could not be accurately valued* supported fee award of nearly 30%).

D. Class Counsel’s requested fee percentage falls well below the benchmark and compares favorably to awards in similarly valued settlements.

As detailed above, Class Counsel’s request reflects only 9.6% of the full value of the constructive common fund. This is the appropriate valuation, especially given the incentive structures created by this particular settlement. *See Boeing*, 444 U.S. at 479-81; *Williams*, 129 F.3d 1027 (9th Cir. 1997). Even under the most conservative approaches, however, the percentage would rise to only 13% (reducing the compensation by 15% and the warranty by 50%) or, at most, 17.7% (removing the warranty altogether). All of these percentages fall well below the 25% benchmark as well as the mean and median percentages awarded across the country and

1 in this Circuit—which, depending on the study, range from 23.9% to 29%. Fitzpatrick Decl.
2 ¶¶ 23-26 (discussing several empirical studies calculating mean and median percentages).

3 Still, as this Court observed, percentage awards in “megafund” settlements like this one
4 skew lower. Dkt. No. 526 at 14-15; *Alexander v. FedEx Ground Package Sys., Inc.*, No. 05-CV-
5 00038-EMC, 2016 WL 3351017, at *2 (N.D. Cal. June 15, 2016). But even among megafund
6 settlements, Class Counsel’s request is perfectly ordinary and reasonable. Indeed, Professor
7 Fitzpatrick’s empirical analysis reveals that the mean and median awards in settlements between
8 \$250 and \$500 million are 17.8% and 19.5%, respectively—both of which exceed even the most
9 conservative calculation of the percentage requested here. Fitzpatrick Decl. ¶ 23.

10 It is true, as Judge Koh recently observed, that Professor Fitzpatrick’s database included
11 only 8 settlements over two years. *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-
12 LHK, 2015 WL 5158730, at *13 (N.D. Cal. Sept. 2, 2015). For this reason, Judge Koh was more
13 persuaded by a study that included more data points (68) over a longer time (1993 to 2008) and
14 concluded that the mean and median in settlements exceeding \$175.5 million were 12% and
15 10.2%, respectively. *Id.* (citing Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and*
16 *Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical Legal Stud. 248, 265 (2010)
17 (“Eisenberg-Miller 2010”)). But, as Professor Fitzpatrick notes, the Eisenberg-Miller 2010 study
18 included settlements in the billions of dollars and, because those settlements yielded by far the
19 lowest percentages, the mean and median that resulted are not tailored to, and likely not reflective
20 of, settlements comparable to this one. Fitzpatrick Decl. ¶ 24.

21 Furthermore, new data have emerged since *In re High Tech* that confirm Professor
22 Fitzpatrick’s initial conclusions for similarly-valued settlements. Specifically, Professor William
23 Rubenstein has reported that his database includes an additional 11 settlements over a six-year
24 period valued between \$300 and \$600 million. *Id.* ¶ 26. The mean and median percentages
25 awarded in that group were 17.6% and 17.9%—results that were “almost completely
26 synchronous” with Professor Fitzpatrick’s study. *Id.* Furthermore, Eisenberg & Miller published
27 an updated analysis of 458 cases, 45 of which fell into the highest tranche (above \$67.5 million).
28 See Eisenberg-Miller 2017, 92 N.Y.U. L. Rev. at 940, 948. The average percentage awarded in

1 those cases was 22.3%, and, as Judge Wilken observed, “21% was the midpoint for fees where
 2 the recovery exceeded \$100 million.” *In re NCAA*, 2017 WL 6040065, at *2 (citing Eisenberg-
 3 Miller 2017, 92 N.Y.U. L. Rev. at 947, and awarding class counsel 20% of \$208.7 million
 4 recovery).

5 Thus, no matter how you slice it, Class Counsel’s requested fees are significantly below or
 6 (at worst) in line with the average awards in similarly-valued megafund settlements. This factor,
 7 too, supports Class Counsel’s request.

8 **E. Class Counsel carried considerable financial burden in prosecuting this**
 9 **complex litigation.**

10 It is an established practice to reward attorneys who assume representation on a contingent
 11 basis to compensate them for the risk that they might be paid nothing at all. *See In re Wash. Pub.*
 12 *Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994). Such a practice encourages the
 13 legal profession to assume such a risk and promotes competent representation for plaintiffs who
 14 could not otherwise hire an attorney. *Id.* Class Counsel devoted tens of thousands of hours and
 15 advanced whatever expenses were necessary to see this case through to a successful outcome, all
 16 with no guarantee of reimbursement. Cabraser Decl. ¶¶ 3, 17, 28. In so doing, Class Counsel
 17 turned down opportunities to work on other cases to devote the appropriate amount of time,
 18 resources, and energy necessary to responsibly handle this complex case.

19 The demands of the case were high. Class Counsel made the accelerated pace and parallel
 20 settlement and litigation tracks each an important priority. The Court directed it, and the case
 21 deserved it. This factor further supports Class Counsel’s request.

22 **F. A lodestar cross-check confirms the requested fees are reasonable.**

23 Courts in this Circuit sometimes employ a “streamlined” lodestar analysis to “cross-
 24 check” the reasonableness of a requested award. *See, e.g., Vizcaino*, 290 F.3d at 1050 (“[W]hile
 25 the primary basis of the fee award remains the percentage method, the lodestar may provide a
 26 useful perspective on the reasonableness of a given percentage award.”); Dkt. No. 526 (endorsing
 27 the cross-check for megafund cases). As explained below and in the accompanying Cabraser
 28

Declaration,¹⁰ the cross-check reveals that, under the circumstances of this case, Class Counsel worked a reasonable number of hours billed at reasonable rates. The resulting lodestar yields a modest multiplier of 1.36 for work performed to date and 1.17 including time anticipated for the on-the-ground work necessary to implement, oversee, and protect this Settlement over the next two-plus years. Either multiplier is well below the average in comparable cases and justified by the significant results achieved. Fitzpatrick Decl. ¶¶ 34-35.

1. Class Counsel expended a reasonable number of hours advancing this complex and hard-fought litigation.

As summarized above, this case was intensively litigated from its inception. *See, e.g.*, Background § I, *supra*; Cabraser Decl. ¶¶ 3-11. To effectively prosecute this case, Class Counsel engaged in extensive discovery that included hundreds of discovery requests (many of which were disputed and litigated), nearly 100 depositions, and the strategic review and analysis of more than 4 million pages of documents. *Id.* They also engaged in complex and extremely robust briefing on several dispositive motions and class certification. *Id.* At the same time, they were simultaneously preparing for trial and participating in complex, multi-party settlement

¹⁰ The Cabraser Declaration includes, among other information: (1) the total common benefit hours billed, lodestar incurred, and blended average billing rate for each of the 19 category codes identified in PTO 4; (2) the total common benefit hours billed, lodestar incurred, and blended average billing rate for each of the ten non-PSC participating counsel firms, along with a description of the work performed by those firms; (3) the total common benefit hours billed, lodestar incurred, range of billing rates, and blended average billing rates for each category of timekeeper (Partner, Associate, Non-Partner-Track Attorney, and other professional); and (4) a list of all attorney timekeepers' law schools and graduation years, timekeeper designation, and rates billed. This detailed declaration comports with the Court's directives in PTO 4 and this District's Procedural Guidance for Class Action Settlements. *See Procedural Guidance, Attorneys' Fees* ("Declarations of class counsel as to the number of hours spent on various categories of activities related to the action by each biller, together with hourly billing rate information may be sufficient, provided that the declarations are adequately detailed."); *see also Volkswagen*, 2017 WL 1047834, at *5, n.5 (finding that class counsel had complied with similar pretrial order and overruling objection that more lodestar information was necessary in similar fee application because "it is well established that '[t]he lodestar cross-check calculation need entail neither mathematical precision nor bean counting . . . [courts] may rely on summaries submitted by the attorneys and need not review actual billing records.'") (quoting *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 264 (N.D. Cal. 2015)). Class Counsel are nevertheless prepared to submit detailed copies of the tens of thousands of individual time entries, should the Court wish to engage in a line-by-line review.

1 negotiations. *Id.* The Settlement that resulted from this work provides substantial relief to the
2 Class.

3 In furtherance of these common benefit efforts, among many others, Class Counsel
4 worked 95,951.4 hours. Based on the work required in defending and implementing other
5 automotive class settlements, Class Counsel estimates that approximately 15,000 more hours will
6 be necessary for the on-the-ground efforts to finalize, implement, and protect the Settlement over
7 the next two-plus years. This will include, for example, work required to (1) obtain final approval
8 of the Settlement; (2) protect the Settlement on appeal (if any appeals are lodged); and (3) oversee
9 and help implement the Settlement over the two-year Settlement Benefit Period, which will
10 include, among other things, (a) responding to inquiries from many of the more than 100,000
11 class members, and (b) participating in the detailed, claim-by-claim review process for the Claims
12 Review Committee. *See* Cabraser Decl. ¶ 18.

13 This is a lot of time but, as noted above, a lot was (and remains to be) accomplished.
14 Moreover, Professor Rubenstein’s database reveals that the average number of hours worked in
15 cases settling in the \$300 million to \$600 million range is 137,906. Fitzpatrick Decl. ¶ 34. Thus,
16 even including the time projected for the next few years, Class Counsel’s hours are below
17 average, and justified under the facts of this case.

18 **2. Class Counsel billed reasonable rates for those hours.**

19 The blended average billing rate for the work described above is approximately \$453 per
20 hour. Cabraser Decl. ¶ 17.¹¹ This rate is reasonable and, if anything, on the low side given the
21 skill, experience, and reputation of Class Counsel—all of whom were appointed through a
22 competitive leadership application process. *See, e.g., Volkswagen*, No. 2672 CRB (JSC), Dkt.
23 No. 3396-2 (Rubenstein Declaration) ¶ 29 (N.D. Cal. June 30, 2017) (noting that the average
24 blended rate of 40 class action settlements approved in this District in 2016 and 2017 was

25 _____
26 ¹¹ Although PTO 4 authorizes Class Counsel to “seek an award of fees based on their hourly rate
27 at the time a settlement or judgment is reached to account for the delay in payment,” to be
28 conservative, the billing rates used for this application are the historical, “then-present” rates
recorded in the monthly time reports submitted to Lead Counsel since 2017. *See* Dkt. No. 181
at 8.

1 \$528.11 per hour); *Volkswagen*, 2017 WL 1047834, at *5 (approving blended average billing rate
2 of \$529 per hour in analogous litigation).

3 **3. Class Counsel’s performance and the results achieved justify a**
4 **reasonable lodestar multiplier.**

5 The Ninth Circuit *requires* an upward multiplier when certain risk factors are present and
6 authorizes a multiplier for certain “reasonableness” factors, including the quality of
7 representation, the complexity of the issues presented, and most importantly, the benefit obtained
8 for the class. *See, e.g., Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016); *Kerr v. Screen*
9 *Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975); *In re Bluetooth*, 654 F.3d at 942). As this
10 Court recently observed, a typical multiplier in megafund cases is “3 or less.” *Alexander*, 2016
11 WL 3351017, at *3. The data bear this out. The Eisenberg-Miller 2017 study, for example,
12 found that the average multiplier in cases valued over \$67.5 million (the highest decile in that
13 study) was 2.72. Eisenberg-Miller 2017 at 967. Other studies are in accord, and some report
14 even higher averages. *See, e.g., Fitzpatrick Decl.* ¶ 35 (noting that Professor Rubenstein found an
15 average multiplier of 2.75 in his database of class actions in the \$300 to \$600 million range); *id.*
16 (reporting that Fitzpatrick’s empirical study found an average multiplier of 3.37 for settlements
17 between \$250 million and \$500 million).

18 Thus, Class Counsel’s requested multiplier—1.17 with anticipated future time and 1.36
19 without—is, at worst, half the average multiplier awarded in comparably valued cases. This
20 result is more than justified by the complexity and results of this case.

21 **IV. Class Counsel’s Expenses are Reasonable and Appropriate.**

22 “Class counsel are entitled to reimbursement of reasonable out-of-pocket expenses.”
23 *Wakefield v. Wells Fargo & Co.*, No. 3:13-cv-05053 LB, 2015 WL 3430240, at *6 (N.D. Cal.
24 May 28, 2015); *see also Staton*, 327 F.3d at 974; Fed. R. Civ. P. 23(h). This includes expenses
25 that are reasonable, necessary, directly related to the litigation, and normally charged to a fee-
26 paying client. *See, e.g., Willner v. Manpower Inc.*, No. 11-cv-02846-JST, 2015 WL 3863625, at
27 *7 (N.D. Cal. June 22, 2015); *Buccellato v. AT&T Operations, Inc.*, No. C10-00463-LHK, 2011
28 WL 3348055, at *2 (N.D. Cal. June 30, 2011).

1 Here, Class Counsel seek \$7,000,000 in litigation expenses, which includes \$6,041,614.94
2 already expended by Lead Counsel, all PSC firms, and numerous other firms designated by lead
3 counsel to advance the common benefit pursuant to the terms of PTO 4. Cabraser Decl. ¶¶ 28-30
4 (breaking out the costs across the 19 Court-approved categories). It also includes approximately
5 \$958,000 that Class Counsel are responsibly reserving to cover the anticipated costs associated
6 with the on-the-ground administration and implementation efforts over the next several years. *Id.*
7 Seven million dollars is a lot of money, but, at 1.1% to 2.1% of the constructive common fund
8 (depending on how the fund is valued), it is in line with (or less than) than the average costs
9 awarded in class action settlements. Fitzpatrick Decl. ¶ 37 (citing studies finding that the average
10 costs ranged from 2.7% to 3.9% of settlement value).

11 More importantly, these costs are commensurate with the stakes, complexity, and intensity
12 of this particular litigation. They include, for example, approximately \$2.3 million to employ
13 technical experts on emissions system functionality, testing processes, software programming and
14 code analysis as well as several litigation experts—including four who were presented with the
15 class certification briefing—on topics ranging from marketing to classwide damages
16 methodologies. *See* Cabraser Decl. ¶¶ 28-31. They also include, among other costs detailed in
17 the Cabraser Declaration, approximately \$1.3 million to satisfy Class Counsel’s joint obligations
18 to cover the fees and costs Court-appointed Settlement Master, *see* Dkt. No. 184 ¶ 7; and
19 \$734,954.14 for the eDiscovery services and document processing platform, necessary for
20 processing, maintaining, and analyzing the millions of pages of documents produced in this case.

21 No doubt, this case was expensive to prosecute. But, as other courts have recognized,
22 “Class Counsel had a strong incentive to keep expenses at a reasonable level due to the high risk
23 of no recovery when the fee is contingent.” *Beesley v. Int’l Paper Co.*, No. 3:06-CV-703-DRH-
24 CJP, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014). This is true, and Class Counsel expended
25 only that which they believed was necessary to advance the interests of the Class. The requested
26 costs are reasonable and should be reimbursed.

V. **The Settlement Class Representatives Have Earned, and Public Policy Supports, the Requested Service Awards.**

Class Counsel request service awards of \$5,000 for each of the 60 proposed Settlement Class Representatives (see Dkt. No. 491-6), which, if awarded, will be paid in addition to the benefits available to the Class. Dkt. No. 508 ¶ 15.2. This Court has already observed that \$5,000 is the “presumptive incentive award in this District” and concluded that this request is “reasonable” here. Dkt. No. 526 at 15. This conclusion is well supported. *See, e.g., In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (affirming awards of \$5,000); *In re Mego*, 213 F.3d at 463 (same); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. 1917, 2016 WL 4126533, at *11 (N.D. Cal. Aug. 3, 2016) (“An incentive award of \$5,000 is presumptively reasonable. . . .”); *In re NCAA*, 2017 WL 6040065, at *11 (awarding \$20,000 where, as here, “the class representatives spent a significant amount of time assisting in the litigation of this case, in preparing for and having their depositions taken, in searching for and producing documents that spanned many years, and in conferring with counsel throughout the litigation”). The Settlement Class Representatives worked hard to protect the interests of the Class by, among other things, responding to written discovery requests; searching for and producing documents; preparing for, traveling to, and sitting for lengthy depositions; and regularly communicating with counsel to stay abreast of and monitor the developments in this litigation. *See* Dkt. No. 491-1 ¶¶ 11-15. They have earned the modest service awards requested.

CONCLUSION

For the foregoing reasons, Settlement Class Representatives and Settlement Class Counsel respectfully request that the Court confirm the certification of the Settlement Class and appointment of Settlement Class Counsel and Class Representatives; grant final approval to the Settlement; award \$59 million in attorneys’ fees and \$7 million in costs to be allocated by Lead Counsel among the PSC firms and additional counsel performing work under Pretrial Order Nos. 3 and 4; and approve service awards of \$5,000 to each Settlement Class Representative.

1 Dated: March 11, 2019

Respectfully submitted,

2 LIEFF CABRASER HEIMANN & BERNSTEIN,
3 LLP

4 By: /s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

5 Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
6 San Francisco, CA 94111-3339
Telephone: 415.956.1000
7 Facsimile: 415.956.1008
8 E-mail: ecabraser@lchb.com

9 *Plaintiffs' Lead Counsel and Chair of the Plaintiffs'*
Steering Committee

10 Roland K. Tellis
11 BARON & BUDD, P.C.
15910 Ventura Boulevard, Suite 1600
12 Encino, CA 91436
Telephone: 818.839.2320
13 Facsimile: 818.986.9698
E-mail: rtellis@baronbudd.com

W. Daniel ("Dee") Miles, III
14 BEASLEY, ALLEN, CROW, METHVIN, PORTIS
& MILES P.C.
218 Commerce Street
15 Montgomery, AL 36104
Telephone: 800.898.2034
16 Facsimile: 334.954.7555
E-mail: dee.miles@beasleyallen.com

15 Lesley E. Weaver
BLEICHMAR FONTI & AULD, LLP
555 12th Street, Suite 1600
16 Oakland, CA 94607
Telephone: 415.445.4003
17 Facsimile: 415.445.4020
E-mail: lweaver@bfalaw.com

David S. Casey, Jr.
18 CASEY GERRY SCHENK FRANCAVILLA
BLATT & PENFIELD LLP
110 Laurel Street
San Diego, CA 92101-1486
19 Telephone: 619.238.1811
Facsimile: 619.544.9232
E-mail: dcasey@cglaw.com

19 Steve W. Berman
20 HAGENS BERMAN
1918 8th Avenue, Suite 3300
Seattle, WA 98101
21 Telephone: 206.623.7292
Facsimile: 206.623.0594
22 E-mail: steve@hbsslw.com

Lynn Lincoln Sarko
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
23 Telephone: 206.623.1900
Facsimile: 206.623.3384
E-mail: lsarko@kellerrohrback.com

23 Joseph F. Rice
24 MOTLEY RICE, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29464
25 Telephone: 843.216.9000
Facsimile: 843.216.9450
26 E-mail: jrice@motleyrice.com

Rachel L. Jensen
ROBBINS GELLER RUDMAN & DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 98101
27 Telephone: 619.231.1058
Facsimile: 619.231.7423
E-mail: rachelj@rgrdlaw.com

Stacey P. Slaughter
ROBINS KAPLAN LLP
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402
Telephone: 612.349.8500
Facsimile: 612.339.4181
E-mail: sslaughter@robinskaplan.com

Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I hereby certify that, on March 11, 2019, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

Elizabeth J. Cabraser (State Bar No. 083151)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
Email: ecabraser@lchb.com

Plaintiffs' Lead Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CHRYSLER-DODGE-JEEP
ECODIESEL® MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

This Document Relates to:

ALL ACTIONS

Case No. 3:17-md-02777-EMC

**DECLARATION OF ELIZABETH J.
CABRASER IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ATTORNEYS' FEES AND COSTS UNDER
FED. R. CIV. P. 23(e), 23(h), AND PRETRIAL
ORDER NOS. 3 AND 4**

The Honorable Edward M. Chen

1 I, ELIZABETH J. CABRASER, declare:

2 1. I am an attorney admitted to the Bars of the State of California and the Northern
3 District of California. I am counsel of record for the Plaintiffs in these proceedings, and serve,
4 pursuant to Pretrial Order No. 3: Order Appointing Plaintiffs' Lead Counsel, Plaintiffs' Steering
5 Committee and Government Coordinating Counsel (Dkt. No. 173), as Lead Plaintiffs' Counsel. I
6 respectfully submit this Declaration in support of the Motion for Final Approval of Class Action
7 Settlement and for Attorneys' Fees and Costs Under Fed. R. Civ. P. 23(e), 23(h) and Pretrial
8 Order Nos. 3 and 4. I have personal knowledge of the facts set forth herein and, if called as a
9 witness, I could and would testify competently to them.

10 2. I have served as Lead Counsel for Plaintiffs and the proposed Class in this
11 consolidated MDL litigation since July 2017. In this position, I have had a primary role in
12 devising the litigation and settlement strategies for the Class, supervising the Plaintiffs' Steering
13 Committee ("PSC") and other authorized common benefit counsel, and have been actively and
14 personally involved in prosecuting and resolving the litigation.

15 **Litigation History**

16 3. Prosecution of this complex, multi-party litigation required an enormous amount
17 of work, effort, and expense by the PSC members and their respective law firms. Throughout this
18 litigation, the PSC devoted whatever resources were necessary to see it through to a successful
19 outcome.

20 4. The Parties conducted extensive discovery in this case, facilitated by early
21 negotiation of comprehensive expert, deposition, preservation, confidentiality, and Electronically
22 Stored Information (ESI) protocols. As a result, a significant number of documents were
23 produced to the PSC very early in the litigation.

24 5. Class Plaintiffs also served FCA with 37 interrogatories, 130 document requests,
25 and 188 requests for admission; and served Bosch with 45 interrogatories, 56 document requests,
26 and 34 requests for admission. To actively pursue a useful, informative, and meaningful response
27 to these requests, Class Counsel conducted extensive negotiations with both FCA and Bosch
28

1 regarding the identification of document custodians, the use of search terms, the completeness of
2 discovery requests, and deposition scope and scheduling.

3 6. In all, by the time the Parties reached a proposed resolution, the Defendants had
4 produced approximately 5.28 million pages of electronically stored information, and the PSC had
5 analyzed, categorized, and coded approximately 4.05 million of those pages (excluding duplicate
6 documents from the review), many of which were in German and Italian and required careful
7 translation. This necessitated around-the-clock efforts to understand the nature of the claims
8 and—critically—to identify evidence that could be used to support those claims, both for class
9 certification and for trial.

10 7. The discovery efforts in this case also included, among many other tasks, nearly
11 100 depositions over the course of 18 months. Class Counsel took 31 depositions, including 26
12 witnesses from FCA, three witnesses from Bosch, and depositions of two experts submitted in
13 support of Defendants’ Opposition to Plaintiffs’ Motion for Class Certification. They also
14 defended the depositions of 62 named plaintiffs and proposed Settlement Class representatives as
15 well as depositions of Plaintiffs’ four class certification experts.

16 8. The drafting and briefing in this case was extensive. Shortly after the case was
17 consolidated, the PSC set to work drafting the 365-page Consolidated Consumer Class Action
18 Complaint (Dkt. No. 186) that alleged detailed claims under the Racketeer Influenced Corrupt
19 Organizations Act (“RICO”), the Magnusson-Moss Warranty Act (“MMWA”), common law
20 fraud, and the consumer protection and warranty laws of all 50 states. Plaintiffs amended the
21 complaint two months later to add additional plaintiffs and allegations (Dkt. No. 225).

22 9. The parties then briefed the first round of motions to dismiss, which included more
23 than 200 pages of briefing and, after a lengthy oral argument, resulted in a 129-page order (Dkt.
24 No. 290) that largely upheld Plaintiffs’ claims. The PSC then drafted the second amended
25 complaint which added approximately 30 pages of detailed factual allegations (and amended
26 many of the state law claims) based on the documents analyzed and depositions taken at that time.
27 The second round of motions to dismiss followed—this one even more intense than the last. In
28

1 all, the parties submitted 14 briefs relating to this second round and argued the motions during
2 two long hearings.

3 10. While this was ongoing, Plaintiffs also moved to certify a nationwide class and
4 subclasses for all 50 states. The Parties' class certification submissions included thousands of
5 pages of complex briefing, exhibits, trial plans, and expert reports. The PSC deposed both of
6 Defendants' experts and defended the depositions of all four of Plaintiffs' experts; the Parties
7 engaged in significant, technical *Daubert* motion practice; and both sides prepared to present their
8 arguments in what Defendants had argued should be a multi-day class certification hearing.

9 11. These are but some of the efforts that the PSC expended to litigate the case
10 zealously and efficiently to address the ongoing economic and environmental harm posed by the
11 over-polluting EcoDiesel vehicles each day they were on the roads without a fix.

12 **Settlement History**

13 12. Settlement negotiations in this action commenced soon after the Court's
14 appointment of Lead Counsel and the Settlement Master in July 2017, in parallel with active
15 litigation, including intensive discovery and motion practice, as described above.

16 13. Lead Counsel and the PSC's settlement working group engaged in extraordinarily
17 complex arm's-length settlement negotiations with FCA and Bosch, in coordination with the DOJ
18 and California AG attorneys (who represented the EPA and CARB, respectively), as well as a
19 group of the remaining 49 attorneys general, in an effort to resolve the consumer claims alongside
20 the government settlements. Throughout the process, the settlement working group pushed FCA
21 hard on two fronts: first, to provide significant cash compensation to the class members, and
22 second, to offer a broad and detailed extended warranty to protect them from any future problems
23 caused by the emissions fix. The Parties communicated regularly with the Settlement Master
24 alone and in various combinations, in briefings, meetings, and formal negotiation sessions over
25 many days and on both coasts.

26 14. The class and government settlements provisions are interlocking; together they
27 interact to achieve far more than any could alone. Compensation to the Class not only provides
28 recovery of damages, but incentivizes participation in the repair program at the highest level.

1 Consumers' economic recovery is the engine maximizing environmental mitigation. Economic
2 and environmental benefits combine to promote consumer protection and restorative justice.

3 **Time and Expense Submission**

4 15. Pursuant to PTO 4, each PSC firm, as well as other Participating Counsel
5 authorized by Lead Counsel to perform work common benefit work, submitted monthly time and
6 expense reports to Lead Counsel. Attorneys and staff working at my direction and under my
7 supervision collected, reviewed, and (using best reasonable efforts) audited these common benefit
8 submissions, and have maintained a database of all submitted time and expenses.

9 16. Only time and expenses that inured to the benefit of the Class and that advanced
10 the claims resolved in the Class Action Settlement have been included in the time and costs
11 presented in Class Counsel's fee motion.

12 **Hours Incurred and Rates Billed**

13 17. In furtherance of the work described above, among other tasks and responsibilities,
14 Participating Counsel have incurred 95,951.4 hours of common benefit time. The lodestar
15 resulting from those hours is \$43,408,817.90, and the blended average billing rate is \$452.40.
16 Using this time alone, the lodestar multiplier resulting from Class Counsel's fee request is 1.36.

17 18. However, even more work will be required to (1) obtain final approval of the
18 Settlement; (2) protect the Settlement on appeal (if any appeals are lodged); and (3) oversee and
19 help implement the Settlement over the two-year Settlement Benefit Period, which will include,
20 among other things, (a) responding to inquiries from many of the more than 100,000 class
21 members, and (b) participating in the detailed, claim-by-claim review process for the Claims
22 Review Committee ("CRC") to resolve any disputes regarding Class Member eligibility and
23 Settlement benefits. As a point of reference, in the similarly-structured *Volkswagen* settlements,
24 Class Counsel responded to tens of thousands of class member inquiries, reviewed approximately
25 6,400 CRC appeals, and have incurred approximately 40,000 hours and \$18 million in lodestar to
26 date in post-approval work, which will continue into 2020.

27 19. Given the smaller class size and somewhat simpler claims process here, I
28 anticipate that Settlement Class Counsel here will incur approximately \$7,000,000 in lodestar

(approximately 15,000 hours) to finalize, protect, and implement the Settlement over the next two-plus years. This brings the total lodestar to \$50,408,817.90, and yields a multiplier of 1.17.

20. The hours and lodestar incurred, as well as the blended average billing rate, for each of the 19 category codes designated in PTO 4 and the “reserved” or projected time described above, are detailed in Table 1 below. Although PTO 4 authorizes Class Counsel to “seek an award of fees based on their hourly rate at the time a settlement or judgment is reached to account for the delay in payment,” to be conservative, the billing rates used in this Declaration are the historical, “then-present” rates recorded in the monthly time reports submitted to Lead Counsel. See PTO 4 at 8.

Table 1

Lodestar and Rates by PTO 4 Category			
PTO 4 Category	Total Hours	Total Lodestar	Blended Average Rate
1 - Lead Counsel Calls/Meetings	124.2	\$104,096.50	\$838.14
2 - PSC Calls/Meetings	187.1	\$141,120.50	\$754.25
3 - Lead Counsel/PSC Duties	4,757.3	\$2,509,792.00	\$527.57
4 - Administrative	1,878.1	\$678,260.50	\$361.14
5 - MDL Status Conf.	619.5	\$463,059.00	\$747.47
6 - Court Appearance	478.9	\$364,733.00	\$761.61
7 - Research	1,745.0	\$828,396.00	\$474.73
8 - Discovery	7,131.0	\$3,491,541.50	\$489.63
9 - Doc. Review & Analysis	51,617.7	\$19,931,427.00	\$386.14
10 - Litigation Strategy & Analysis	1,226.3	\$803,105.00	\$654.90
11 - Dep. Prep/Take/Defend	9,712.8	\$4,770,852.00	\$491.19
12 - Pleadings/Briefs/pretrial Motions/Legal	9,821.0	\$5,057,716.90	\$514.99
13 - Science	922.5	\$617,394.00	\$669.26
14 - Experts/Consultants	1,991.7	\$1,148,469.50	\$576.63
15 - Settlement	3,444.8	\$2,329,016.00	\$676.10
16 - Trial Prep/Bellwether	220.6	\$132,931.50	\$602.59
17 - Trial	-	-	-
18 - Appeal	-	-	-
19 - Miscellaneous	72.9	\$36,907.00	\$506.27
Subtotal	95,951.4	\$43,408,817.90	\$452.40
Reserved	15,472.9	\$7,000,000.00	\$452.40
Total	111,424.3	\$50,408,817.90	\$452.40

1 21. Each category is described in PTO 4. A few merit additional discussion. The
2 PSC's document analysis, for example, comprises a significant portion of the total hours billed.
3 This work was critical to the litigation efforts and encompassed much more than simple "doc
4 review," as some (improperly) understand that term. To begin the process, the PSC first
5 established a detailed, 10-page document review protocol and nuanced coding panel with dozens
6 of fields (relating, for example, to the specific corporate defendant, vehicle type, emissions
7 system component, AECD, etc.). The PSC then spent significant time training all attorneys
8 analyzing produced documents in the details of the case and the coding panel to ensure the
9 categorization was as efficient and useful as possible. Those attorneys then carefully reviewed,
10 coded, and annotated more than 4 million pages of documents, many of which were in Italian and
11 German and/or highly technical in nature.

12 22. Additional layers of review and analysis were also necessary both for quality
13 control and to create a "cast of characters" (identifying the key players in the scheme and their
14 relationship to one another and the entities), an "acronym key" (necessary to interpreting the
15 complex and jargon-filled technical documents), a "hot document" report (including key
16 information about critical documents) and a "chronology" (weaving the documents into a
17 chronological, narrative format). Those reports, as well as the coding panel and training
18 documents, were updated regularly and circulated to all attorneys engaging in document analysis
19 as part of the ongoing and iterative process to ensure the review remained focused and efficient.
20 The reports listed above (cast of characters, acronym key, hot document report, and chronology)
21 were also used extensively in the litigation for the purpose of: (1) crafting additional discovery
22 requests; (2) amending the consolidated complaint; (3) supporting the class certification briefing
23 and experts; (4) identifying deponents; (5) preparing deposition outlines; and (6) assisting
24 settlement efforts and presentations. At the end of the day, nearly seven hundred produced
25 documents—including critical emails and memos that helped Plaintiffs understand the nuanced
26 relationship between the alleged AECDs and linked them to the Defendants' internal fuel
27 economy and performance goals—were introduced in a deposition or cited in a filed brief or
28 pleading.

23. This was a very significant undertaking, but—as should be evident from the description above—it was necessary to effectively prosecute the case. As a point of comparison, in the Volkswagen/Bosch “Clean Diesel” litigation, the PSC expended almost three times as many hours (in part because there were more documents to analyze). Moreover, here, Class Counsel capped the billing rate for document analysis at \$415/hour regardless of the customary billing rate of the reviewing attorney.

24. Significant hours were also expended for deposition work and legal briefs and pleadings. As noted above, however, the PSC took and defended nearly 100 depositions all around the country. Tasks related to these depositions included, among others: (1) identifying potential deponents, (2) conducting thorough research to identify, analyze, and distill complex documents relevant to each deposition, (3) drafting and refining outlines and other preparation efforts, (4) preparing the class member and expert witnesses in advance of the depositions, (5) traveling to and from depositions around the country, (6) taking or defending the depositions, and (7) reviewing and analyzing deposition transcripts.

25. In addition to the ten Court-designated PSC firms, Lead Counsel authorized ten other firms to perform common benefit work under the terms of PTO 4. The majority of these non-PSC Participating Counsel firms assisted PSC firms in retaining named plaintiffs and proposed Class Representatives, and working with those plaintiffs to (1) provide regular updates regarding the litigation, (2) respond to written discovery requests, including collecting and producing documents, and (3) prepare for and participate in depositions. In addition, attorneys from Bailey Glasser LLP, a PSC firm in the *Volkswagen* litigation, provided significant assistance in technical analysis and expert work, aided by their relationship with the experts at West Virginia University who helped uncover the diesel emissions fraud in *Volkswagen*. Kopelowitz Ostrow Ferguson Weiselberg Gilbert also provided an attorney to assist in document analysis efforts. The non-PSC Participating Counsel firms, and their hours, lodestar, and blended average rates are listed in Table 2 below:

Table 2

Non-PSC Participating Counsel Lodestar and Rates By Firm			
Non-PSC Participating Counsel Firm	Total Hours	Total Lodestar	Blended Average Rate
Bailey Glasser LLP	1,206.4	\$777,609.00	\$644.57
Bilbo Law Office	99.5	\$38,250.00	\$384.42
Branstetter, Stranch & Jennings, PLLC	386.3	\$235,989.00	\$610.90
Goldenberg Schneider, LPA	74.8	\$40,091.00	\$535.98
Gordon & Partners	215.2	\$116,584.00	\$541.75
Kopelowitz Ostrow Ferguson Weiselberg Gilbert	1,683.9	\$659,910.00	\$391.89
Law Office of Peter Fredman	24.1	\$13,905.00	\$576.97
Mastando & Artrip LLC	87.7	\$54,812.50	\$625.00
The Dampier Law Firm, P.C.	101.6	\$59,436.00	\$585.00
Turke & Strauss LLP	354.0	\$122,190.00	\$345.17
Total	4,233.5	\$2,118,776.50	\$500.48

26. In Table 3, below, I provide the hours worked, lodestar incurred, range of billing rates, and average blended billing rates for each of the timekeeper categories.

Table 3

Lodestar and Rates By Timekeeper Category				
Timekeeper Category	Total Hours	Total Lodestar	Billing Range	Blended Average Rate
Partner	15,905.9	\$11,756,592.80	\$400 – \$1,400	\$739.13
Associate	16,474.7	\$7,490,372.10	\$300 – \$695	\$454.66
Non-Partner-Track Attorney	55,371.3	\$21,551,390.00	\$290 – \$470	\$389.22
Paralegals and Other Professionals	8,199.5	\$2,610,463.00	\$75 – \$390	\$318.37
Total	95,951.4	\$43,408,817.90		\$452.40

27. The categories used above differ slightly from those listed in PTO 4, which identifies Partners, Associates, Contract Attorneys, and Paralegals. This is because the label “contract attorney” is inaccurate in that it does not capture the full range of attorneys who are neither partners nor associates on a traditional partner track. Thus, for the purpose of this Declaration, I label such attorneys “Non-Partner-Track.” This designation includes some

1 traditional “contract attorneys” who are hired (either through an agency or directly by
 2 Participating Counsel) only for work on a specific case. Using such attorneys can be vitally
 3 important when plaintiffs’ firms in the business of contingency representation are required to
 4 quickly “staff up” to meet the needs of a particular case. Given the complexity of this case, the
 5 intensity of the litigation, and the scope of the document production, this was necessary here.
 6 However, the majority of the Non-Partner-Track attorneys who participated in this case are more
 7 appropriately considered “staff attorneys” (the labels vary by firm). These are full-time
 8 employees of the PSC firms who receive salaries, vacation time, health insurance, office space,
 9 and other benefits. There are many reasons why these attorneys choose non-partner-track
 10 positions (e.g., more flexible hours, potentially less demanding workloads, etc.), but this does not
 11 change the fact that they are skilled, experienced, and well-credentialed lawyers who perform the
 12 same type and quality of work as partner-track associates (and even partners). This is confirmed,
 13 in part, by Appendix A to this Declaration, which lists all attorney timekeepers in this case, the
 14 law schools they attended and the years of their graduation, their timekeeper designations, and
 15 their billing rates for each year they submitted time.¹

16 **Costs Incurred**

17 28. Class Counsel seek reimbursement of \$7 million in litigation expenses. This
 18 includes \$6,041,614.94 in costs submitted pursuant to PTO 4 that have already been incurred for
 19 the benefit of the Class, as well as \$958,385.06 in projected costs which Settlement Class Counsel
 20 is responsibly reserving to cover expenses associated with the on-the-ground enforcement and
 21 assistance efforts this Settlement will require. In Table 4, below, those costs are broken down by
 22
 23

24 ¹ In Appendix A, attorneys are listed by the professional category they held at the end of the
 25 litigation. For example, associates who were promoted to partner during the litigation would be
 26 categorized as partners in Appendix A. However, the figures in Table 3 are based on the hours
 27 and rates at the time they were submitted. Thus, the 2017 time for an attorney who was an
 28 associate in 2017 would be included in the associate row of Table 3, even if that attorney was
 promoted to partner in 2018. Finally, the annual billing rates in Appendix A are based on the
 rates that were billed for the majority of any calendar year. So, if a timekeeper’s rate was \$425
 for five months out of a calendar year and raised to \$450 for the remaining seven months in the
 same year, their rate for that year in Appendix A would be \$450.

the Court-approved categories in PTO 4, and reported as submitted (after review) in the monthly submissions.

Table 4

Costs (as submitted) by PTO 4 Category	
PTO 4 Category	Common Benefit Costs
1 - Assessment Fees	\$4,800,000.00
2 - Federal Express / Local Courier, etc.	\$10,320.07
3 - Postage Charges	\$4,198.01
4 - Facsimile Charges	\$6.22
5 - Long Distance	\$11,966.91
6 - In-House Photocopying	\$122,534.06
7 - Outside Photocopying	\$11,113.08
8 - Hotels	\$178,568.15
9 - Meals	\$46,012.33
10 - Mileage	\$4,302.45
11 - Air Travel	\$415,261.75
12 - Deposition Costs	\$46,516.98
13 - Lexis/Westlaw	\$41,852.72
14 - Court Fees	\$13,488.36
15 - Witness / Expert Fees	\$217,385.77
16 - Investigation Fees / Service Fees	\$53,388.36
17 - Transcripts	\$22,310.69
18 - Ground Transportation	\$58,652.02
19 - Miscellaneous	\$16,443.66
Litigation Fund Balance	-\$32,706.65
Subtotal	\$6,041,614.94
Reserved	\$958,385.06
Total	\$7,000,000

29. The bulk of the expenses were submitted as Litigation Fund contributions, as outlined in PTO 4. The balance remaining in the Litigation Fund (\$32,706.65) is not included in the final tally. Moreover, in Table 5, below, I re-allocated the expended Litigation Fund contributions into the appropriate PTO 4 category (if there was one). So, for example, monies paid from the Litigation Fund to compensate experts were moved from Category 1 to Category 15.

Table 5

Costs (re-allocated) by PTO 4 Category	
PTO 4 Category	Common Benefit Costs
1 - Assessment Fees	\$0.00
2 - Federal Express / Local Courier, etc.	\$10,320.07
3 - Postage Charges	\$4,198.01
4 - Facsimile Charges	\$6.22
5 - Long Distance	\$11,966.91
6 - In-House Photocopying	\$122,534.06
7 - Outside Photocopying	\$11,113.08
8 - Hotels	\$178,568.15
9 - Meals	\$46,012.33
10 - Mileage	\$4,302.45
11 - Air Travel	\$415,261.75
12 - Deposition Costs	\$317,703.91
13 - Lexis/Westlaw	\$41,852.72
14 - Court Fees	\$13,488.36
15 - Witness / Expert Fees	\$2,290,924.85
16 - Investigation Fees / Service Fees	\$58,230.19
17 - Transcripts	\$22,310.69
18 - Ground Transportation	\$58,652.02
19 - Miscellaneous	\$408,114.78
eDiscovery Platform	\$734,954.14
Settlement Master	\$1,291,100.25
Subtotal	\$6,041,614.94
Reserved	\$958,385.06
Total	\$7,000,000

30. Again, most of these categories are self-explanatory, but a few merit additional discussion. The largest expenditure, for example, was for experts. This is not surprising given the intensity of the litigation and the technical nature of the case. To effectively prosecute this case, Class Counsel employed experts on emissions system functionality and testing processes as well as emissions software programming and code analysis. Class Counsel also retained several litigation experts—including four that were presented with the class certification briefing—on topics ranging from marketing to classwide damages methodologies. Plaintiffs' marketing expert, Dr. Venkatesh Shankar, for example, designed and oversaw a team of analysts performing a comprehensive content review of, among other things, over one thousand television

1 advertisements. This undertaking was critical to establishing the widespread reach of EcoDiesel
2 advertising and thereby, the suitability of classwide treatment of Plaintiffs' fraudulent
3 misrepresentation claims. For their part, Plaintiffs' damages experts proposed two unique
4 classwide damages methodologies. Steven Gaskin, advised by Colin Weir, recommended a
5 choice-based conjoint analysis—a survey driven methodology designed to calculate the market
6 price differential in Class Vehicles with and without cheating software. To illustrate the
7 suitability of using a conjoint to calculate classwide damages in this case, Gaskin and his team
8 developed and actually implemented two such surveys on a test population representative of the
9 Class demographics. Finally, in addition to the significant undertakings necessary to complete
10 their opening and rebuttal reports, each of these experts also spent significant time preparing for
11 depositions and being deposed, and advising and assisting in Class Counsel's offensive and
12 defensive *Daubert* briefing efforts.

13 31. An additional \$1.29 million was disbursed toward fees and costs for the Court-
14 appointed Settlement Master, in fulfillment of the PSC and Defendants' joint obligation to cover
15 those expenses. See PTO 6 at ¶ 7. Furthermore, the eDiscovery services and document
16 processing platform—necessary for processing, maintaining, and analyzing the over 5 million
17 pages of documents produced in this case—cost \$734,954.14. Finally, \$391,671.12 (the bulk of
18 the “miscellaneous” category) was spent on media strategy and analysis, employed both to
19 promote the litigation, thereby maintaining pressure on Defendants and, ultimately, to help drive
20 engagement with and participation in the Settlement.

21 * * *

22 32. For the foregoing reasons, and those outlined in Plaintiffs' Motion, Plaintiffs seek
23 an award of \$59 million in fees and \$7 million in costs pursuant to Federal Rule of Civil
24 Procedure 23(h), to be allocated by Plaintiffs' Lead Counsel among the PSC firms and additional
25 counsel performing work under PTOs 3 and 4.

1 I declare under penalty of perjury that the forgoing is true and correct. Executed in San
2 Francisco, California, this 11th day of March 2019.

3
4 /s/ Elizabeth J. Cabraser
5 Elizabeth J. Cabraser
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX A

Attorney Timekeepers

Law Firm	Attorney (Last, First)	Attorney Designation	Law School	Graduation Year	Rates Billed		
					2017	2018	2019
Bailey and Glasser LLP	Bailey, Benjamin L.	Partner	Harvard Law School	1980	\$760	\$760	n/a
Bailey and Glasser LLP	Boggs, Jon D.	Partner	Harvard Law School	1990	\$650	\$650	n/a
Bailey and Glasser LLP	Charonko, Kate E.	Associate	West Virginia University College of Law	2011	\$490	\$490	n/a
Bailey and Glasser LLP	Snyder, Eric B.	Partner	University of Pittsburgh School of Law	2002	\$690	n/a	n/a
Baron & Budd, P.C.	Adraneda, Karen	Non-Partner-Track Attorney	Thomas Jefferson School of Law	2016	\$390	\$395	n/a
Baron & Budd, P.C.	Cluff, Sterling	Associate	Pepperdine University School of Law	2009	\$575	\$575	n/a
Baron & Budd, P.C.	Fernandes, David B.	Associate	Pepperdine University School of Law	2011	\$485	\$550	\$550
Baron & Budd, P.C.	Goncharko, Anastasia	Non-Partner-Track Attorney	Whittier Law School	2013	n/a	\$395	n/a
Baron & Budd, P.C.	Howard, James	Non-Partner-Track Attorney	College of William and Mary	1976	\$390	\$395	n/a
Baron & Budd, P.C.	Hughley-Smith, Tyra	Non-Partner-Track Attorney	University of Southern California School of Law	2008	\$395	\$395	n/a
Baron & Budd, P.C.	Lipinski, Jeffrey	Non-Partner-Track Attorney	Golden Gate University School of Law	2014	n/a	\$395	n/a
Baron & Budd, P.C.	Pifko, Mark	Partner	University of California, Hastings College of the Law	2003	\$695	\$735	n/a
Baron & Budd, P.C.	Tellis, Roland	Partner	University of California, Hastings College of the Law	1996	\$825	\$895	\$895
Baron & Budd, P.C.	Terry, Marianne	Non-Partner-Track Attorney	Loyola Law School	2010	n/a	\$395	n/a
Baron & Budd, P.C.	Thayer, James	Non-Partner-Track Attorney	Hofstra University School of Law	2011	n/a	\$395	n/a
Baron & Budd, P.C.	White, Erika	Non-Partner-Track Attorney	Southwestern Law School	2016	\$390	\$395	n/a
Baron & Budd, P.C.	Zucker, Evan M.	Associate	Loyola Law School	2009	n/a	\$575	n/a
Beasley Allen Crow Methvin Portis & Miles, PC	Baldwin, Chris	Non-Partner-Track Attorney	Faulkner University's Thomas Goode Jones School of Law	2017	\$350	\$350	n/a

Law Firm	Attorney (Last, First)	Attorney Designation	Law School	Graduation Year	Rates Billed		
					2017	2018	2019
Beasley Allen Crow Methvin Portis & Miles, PC	Barnett, H. Clay	Partner	University of Alabama School of Law	2001	\$600	\$600	n/a
Beasley Allen Crow Methvin Portis & Miles, PC	Grubb, Archie	Partner	University of Alabama School of Law	2003	\$600	\$600	\$600
Beasley Allen Crow Methvin Portis & Miles, PC	Helms, Tyner	Non-Partner-Track Attorney	University of Alabama School of Law	2017	\$350	\$350	\$350
Beasley Allen Crow Methvin Portis & Miles, PC	Miles, Wilson Daniel "Dee"	Partner	Cumberland School of Law of Samford University	1989	\$675	\$675	\$675
Bilbo Law Office	Bilbo, Jim	Partner	Nashville School of Law	1985	\$400	\$400	n/a
Bleichmar Fonti & Auld LLP	Aldridge, Emily	Associate	Fordham University School of Law	2011	\$560	\$560	n/a
Bleichmar Fonti & Auld LLP	Cibulka, Britt	Non-Partner-Track Attorney	Northwestern University School of Law	1999	\$470	\$470	n/a
Bleichmar Fonti & Auld LLP	Davis, Anne	Associate	University of Michigan Law School	2008	n/a	\$625	n/a
Bleichmar Fonti & Auld LLP	Desai, Mili	Associate	Harvard Law School	2009	\$535	n/a	n/a
Bleichmar Fonti & Auld LLP	English, Robyn	Associate	Georgetown University Law Center	2013	\$535	n/a	n/a
Bleichmar Fonti & Auld LLP	Fonti, Joseph	Partner	New York University School of Law	1999	\$880	\$880	\$895
Bleichmar Fonti & Auld LLP	Green, Frederick William	Non-Partner-Track Attorney	Washington University School of Law	2013	n/a	\$470	n/a
Bleichmar Fonti & Auld LLP	Lindley, Robert	Non-Partner-Track Attorney	George Washington University Law School	2003	n/a	\$360	n/a
Bleichmar Fonti & Auld LLP	Maxis, Laurie	Non-Partner-Track Attorney	Nova Southeastern University	2003	\$350	\$360	n/a
Bleichmar Fonti & Auld LLP	Moody, Janelle	Non-Partner-Track Attorney	Northwestern School of Law at Lewis & Clark College	1997	n/a	\$450	n/a
Bleichmar Fonti & Auld LLP	Simnowitz, Sara	Associate	University of Chicago Law School	2001	\$640	\$640	n/a
Bleichmar Fonti & Auld LLP	Sullivan, Kasey	Non-Partner-Track Attorney	Northwestern University School of Law	1999	\$415	\$450	n/a
Bleichmar Fonti & Auld LLP	Sum, Sylvia	Non-Partner-Track Attorney	University of California, Los Angeles, School of Law	1997	\$450	\$450	n/a
Bleichmar Fonti & Auld LLP	Wax, David	Non-Partner-Track Attorney	Fordham University School of Law	2008	\$350	\$360	n/a

Law Firm	Attorney (Last, First)	Attorney Designation	Law School	Graduation Year	Rates Billed		
					2017	2018	2019
Bleichmar Fonti & Auld LLP	Weaver, Lesley	Partner	University of Virginia School of Law	1997	\$800	\$800	\$840
Bleichmar Fonti & Auld LLP	Weiler, Matthew	Associate	University of Michigan Law School	2004	\$625	\$625	n/a
Branstetter, Stranch & Jennings, PLLC	Galletti, Gabriel	Associate	University of Virginia School of Law	2004	\$630	n/a	n/a
Branstetter, Stranch & Jennings, PLLC	Miller, Michael I.	Associate	Pepperdine University School of Law	2009	\$660	n/a	n/a
Branstetter, Stranch & Jennings, PLLC	Osbourne, Christine	Associate	University of Tennessee College of Law	2012	\$410	n/a	n/a
Branstetter, Stranch & Jennings, PLLC	Stewart, Mike	Partner	University of Tennessee College of Law	1987	n/a	\$750	n/a
Branstetter, Stranch & Jennings, PLLC	Stranch, Gerard J.	Partner	Vanderbilt University Law School	2003	\$770	\$770	\$800
Casey Gerry Schenk Francavilla Blatt & Penfield LLP	Behan, Wendy M.	Partner	California Western School of Law	1998	\$685	\$685	n/a
Casey Gerry Schenk Francavilla Blatt & Penfield LLP	Blatt, Gayle M.	Partner	California Western School of Law	1985	\$800	\$800	\$800
Casey Gerry Schenk Francavilla Blatt & Penfield LLP	Casey, Jr., David S.	Partner	University of San Diego School of Law	1974	\$900	\$900	\$900
Casey Gerry Schenk Francavilla Blatt & Penfield LLP	Chun, Angela J.	Associate	California Western School of Law	2006	n/a	\$600	n/a
Casey Gerry Schenk Francavilla Blatt & Penfield LLP	Dave, Sanjeev	Non-Partner-Track Attorney	University of San Diego School of Law	2000	n/a	\$450	n/a
Casey Gerry Schenk Francavilla Blatt & Penfield LLP	Green, Idun	Non-Partner-Track Attorney	Seton Hall University School of Law	2002	\$415	\$415	n/a
Casey Gerry Schenk Francavilla Blatt & Penfield LLP	Guerra, P. Camille	Associate	Thomas Jefferson School of Law	2004	\$550	\$550	\$550
Casey Gerry Schenk Francavilla Blatt & Penfield LLP	Litney, Ethan T.	Associate	University of California, Davis, Davis School of Law	2014	\$340	n/a	n/a
Casey Gerry Schenk Francavilla Blatt & Penfield LLP	Williams, Alyssa	Associate	University of San Diego School of Law	2015	\$340	\$340	n/a
Goldenberg Schneider, LPA	Goldenberg, Jeffrey	Partner	Indiana University School of Law	1994	\$595	\$595	\$625
Goldenberg Schneider, LPA	Naylor, Todd	Partner	University of Colorado School of Law	1997	\$550	\$550	n/a
Gordon & Partners	Calamusa, Steven	Partner	University of Miami School of Law	1992	\$795	\$795	\$795
Hagens Berman Sobol Shapiro LLP	Aragon, Leonard	Partner	Stanford Law School	2001	n/a	\$600	n/a

Law Firm	Attorney (Last, First)	Attorney Designation	Law School	Graduation Year	Rates Billed		
					2017	2018	2019
Hagens Berman Sobol Shapiro LLP	Berman, Steve	Partner	University of Chicago Law School	1993	\$950	\$975	n/a
Hagens Berman Sobol Shapiro LLP	Chao, Sophia	Non-Partner-Track Attorney	Seattle University School of Law	2004	\$300	\$325	n/a
Hagens Berman Sobol Shapiro LLP	Fitzpatrick, Rachel	Associate	Arizona State University	2011	n/a	\$400	n/a
Hagens Berman Sobol Shapiro LLP	Gannon, Catherine Y.N.	Associate	York University - Osgoode Hall Law School	2008	\$400	n/a	n/a
Hagens Berman Sobol Shapiro LLP	Loeser, Thomas	Partner	Duke University School of Law	1999	\$683	n/a	n/a
Hagens Berman Sobol Shapiro LLP	Lundsgaarde, Allan	Non-Partner-Track Attorney	University of California, Berkeley, School of Law	2002	\$325	\$350	n/a
Hagens Berman Sobol Shapiro LLP	Oster, Thomas	Non-Partner-Track Attorney	University of California, Hastings College of the Law	2011	n/a	\$350	n/a
Hagens Berman Sobol Shapiro LLP	Patterson, Jerrod	Associate	University of California, Berkeley, School of Law	2002	\$575	n/a	n/a
Hagens Berman Sobol Shapiro LLP	Quackenbush, Charles	Non-Partner-Track Attorney	Gonzaga University School of Law	2010	n/a	\$300	n/a
Hagens Berman Sobol Shapiro LLP	Smith, Shelby	Associate	Seattle University School of Law	2000	\$473	\$500	\$525
Hagens Berman Sobol Shapiro LLP	Stowe, Jason	Non-Partner-Track Attorney	Emory University School of Law	2004	n/a	\$350	n/a
Hagens Berman Sobol Shapiro LLP	Thompson, Jessica	Associate	University of Baltimore School of Law	2010	\$300	\$350	\$375
Keller Rohrback L.L.P.	Cappio, Gretchen	Partner	University of Washington School of Law	1999	\$810	\$870	\$895
Keller Rohrback L.L.P.	Gould, Benjamin	Associate	Yale Law School	2006	\$550	n/a	n/a
Keller Rohrback L.L.P.	Jones, Kris	Non-Partner-Track Attorney	Seattle University School of Law	2007	\$350	\$375	n/a
Keller Rohrback L.L.P.	Kawamoto, Dean	Partner	Yale Law School	2003	\$750	n/a	n/a
Keller Rohrback L.L.P.	Loeser, Derek	Partner	University of Washington School of Law	1994	\$895	n/a	n/a
Keller Rohrback L.L.P.	McDevitt, Ryan	Associate	Columbia Law School	2010	\$525	\$575	\$595
Keller Rohrback L.L.P.	Meredith, Michael	Associate	University of Washington School of Law	2012	\$420	n/a	n/a
Keller Rohrback L.L.P.	Morowitz, Rachel	Associate	George Washington University Law School	2016	\$430	\$455	\$500

Law Firm	Attorney (Last, First)	Attorney Designation	Law School	Graduation Year	Rates Billed		
					2017	2018	2019
Keller Rohrback L.L.P.	Petak, Lisa	Associate	University of California, Irvine, School of Law	2014	\$430	n/a	n/a
Keller Rohrback L.L.P.	Sarko, Lynn	Partner	University of Wisconsin School of Law	1981	\$940	\$995	\$1,035
Keller Rohrback L.L.P.	Wang, Eleanor	Non-Partner-Track Attorney	Seattle University School of Law	2011	\$315	\$375	n/a
Kopelowitz Ostrow Ferguson Weiselberg Gilbert	Gherman, Sergiu	Associate	University of Florida Levin College of Law	2006	\$350	\$350	n/a
Kopelowitz Ostrow Ferguson Weiselberg Gilbert	Gilbert, Robert C.	Partner	University of Miami School of Law	1985	\$750	\$800	\$800
Kopelowitz Ostrow Ferguson Weiselberg Gilbert	Solomon, Dori S.	Non-Partner-Track Attorney	University of Miami School of Law	1994	\$350	\$350	n/a
Law Office of Peter Fredman	Fredman, Peter	Partner	University of California, Los Angeles, School of Law	2002	\$575	\$575	\$600
Lieff Cabraser Heimann & Bernstein LLP	Benoit, Philippe	Non-Partner-Track Attorney	Boston College Law School	2007	\$415	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Budner, Kevin	Partner	University of California, Berkeley, School of Law	2012	\$435	\$525	\$550
Lieff Cabraser Heimann & Bernstein LLP	Cabraser, Elizabeth	Partner	University of California, Berkeley, School of Law	1978	\$1,025	\$1,050	\$1,075
Lieff Cabraser Heimann & Bernstein LLP	Carr, Lindsay	Non-Partner-Track Attorney	Tulane University School of Law	2008	\$415	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Dunlavey, Wilson	Associate	University of California, Berkeley, School of Law	2015	\$370	\$420	\$440
Lieff Cabraser Heimann & Bernstein LLP	Garcia, Richard	Non-Partner-Track Attorney	Southern Illinois University School of Law	2009	\$415	n/a	n/a
Lieff Cabraser Heimann & Bernstein LLP	Giron, Aaron	Non-Partner-Track Attorney	California Western School of Law	2010	\$415	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Gralewski, Kelly	Non-Partner-Track Attorney	California Western School of Law	1997	n/a	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Halfon, Avery	Associate	Harvard Law School	2015	n/a	\$420	n/a
Lieff Cabraser Heimann & Bernstein LLP	Herd, James	Non-Partner-Track Attorney	University of California, Hastings College of the Law	1992	n/a	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Kim, Denny	Non-Partner-Track Attorney	University of San Diego School of Law	2005	\$415	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Krainsky, Ella	Non-Partner-Track Attorney	George Washington University Law School	2001	\$415	n/a	n/a
Lieff Cabraser Heimann & Bernstein LLP	Lichtman, Jason	Partner	University of Michigan Law School	2006	n/a	\$590	n/a

Law Firm	Attorney (Last, First)	Attorney Designation	Law School	Graduation Year	Rates Billed		
					2017	2018	2019
Lieff Cabraser Heimann & Bernstein LLP	Liu, Sharon	Non-Partner-Track Attorney	University of California, Hastings College of the Law	2010	\$415	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	McBride, Katherine	Associate	Stanford Law School	2015	\$370	\$420	\$440
Lieff Cabraser Heimann & Bernstein LLP	Meo, Gianluca	Non-Partner-Track Attorney	Cardozo School of Law, Yeshiva University	2013	\$415	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Nguyen, Phianh	Non-Partner-Track Attorney	Golden Gate University School of Law	2008	\$415	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Nguyen, Phong-Chau	Partner	University of San Francisco School of Law	2012	\$435	\$525	\$550
Lieff Cabraser Heimann & Bernstein LLP	Palermo, Rose	Non-Partner-Track Attorney	Boston University School of Law	1986	\$415	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Pischel, Manon	Non-Partner-Track Attorney	Golden Gate University School of Law	2001	\$415	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Pustilnik, Alix	Non-Partner-Track Attorney	Harvard Law School	1993	n/a	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Stellings, David	Partner	New York University School of Law	1993	\$850	\$875	\$900
Lieff Cabraser Heimann & Bernstein LLP	Sturtevant, Ryan	Non-Partner-Track Attorney	University of California, Hastings College of the Law	2005	n/a	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Swenson, Yun	Non-Partner-Track Attorney	Cornell Law School	2003	n/a	\$360	n/a
Lieff Cabraser Heimann & Bernstein LLP	Wasson, Daniel	Non-Partner-Track Attorney	University of California, Berkeley, School of Law	2002	\$415	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Winston, Aya	Non-Partner-Track Attorney	University of California, Los Angeles, School of Law	2010	\$415	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Yu, Christina	Non-Partner-Track Attorney	Santa Clara University School of Law	1997	n/a	\$415	n/a
Lieff Cabraser Heimann & Bernstein LLP	Zaul, Jonathan	Non-Partner-Track Attorney	University of San Francisco School of Law	2009	n/a	\$415	n/a
Mastando & Artrip LLC	Artrip, Eric	Partner	University of Alabama School of Law	1998	\$625	\$625	\$625
Mastando & Artrip LLC	Mastando, D. Anthony	Partner	University of Michigan Law School	1995	\$625	\$625	n/a
Motley Rice, LLC	Akers, Nathan	Non-Partner-Track Attorney	Elon University School of Law	2017	n/a	\$350	n/a
Motley Rice, LLC	Arnold, Andrew	Associate	University of North Carolina School of Law	2013	\$475	\$500	\$500
Motley Rice, LLC	Bihun, Brittany T.	Non-Partner-Track Attorney	Loyola University Chicago School of Law	2011	\$425	n/a	n/a

Law Firm	Attorney (Last, First)	Attorney Designation	Law School	Graduation Year	Rates Billed		
					2017	2018	2019
Motley Rice, LLC	Callison, Richard	Non-Partner-Track Attorney	Temple University Beasley School of Law	2010	\$415	\$415	n/a
Motley Rice, LLC	Camm, Matthew	Non-Partner-Track Attorney	Louisiana State University Paul M. Herbert Law Center	2014	n/a	\$425	n/a
Motley Rice, LLC	Camputaro, Elizabeth	Associate	Charleston School of Law	2008	\$475	n/a	n/a
Motley Rice, LLC	Flowers, Jodi	Partner	University of South Carolina School of Law	1993	\$950	\$950	\$950
Motley Rice, LLC	Frncillo, Olivia	Non-Partner-Track Attorney	Houston College of Law	2014	n/a	\$400	n/a
Motley Rice, LLC	Gruetzmacher, Max	Associate	Marquette University Law School	2008	\$575	n/a	n/a
Motley Rice, LLC	Haileselassie, Jade	Non-Partner-Track Attorney	University of Baltimore School of Law	2010	\$440	\$455	n/a
Motley Rice, LLC	Hilton, Anna	Non-Partner-Track Attorney	Charleston School of Law	2010	\$440	n/a	n/a
Motley Rice, LLC	Louie, Karen Garry	Non-Partner-Track Attorney	Fordham University School of Law	1992	n/a	\$415	n/a
Motley Rice, LLC	Rice, Joseph F.	Partner	University of South Carolina School of law	1979	\$1,350	\$1,400	\$1,400
Motley Rice, LLC	Ritter, Ann	Partner	University of Tennessee College of Law	1982	\$925	\$950	n/a
Robbins Geller Rudman and Dowd LLP	Alperstein, Jason	Partner	University of Miami School of Law	2008	\$690	\$750	\$800
Robbins Geller Rudman and Dowd LLP	Dearman, Mark	Partner	Nova Southeastern University	1993	\$825	\$950	n/a
Robbins Geller Rudman and Dowd LLP	Geller, Paul	Partner	Emory University School of Law	1993	\$955	\$1,030	\$1,250
Robbins Geller Rudman and Dowd LLP	Jensen, Rachel	Partner	Georgetown University Law Center	2000	\$735	\$795	\$850
Robbins Geller Rudman and Dowd LLP	Joseph, Ryan	Non-Partner-Track Attorney	New York Law School	2009	\$360	\$360	n/a
Robbins Geller Rudman and Dowd LLP	Marenco, Ricardo	Associate	Rutgers School of Law	2014	\$435	\$450	n/a
Robbins Geller Rudman and Dowd LLP	Prado, Svenna	Associate	University of Erlangen-Nuremberg	1996	\$400	\$500	n/a
Robins Kaplan, LLP	Achua, Brooke A.	Associate	William Mitchell College of Law	2017	n/a	\$360	n/a
Robins Kaplan, LLP	Askew, Kevin H.	Non-Partner-Track Attorney	William Mitchell College of Law	2014	\$290	\$290	n/a

Law Firm	Attorney (Last, First)	Attorney Designation	Law School	Graduation Year	Rates Billed		
					2017	2018	2019
Robins Kaplan, LLP	Beane, Lisa L.	Associate	University of Minnesota Law School	2013	\$465	\$485	n/a
Robins Kaplan, LLP	Dirksen, Michael D.	Non-Partner-Track Attorney	University of New Hampshire School of Law	2014	\$330	\$330	n/a
Robins Kaplan, LLP	Fair, Jason R.	Associate	Loyola Law School	2011	\$520	n/a	n/a
Robins Kaplan, LLP	Hurt, J. Austin	Associate	Hamline University School of Law	2010	\$410	\$410	\$410
Robins Kaplan, LLP	Johnson, Kaitlyn J.	Associate	University of Minnesota Law School	2014	\$400	n/a	n/a
Robins Kaplan, LLP	Khoroosi, Sam E.	Associate	University of South Dakota School of Law	2007	\$465	\$465	n/a
Robins Kaplan, LLP	Larson, Tamara L	Non-Partner-Track Attorney	Hamline University School of Law	2009	\$350	\$350	n/a
Robins Kaplan, LLP	Pacelli, Michael J.	Associate	Georgetown University Law Center	2017	\$360	\$360	\$360
Robins Kaplan, LLP	Reyes, Alexandria J.	Associate	Wake Forest University School of Law	2009	n/a	\$576	n/a
Robins Kaplan, LLP	Slaughter, Stacey P.	Partner	University of Minnesota Law School	1999	\$760	\$760	\$760
The Dampier Law Firm, P.C.	Dampier, M. Stephen	Partner	New York University School of Law	1991	\$585	\$585	\$585
Turke & Strauss LLP	Begolli, Zog	Associate	University of Wisconsin School of Law	2017	n/a	\$300	n/a
Turke & Strauss LLP	Strauss, Samuel	Partner	University of Washington School of Law	2013	\$475	\$475	\$475

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 IN RE CHRYSLER-DODGE-JEEP
13 ECODIESEL® MARKETING, SALES
14 PRACTICES, AND PRODUCTS
15 LIABILITY LITIGATION
16
17
18

MDL 2777 EMC

**DECLARATION OF BRIAN
FITZPATRICK IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND FOR
ATTORNEYS' FEES AND COSTS
UNDER FED. R. CIV. P. 23(e), 23(h)
AND PRETRIAL ORDER NOS. 3
AND 4**

Background and Qualifications

1. I am a Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I have also been a visiting professor at Harvard Law School and Fordham Law School. I graduated from the University of Notre Dame in 1997 and Harvard Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid O’Scainnlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Exhibit 1.

2. My teaching and research have focused on class action litigation. I teach the Civil Procedure, Federal Courts, Complex Litigation, and Comparative Class Action courses. In addition, I have published a number of articles on class action litigation in such journals as the University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the University of Arizona Law Review, and the NYU Journal of Law & Business. My work has been cited by numerous courts, scholars, and popular media outlets, such as the New York Times, USA Today, and the Wall Street Journal. I am also frequently invited to speak at symposia and other events about class action litigation, such as the ABA National Institutes on Class Actions in 2011, 2015, 2016, and 2017, and the ABA Annual Meeting in 2012. Since 2010, I have also served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies. In 2015, I was elected to the membership of the American Law Institute.

3. In December 2010, I published an article in the Journal of Empirical Legal Studies entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811 (2010) (hereinafter “Empirical Study”). This article is what I believe to be the most comprehensive examination of federal class action settlements and attorneys’ fees that has ever been published. Unlike other studies of class actions, which have been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study attempted to examine

every class action settlement approved by a federal court over a two-year period, 2006-2007. *See id.* at 812-13. As such, not only is my study an unbiased sample of settlements, but the number of settlements included in my study is several times the number of settlements per year that has been identified in any other empirical study of class action settlements: over this two-year period, I found 688 settlements, including 169 from the Ninth Circuit alone. *See id.* at 817. I presented the findings of my study at the Conference on Empirical Legal Studies at the University of Southern California School of Law in 2009, the Meeting of the Midwestern Law and Economics Association at the University of Notre Dame in 2009, and before the faculties of many law schools in 2009 and 2010. This study has been relied upon by a number of courts, scholars, and testifying experts.¹ I will draw upon this study in this declaration.

¹ *See, e.g., Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (relying on article to assess fees); *Grice v. Pepsi Beverages Co.*, 2019 WL 340714, at *2 (S.D.N.Y. Jan. 28, 2019); *Rodman v. Safeway Inc.*, 2018 WL 4030558, at *5 (N.D. Cal. Aug. 23, 2018) (same); *Little v. Washington Metro. Area Transit Auth.*, 2018 WL 1997257, at *7 (D.D.C. Apr. 27, 2018) (same); *Hillson v. Kelly Servs. Inc.*, 2017 WL 3446596, at *4 (E.D. Mich. Aug. 11, 2017) (same); *Good v. W. Virginia-Am. Water Co.*, 2017 WL 2884535, at *23, *27 (S.D.W. Va. July 6, 2017) (same); *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC*, 2017 WL 1021025, at *9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 1629349, at *17 (S.D.N.Y. Apr. 24, 2016) (same); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D. Ill. 2016) (same); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1246 (D.N.M. 2016) (same); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, 2016 WL 721680, at *42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, 2015 WL 4528880, at *19-20 (E.D. La. July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 2147679, at *2-4 (N.D. Ill. May 6, 2015) (same); *In re: Checking Account Overdraft Litig.*, 2015 WL 12642178, at *15 (S.D.Fla. Apr. 2, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 1399367, at *3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 2015 WL 605203, at *12 (N.D. Ill. Feb. 12, 2015) (same); *In re Neurontin Marketing and Sales Practices Litig.*, 2014 WL 5810625, at *3 (D. Mass. Nov. 10, 2014) (same); *Tennille v. W. Union Co.*, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Checking Account Overdraft Litigation*, 2014 WL 12557836, at *15 (S.D.Fla. Apr. 1, 2014) (same); *In re: Checking Account Overdraft Litig.*, 2014 WL 11370115, at *18 (S.D. Fla. Jan. 6, 2014) (same); *In re Federal National Mortgage Ass'n Secs., Deriv., and "ERISA" Litig.*, 4 F. Supp. 3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Products Liability Litig.*, 2013 WL 5295707, at *3-4 (E.D. La. Sep. 18, 2013) (same); *In re: Checking Account Overdraft Litigation*, 2013 WL 11319392, at *17 (S.D. Fla. Aug. 5, 2013) (same); *In re: Checking Account Overdraft Litig.*, 2013 WL 11320088, at *16 (S.D. Fla. Aug. 2, 2013) (same); *In re: Checking Account Overdraft Litig.*, 2013 WL 11319242, at *17 (S.D.Fla. Aug. 2, 2013) (same); *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 98-99 (D.D.C. 2013) (same); *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *2 (E.D. Tenn., May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same); *In re Black Farmers Discrimination Litig.*, 856 F.

4. In addition to my empirical works, I have also published many papers on how law-and-economics theory affects attorneys and others in class action litigation. *See, e.g.*, Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623 (2009); Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043 (2010) (hereinafter “Class Action Lawyers”). The culmination of these papers will be a book published next year by the University of Chicago Press entitled *THE CONSERVATIVE CASE FOR CLASS ACTIONS*, where I argue that the so-called “private attorney general” is superior to the public attorney general in the enforcement of the rules that free markets need in order to operate effectively.

5. I have been asked by class counsel to opine on whether the attorneys’ fees and expenses they have requested here are reasonable. In order to formulate my opinion, I reviewed a number of documents provided to me by class counsel; I have attached a list of these documents in Exhibit 2. As I explain, based on my empirical analysis of settlements across the country and in the Ninth Circuit in particular, I believe the requests here are within the range of reasonable fee awards in federal class action settlements.

Case Background

6. In January 2017, the federal and California governments notified the defendant manufacturers of certain “EcoDiesel”-branded Ram and Jeep vehicles that they believed these vehicles had been manufactured with software enabling the vehicles to pollute more on the road than in testing conditions. This allowed the manufactures to sell purportedly environmentally-friendly vehicles at a premium without actually improving their emissions’ profiles.

7. Shortly thereafter, the federal government, the State of California, and private plaintiffs filed civil lawsuits for fraud, breach of warranty, and environmental harms against not only the vehicle manufacturers, but the engine manufacturers and the manufacturers of related components. These lawsuits were transferred to this court pursuant to the federal Multidistrict Litigation statute. After nearly two years of litigation, the parties have all now reached settlements.

Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

8. The settlement between the private plaintiffs and the defendants was reached on behalf of a class of most current and former owners and lessees of the affected Ram and Jeep vehicles. *See* Settlement Agreement ¶ 2.19. The court preliminarily approved it on February 11. The settlement calls for all class members to each receive a cash payment of between \$990 and \$3075; for current owners to receive a repair to their vehicles that reduces their emissions; and for current owners who repaired their vehicles to receive an extended warranty on the repaired components and related engine systems. *See id.* at ¶ 4.3.1. In addition to all this, the defendants will separately pay attorneys’ fees, expenses, and notice and administration costs. *See id.* at ¶¶ 5.6, 8.4, 11.1. All told, the settlement could be worth more than \$600 million.

9. The defendants have agreed to pay class counsel \$59 million in attorneys’ fees and \$7 million in expenses. Class counsel have now asked the court to award them these amounts for their work in bringing about the settlement. As I explain below, the requested fees reflect only 10% to 18% of the settlement depending on how the court values the settlement. In my opinion, any of these percentages would be well within the range of reasonableness. Moreover, as I explain, the expense request is in line with typical awards.

Assessment of the Reasonableness of the Request for Attorney’s Fees

10. This settlement is a so-called “constructive common fund” settlement where efforts by attorneys for the plaintiffs have created settlement funds for the benefit of class members and the defendants have agreed to pay class counsel’s fees separately and on top of its payments to class members despite the inapplicability of a fee-shifting statute. Courts in such cases add together 1) the fees the defendant agreed to pay separately and 2) the value of the fund created for the benefit of the class. The court then evaluates whether it would be reasonable to “award” the fees from this “fund” in the same way it would fees in a traditional common fund class action.

11. At one time, courts that awarded fees in common fund class action cases did so using the familiar “lodestar” approach. *See* Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043, 2051 (2010) (hereinafter “Class Action Lawyers”). Under this approach, courts awarded class counsel a fee equal to the number of hours they worked on

the case (to the extent the hours were reasonable), multiplied by a reasonable hourly rate as well as by a discretionary multiplier that courts often based on the risk of non-recovery and other factors. *See id.* Over time, however, the lodestar approach fell out of favor in common fund class actions. It did so largely for two reasons. First, courts came to dislike the lodestar method because it was difficult to calculate the lodestar; courts had to review voluminous time records and the like. Second—and more importantly—courts came to dislike the lodestar method because it did not align the interests of class counsel with the interests of the class; class counsel’s recovery did not depend on how much the class recovered, but, rather, on how many hours could be spent on the case. *See id.* at 2051-52. According to my empirical study, the lodestar method is now used to award fees in only a small percentage of class action cases, usually those involving fee-shifting statutes or those where the relief is predominantly injunctive in nature (and the value of the injunction cannot be reliably calculated). *See Fitzpatrick, Empirical Study, supra*, at 832 (finding the lodestar method used in only 12% of settlements). The other large-scale academic study of class action fees, authored over time by Geoff Miller and the late Ted Eisenberg, agrees with my findings. *See Theodore Eisenberg & Geoffrey P. Miller, Attorneys’ Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 267 (2010) (finding lodestar method used only 13.6% of the time before 2002 and less than 10% of the time thereafter) (hereinafter “Eisenberg-Miller 2010”); Theodore Eisenberg et al., *Attorneys’ Fees in Class Action Settlements: 2009-2013*, 92 N.Y.U. L. Rev. 937, 945 (2017) (finding lodestar method used less than 7% of the time since 2009) (hereinafter “Eisenberg-Miller 2017”).

12. The more popular method of calculating attorneys’ fees today is known as the “percentage” method. Under this approach, courts select a percentage that they believe is fair to class counsel, multiply the settlement amount by that percentage, and then award class counsel the resulting product. The percentage approach became popular precisely because it corrected the deficiencies of the lodestar method: it is less cumbersome to calculate, and, more importantly, it aligns the interests of class counsel with the interests of the class because the more the class recovers, the more class counsel recovers. *See Fitzpatrick, Class Action Lawyers, supra*, at 2052.

13. In the Ninth Circuit, district courts have the discretion to use either the lodestar method or the percentage method in common fund cases. *See In re Washington Public Power Supply Sys. Securities Litig.*, 19 F.3d 1291, 1295 (9th Cir. 1994) (“[D]istrict court has discretion to use either method in common fund cases.”). In light of the well-recognized disadvantages of the lodestar method and the well-recognized advantages of the percentage method, it is my opinion that courts should generally use the percentage method in common fund cases whenever the value of the settlement can be reliably calculated. Only where the value of the settlement cannot be reliably calculated is it my opinion that courts should use the lodestar method; in these circumstances, the lodestar method is the only feasible choice. This is not just my opinion. It is the consensus opinion of class action scholars. *See American Law Institute, Principles of the Law of Aggregate Litigation* § 3.13(b) (2010) (“[A] percentage-of-the-fund approach should be the method utilized in most common-fund cases.”). In this case, I believe the settlement can be reliably valued and therefore the percentage method should be used.

14. Under the percentage method, courts must 1) calculate the value of the settlement and then 2) select a percentage of that value to award to class counsel. When calculating the value of the settlement, in my opinion courts should (and they usually do) include any cash compensation to class members, cash the defendant must pay to third parties, non-cash relief that can be reliably valued, attorneys’ fees and expenses, and administrative costs paid by the defendant. *See, e.g., Rainbow Bus. Sols. v. MBF Leasing LLC*, No. 10-CV-01993-CW, 2017 WL 6017844, at *2 n.1 (N.D. Cal. Dec. 5, 2017); *Weeks v. Kellogg Co.*, No. CV 09-08102 MMM RZX, 2013 WL 6531177, at *29 (C.D. Cal. Nov. 23, 2013); *In re Brokerage Antitrust Litig.*, 579 F.3d 241, 283 (3d Cir. 2009). When selecting what percentage to award class counsel, in my opinion courts should hypothesize what class members would have been willing to pay class counsel at the outset of the litigation in order to induce them to take the case, *see, e.g., Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) (“When attorney’s fees are deducted from class damages, the district court must try to assign fees that mimic a hypothetical *ex ante* bargain between the class and its attorneys.”), but that is not the Ninth Circuit’s approach. In the Ninth Circuit, courts use 25% as the “‘bench mark’ percentage for the fee award,” which

“can then be adjusted upward or downward to account for any unusual circumstances involved in the case.” *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989). *See also Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (stating that the 25% benchmark percentage “should be adjusted . . . when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors”). In various cases, the Ninth Circuit has identified at least eight different factors that district courts can examine in deciding whether to increase or decrease an award from the benchmark:

- (1) the results achieved by class counsel, *see Six Mexican Workers*, 904 F.2d at 1311; *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002);
- (2) the length the case has transpired, *see Six Mexican Workers*, 904 F.2d at 1311; *Vizcaino*, 290 F.3d at 1050;
- (3) the complexity of the case, *see Six Mexican Workers*, 904 F.2d at 1311; *In re Pacific Enters. Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995);
- (4) the risks the case involved, *see In re Pacific Enters. Securities Litig.*, 47 F.3d at 379; *Vizcaino*, 290 F.3d at 1048-49;
- (5) the percentages awarded in other class action cases, *see Vizcaino*, 290 F.3d at 1050;
- (6) any non-monetary benefits obtained by class counsel, *see In re Pacific Enters. Securities Litig.*, 47 F.3d at 379; *Vizcaino*, 290 F.3d at 1049; *Staton v. Boeing*, 327 F.3d 938, 946 (9th Cir. 2003);
- (7) the percentages in standard contingency-fee agreements in similar individual cases, *see Vizcaino*, 290 F.3d at 1049; and
- (8) class counsel’s lodestar, *see id.* at 1050-51.

15. As I explain below, under even the most conservative assumptions, the fee request here is both well under the Ninth Circuit’s 25% benchmark and well in line with awards in similarly-sized so-called “megafund” settlements. In my opinion, the fee request is easily justified in light of the Ninth Circuit’s factors.

Valuation of the Settlement

16. The face value of this settlement may be over \$600 million: the \$307.5 million in potential cash compensation to the class if every owner files a claim (Settlement Agreement ¶ 4.12); the \$239.5 million at which class counsel’s expert values the extended warranties if every car is repaired (Dkt. No. 491-4 at 1, 6); the \$66 million in attorneys’ fees and expenses if approved by the court; the approximately \$1.5 million the defendants will pay for notice and administration; and an unknown amount the defendants will pay and have paid to develop and implement the vehicle repairs. Under Supreme Court and Ninth Circuit precedent, the court is permitted to base class counsel’s fee percentage on this face value—even if not all of it is ultimately paid out. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 479-81 (1980); *Williams v. MGM-Pathe Commc’ns Co.*, 129 F.3d 1027 (9th Cir. 1997); *Lopez v. Youngblood*, No. CV-F-07-0474 DLB, 2011 WL 10483569, at *12 (E.D. Cal. Sept. 2, 2011); *Miller v. Ghirardelli Chocolate Co.*, No. 12-CV-04936-LB, 2015 WL 758094, at *5 (N.D. Cal. Feb. 20, 2015). If the court chooses to do this, class counsel’s \$59 million fee request would amount to less than 10%.

17. There are circumstances, however, in which I and other scholars believe that the face-value approach can incentivize class action lawyers to generate theoretical compensation and deterrence rather than actual compensation and deterrence. In those circumstances, we favor basing fees on how much the defendant will actually (or is likely to) payout. Sometimes we have to wait until the end of the claims process to know how much defendants are likely to payout, but this is not one of those cases. In particular, we know that the defendants face significant fines and penalties (more than \$6,000 per vehicle) if they fail to repair 85% of the class vehicles. Preliminary Approval Order at 6-7, 13. As the Court observed, all parties to this settlement are motivated to “maximize the cars to get fixed.” Preliminary Approval Hr’g Tr. at 30. Given this framework, it is my opinion that it is not necessary or appropriate to wait until the claims process is over to award fees. We already know that, whatever the total eventually comes to, the defendants will certainly pay out *hundreds of millions of dollars* and, as I explain, *even the most conservative estimate* of how many hundreds of millions is more than sufficient to justify class counsel’s fee request.

1 18. Let's start with the cash compensation. How many class members might file
2 claims? In the similarly structured *Volkswagen* "*Clean Diesel*" settlement, as many as 95% did
3 so. There is every reason to think this settlement will be no less well subscribed: as noted above,
4 if fewer than 85% of owner-class members repair their cars, the defendants have to pay a penalty
5 of \$6,000 per car; this is much more than what the defendants would pay to repair the car *and* pay
6 the owner his or her \$3,075. Although I believe it is therefore likely that, like the *Volkswagen*
7 settlement, more than 85% of class members will file claims, in order to use a conservative
8 estimate, I will assume that only 85% will do so. This still comes to \$261 million in cash
9 compensation. If we add in the fees and expenses that have been requested and the settlement
10 administration costs—but ignore any value to the extended warranty and any cost to the
11 defendant of making repairs—the total value would be \$328.5 million. The fee request here
12 would then come to only 18%, well below the Ninth Circuit's 25% benchmark, and, as I explain
13 below, well in line with the mean and median percentages awarded in similarly-sized megafund
14 settlements.

15 19. What if we add in some of the things we ignored? For example, class counsel's
16 expert has opined that the extended warranty will be worth \$239.5 million to class members
17 whereas the defendants have estimated the extended warranty will cost them \$105 million. No
18 matter what number we use—or use some number in between—it drives class counsel's fee
19 percentage even lower (and therefore makes it even more reasonable). For example, let's use
20 class counsel's \$239.5 million number and cut it in half to account for the governments' shared
21 role in securing the extended warranty. If we add the resulting \$120 million to the value of the
22 settlement, it brings the total up to \$448.5 million. Class counsel's fee request would then be
23 only 13.2%, approximately *half* of the Ninth Circuit's benchmark, and, as I explain below, well
24 below the mean and median for similarly-sized megafund settlements.

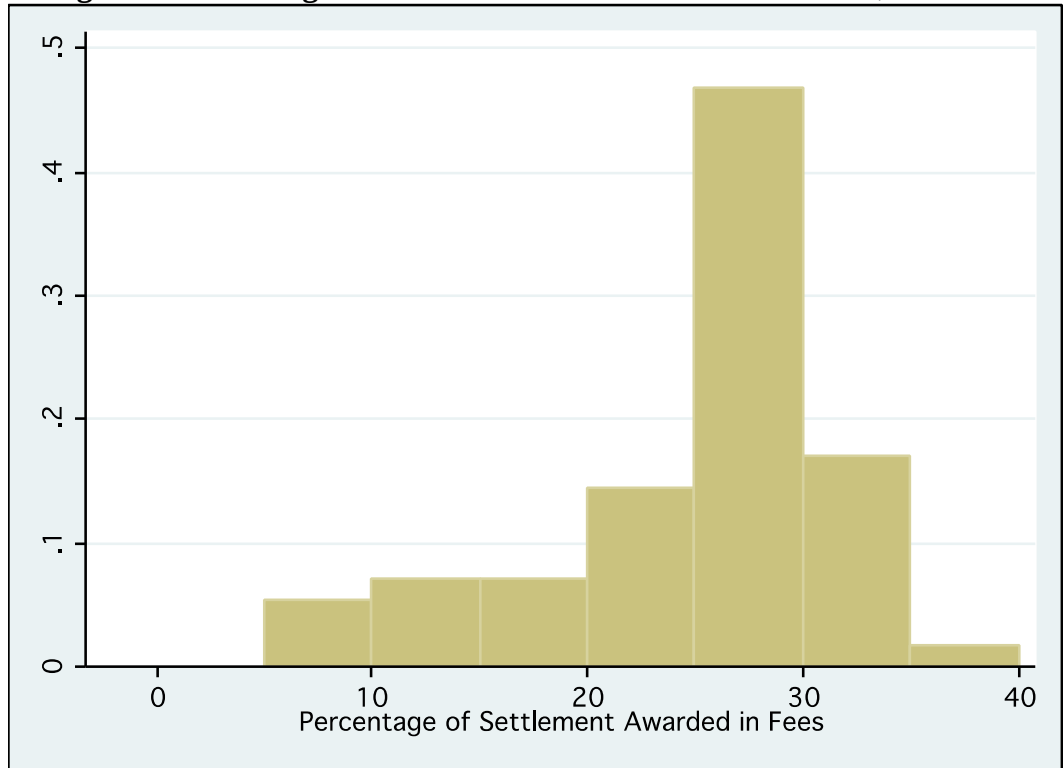
25 20. If we were to make these numbers even less conservative and even more realistic,
26 class counsel's fee percentage would drift lower and lower towards the 10% face-value number,
27 but, in my opinion, it is not necessary to go any further. No matter which settlement valuation is
28 used—the Supreme Court's \$600+ million face value; the \$328.5 million 85%-cash-only number;

the \$448.5 million 85%-cash-plus-50%-warranty number; or something in between—class counsel’s fee request is *well* below Ninth Circuit’s benchmark and in line with, or even significantly below, the average percentages from comparably-sized settlements. In my opinion, any percentage in this 10% to 18% range would be justified by the Ninth Circuit’s factors.

Selecting the Percentage

21. Consider first the factor that looks at how this request measures up against others: (5) the percentages awarded in other class action cases. According to my empirical study, the most common fee percentages awarded in common fund class actions are 25%, 30%, and 33%, with the mean and median at 25%. *See* Fitzpatrick, *Empirical Study, supra*, at 833, 838. The numbers for the 111 settlements in the Ninth Circuit where the percentage method was used were quite similar: the most common percentages were also 25%, 30%, and 33%, with the vast majority of awards also between 25% and 35%, and a mean of 23.9% and median of 25%. My numbers agree with the other large-scale academic study of class action fee awards. *See* Eisenberg-Miller 2010, *supra*, at 260 (finding mean and median of 24% and 25% nationwide, and 25% in Ninth Circuit); Eisenberg-Miller 2017, *supra*, at 951 (finding mean and median of 27% and 29% nationwide, and 26% and 25% in Ninth Circuit). Needless to say, all of these numbers greatly exceed the fee requested here no matter which valuation of the settlement is used.

22. Indeed, in order to see more clearly where the fee request here falls among other awards, I graphed the distribution of the Ninth Circuit’s percentage awards from my study in Figure 1. The figure shows what fraction of settlements (y-axis) had fee awards within each five-point range of fee percentages (x-axis). Thus, for example, nearly half of all settlements (i.e., nearly .5 of all settlements) had fee awards that fell between 25% (inclusive) and 30%. As the Figure shows, no matter what valuation of the settlement is used, class counsel’s fee request would be very much on the low end of Ninth Circuit awards.

Figure 1: Percentage-method fee awards in the Ninth Circuit, 2006-2007

23. It should be noted that the nationwide data in my empirical study shows that settlement size had a statistically significant but inverse relationship with the fee percentages awarded by federal courts—i.e., that some federal courts awarded lower percentages in cases where settlements were larger. *See Fitzpatrick, Empirical Study, supra*, at 838, 842-44. The Eisenberg-Miller study shows the same thing. *See Eisenberg-Miller 2010, supra*, at 264; Eisenberg-Miller 2017, *supra*, at 947-48. This is notable because this settlement is on the larger side; only a handful of settlements every year are as big as this one. Even so, the request here is *still at or below the mean and median* fee percentages awarded in settlements of similar size. Of the settlements in my dataset between \$250 and \$500 million, I found a mean of 17.8% and a median of 19.5%—i.e., *right* at the percentage that would result here using the most conservative valuation estimate and *well above* the more realistic ones. *See Fitzpatrick, Empirical Study, supra*, at 839.

24. The Eisenberg-Miller study did not report separate fee-percentage averages and medians for very large settlements; for example, in their older (and therefore most cited) paper, they ended their top grouping at \$175.5 million and lumped in any settlements above that amount,

1 including multi-billion-dollar settlements, before reporting mean and median statistics. *See*
2 Eisenberg-Miller 2010, *supra*, at 265. Because multi-billion-dollar settlements tend to be
3 awarded the smallest fee percentages of any settlements, it obviously drives down the average and
4 median fee percentages in any grouping of cases that includes these settlements. It is therefore
5 not surprising that, when Eisenberg-Miller reported its average and median fee percentages for its
6 top grouping, they were lower than the average and median percentages I reported above for
7 settlements between \$250 million and \$500 million. *See* Eisenberg-Miller 2010, *supra*, at 265
8 (reporting mean of 12% and median of 10.2% for settlements above \$175.5 million). If I had I
9 lumped in my multi-billion-dollar settlements along with my \$250-500 million settlements, my
10 average and median fee percentages would have dropped, too. *See* Fitzpatrick, *Empirical Study*,
11 *supra*, at 839. Because including multi-billion-dollar settlements along with \$250-500 million
12 settlements would make any comparison of the resulting statistics to the settlement here less
13 precise, it is my opinion that it should not be done. Using the statistics from the narrower \$250-
14 500 million grouping provides a more accurate insight.

15 25. Nonetheless, because lumping together settlements produces more data points (68
16 points in Eisenberg-Miller's anything-above-\$175.5 million grouping versus eight points in my
17 \$250-500 million grouping), some judges have favored statistics based on more data points, even
18 if those data points cover a wider range of settlement values. *See In re High Tech Employees*
19 *Antitrust Litig.*, 2015 WL 5158730, at *13 (N.D. Cal., Sep. 2, 2015). I understand the draw of
20 more data points over fewer. But the good news is we no longer have to choose between more
21 targeted data on the one hand and more data points on the other: we now have enough studies that
22 both point to the same conclusions.

23 26. First, after *In re High Tech Employees* was decided, Professors Eisenberg
24 (posthumously) and Miller published an update to their study. Now their top grouping of
25 settlements (this time anything above \$67.5 million) has 45 data points *and a mean fee award of*
26 *22.3%*. *See* Eisenberg-Miller 2017, *supra*, at 948. This mean percentage is even higher than the
27 mean I reported between \$250 million and \$500 million, and, of course, *even higher still* than any
28 of the possible fee percentages here. Second, also after *In re High Tech Employees* was decided,

1 Professor Bill Rubenstein finished the 5th edition of the Newberg on Class Actions treatise. In
 2 this treatise, he reported on his own collection of data on over 1100 class action settlements, even
 3 graphing his findings along with mine in the same groupings I used in my study. The graph
 4 shows his mean fee percentage between \$250-500 million almost precisely matching mine; he
 5 even notes the data “across the two studies is almost completely synchronous.” William
 6 Rubenstein, Newberg on Class Actions § 15.81 (5th ed. 2018). Furthermore, in preparing this
 7 Declaration, I asked Professor Rubenstein for further data underlying his analysis which he
 8 provided (at no cost to me or class counsel). He reported that his dataset included 11 settlements
 9 between \$300-\$600 million, and that the mean and median percentages awarded in those
 10 settlements were 17.6% and 17.9%, respectively—which, again, is consistent with my study.²
 11 Thus, no matter how you slice it, the fee request here is *at worst* in line with and *at best* below—
 12 even *well* below—the percentages awarded in similarly-valued megafund cases.

13 27. Consider next the factors that assess how the relief in this settlement stacks up
 14 against the obstacles class counsel faced: (1) the results achieved by class counsel, (3) the
 15 complexity of the case, and (4) the risks the case involved. According to class counsel’s expert,
 16 the relief offered class members here is as good as what they could have recovered if they had
 17 prevailed at trial under at least one of plaintiffs’ damages model. Even if only 85% of class
 18
 19
 20

21 ² Professor Rubenstein also provided me the following summary and explanation of his data and
 22 methodology: “As part of my scholarly work on class action law, I have created and maintain a
 23 database containing data on more than 1,000 class action lawsuits. Specifically, my research
 24 assistants coded the data from case reports appearing in the journal, *Class Action Attorney Fee*
 25 *Digest* (“CAAFD”). CAAFD was published monthly from January 2007 to September 2011 for a
 26 total of 57 issues, and reported on 1,187 unique court-approved state and federal class
 27 actions. For each case, a CAAFD case abstract describes the awarding court and judge, the
 28 subject matter of the dispute, the settlement/judgment benefits, the attorney fee and expense
 awards (both as requested by plaintiff’s counsel and as approved by the court), the case filing and
 attorney fee award dates, any named plaintiff awards, and miscellaneous data on case and
 settlement/judgment administration. In creating the database from the CAAFD reports, my
 research team cross-checked the accuracy of a subset of federal reports against source documents
 from PACER; we found only one error – an understatement of the settlement benefit value by 2%
 – in 726 data fields, or fewer than 0.15% of fields. I am therefore confident about the accuracy of
 the data in my database and use it regularly as a source for my scholarship and expert witness
 work.”

1 members file claims, it is extraordinarily uncommon for a class to recover anywhere near 85% of
 2 its possible damages in a settlement.³

3 28. Moreover, these results were not easily achieved. Unlike in the *Volkswagen*
 4 litigation, the defendants here did not concede liability or plead guilty to criminal charges. As
 5 evidenced by the hotly disputed motions to dismiss, the extensive expert work, and the detailed
 6 class certification briefing, this was a complex case. And a risky one. Indeed, it is still uncertain
 7 whether plaintiffs' RICO claims here would survive the motion to dismiss, whether any of
 8 plaintiffs' claims would be certified for class treatment, and, finally, how even to measure the
 9 class's damages. An 85%+ recovery is a terrific return in light of these risks, and these factors
 10 strongly support class counsel's fee request.

11 29. It must be noted that class counsel had the assistance of the federal and California
 12 governments in prosecuting this case. Although many class action cases benefit from government
 13 enforcement efforts, this is admittedly a reason why the court might want to depart downward
 14 from the benchmark. But class counsel's request *itself* has already incorporated this consideration
 15 by departing significantly downward from the benchmark. For example, as I noted above, even if
 16 we attribute half the value of the extended warranty to the government's effort, the fee request
 17 here is only *half* the Ninth Circuit's benchmark and at or below other, similarly-sized megafund
 18 settlements. In my opinion, no further departure downward is necessary. As such, I think these
 19 factors, too, are consistent with the fee request here.

20 30. Consider next factor (2): the length this case has transpired. This case has not
 21 lasted as long as most class action cases. According to my empirical study, the average and
 22 median times in which settlements were reached in class actions were around three years. *See*
 23 Fitzpatrick, *Empirical Study, supra*, at 820. This is, admittedly, another reason why the court
 24 might wish to depart downward from the benchmark. But it is not clear to me that this would be
 25 proper in light of the special circumstances present here: there was great pressure on the parties to

26 ³ The best studies of class member recoveries come from securities fraud cases. *See, e.g., Recent*
 27 *Trends in Securities Class Action Litigation: 2014 Full-Year Review*, available at http://www.nera.com/content/dam/nera/publications/2015/PUB_2014_Trends_0115.pdf at 9, 33 (finding that
 28 the median securities fraud class action between 1996 and 2015 settled for between 1.3% and 7.0% of a measure of investor losses, depending on the year).

1 come to an agreement as quickly as possible in order to fix the offending vehicles to prevent even
2 more environmental damage. The parties should hardly be punished for being sensitive to the
3 environment. This is especially the case when they worked as hard as they have during the last
4 two years: they have, among other things, reviewed millions of pages of documents, conducted
5 some 100 depositions, and extensively briefed motions to dismiss and for class certification.

6 31. Indeed, in my opinion, this factor is more a *proxy* for class counsel's performance
7 than a measure of class counsel's performance itself; it is a proxy for whether class counsel have
8 dug far enough to the case to know what the case is worth and to provide the court with
9 information about what the case is worth so it can evaluate whether the recovery here is
10 warranted by the risks and complexities of the case. As I explained above, the recovery here is
11 very successful compared to most class actions and class counsel conducted more than enough
12 discovery to show that to be the case. As such, I do not believe this factor is reason to reduce
13 class counsel's fee award even further below the benchmark than class counsel have already
14 requested.

15 32. Consider next factor (6): any non-monetary benefits. As I noted above, the
16 settlement confers an extended warranty on the repaired vehicles and requires the defendants to
17 pay to repair class members' vehicles. It is unknown how much the latter will cost and I therefore
18 did not assign a number to it in any of the possible settlement valuations. As such, there are
19 unvalued non-monetary benefits here, and this is reason to depart *upward* from the benchmark
20 with respect to class counsel's fee percentage. This is all the more true if the court decides not to
21 assign any value to the extended warranty either: if class counsel are not receiving a portion of the
22 benefits they created in fees, then the court should increase the portion class counsel receives of
23 the other settlement benefits in order to reward them—and incentivize them—for securing the
24 unvalued benefits.

25 33. Consider next factor (7): the percentages in standard contingency-fee agreements
26 in similar individual cases. It is well known that standard contingency-fee percentages in
27 individual litigation are *at least* 33%, much greater than the percentage requested here. *See, e.g.,*
28 Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 Fordham

1 L. Rev. 247, 248 (1996) (noting that “standard contingency fees” are “usually thirty-three percent
 2 to forty percent of gross recoveries” (emphasis omitted)); Herbert M. Kritzer, *The Wages of Risk:
 3 The Returns of Contingency Fee Legal Practice*, 47 DePaul L. Rev. 267, 286 (1998) (reporting
 4 the results of a survey of Wisconsin lawyers, which found that “[o]f the cases with a [fee
 5 calculated as a] fixed percentage [of the recovery], a contingency fee of 33% was by far the most
 6 common, accounting for 92% of those cases”). Unsurprisingly, many of the class representatives
 7 here have entered into retainer contracts agreeing to pay their lawyers at least 33%. I do not put
 8 much stock in individual retainer agreements because the small-stakes nature of typical class
 9 claims are very different than those in individual cases; moreover, retainer agreements signed by
 10 class representatives are usually not credible because class representatives have so little at stake
 11 they are indifferent as to what fraction their lawyers might take from them. Nonetheless, to the
 12 extent this factor is relevant here, it is certainly supports rather than undermines class counsel’s
 13 fee request.

14 34. Consider finally factor (8): class counsel’s lodestar. Although, in my opinion, it is
 15 counterproductive to consider class counsel’s lodestar when awarding fees under the percent
 16 method,⁴ if the court does consider it, the court should know that the multiplier that would result
 17 from class counsel’s request here would be well below average. Class counsel have reported a

18 ⁴ The so-called “lodestar crosscheck” reintroduces the very same undesirable consequences of the
 19 lodestar method that the percentage method was designed to correct in the first place. In
 20 particular, if class counsel believes that courts will cap the percentage awarded at some multiple
 21 of their lodestar, then they will have precisely the same incentives they would if courts used the
 22 lodestar method alone: to be inefficient, perform unnecessary projects, delay results, and overbill
 23 and overstaff work in order to run up their lodestar. See *Vizcaino v. Microsoft Corp.*, 290 F.3d at
 24 1050 n. 5 (“The lodestar method is merely a cross-check on the reasonableness of a percentage
 25 figure, and it is widely recognized that the lodestar method creates incentives for counsel to
 26 expend more hours than may be necessary on litigating a case so as to recover a reasonable
 27 fee . . .”). The lodestar crosscheck also caps the amount of compensation class counsel can
 28 receive from a settlement, thereby misaligning their incentives from those of class members, and
 blunting their incentive to achieve the largest possible award for the class. See Fitzpatrick, *Class
 Action Lawyers*, *supra*, at 2065-66. Consider the following example. Suppose a class action
 lawyer had incurred a lodestar of \$1 million in a class action case. If that counsel believed that a
 court would not award him a 25% fee if it exceeded twice his lodestar, then he would be
 rationally indifferent between settling the case for \$8 million and \$80 million (or any number
 higher than \$8 million). Although I am not suggesting that class counsel here would have been
 tempted in this way—these are some of the finest class action lawyers in America—the decisions
 courts make today set the expectations for class action lawyers tomorrow, and it is bad public
 policy to create the expectation that the lodestar crosscheck will cap class counsel’s fees under the
 percentage method.

1 current and estimated future lodestar of approximately \$50 million based on approximately
2 111,000 hours of current and estimated work, which would result in a lodestar multiplier of
3 approximately 1.2 if the court grants their request. In my opinion, the number of hours is
4 reasonable given the complexity of the litigation and the amount that was accomplished. This is
5 confirmed by Professor Rubenstein's data, which show an average of 137,906 hours worked in
6 cases resolved for between \$300 million and \$600 million.

7 35. The resulting multiplier is also reasonable, and compares favorably to average
8 multipliers in similar cases. In my empirical study, the mean and median lodestar multipliers in
9 cases using the percentage method with the lodestar crosscheck were 1.65 and 1.34, respectively.
10 See Fitzpatrick, *Empirical Study*, *supra*, at 834. These numbers are also consistent with the
11 Eisenberg-Miller study. See Eisenberg-Miller 2010, *supra*, at 273 (finding mean multiplier of
12 1.81); Eisenberg-Miller 2017, *supra*, at 965 (finding mean of 1.48). This means the multiplier
13 that would result here would be *lower than in the typical case*. Indeed, the multiplier that would
14 result here is even more favorable than first meets the eye because the relationship between
15 settlement size and lodestar multipliers is the opposite of that between settlement size and fee
16 percentages: as the settlement size increases, the lodestar multiplier class counsel receives
17 typically increases as well. See Eisenberg-Miller 2010, *supra*, at 274 ("As the recovery decile
18 increases, the multiplier also tends to increase, with the multiplier in the highest recovery decile
19 more than triple that of the multiplier in the lowest recovery decile."). As this is settlement is
20 bigger than most, it is not surprising that the multiplier that would result here is *even lower than*
21 *in typical large settlements*. See Eisenberg-Miller 2010, *supra*, at 274 (finding mean multiplier of
22 3.18 and median of 2.6 for settlements above \$175.5 million); Eisenberg-Miller 2017, *supra*, at
23 965 (finding mean of 2.72 and median of 1.5 for settlements above \$67.5 million). For example,
24 Professor Rubenstein reports that of the settlements in his database valued between \$300 million
25 and \$600 million, the average multipliers was 2.75. In my empirical study, the average and
26 median lodestar multiplier for settlements between \$250 million and \$500 million was 3.37 and
27 3.41—almost *three times* the multiplier that would result here.

28

36. For all these reasons, I believe the fee award requested here is well within the range of reasonable awards.

Assessment of the reasonableness of the request for expenses

37. Class counsel have requested \$7 million in expenses in connection with this settlement. Although I have not reviewed each dollar of these expenses in any detail, the overall number is modest compared to other settlements. Even under my most conservative estimate of the value of the settlement (\$328.5 million), the expenses here come to only 2.1%. If we use more realistic estimates, the expense percentage would be even lower. Indeed, if we use the face value of the settlement, the expenses here would be only 1.2%. By comparison, in my empirical study, expense awards averaged 3.3% of the settlements with a median of 1.9%. The Eisenberg-Miller study found much the same. See Eisenberg-Miller 2010, *supra*, at 267 (mean and median of 2.8% and 1.7% before 2002 and 2.7% and 1.7% thereafter); Eisenberg-Miller 2017, *supra*, at 945 (mean and median of 3.9% and 1.7% since 2009). The expense request here is therefore easily in line with typical awards.

38. My compensation in this matter has been \$950 per hour plus expenses.

Dated: March 11, 2019
Nashville, TN



Brian T. Fitzpatrick

EXHIBIT 1

BRIAN T. FITZPATRICK

Vanderbilt University Law School
131 21st Avenue South
Nashville, TN 37203
(615) 322-4032
brian.fitzpatrick@law.vanderbilt.edu

ACADEMIC APPOINTMENTS

VANDERBILT UNIVERSITY LAW SCHOOL, *Professor*, 2012 to present

- *FedEx Research Professor*, 2014-2015; *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Complex Litigation, Federal Courts, Comparative Class Actions
- Hall-Hartman Outstanding Professor Award, 2008-2009
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

HARVARD LAW SCHOOL, *Visiting Professor*, Fall 2018

- Classes: Civil Procedure, Litigation Finance

FORDHAM LAW SCHOOL, *Visiting Professor*, Fall 2010

- Classes: Civil Procedure

EDUCATION

HARVARD LAW SCHOOL, J.D., *magna cum laude*, 2000

- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

UNIVERSITY OF NOTRE DAME, B.S., Chemical Engineering, *summa cum laude*, 1997

- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

CLERKSHIPS

HON. ANTONIN SCALIA, Supreme Court of the United States, 2001-2002

HON. DIARMUID O'SCANNLAIN, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

EXPERIENCE

NEW YORK UNIVERSITY SCHOOL OF LAW, Feb. 2006 to June 2007
John M. Olin Fellow

HON. JOHN CORNYN, United States Senate, July 2005 to Jan. 2006
Special Counsel for Supreme Court Nominations

SIDLEY AUSTIN LLP, Washington, DC, 2002 to 2005
Litigation Associate

BOOKS

THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press, forthcoming 2019)

ACADEMIC ARTICLES

Can the Class Action be Made Business Friendly?, 24 N.Z. BUS. L. & Q. 169 (2018)

Can and Should the New Third-Party Litigation Financing Come to Class Actions?, 19 THEORETICAL INQUIRIES IN LAW 109 (2018)

Scalia in the Casebooks, 84 U. CHI. L. REV. 2231 (2017)

The Ideological Consequences of Judicial Selection, 70 VAND. L. REV. 1729 (2017)

Judicial Selection and Ideology, 42 OKLAHOMA CITY UNIV. L. REV. 53 (2017)

Justice Scalia and Class Actions: A Loving Critique, 92 NOTRE DAME L. REV. 1977 (2017)

A Tribute to Justice Scalia: Why Bad Cases Make Bad Methodology, 69 VAND. L. REV. 991 (2016)

The Hidden Question in Fisher, 10 NYU J. L. & LIBERTY 168 (2016)

An Empirical Look at Compensation in Consumer Class Actions, 11 NYU J. L. & BUS. 767 (2015)
(with Robert Gilbert)

The End of Class Actions?, 57 ARIZ. L. REV. 161 (2015)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, 98 VA. L. REV. 839 (2012)

Twombly and Iqbal Reconsidered, 87 NOTRE DAME L. REV. 1621 (2012)

An Empirical Study of Class Action Settlements and their Fee Awards, 7 J. EMPIRICAL L. STUD. 811 (2010) (selected for the 2009 Conference on Empirical Legal Studies)

Do Class Action Lawyers Make Too Little?, 158 U. PA. L. REV. 2043 (2010)

Originalism and Summary Judgment, 71 OHIO ST. L.J. 919 (2010)

The End of Objector Blackmail?, 62 VAND. L. REV. 1623 (2009) (selected for the 2009 Stanford-Yale Junior Faculty Forum)

The Politics of Merit Selection, 74 MISSOURI L. REV. 675 (2009)

Errors, Omissions, and the Tennessee Plan, 39 U. MEMPHIS L. REV. 85 (2008)

Election by Appointment: The Tennessee Plan Reconsidered, 75 TENN. L. REV. 473 (2008)

Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?, 13 MICH. J. RACE & LAW 277 (2007)

BOOK CHAPTERS

Do Class Actions Deter Wrongdoing? in THE CLASS ACTION EFFECT (Catherine Piché, ed., Éditions Yvon Blais, Montreal, 2018)

Judicial Selection in Illinois in AN ILLINOIS CONSTITUTION FOR THE TWENTY-FIRST CENTURY (Joseph E. Tabor, ed., Illinois Policy Institute, 2017)

Civil Procedure in the Roberts Court in BUSINESS AND THE ROBERTS COURT (Jonathan Adler, ed., Oxford University Press, 2016)

Is the Future of Affirmative Action Race Neutral? in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 (Ellen Katz & Samuel Bagenstos, eds., Michigan University Press, 2016)

ACADEMIC PRESENTATIONS

The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?, Ninth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 14, 2018)

MDL: Uniform Rules v. Best Practices, Miami Law Class Action & Complex Litigation Forum, University of Miami Law School, Miami, Florida (December 7, 2018) (panelist)

Third Party Finance of Attorneys in Traditional and Complex Litigation, George Washington Law School, Washington, D.C. (November 2, 2018) (panelist)

MDL at 50 - The 50th Anniversary of Multidistrict Litigation, New York University Law School, New York, New York (October 10, 2018) (panelist)

The Discovery Tax, Law & Economics Seminar, Harvard Law School, Cambridge, Massachusetts (September 11, 2018)

Empirical Research on Class Actions, Civil Justice Research Initiative, University of California at Berkeley, Berkeley, California (Apr. 9, 2018)

A Political Future for Class Actions in the United States?, The Future of Class Actions Symposium, University of Auckland Law School, Auckland, New Zealand (Mar. 15, 2018)

The Indian Class Actions: How Effective Will They Be?, Eighth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 19, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 8, 2017) (panelist)

Critical Issues in Complex Litigation, Contemporary Issues in Complex Litigation, Northwestern Law School (Nov. 29, 2017) (panelist)

The Conservative Case for Class Actions, Consumer Class Action Symposium, National Consumer Law Center, Washington, DC (Nov. 19, 2017)

The Conservative Case for Class Actions—A Monumental Debate, ABA National Institute on Class Actions, Washington, DC (Oct. 26, 2017) (panelist)

One-Way Fee Shifting after Summary Judgment, 2017 Meeting of the Midwestern Law and Economics Association, Marquette Law School, Milwaukee, WI (Oct. 20, 2017)

The Conservative Case for Class Actions, Pepperdine Law School Malibu, CA (Oct. 17, 2017)

One-Way Fee Shifting after Summary Judgment, Vanderbilt Law Review Symposium on The Future of Discovery, Vanderbilt Law School, Nashville, TN (Oct. 13, 2017)

The Constitution Revision Commission and Florida's Judiciary, 2017 Annual Florida Bar Convention, Boca Raton, FL (June 22, 2017)

Class Actions After Spokeo v. Robins: Supreme Court Jurisprudence, Article III Standing, and Practical Implications for the Bench and Practitioners, Northern District of California Judicial Conference, Napa, CA (Apr. 29, 2017) (panelist)

The Ironic History of Rule 23, Conference on Secrecy, Institute for Law & Economic Policy, Naples, FL (Apr. 21, 2017)

Justice Scalia and Class Actions: A Loving Critique, University of Notre Dame Law School, South Bend, Indiana (Feb. 3, 2017)

Should Third-Party Litigation Financing Be Permitted in Class Actions?, Fifty Years of Class Actions—A Global Perspective, Tel Aviv University, Tel Aviv, Israel (Jan. 4, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 2, 2016) (panelist)

The Ideological Consequences of Judicial Selection, William J. Brennan Lecture, Oklahoma City University School of Law, Oklahoma, City, Oklahoma (Nov. 10, 2016)

After Fifty Years, What's Class Action's Future, ABA National Institute on Class Actions, Las Vegas, Nevada (Oct. 20, 2016) (panelist)

Where Will Justice Scalia Rank Among the Most Influential Justices, State University of New York at Stony Brook, Long Island, New York (Sep. 17, 2016)

The Ironic History of Rule 23, University of Washington Law School, Seattle, WA (July 14, 2016)

A Respected Judiciary—Balancing Independence and Accountability, 2016 Annual Florida Bar Convention, Orlando, FL (June 16, 2016) (panelist)

What Will and Should Happen to Affirmative Action After Fisher v. Texas, American Association of Law Schools Annual Meeting, New York, NY (January 7, 2016) (panelist)

Litigation Funding: The Basics and Beyond, NYU Center on Civil Justice, NYU Law School, New York, NY (Nov. 20, 2015) (panelist)

Do Class Actions Offer Meaningful Compensation to Class Members, or Do They Simply Rip Off Consumers Twice?, ABA National Institute on Class Actions, New Orleans, LA (Oct. 22, 2015) (panelist)

Arbitration and the End of Class Actions?, Quinnipiac-Yale Dispute Resolution Workshop, Yale Law School, New Haven, CT (Sep. 8, 2015) (panelist)

The Next Steps for Discovery Reform: Requester Pays, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

Private Attorney General: Good or Bad?, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

Liberty, Judicial Independence, and Judicial Power, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

The Economics of Objecting for All the Right Reasons, 14th Annual Consumer Class Action Symposium, Tampa, FL (Nov. 9, 2014)

Compensation in Consumer Class Actions: Data and Reform, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, NY (Nov. 7, 2014)

The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?, Northern District of California Judicial Conference, Napa, CA (Apr. 13, 2014) (panelist)

The End of Class Actions?, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, FL (Apr. 4, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, University of Missouri School of Law, Columbia, MO (Mar. 7, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, George Mason Law School, Arlington, VA (Mar. 6, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law, Lexington, VA (Nov. 7-8, 2013)

Is the Future of Affirmative Action Race Neutral?, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School, Ann Arbor, MI (Oct. 11, 2013)

The Mass Tort Bankruptcy: A Pre-History, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School, Nashville, TN (Sep. 28, 2013) (panelist)

Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, FL (Apr. 12, 2013) (panelist)

The End of Class Actions?, Symposium on Class Action Reform, University of Michigan Law School, Ann Arbor, MI (Mar. 16, 2013)

Toward a More Lawyer-Centric Class Action?, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School, New York, NY (Nov. 30, 2012)

The Problem: AT & T as It Is Unfolding, Conference on AT & T Mobility v. Concepcion, Cardozo Law School, New York, NY (Apr. 26, 2012) (panelist)

Standing under the Statements and Accounts Clause, Conference on Representation without Accountability, Fordham Law School Corporate Law Center, New York, NY (Jan. 23, 2012)

The End of Class Actions?, Washington University Law School, St. Louis, MO (Dec. 9, 2011)

Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, IL (Sep. 15-16, 2011) (participant)

Is Summary Judgment Unconstitutional? Some Thoughts About Originalism, Stanford Law School, Palo Alto, CA (Mar. 3, 2011)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Northwestern Law School, Chicago, IL (Feb. 25, 2011)

The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote, University of Iowa Law School, Iowa City, IA (Feb. 3, 2011) (panelist)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Washington University Law School, St. Louis, MO (Oct. 1, 2010)

Twombly and Iqbal Reconsidered, Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School, Cleveland, OH (Sep. 17, 2010)

Do Class Action Lawyers Make Too Little?, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

Originalism and Summary Judgment, Georgetown Law School, Washington, DC (Apr. 5, 2010)

Theorizing Fee Awards in Class Action Litigation, Washington University Law School, St. Louis, MO (Dec. 11, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Conference on Empirical Legal Studies, University of Southern California Law School, Los Angeles, CA (Nov. 20, 2009)

Originalism and Summary Judgment, Symposium on Originalism and the Jury, Ohio State Law School, Columbus, OH (Nov. 17, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School, South Bend, IN (Oct. 10, 2009)

The End of Objector Blackmail?, Stanford-Yale Junior Faculty Forum, Stanford Law School, Palo Alto, CA (May 29, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, University of Minnesota School of Law, Minneapolis, MN (Mar. 12, 2009)

The Politics of Merit Selection, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School, Columbia, MO (Feb. 27, 2009)

The End of Objector Blackmail?, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law, Chicago, IL (Oct. 9, 2008)

Alternatives To Affirmative Action After The Michigan Civil Rights Initiative, University of Michigan School of Law, Ann Arbor, MI (Apr. 3, 2007) (panelist)

OTHER PUBLICATIONS

9th Circuit Split: What's the math say?, DAILY JOURNAL (Mar. 21, 2017)

Former clerk on Justice Antonin Scalia and his impact on the Supreme Court, THE CONVERSATION (Feb. 24, 2016)

Lessons from Tennessee Supreme Court Retention Election, THE TENNESSEAN (Aug. 20, 2014)

Public Needs Voice in Judicial Process, THE TENNESSEAN (June 28, 2013)

Did the Supreme Court Just Kill the Class Action?, THE QUARTERLY JOURNAL (April 2012)

Let General Assembly Confirm Judicial Selections, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

"Tennessee Plan" Needs Revisions, THE TENNESSEAN (Feb. 3, 2012)

How Does Your State Select Its Judges?, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

On the Merits of Merit Selection, THE ADVOCATE 67 (Winter 2010)

Supreme Court Case Could End Class Action Suits, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

Kagan is an Intellect Capable of Serving Court, THE TENNESSEAN (Jun. 13, 2010)

Confirmation “Kabuki” Does No Justice, POLITICO (July 20, 2009)

Selection by Governor may be Best Judicial Option, THE TENNESSEAN (Apr. 27, 2009)

Verdict on Tennessee Plan May Require a Jury, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

Tennessee’s Plan to Appoint Judges Takes Power Away from the Public, THE TENNESSEAN (Mar. 14, 2008)

Process of Picking Judges Broken, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

Disorder in the Court, LOS ANGELES TIMES (Jul. 11, 2007)

Scalia’s Mistake, NATIONAL LAW JOURNAL (Apr. 24, 2006)

GM Backs Its Bottom Line, DETROIT FREE PRESS (Mar. 19, 2003)

Good for GM, Bad for Racial Fairness, LOS ANGELES TIMES (Mar. 18, 2003)

10 Percent Fraud, WASHINGTON TIMES (Nov. 15, 2002)

OTHER PRESENTATIONS

Does the Way We Choose our Judges Affect Case Outcomes?, American Legislative Exchange Council 2018 Annual Meeting, New Orleans, Louisiana (August 10, 2018) (panelist)

Oversight of the Structure of the Federal Courts, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, United States Senate, Washington, D.C. (July 31, 2018)

Where Will Justice Scalia Rank Among the Most Influential Justices, The Leo Bearman, Sr. American Inn of Court, Memphis, TN (Mar. 21, 2017)

Bringing Justice Closer to the People: Examining Ideas for Restructuring the 9th Circuit, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Mar. 16, 2017)

Supreme Court Review 2016: Current Issues and Cases Update, Nashville Bar Association, Nashville, TN (Sep. 15, 2016) (panelist)

A Respected Judiciary—Balancing Independence and Accountability, Florida Bar Annual Convention, Orlando, FL (June 16, 2016) (panelist)

Future Amendments in the Pipeline: Rule 23, Tennessee Bar Association, Nashville, TN (Dec. 2, 2015)

The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

Hedge Funds + Lawsuits = A Good Idea?, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

Judicial Selection in Historical and National Perspective, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

Life as a Supreme Court Law Clerk and Views on the Health Care Debate, Exchange Club, Nashville, TN (Apr. 3, 2012)

The Tennessee Judicial Selection Process—Shaping Our Future, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

Reexamining the Class Action Practice, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

Judicial Selection in Kansas, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

Judicial Selection and the Tennessee Constitution, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

Judicial Selection in Tennessee, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

Ethical Implications of Tennessee's Judicial Selection Process, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

PROFESSIONAL ASSOCIATIONS

Member, American Law Institute
Referee, Journal of Law, Economics and Organization
Referee, Journal of Empirical Legal Studies

Reviewer, Oxford University Press
Reviewer, Supreme Court Economic Review
Member, American Bar Association
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights
Board of Directors, Tennessee Stonewall Bar Association
American Swiss Foundation Young Leaders' Conference, 2012
Bar Admission, District of Columbia

COMMUNITY ACTIVITIES

Board of Directors, Nashville Ballet, 2011-2017; Nashville Talking Library for the Blind, 2008-2009

EXHIBIT 2

DOCUMENTS REVIEWED

- Defendants Robert Bosch LLC and Robert Bosch GMBH's Notice of Motion and Motion to Dismiss the Amended Consolidated Consumer Class Action Complaint and Memorandum of Points and Authorities in Support Thereof (document 231, filed 10/6/17)
- Defendants Fiat Chrysler Automobiles N.V., FCA US LLC, Sergio Marchionne, VM Motori S.p.A., and VM North America, Inc.'s Memorandum of Law in Support of their Motion to Dismiss the Amended Consolidated Consumer Class Action Complaint (document 232, filed 10/6/17)
- Ordering Granting in Part and Denying in Part Defendants' Motions to Dismiss (document 290, filed 3/15/18)
- Defendants Robert Bosch LLC and Robert Bosch GMBH's Notice of Motion and Motion to Dismiss the Second Amended Consolidated Consumer Class Action Complaint and Memorandum of Points and Authorities in Support Thereof (document 314, filed 5/23/18)
- Defendants Fiat Chrysler Automobiles N.V., FCA US LLC, Sergio Marchionne, VM Motori S.p.A., and VM North America, Inc.'s Memorandum of Law in Support of their Partial Motion to Dismiss the Second Amended Consolidated Consumer Class Action Complaint (document 315, filed 5/23/18)
- Plaintiffs' Motion for Class Certification (document 327, filed 6/6/18)
- Defendants Robert Bosch LLC and Robert Bosch GMBH's Opposition to Plaintiffs' Motion for Class Certification (document 360, filed 8/6/18)
- Defendants Fiat Chrysler Automobiles N.V., FCA US LLC, Sergio Marchionne, VM Motori S.p.A., and VM North America, Inc.'s Memorandum of Law in Opposition to Plaintiffs' Motion for Class Certification (document 362, 8/7/18)
- Motion for Preliminary Approval of Class Action Settlement and Direction of Notice Under Fed. R. Civ. P. 23(e) (document 491, filed 1/10/19) (including exhibits thereto)
- Amended Consumer and Reseller Dealership Class Action Settlement Agreement and Release (document 508, filed 1/18/19) ("Settlement Agreement")
- Plaintiffs' Notice re: Attorneys' Fees and Costs to be Requested Pursuant to Pretrial Order No. 4 and Fed. R. Civ. P. 23(h) (document 510, filed 1/22/19)
- Transcript of preliminary approval hearing held on January 23, 2019 (document 519)

- Plaintiffs' Supplemental Notice re: Attorneys' Fees and Costs to be Requested Pursuant to Pretrial Order No. 4 and Fed. R. Civ. P. 23(h) (document 523, filed 2/6/19)
- Order Granting Motion for Preliminary Approval of Class Settlement (document 526, filed 2/11/19) ("Preliminary Approval Order")
- Order Granting Preliminary Approval of Class Settlement and Direction of Notice Under Rule 23(e) (document 527, filed 2/11/19)
- Declaration of Elizabeth J. Cabraser in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Attorneys' Fees and Costs under Fed. R. Civ. P. 23(h) and Pretrial Order No. 4 (filed herewith)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CHRYSLER-DODGE-JEEP
ECODIESEL® MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

DORU BALI, *et al.*, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

FIAT CHRYSLER AUTOMOBILES N.V., FCA
US LLC, SERGIO MARCHIONNE, VM
MOTORI S.p.A., VM NORTH AMERICA,
INC., ROBERT BOSCH GmbH, and ROBERT
BOSCH LLC,

Defendants.

MDL 2777 EMC

**DECLARATION OF STEVEN
WEISBROT OF ANGEION GROUP, LLC
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

1 I, Steven Weisbrot, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746
2 that the following is true and correct:

3 1. I am a partner at the class action notice and settlement administration firm,
4 Angeion Group LLC (“Angeion”). I am fully familiar with the facts contained herein based upon
5 my personal knowledge.

6 2. My credentials have been previously reported to this Court in my prior declaration
7 that was filed with Plaintiffs’ Motion for Preliminary Approval of Class Settlement and Direction
8 of Notice Under Fed. R. Civ. P. 23(e) (Dkt. No. 491) (the “Original Declaration”).

9 3. The purpose of this declaration is to provide the Court with a summary of the work
10 performed related to the Notice Program as outlined in my Original Declaration and revised in my
11 Supplemental Declaration that was filed with the Parties’ Joint Response Regarding Class Action
12 Settlement Notice (Dkt. No. 525).

13 **I. CAFA NOTICE**

14 4. Angeion has been advised that on January 15, 2019, the FCA and Bosch Defendants
15 caused Notice of this Settlement and related materials to be sent to the Attorneys General of all
16 states, the Attorneys General of the District of Columbia, Guam and Puerto Rico, as well as the
17 Attorney General of the United States, pursuant to the requirements of 28 U.S.C. §1715 (“CAFA
18 Notice”). The Defendants provided Angeion with a copy of the CAFA Notice that was sent, which
19 is attached hereto as Exhibit “1”.

20 **II. DIRECT NOTICE**

21 **Class List**

22 5. Between February 5, 2019 and February 21, 2019, Angeion received email and
23 mailing address data of potential Class Members from FCA. Prior to disseminating Notice of the
24 Settlement (“Notice”), Angeion reviewed and processed the data files provided to remove exact
25 duplicative records and finalize the mailing list.

26 **Mailed Notice**

27 6. Between February 19, 2019 and February 23, 2019, Angeion caused 137,637
28 Notices to be mailed via the United States Postal Service (“USPS”) first-class mail, postage prepaid.

1 Prior to mailing, the mailing list was processed via the USPS National Change of Address
2 (“NCOA”) database to identify updated address information for individuals and businesses who
3 have moved in the last four years and who filed a change of address card with the USPS. The mailed
4 Notices were in the same form as Exhibit “2” attached hereto.

5 7. As of March 11, 2019, the USPS has returned 3,858 of the Notices as undeliverable.
6 Notices returned as undeliverable by the USPS without a forwarding address are being processed
7 through address verification searches and will be re-mailed to updated addresses located via this
8 process. Notices returned as undeliverable by the USPS with a forwarding address are being re-
9 mailed to that forwarding address identified by the USPS. Angeion will continue to receive, process
10 and re-mail Notices that are received as undeliverable by the USPS.

11 **Email Notice**

12 8. Between February 19, 2019 and February 26, 2019, Angeion caused 123,128
13 Notices to be emailed. The email Notices were in the same form as Exhibit “3” attached hereto.
14 The Notices were optimized for readability both on computer screens and mobile devices.

15 9. Prior to sending the Notices via email, the email addresses provided by FCA were
16 subjected to the “Hygiene and Verification” process and email append process as described in my
17 Supplemental Declaration (Dkt. No 525-1) at paragraphs 20–23.

18 10. As of March 11, 2019, a total of 115,824 email Notices were delivered, which
19 represents a 94.07% deliverability percentage, while only 7,304 email Notices were not delivered
20 (5.93%). Any email Notices that were not delivered as a result of a soft bounce were re-attempted
21 after an approximate 12 to 24-hour rest period, which allowed any temporary block at the ISP level
22 to expire.

23 **III. MEDIA & PUBLICATION NOTICE**

24 **Targeted Facebook Campaign**

25 11. On February 13, 2019, Angeion caused the targeted Facebook campaign to
26 commence. The Notice portion of the Facebook campaign will run for a total of 45-days. A second
27 45-day campaign will commence at the beginning of the Claims Benefit Period. The Facebook
28

1 campaign displays targeted ads on potential Class Members' Facebook timelines based on email
2 addresses provided by FCA and obtained via the email append work referenced in paragraph 9
3 above.

4 12. Angeion also incorporated the vehicle model data provided by FCA to specifically
5 deliver custom Jeep or Ram ads to the appropriate Jeep and Ram audiences. Copies of the
6 customized Facebook ads are attached hereto as Exhibit "4".

7 13. Through March 10, 2019, the targeted Facebook campaign has served 418,257
8 impressions to the Ram audience and 130,704 impressions to the Jeep audience. The impressions
9 described herein have resulted in 20,392 click-throughs for the Ram audience and 6,841 click-
10 throughs for the Jeep audience.

11 **Internet Search Targeting Campaign**

12 14. On February 15, 2019, Angeion caused the internet banner ad campaign to
13 commence. This Notice portion of this campaign, similar to the Facebook campaign, will run for a
14 total of 45-days. A second 45-day campaign will commence at the beginning of the Claims Benefit
15 Period.

16 15. As described in my Supplemental Declaration (Dkt. No 525-1) at paragraphs 31-36,
17 the internet banner ad campaign is specifically designed to target the most appropriate audiences to
18 deliver Notice of this Settlement, utilizing both Ram-specific and Jeep-specific ads. Copies of the
19 banner ads are attached hereto as Exhibit "5".

20 16. Through March 10, 2019, a total of 159,795 impressions have been served utilizing
21 the Ram-specific ad and 168,533 impressions have been served utilizing the Jeep-specific ad. The
22 impressions described herein have resulted in 1,071 click-throughs for the Ram audience and 1,124
23 click-throughs for the Jeep audience.

24 **Summary of Digital & Social Media Campaigns**

25 17. The level of engagement for the digital and social media advertising campaigns are
26 notably above average when compared to other consumer class action settlements. In particular,
27 the Facebook campaigns' click through rate is considerably more robust than industry averages and
28

1 will continue to drive potential Class Members to the dedicated case website to learn more about
2 the Settlement.

3 **Publication Notice**

4 18. Angeion caused Notice to be published in the March 4, 2019 edition of *Automotive*
5 *News*. Angeion has also secured publication space in the April 7, 2019 edition of *Motor*. A copy of
6 the publication Notice text used for publication in the *Automotive News* and submitted to *Motor* for
7 publication is attached hereto as Exhibit “6”.

8 **IV. ADDITIONAL FORMS OF NOTICE**

9 19. In addition to the Notice efforts described in this declaration, Angeion has been
10 informed that links to the official settlement website have been posted on the following FCA
11 websites: www.jeep.com and www.ramtrucks.com, the official brand websites for the vehicle
12 brands in this case.

13 20. Notice of the Settlement is also available to Class Members via the official
14 settlement website: www.ecodieselsettlement.com. Class Members also have the ability to register
15 for updates regarding the Settlement via the settlement website.

16 21. Through March 8, 2019, a total of 23,817 unique email addresses have registered
17 via the settlement website. In addition, FCA has received approximately 1,800 pieces of mail
18 at the post office box dedicated to receiving claim forms and questions about the Settlement. In
19 my opinion, this is a very high engagement rate for Class Members, especially given that the
20 claims period will not open for at least two more months and will remain open for nearly two
21 years after that. In contrast to this positive reaction from Class Members, only one request
22 from exclusion has been submitted thus far.

23 **V. CONCLUSION**

24 22. The Notice Program utilizes every potential Class Member mailing address and
25 email address reasonably available to effectuate direct notice. When combined with the
26 aforementioned digital, social and traditional media publication, the overall notification efforts
27
28

1 exceed the guidance of the Federal Judicial Center, and comply with Due Process, this District's
2 Local Rules, and the amended Rule 23.

3 23. Given the high deliverability rates for both the mail and email notice, combined with
4 above average click through rates and initial registration participation rate, it is my opinion that the
5 Notice Program has been a success, and has demonstrated meaningful Class Member participation
6 and engagement in the Settlement. We expect this to continue as the notice program progresses.

7 24. In my opinion, the Notice Program describes herein met the requirements of Rule
8 23 and due process requirements as the best notice practicable under the circumstances and
9 incorporated contemporary media and best practices to alert and engage the participation of the
10 Class Members in the proposed Settlement.

11
12 I hereby declare under penalty of perjury that the foregoing is true and correct.

13 Dated: March 11, 2019

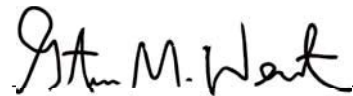
14 
15 STEVEN WEISBROT

Exhibit 1

January 15, 2019

Via Certified Mail

To: All Addressees Identified in the Attached Exhibit A

Re: Notice of Proposed Class Action Settlement Pursuant to the Class Action Fairness Act (28 U.S.C. § 1715): *In re Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, and Products Liability Litigation*,
MDL No. 2777

Dear Sir or Madam:

On behalf of defendants Fiat Chrysler Automobiles N.V., FCA US LLC, VM Motori S.p.A., and VM North America, Inc. (collectively, "FCA") and Robert Bosch GmbH and Robert Bosch LLC (collectively, "Bosch") in the above-referenced putative class action (the "Class Action"), we write pursuant to 28 U.S.C. § 1715 ("CAFA") to notify you of a proposed settlement of the Class Action.

After extensive negotiations, including mediation by former Special Master of the September 11th Victim Compensation Fund, Kenneth Feinberg, the parties agreed to a resolution of the Class Action as set forth in a Consumer and Reseller Dealership Class Action Settlement Agreement and Release, dated January 10, 2019 (the "Proposed Settlement"). Under the terms of the Proposed Settlement, FCA and Bosch have agreed to compensate eligible class member owners, lessees, former owners, and former lessees, as set forth in the Proposed Settlement. On January 10, 2019, Plaintiffs filed a motion for preliminary approval of the Proposed Settlement.

The enclosed USB drive contains the documents required by 28 U.S.C. § 1715(b), including the following:

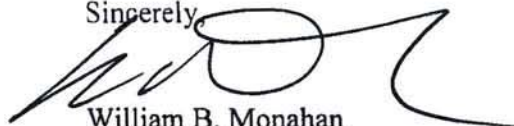
1. Consolidated Consumer Class Action Complaint, dated July 19, 2017; Amended Consolidated Consumer Class Action Complaint, dated September 29, 2017; and Second Amended Consolidated Consumer Class Action Complaint, dated May 16, 2018;
2. the Proposed Settlement and all attachments thereto, including proposed notifications to class members of the Proposed Settlement; and
3. the Court's January 15, 2019 Order relating to the proposed settlement and proposed notification to class members.

A hearing has been scheduled for January 23, 2019, at 10 a.m. PT to determine whether the Proposed Settlement should be preliminarily approved. The hearing to finally approve the Proposed Settlement is expected to occur in late April or May 2019.

CAFA also requires a defendant, "if feasible," to provide "the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement," or, if that is not feasible, to provide a "reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement." 28 U.S.C. § 1715(b)(7)(A)-(B). The attached Exhibit B contains FCA's estimate of the number of Eligible Vehicles, as that term is defined in the Proposed Settlement, registered in each State. FCA believes that these figures provide a reasonable estimate of the number of class members per State and the "estimated proportionate share of the claims of such class members to the entire settlement." 28 U.S.C. § 1715(b)(7)(A)-(B). Ultimately, these figures provide only a reasonable estimate of the total number of class members per State, and the actual numbers may later be determined to be different.

The foregoing information is provided based on the status of the proceedings at the time of the submission of this notification and on the information currently available to FCA and Bosch.

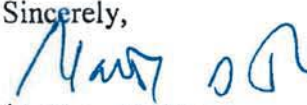
Sincerely,



William B. Monahan
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10016

*Counsel for Defendants Fiat Chrysler
Automobiles N.V., FCA US LLC,
VM Motori S.p.A., and
VM North America, Inc.*

Sincerely,



Matthew D. Slater
Cleary Gottlieb Steen & Hamilton LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037

*Counsel for Defendants
Robert Bosch LLC and
Robert Bosch GmbH*

(Enclosure)

cc: Elizabeth J. Cabraser, Esq.
(Lief Cabraser Heimann & Bernstein LLP)
Plaintiffs' Lead Counsel

EXHIBIT A

U.S. Department of Justice
Office of the Attorney General of the
United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Office of the Attorney General of Alaska
P.O. Box 110300
Juneau, AK 99811-0300

Office of the Attorney General of Arkansas
323 Center Street, Suite 200
Little Rock, AR 72201-2610

Office of the Attorney General of Colorado
Ralph L. Carr Colorado Judicial Ctr.
1300 Broadway, 10th Floor
Denver, CO 80203

Office of the Attorney General of Delaware
Delaware Department of Justice
Carvel State Building
820 N. French St
Wilmington, DE 19801

Office of Attorney General of Florida
State of Florida
The Capitol PL-01
Tallahassee, FL 32399-1050

Office of the Attorney General of Guam
590 S. Marine Corps Dr., Ste. 901
Tamuning, GU 96913

Office of the Attorney General of Idaho
700 W. Jefferson Street, Suite 210
P.O. Box 83720
Boise, ID 83720-0010

Office of the Attorney General of Indiana
Indiana Government Center South
302 W. Washington St., 5th Floor
Indianapolis, IN 46204

Office of the Attorney General of Alabama
P.O. Box 300152
Montgomery, AL 36130-0152

Office of the Attorney General of Arizona
2005 N Central Ave
Phoenix, AZ 85004-2926

CAFA Coordinator
Office of the Attorney General of California
Consumer Law Section
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Office of the Attorney General of Connecticut
55 Elm Street
Hartford, CT 06106

Office of the Attorney General for the
District of Columbia
441 4th Street, NW
Ste. 1100S
Washington, DC 20001

Office of the Attorney General of Georgia
40 Capitol Square, SW
Atlanta, GA 30334

Department of the Attorney General of Hawaii
425 Queen Street
Honolulu, HI 96813

Office of the Attorney General of Illinois
James R. Thompson Ctr.
100 West Randolph Street
Chicago, IL 60601

Office of the Attorney General of Iowa
Hoover State Office Building
1305 E. Walnut Street
Des Moines, IA 50319

Office of the Attorney General Kansas
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612-1597

Office of Attorney General of Louisiana
P.O. Box 94005
Baton Rouge, LA 70804

Office of the Attorney General of Maryland
200 St. Paul Place
Baltimore, MD 21202-2202

Office of the Attorney General of Michigan
G. Mennen Williams Building, 7th Floor
525 W. Ottawa St.
P.O. Box 30212
Lansing, MI 48909

Office of the Attorney General of Mississippi
P.O. Box 220
Jackson, MS 39201

Office of the Attorney General of Montana
Justice Building
215 N. Sanders Street
P.O. Box 201401
Helena, MT 59620-1401

Office of the Attorney General of Nevada
100 North Carson St.
Carson City, NV 89701

Office of the Attorney General of New Jersey
RJ Hughes Justice Complex
25 Market St., Box 080
Trenton, NJ 08625-0080

CAFA Coordinator
Office of the Attorney General of New York
28 Liberty St., 15th FL
New York, NY 10005

Office of the Attorney General of Kentucky
700 Capitol Ave., Ste. 118
Frankfort, KY 40601

Office of the Attorney General of Maine
6 State House Station
Augusta, ME 04333

Office of the Attorney General of Massachusetts
ATTN: CAFA Coordinator/General Counsel's
Office
One Ashburton Place
Boston, MA 02108-1518

Office of the Attorney General of Minnesota
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131

Missouri Attorney General's Office of Missouri
Supreme Court Building
207 W. High St.
P.O. Box 899
Jefferson City, MO 65102

Office of the Attorney General of Nebraska
2115 State Capitol
P.O. Box 98920
Lincoln, NE 68509

Office of the Attorney General of
New Hampshire
33 Capitol Street
Concord, NH 03301

Office of the Attorney General of New Mexico
408 Galisteo Street
Villagra Building
Santa Fe, NM 87501

Office of the Attorney General North Carolina
9001 Mail Service Center
Raleigh, NC 27699-9001

Office of the Attorney General of North Dakota
State Capitol
600 E. Boulevard Ave. Dept. 125
Bismarck, ND 58505

Office of the Attorney General of Oklahoma
313 NE 21st Street
Oklahoma City, OK 73105

Office of the Attorney General of Pennsylvania
16th Floor, Strawberry Square
Harrisburg, PA 17120

Office of the Attorney General of Rhode Island
150 South Main Street
Providence, RI 02903

Office of the Attorney General of South Dakota
1302 E. Hwy 14, Suite 1
Pierre, SD 57501-8501

Office of the Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

Office of the Attorney General of Vermont
109 State Street
Montpelier, VT 05609-1001

Office of the Attorney General of Washington
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

Office of the Attorney General of Wisconsin
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Office of the Attorney General of Ohio
State Office Tower
30 E. Broad Street, 14th Fl.
Columbus, OH 43215

Office of the Attorney General of Oregon
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

Office of the Attorney General of Puerto Rico
Puerto Rico Department of Justice
PO Box 9020192
San Juan, PR 00902-0192

Office of the Attorney General of South Carolina
P.O. Box 11549
Columbia, SC 29211

Office of the Attorney General of Tennessee
P.O. Box 20207
Nashville, TN 37202-0207

Office of the Attorney General of Utah
P.O. Box 142320
Salt Lake City, UT 84114-2320

Office of the Attorney General of Virginia
202 North Ninth Street
Richmond, VA 23219

Office of the Attorney General of West Virginia
State Capital Complex Building 1
Room E-26
Charleston, WV 25305

Office of the Attorney General of Wyoming
Kendrick Building
2320 Capitol Avenue
Cheyenne, WY 82002

EXHIBIT B

Jurisdiction	Estimated Number of Eligible Vehicles Currently Registered*	Percentage of Total
Alabama	979	1.00%
Alaska	430	0.44%
Arizona	2,535	2.58%
Arkansas	1,047	1.06%
California	13,324	13.55%
Colorado	2,974	3.02%
Connecticut	588	0.60%
DC	32	0.03%
Delaware	212	0.22%
Florida	5,317	5.41%
Georgia	2,409	2.45%
Guam**	10	0.01%
Hawaii	178	0.18%
Idaho	1,443	1.47%
Illinois	2,750	2.80%
Indiana	1,489	1.51%
Iowa	1,387	1.41%
Kansas	1,108	1.13%
Kentucky	1,062	1.08%
Louisiana	1,607	1.63%
Maine	461	0.47%
Maryland	1,213	1.23%
Massachusetts	926	0.94%
Michigan	2,342	2.38%
Minnesota	1,697	1.73%
Mississippi	765	0.78%
Missouri	1,861	1.89%
Montana	1,251	1.27%
Nebraska	899	0.91%
Nevada	1,199	1.22%
New Hampshire	475	0.48%
New Jersey	1,229	1.25%
New Mexico	907	0.92%
New York	2,841	2.89%
North Carolina	2,408	2.45%
North Dakota	573	0.58%

Jurisdiction	Estimated Number of Eligible Vehicles Currently Registered*	Percentage of Total
Ohio	1,902	1.93%
Oklahoma	1,962	1.99%
Oregon	2,451	2.49%
Pennsylvania	2,383	2.42%
Puerto Rico	147	0.15%
Rhode Island	153	0.16%
South Carolina	1,193	1.21%
South Dakota	700	0.71%
Tennessee	1,426	1.45%
Texas	13,023	13.24%
Utah	1,967	2.00%
Vermont	258	0.26%
Virginia	1,790	1.82%
Washington	3,373	3.43%
West Virginia	524	0.53%
Wisconsin	2,444	2.48%
Wyoming	732	0.74%

*Based on available registration data as of October 1, 2018.

**Based on retail sales data.

Exhibit 2

You are receiving this notice as an **owner, former owner, lessee, or former lessee** of one of the Fiat Chrysler EcoDiesel vehicles listed below. You may be eligible for cash benefits under a class action settlement.

Ram 1500 EcoDiesel	Jeep Grand Cherokee EcoDiesel
Model Years 2014-2016	Model Years 2014-2016

Settlement Benefits

GET PAID CASH

most owners get \$3,075; most lessees get \$990

+

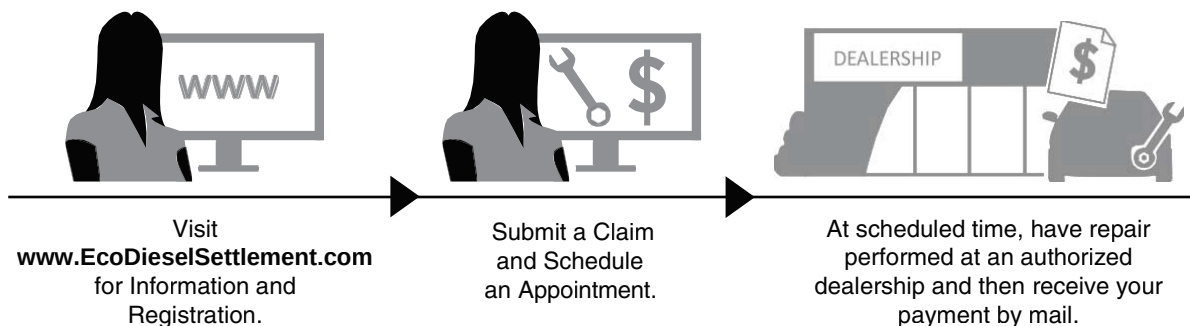
GET YOUR VEHICLE FIXED

to comply with emissions standards

+

RECEIVE A COMPREHENSIVE EXTENDED WARRANTY

How It Works



Your Rights, Next Steps, & Important Dates

The Settlements collectively provide cash compensation, a vehicle repair, and a comprehensive extended warranty. **If you are a current owner or current lessee, you must submit a claim and receive the repair to be eligible for compensation.** You can have your vehicle repaired and receive the extended warranty prior to or after making a claim, but you will not be eligible for compensation until you submit your claim.

The Court will hold a hearing on **May 3, 2019** and will decide whether to approve the Settlements on or after that date.

Fiat Chrysler will begin processing claims once the Court approves the Settlements. This notice is being sent to you prior to that date to give you time to decide whether to participate in the claims process. You will be notified again once you can start submitting claim forms and documentation. In the meantime, claim forms are available now at www.EcoDieselSettlement.com, and you can also sign up for e-mail updates at www.EcoDieselSettlement.com.

All current owners and current lessees must submit a valid claim within **21 months** of the Court's final approval of the Settlements to participate. If you are a Former Owner or Former Lessee, you must submit your valid claim within **90 days** of the Court's final approval of the Settlements. Please visit the settlement website below for additional information about important dates and deadlines.

You may object or exclude yourself from the Class Action Settlement by **April 15, 2019**. If you object, you will still be a member of the Class (if you are otherwise eligible) and must submit a claim to receive cash compensation. If you stay in the Class Action Settlement, you are eligible to receive benefits and cash and cannot sue Fiat Chrysler or Bosch for the claims being resolved by the Settlement.

Attorneys representing the Class will request Court approval for \$59 million in attorneys' fees and \$7 million in costs. Any such fees and costs awarded by the Court will be paid separately by Fiat Chrysler and Bosch and will not reduce your compensation.

Visit www.EcoDieselSettlement.com for more details on the Class Action Settlement, to register, and to review your rights and options.

Jeep Grand Cherokee and Ram 1500 EcoDiesel Emissions Settlements
c/o Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE PAID
BELLMAWR, NJ
PERMIT #247

**Electronic Service
Requested**

IMPORTANT LEGAL INFORMATION

Official Court-Approved Legal Notice



**2014-2016
Jeep Grand Cherokee EcoDiesel
and Ram 1500 EcoDiesel Settlements**

Exhibit 3

Official Court-Approved Legal Notice

Settlements with Ram and Jeep EcoDiesel Vehicle Owners/Lessees, the Environmental Protection Agency, and the California Air Resources Board

You are receiving this notice as an **owner, former owner, lessee, or former lessee** of one of the Fiat Chrysler EcoDiesel vehicles listed below. You may be eligible for cash benefits under a class action settlement.

Ram 1500
3.0L EcoDiesel

Model Years
2014-2016

Jeep Grand
Cherokee 3.0L EcoDiesel

Model Years
2014-2016

Settlement Benefits

GET PAID CASH

most owners get \$3,075; most lessees get \$990

+

GET YOUR VEHICLE FIXED

to comply with emissions standards

+

RECEIVE A COMPREHENSIVE EXTENDED WARRANTY

How It Works



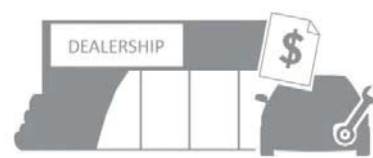
Step 1

Visit
www.EcoDieselSettlement.com
for Information and Registration.



Step 2

Submit a Claim and
Schedule an Appointment



Step 3

At scheduled time, have repair
performed at an authorized
dealership and then receive
your payment by mail.

Your Rights, Next Steps, & Important Dates

The Settlements collectively provide cash compensation, a vehicle repair, and a comprehensive extended warranty. **If you are a current owner or current lessee, you must submit a claim and receive the repair to be eligible for compensation.** You can have your vehicle repaired and receive the extended warranty prior to or after making a claim, but you will not be eligible for compensation until you submit your claim.

The Court will hold a hearing on **May 3, 2019** and will decide whether to approve the Settlements on or after that date.

Fiat Chrysler will begin processing claims once the Court approves the Settlements. This notice is being sent to you prior to that date to give you time to decide whether to participate in the claims process. You will be notified again once you can start submitting claim forms and documentation. In the meantime, claim forms are available now at www.EcoDieselSettlement.com, and you can also sign up for e-mail updates at www.EcoDieselSettlement.com.

All current owners and current lessees must submit a valid claim within **21 months** of the Court's final approval of the Settlements to participate. If you are a Former Owner or Former Lessee, you must submit your valid claim within **90 days** of the Court's final approval of the Settlements. Please visit the settlement website below for additional information about important dates and deadlines.

You may object or exclude yourself from the Class Action Settlement by **April 15, 2019**. If you object, you will still be a member of the Class (if you are otherwise eligible) and must submit a claim to receive cash compensation. If you stay in the Class Action Settlement, you are eligible to receive benefits and cash and cannot sue Fiat Chrysler or Bosch for the claims being resolved by the Settlement.

Attorneys representing the Class will request Court approval for \$59 million in attorneys' fees and \$7 million in costs. Any such fees and costs awarded by the Court will be paid separately by Fiat Chrysler and Bosch and will not reduce your compensation.

Visit www.EcoDieselSettlement.com for more details on the Class Action Settlement, to register, and to review your rights and options.

www.EcoDieselSettlement.com 1-833-280-4748

<<First Name>> <<Last Name>> Notice ID: <<NoticeID>>

[Unsubscribe](#)

Exhibit 4



EcoDiesel Emissions Settlement ...
Administrator
Sponsored · 🌐

Learn more about new settlements announced
for Ram 1500 EcoDiesels.



ECODIESELSETTLEMENT.COM

EcoDiesel Settlements
Visit the Settlement Website

LEARN MORE



Like



Comment



Share



EcoDiesel Emissions Settlement ...
Administrator
Sponsored · 🌐

Learn more about new settlements announced
for Jeep Grand Cherokee EcoDiesels.



ECODIESELSETTLEMENT.COM

EcoDiesel Settlements
Visit the Settlement Website

LEARN MORE



Like



Comment

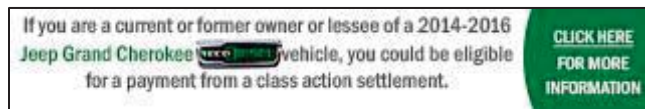


Share

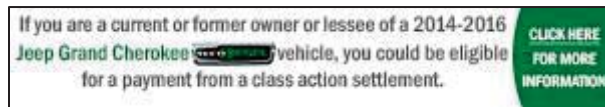
Exhibit 5

Jeep Banner Ads – All Interactive Advertising Bureau (“IAB”) Sizes

1. 320x50



2. 300x50



3. 728x90



4. 300x250



5. 300x600

If you are a current or
former owner or
lessee of a
2014-2016
Jeep Grand Cherokee

vehicle, you could
be eligible for a
payment from a class
action settlement.

[CLICK HERE](#)
FOR MORE INFORMATION

6. 160x600

If you are a
current or
former owner
or lessee of a
2014-2016
**Jeep Grand
Cherokee**



vehicle, you
could be
eligible for a
payment from
a class action
settlement.

[CLICK HERE](#)
FOR MORE
INFORMATION

Ram 1500 Banner Ads – All Interactive Advertising Bureau (“IAB”) Sizes

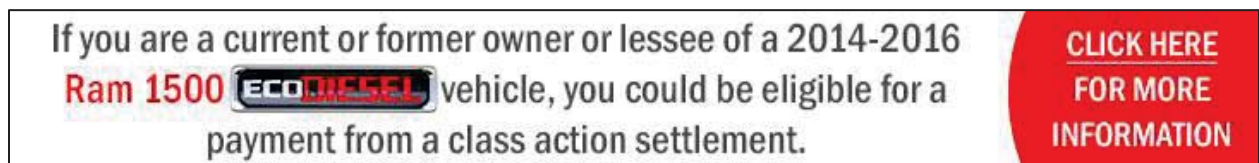
1. 320x50



2. 300x50



3. 728x90



4. 300x250



5. 300x600

If you are a current or
former owner or
lessee of a
2014-2016

Ram 1500



vehicle, you could
be eligible for a
payment from a class
action settlement.

[CLICK HERE](#)
FOR MORE INFORMATION

6. 160x600

If you are a
current or
former owner
or lessee of a
2014-2016

Ram 1500



vehicle, you
could be
eligible for a
payment from
a class action
settlement.

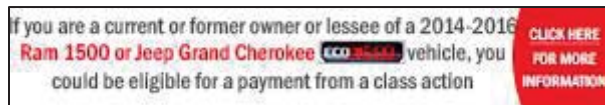
[CLICK HERE](#)
FOR MORE
INFORMATION

Jeep & Ram 1500 Banner Ads – All Interactive Advertising Bureau (“IAB”) Sizes

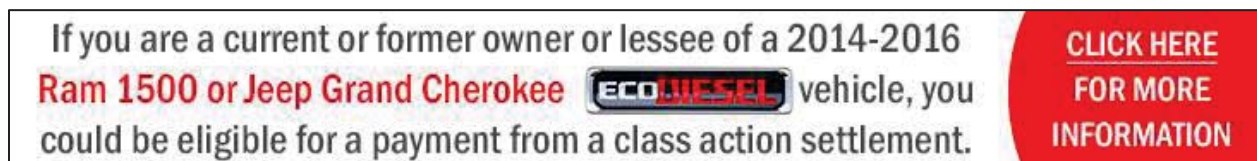
1. 320x50



2. 300x50



3. 728x90



4. 300x250



5. 300x600

If you are a current or
former owner or
lessee of a
2014-2016

**Ram 1500 or Jeep
Grand Cherokee**



vehicle, you could
be eligible for a
payment from a class
action settlement.

**CLICK HERE
FOR MORE INFORMATION**

6. 160x600

If you are a
current or former
owner or lessee
of a 2014-2016
**Ram 1500 or
Jeep Grand
Cherokee**

vehicle, you
could be eligible
for a payment
from a class
action
settlement.

[CLICK HERE](#)
**FOR MORE
INFORMATION**

Exhibit 6

Official Court-Approved Legal Notice

Settlements with Ram and Jeep EcoDiesel Vehicle Owners/Lesseees, the Environmental Protection Agency, and the California Air Resources Board

You are receiving this notice as an **owner, former owner, lessee, or former lessee** of one of the Fiat Chrysler EcoDiesel vehicles listed below. You may be eligible for cash benefits under a class action settlement.

Ram 1500 3.0L EcoDiesel	Jeep Grand Cherokee 3.0L EcoDiesel
Model Years 2014-2016	Model Years 2014-2016

Settlement Benefits**GET PAID CASH**

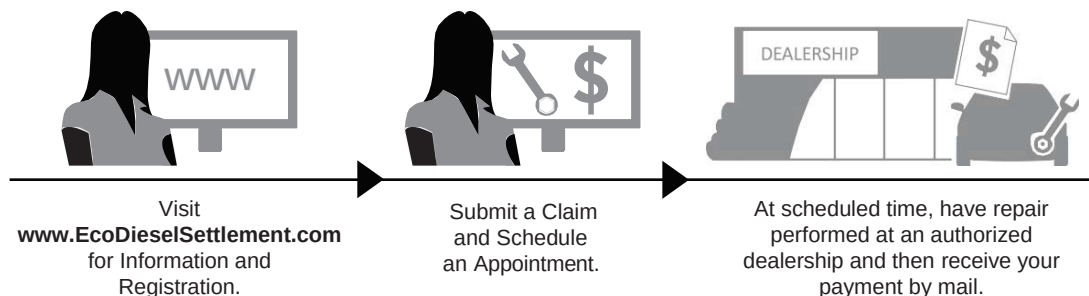
most owners get \$3,075; most lessees get \$990

+

GET YOUR VEHICLE FIXED

to comply with emissions standards

+

RECEIVE A COMPREHENSIVE EXTENDED WARRANTY**How It Works****Your Rights, Next Steps, & Important Dates**

The Settlements collectively provide cash compensation, a vehicle repair, and a comprehensive extended warranty. **If you are a current owner or current lessee, you must submit a claim and receive the repair to be eligible for compensation.** You can have your vehicle repaired and receive the extended warranty prior to or after making a claim, but you will not be eligible for compensation until you submit your claim.

The Court will hold a hearing on **May 3, 2019** and will decide whether to approve the Settlements on or after that date.

Fiat Chrysler will begin processing claims once the Court approves the Settlements. This notice is being sent to you prior to that date to give you time to decide whether to participate in the claims process. You will be notified again once you can start submitting claim forms and documentation. In the meantime, claim forms are available now at www.EcoDieselSettlement.com, and you can also sign up for e-mail updates at www.EcoDieselSettlement.com.

All current owners and current lessees must submit a valid claim within **21 months** of the Court's final approval of the Settlements to participate. If you are a Former Owner or Former Lessee, you must submit your valid claim within **90 days** of the Court's final approval of the Settlements. Please visit the settlement website below for additional information about important dates and deadlines.

You may object or exclude yourself from the Class Action Settlement by **April 15, 2019**. If you object, you will still be a member of the Class (if you are otherwise eligible) and must submit a claim to receive cash compensation. If you stay in the Class Action Settlement, you are eligible to receive benefits and cash and cannot sue Fiat Chrysler or Bosch for the claims being resolved by the Settlement.

Attorneys representing the Class will request Court approval for \$59 million in attorneys' fees and \$7 million in costs. Any such fees and costs awarded by the Court will be paid separately by Fiat Chrysler and Bosch and will not reduce your compensation.

Visit www.EcoDieselSettlement.com for more details on the Class Action Settlement, to register, and to review your rights and options.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CHRYSLER-DODGE-JEEP
ECODIESEL® MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

Case No. 3:17-md-02777-EMC

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
ATTORNEYS' FEES AND COSTS**

The Honorable Edward M. Chen

Before the Court is Class Plaintiffs' Motion for Final Approval of Class Action Settlement and Attorneys' Fees and Costs under Fed. R. Civ. P. 23(e) and 23(h) and Pretrial Order Nos. 3 and 4. The background, procedural history, and Settlement terms were summarized in the Court's Order Granting Preliminary Approval of Class Settlement, familiarity with which is presumed. *See* Dkt. No. 526 ("Preliminary Approval Order"). In brief, the Settlement, along with the interrelated US-CA Consent Decree, provides an emissions repair for approximately 100,000 vehicles, offers an extended warranty covering all vehicles receiving that repair, and compensates class members with cash payments ranging from \$990 to \$3,075.

Following the Court's Preliminary Approval Order, notice has been sent to the Class via a Court-approved notice program, and the Class has had an opportunity to respond. Having considered the Parties' briefs and accompanying submissions, comments from the Class, and presentations at the hearing on these matters, the Court **GRANTS** the motion.

1 **I. CLASS CERTIFICATION AND SETTLEMENT APPROVAL**

2 When presented with a motion for final approval of a class action settlement, a court first
 3 evaluates whether certification of a settlement class is appropriate under Federal Rule of Civil
 4 Procedure 23(a) and (b). Rule 23(a) provides that a class action is proper only if four
 5 requirements are met: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of
 6 representation. *See* Fed. R. Civ. 23(a)(1)-(4). As relevant here, settlement certification of a Rule
 7 23(b)(3) class requires that (1) “the questions of law or fact common to class members
 8 predominate over any questions affecting only individual members” and that (2) “a class action
 9 [be] superior to any other available methods for fairly and efficiently adjudicating the
 10 controversy.” *See* Fed. R. Civ. P. 23(b)(3).

11 The Court analyzed these factors in its Preliminary Approval Order and finds no reason to
 12 disturb its earlier conclusions. The requirements of Rule 23(a) and Rule 23(b)(3) were satisfied
 13 then and they remain so now. *See* Dkt. No. 526 at 8-12. As such, the Court determines that
 14 certification of the Settlement Class is appropriate.

15 Assuming a proposed settlement satisfies Rules 23(a) and (b), the Court must then
 16 determine whether the proposal is fundamentally fair, reasonable, and adequate. *See* Fed. R. Civ.
 17 P. 23(e)(2). The Ninth Circuit has identified factors to consider when a court evaluates a
 18 settlement:

19 (1) the strength of the plaintiff’s case; (2) the risk, expense,
 20 complexity, and likely duration of further litigation; (3) the risk of
 21 maintaining class action status throughout the trial; (4) the amount
 22 offered in settlement; (5) the extent of discovery completed and the
 23 stage of the proceedings; (6) the experience and views of counsel;
 (7) the presence of a governmental participant; and (8) the reaction
 of the class members of the proposed settlement.

24 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). In preliminarily
 25 approving the Settlement, the Court analyzed the Rule 23(e)(2) and Ninth Circuit factors and
 26 concluded that the Settlement was “fair, adequate, and reasonable.” Dkt. No. 526 at 15. Those
 27 conclusions stand and counsel equally in favor of final approval now.

II. THE REQUESTED ATTORNEYS' FEES AND COSTS

Class Counsel requests an award of \$59 million in attorneys' fees and \$7 million in costs for work arising from the claims resolved by the Settlement. Defendants have agreed to pay this amount in addition to compensation to the Class. See Dkt. No. 508 ¶ 11.1.

When, as here, a settlement establishes a common fund or calculable monetary benefit for a class, it is appropriate to award attorneys' fees based on a percentage of the monetary benefit obtained. See *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Here, Class Counsel's requested fee represents between 9.6% (using the full value of the Settlement benefits) and 17.7% (using a conservative value) of the constructive value of benefits obtained for the Class. Concerns that may otherwise counsel in favor of a conservative valuation are not present here, as Fiat Chrysler faces penalties of more than \$6,000 per vehicle if it fails to achieve an 85% participation rate. This provides a strong incentive to ensure robust participation in the Settlement. Dkt. No. 526 at 6-7. Regardless, even the conservative estimate of the requested fee percentage falls well below the Ninth Circuit's 25% benchmark as well as the mean and median percentages awarded in similarly-valued "megafund" settlements. See *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); Declaration of Brian T. Fitzpatrick ("Fitzpatrick Decl."), Dkt. No. 538-2 ¶¶ 16-26.

A lodestar cross-check confirms the reasonableness of the award sought. Both the hours worked and the rates billed (a blended average rate of \$453 per hour) are customary, reasonable, and below the average in comparable settlements. See, e.g., *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving blended average hourly billing rate of \$529 per hour in similar litigation); Fitzpatrick Decl. ¶¶ 34-35 (analyzing empirical data relating to average hours billed and average blended billing rates in comparable settlements). The total lodestar yields a multiplier of 1.17 for work done to-date and anticipated future work to implement and protect the settlement. Declaration of Elizabeth J. Cabraser, Dkt. No. 538-1 ¶¶ 17-19. This multiplier is significantly below the average for similarly-valued settlements, and is well within the range of reason. See, e.g., *Alexander v. FedEx Ground Package Sys., Inc.*, No. 05-CV-00038-EMC, 2016

1 WL 3351017, at *3 (N.D. Cal. June 15, 2016) (noting the typical multiplier in megafund cases is
 2 “3 or less”); *Volkswagen*, 2017 WL 1047834, at *5 (approving lodestar multiplier of 2.63);
 3 Fitzpatrick Decl. ¶¶ 34-45. Both the percentage of the fund and the lodestar multiplier are
 4 reasonable in light of the substantial benefits obtained for the Class and the risks and complexities
 5 of this multidistrict litigation. Class Counsel’s request for \$59 million in fees and \$7 million in
 6 costs is hereby **GRANTED**.

7 Finally, Plaintiffs request a service award of \$5,000 to be paid by Defendants in addition
 8 to the Settlement compensation. This is the presumptive service award in this District, and is
 9 reasonable under the facts of this case, in which representative Plaintiffs participated actively in
 10 the litigation, including sitting for depositions, completing detailed questionnaires, and searching
 11 for and producing responsive documents. *See* Dkt. No. 526 at 15. The request for incentive
 12 awards for each of the 60 settlement class representatives is therefore **GRANTED**.

13 **III. CONCLUSION**

14 Accordingly, the Court hereby orders, adjudges, finds, and decrees as follows:

- 15 1. The Court hereby **CERTIFIES** the Settlement Class and **GRANTS** the Motion
 16 for Final Approval of the Settlement. The Court fully and finally approves the
 17 Settlement in the form contemplated by the Settlement Agreement (Dkt. No. 508)
 18 and finds its terms to be fair, reasonable and adequate within the meaning of Fed.
 19 R. Civ. P. 23. The Court directs the consummation of the Settlement pursuant to
 20 the terms and conditions of the Settlement Agreement.
- 21 2. The Court **CONFIRMS** the appointment of Lead Plaintiffs’ Counsel and the
 22 members of the PSC listed in Pretrial Order No. 3 as Settlement Class Counsel.
- 23 3. The Court **CONFIRMS** the appointment of the Settlement Class Representatives
 24 listed in Exhibit A to Class Plaintiffs’ Motion for Preliminary Approval. Dkt. No.
 25 491-6.
- 26 4. The Court **CONFIRMS** the appointment of the Angeion Group as Claims and
 27 Notice Administrator.

5. The Court **GRANTS** Class Counsel's request for attorneys' fees and costs, and **AWARDS** Class Counsel \$59 million in attorneys' fees and \$7 million in costs to be paid by the Defendants in addition to the compensation available to the Class, and to be allocated by Lead Counsel among the PSC firms and additional counsel performing work under Pretrial Order Nos. 3 and 4.
6. The Court **AWARDS** the Settlement Class Representatives service awards of \$5,000 each, also to be paid by the Defendants in addition to the compensation available to the Class.
7. The Court hereby discharges and releases the Released Claims as to the Released Parties, as those terms are used and defined in the Settlement Agreement.
8. The Court hereby permanently bars and enjoins the institution and prosecution by Class Plaintiffs and any Class Member of any other action against the Released Parties in any court or other forum asserting any of the Released Claims, as those terms are used and defined in the Settlement Agreement.
9. The Court further reserves and retains exclusive and continuing jurisdiction over the Settlement concerning the administration and enforcement of the Settlement Agreement and to effectuate its terms. Dkt. No. 508 at ¶ 9.16.

A separate judgment consistent with this Order will issue pursuant to Fed. R. Civ. P. 58.

Dated: _____, 2019

HON. EDWARD M. CHEN
United States District Judge