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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

**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**

This Document Relates to:  
  
ALL ACTIONS

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

The Honorable Edward M. Chen

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**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 Class<sup>1</sup> 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.

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



1 **MEMORANDUM AND POINTS OF AUTHORITIES**

2 **INTRODUCTION**

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

21 The Class agrees. In preliminarily approving the Settlement, the Court noted that the  
22 “benefits to individual class members are substantial and likely to gain their attention.” Dkt. No.  
23 526 at 13. The Class Members’ initial response bears this out. In the few weeks since the  
24 beginning of the notice program, more than 23,000 Class Members have already registered their  
25 interest in the Settlement by signing up on the Settlement Website. *See* Declaration of Steven  
26 Weisbrot (“Weisbrot Decl.”) ¶ 21. This is a remarkable start given that the claims period will not  
27 officially open for at least two more months and will not close for nearly two years after that. *Id.*  
28 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**

1  
2 The Court is very familiar with this litigation. In the interest of efficiency, Plaintiffs will  
3 not repeat the entire history, much of which is detailed in Plaintiffs' preliminary approval briefing  
4 (Dkt. No. 491), the Court's preliminary settlement orders (Dkt. Nos. 526-27), and the Court's  
5 order on the first motions to dismiss (Dkt. No. 290), which are incorporated by reference herein.  
6 A few points, however, bear emphasis.

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

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

14 The PSC packed much more into these months than the timeline might suggest. Once  
15 consolidated, Class Counsel filed comprehensive Amended, First Amended, and Second  
16 Amended Consolidated Consumer Class Action Complaints that refined and developed the  
17 complex allegations in this technical, multi-party fraud case. *See* Dkt. Nos. 186, 225, 310. Each  
18 complaint spanned hundreds of pages and presented detailed claims under federal law and the  
19 laws of all 50 states. *Id.* The allegations were thorough, as were the challenges mounted against  
20 them. Both Fiat Chrysler and Bosch moved to dismiss the First Amended Complaint (Dkt. Nos.  
21 231-32), which Class Counsel opposed in a 75-page opposition brief (Dkt. No. 249). In a 129-  
22 page order, the Court upheld Plaintiffs' nationwide RICO claim and granted leave to amend and  
23 clarify as to state common law fraud and consumer protection claims. Dkt. No. 290. Plaintiffs  
24 then filed a 438-page Second Amended Complaint, which added approximately 30 pages of  
25 detailed factual allegations (and amended many of the state law claims) based on the documents  
26 analyzed and depositions taken at that time. Dkt. No. 310. A second round of motions to dismiss  
27 followed—this one even more intense than the last. All told, the two rounds comprised 301 pages  
28

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.<sup>2</sup>

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 <sup>2</sup> 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

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

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

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

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

25 \_\_\_\_\_  
 26 <sup>3</sup> As discussed below, the Parties have agreed that Class Counsel would seek, and the Defendants  
 27 would not oppose, an aggregate award of \$66 million for attorneys’ fees and costs to be paid in  
 28 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.

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

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

10 **IV. The Settlement Claims Process is Straightforward and Streamlined.**

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

22 **ARGUMENT**

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

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



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

2           Rule 23(a)(1) is satisfied where, as here, “the class is so numerous that joinder of all class  
3 members is impracticable.” Fed. R. Civ. P. 23(a)(1). The Settlement Class includes more than  
4 100,000 members dispersed across the United States. Joinder would be impracticable, and “the  
5 numerosity requirement has thus been met.” Dkt. No. 526 at 9; *accord Slaven v. BP Am., Inc.*,  
6 190 F.R.D. 649, 654 (C.D. Cal. 2000) (numerosity is typically satisfied when the class exceeds 40  
7 members); *Palmer v. Stassinis*, 233 F.R.D. 546, 549 (N.D. Cal. 2006) (“Joinder of 1,000 or more  
8 co-plaintiffs is clearly impractical.”).

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

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

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

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



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

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

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

21           “The predominance inquiry ‘asks whether the common, aggregation-enabling, issues in  
 22 the case are more prevalent or important than the non-common, aggregation-defeating, individual  
 23 issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted).  
 24 Thus, “[w]hen common questions present a significant aspect of the case and they can be resolved  
 25 for all members of the class in a single adjudication, there is clear justification for handling the  
 26 dispute on a representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022 (citation  
 27 omitted).  
 28

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

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

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

17 the Court evaluates whether a class action is a superior method of adjudicating  
 18 plaintiff's claims by evaluating four factors: "(1) the interest of each class member  
 19 in individually controlling the prosecution or defense of separate actions; (2) the  
 20 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."

21 *Trosper v. Styker Corp.*, No. 13-CV-0607-LHK, 2014 WL 4145448, at \*17 (N.D. Cal. Aug. 21,  
 22 2014) (citation omitted).

23 Class treatment here is far superior to the litigation of tens of thousands of individual  
 24 consumer actions. *Hanlon*, 150 F.3d at 1023; *see also Wolin*, 617 F.3d at 1176 ("Forcing  
 25 individual vehicle owners to litigate their cases, particularly where common issues predominate  
 26 for the proposed class, is an inferior method of adjudication."); Dkt. No. 526 at 11 ("[C]lass  
 27 action treatment is superior to other methods and will efficiently and fairly resolve the  
 28 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.

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

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

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

26           The Settlement secures strong relief for the Class, as detailed throughout this brief. *See*,  
 27 *e.g.*, Background § II, *supra*. Along with the US-CA Consent Decree, the Settlement offers (1)  
 28 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.<sup>4</sup> 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 <sup>4</sup> 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.

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

7 **2. The claim process is straightforward and convenient.**

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

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

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



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

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

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

11           The Ninth Circuit has identified a number of additional factors for courts to consider when  
 12 evaluating the fairness, reasonableness, and adequacy of a class action settlement. Those factors  
 13 include: (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely  
 14 duration of further litigation; (3) the risk of maintaining class action status throughout the trial;  
 15 (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the  
 16 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental  
 17 participant; and (8) the reaction of the class members of the proposed settlement. *In re Bluetooth*,  
 18 654 F.3d at 946. Many of these—*e.g.*, the strength of plaintiffs’ case, the risk and duration of  
 19 further litigation, and the amount offered—overlap with the Rule 23(e)(2)(C) factors and are  
 20 addressed above. The remainder favor final approval as well.

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

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





1 **III. Class Counsel’s Requested Fee is Fair, Reasonable, and Appropriate.**

2 “[L]awyer[s] who recover[] a common fund . . . [are] entitled to a reasonable attorney’s  
3 fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In deciding  
4 whether a requested fee amount is appropriate, the Court’s role is to determine whether such  
5 amount is “fundamentally ‘fair, adequate, and reasonable.’” *Staton v. Boeing Co.*, 327 F.3d 938,  
6 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)).

7 When a settlement establishes a common fund or calculable monetary benefit for a class,  
8 it is both appropriate and preferred to award attorneys’ fees based on a percentage of the  
9 monetary benefit obtained. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir.  
10 2002); Fitzpatrick Decl. ¶¶ 11-13. This is true even in a “claims made or class reversion”  
11 settlement, and in such cases, “it is appropriate to award class fund attorneys’ fees based on the  
12 gross settlement fund” available to the class. *See, e.g., Lopez v. Youngblood*, No. CV-F-07-0474  
13 DLB, 2011 WL 10483569, at \*12 (E.D. Cal. Sept. 2, 2011) (citing *Williams v. MGM-Pathe*  
14 *Commc’ns Co.*, 129 F.3d 1026 (9th Cir. 1997)).<sup>5</sup> For the purpose of appraising a fee percentage,  
15 moreover, the constructive common fund also includes the ascertainable value of non-monetary  
16 relief<sup>6</sup> (here, the Extended Warranty) and, if paid separately by the defendants (as here), the cost  
17 of notice and settlement administration,<sup>7</sup> and attorneys’ fees.<sup>8</sup>

18 \_\_\_\_\_  
19 <sup>5</sup> *See also, e.g., Rainbow Bus. Sols. v. MBF Leasing LLC*, No. 10-CV-01993-CW, 2017 WL  
20 6017844, at \*2 n.1 (N.D. Cal. Dec. 5, 2017) (“Fairness of the fee should be determined by the  
21 amount made available to the class, not the amount actually paid in claims.”); *Miller v.*  
22 *Ghirardelli Chocolate Co.*, No. 12-CV-04936-LB, 2015 WL 758094, at \*5 (N.D. Cal. Feb. 20,  
23 2015) (“Ninth Circuit precedent requires courts to award class counsel fees based on the total  
24 benefits being made available to class members rather than the actual amount that is ultimately  
25 claimed.”); *Ellsworth v. U.S. Bank, N.A.*, No. 3:12-CV-02506-LB, 2015 WL 12952698, at \*4  
26 (N.D. Cal. Sept. 24, 2015) (same); *In re Wal-Mart Stores, Inc. Wage & Hour Litig.*, No. 06-02069  
27 SBA, 2011 WL 31266, at \*5 n.5 (N.D. Cal. Jan. 5, 2011) (“With respect to the amount of the fund  
28 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).

<sup>6</sup> *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

1 Applying these principles to this case, the constructive common fund established by the  
 2 Settlement includes: (1) the cash compensation available to the Class (\$307.5 million, Dkt. No.  
 3 508 ¶ 4.12); (2) the consumer value of the Extended Warranty (\$239.5 million, Dkt. No. 491-4 at  
 4 1, 5);<sup>9</sup> (3) the separately paid attorneys’ fees and costs (\$66 million, if awarded by the Court); and  
 5 (4) the separately paid cost of notice and settlement administration (\$1.5 million, Dkt. No. 491-2  
 6 ¶ 53). Together, these benefits total approximately \$615 million. Class Counsel’s requested fees  
 7 represent 9.6% of this fund. This falls far below this Circuit’s 25% benchmark, as well as the  
 8 mean and median percentages awarded in comparable “megafund” settlements. Fitzpatrick Decl.  
 9 ¶¶ 23-26 (discussing empirical analyses showing a mean and median awarded percentages 17.8%  
 10 and 19.5%); *see also In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust*  
 11 *Litig.*, No. 4:14-MD-2541-CW, 2017 WL 6040065, at \*2 (N.D. Cal. Dec. 6, 2017) (citing  
 12 Theodore Eisenberg, Geoffrey Miller, and Roy Germano, *Attorneys’ Fees in Class Actions 2009-*  
 13 *2013*, 92 N.Y.U. L. Rev. 937, 947 (2017) (“Eisenberg-Miller 2017”) (Empirical analysis shows  
 14 that “21% was the midpoint for fees where the recovery exceeded \$100 million.”).

15  
 16 settlement in determining the appropriate fee.”); *In re Netflix Privacy Litig.*, No. 5:11-CV-00379  
 17 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”).

18 <sup>7</sup> *See, e.g., Weeks v. Kellogg Co.*, No. CV 09-08102 MMM RZX, 2013 WL 6531177, at \*29  
 19 (C.D. Cal. Nov. 23, 2013) (It is “proper to include [the cost of notice and settlement  
 20 administration] in the value of the class action settlement” where plaintiffs “successfully  
 21 negotiated a provision that required defendants to bear” those costs and “thus ensured that more  
 22 money would be available to pay claimants.”); *In re Anthem, Inc. Data Breach Litig.*, No. 15-  
 23 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.’”).

24 <sup>8</sup> *See, e.g., Rainbow Bus.*, 2017 WL 6017844, at \*1 (holding that the common fund includes costs  
 25 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).

26 <sup>9</sup> Although Fiat Chrysler estimates that the Extended Warranty will cost it approximately \$105  
 27 million (Dkt. No. 508 ¶ 4.12), “the standard is not how much money a company spends on  
 28 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

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

5 **A. Class Counsel obtained substantial benefits for the Class.**

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

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

22 **B. The Settlement resulted from Class Counsel’s zealous representation in**  
 23 **complex and risky litigation.**

24 This was a complex case, both factually and legally. *See, e.g.,* Dkt. No. 519 at 5:19-20  
 25 (MR. FEINBERG: . . . As Your Honor has pointed out, this has been an extraordinarily difficult,  
 26 complex litigation.”). The subject matter was highly technical. The claims implicated multiple  
 27 defendants (foreign and domestic) in a multi-part conspiracy lasting many years. The litigation  
 28 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.*,

1 89 F. Supp. 3d 155, 169 (D. Mass. 2015) (accepting Kleckner’s warranty valuations); *In re*  
2 *Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*, No.  
3 810ML02151JVSMOX, 2013 WL 12327929, at \*9 n.10 (C.D. Cal. July 24, 2013) (finding  
4 Kleckner’s warranty valuation to be “both reliable and relevant”); *In re: Takata Airbags Products*  
5 *Liability Litigation*, Case No. 15-MD-2599 (S.D. Fla.), Dkt. No. 2162 (order granting motion for  
6 final approval of BMW settlement, supported by Dkt. No. 2033-2, declaration of Kirk Kleckner  
7 on warranty valuation), Dkt. No. 2385 (order granting motion for final approval of Honda and  
8 Nissan settlements, supported by Dkt. No. 2256-4, declaration of Kirk Kleckner on warranty  
9 valuation); Dkt. No. 3121 (order denying motion to exclude testimony of Kirk Kleckner on  
10 warranty valuation). Thus, for fee-setting purposes, the warranty value is most properly  
11 considered as part of the fund secured by the Settlement. *Staton*, 327 F.3d at 974 (When  
12 “accurately ascertained,” the value of “injunctive relief” is included “as part of the value of a  
13 common fund for purpose of applying the percentage method of determining fees.”). If the Court  
14 were inclined not to consider it in the Settlement valuation, however, this significant non-  
15 monetary relief would—at a minimum—strongly support a fee award of 17.7% of the remaining  
16 fund. *Cf. Pan v. Qualcomm Inc.*, No. 16-CV-01885-JLS-DHB, 2017 WL 3252212, at \*12 (S.D.  
17 Cal. July 31, 2017) (concluding that “substantial” non-monetary relief *that could not be*  
18 *accurately valued* supported fee award of nearly 30%).

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

21 As detailed above, Class Counsel’s request reflects only 9.6% of the full value of the  
22 constructive common fund. This is the appropriate valuation, especially given the incentive  
23 structures created by this particular settlement. *See Boeing*, 444 U.S. at 479-81; *Williams*, 129  
24 F.3d 1027 (9th Cir. 1997). Even under the most conservative approaches, however, the  
25 percentage would rise to only 13% (reducing the compensation by 15% and the warranty by 50%)  
26 or, at most, 17.7% (removing the warranty altogether). All of these percentages fall well below  
27 the 25% benchmark as well as the mean and median percentages awarded across the country and  
28



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

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

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

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

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16  
 17 <sup>10</sup> The Cabraser Declaration includes, among other information: (1) the total common benefit  
 18 hours billed, lodestar incurred, and blended average billing rate for each of the 19 category codes  
 19 identified in PTO 4; (2) the total common benefit hours billed, lodestar incurred, and blended  
 20 average billing rate for each of the ten non-PSC participating counsel firms, along with a  
 21 description of the work performed by those firms; (3) the total common benefit hours billed,  
 22 lodestar incurred, range of billing rates, and blended average billing rates for each category of  
 23 timekeeper (Partner, Associate, Non-Partner-Track Attorney, and other professional); and (4) a  
 24 list of all attorney timekeepers' law schools and graduation years, timekeeper designation, and  
 25 rates billed. This detailed declaration comports with the Court's directives in PTO 4 and this  
 26 District's Procedural Guidance for Class Action Settlements. *See Procedural Guidance,*  
 27 *Attorneys' Fees* ("Declarations of class counsel as to the number of hours spent on various  
 28 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.<sup>11</sup> 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 <sup>11</sup> 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.

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

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

20 **CONCLUSION**

21 For the foregoing reasons, Settlement Class Representatives and Settlement Class Counsel  
22 respectfully request that the Court confirm the certification of the Settlement Class and  
23 appointment of Settlement Class Counsel and Class Representatives; grant final approval to the  
24 Settlement; award \$59 million in attorneys’ fees and \$7 million in costs to be allocated by Lead  
25 Counsel among the PSC firms and additional counsel performing work under Pretrial Order Nos.  
26 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,  
LLP

3

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

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*Plaintiffs' Steering Committee*

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**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

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UNITED STATES DISTRICT COURT

9

NORTHERN DISTRICT OF CALIFORNIA

10

SAN FRANCISCO DIVISION

11

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

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

14 This Document Relates to:

**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**

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ALL ACTIONS

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The Honorable Edward M. Chen

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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



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

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

10 **Table 1**

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

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.

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

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

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

**Table 2**

<b>Non-PSC Participating Counsel Lodestar and Rates By Firm</b>			
<b>Non-PSC Participating Counsel Firm</b>	<b>Total Hours</b>	<b>Total Lodestar</b>	<b>Blended Average Rate</b>
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
<b>Total</b>	<b>4,233.5</b>	<b>\$2,118,776.50</b>	<b>\$500.48</b>

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**

<b>Lodestar and Rates By Timekeeper Category</b>				
<b>Timekeeper Category</b>	<b>Total Hours</b>	<b>Total Lodestar</b>	<b>Billing Range</b>	<b>Blended Average Rate</b>
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
<b>Total</b>	<b>95,951.4</b>	<b>\$43,408,817.90</b>		<b>\$452.40</b>

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.<sup>1</sup>

### 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  
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 23

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24 <sup>1</sup> 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.

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

3 **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
<b>Subtotal</b>	<b>\$6,041,614.94</b>
Reserved	\$958,385.06
<b>Total</b>	<b>\$7,000,000</b>

22 29. The bulk of the expenses were submitted as Litigation Fund contributions, as  
23 outlined in PTO 4. The balance remaining in the Litigation Fund (\$32,706.65) is not included in  
24 the final tally. Moreover, in Table 5, below, I re-allocated the expended Litigation Fund  
25 contributions into the appropriate PTO 4 category (if there was one). So, for example, monies  
26 paid from the Litigation Fund to compensate experts were moved from Category 1 to  
27 Category 15.  
28

**Table 5**

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

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.

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

/s/ Elizabeth J. Cabraser  
Elizabeth J. Cabraser

# **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	Froncillo, 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

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

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

10 2. My teaching and research have focused on class action litigation. I teach the Civil  
11 Procedure, Federal Courts, Complex Litigation, and Comparative Class Action courses. In  
12 addition, I have published a number of articles on class action litigation in such journals as the  
13 University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt  
14 Law Review, the University of Arizona Law Review, and the NYU Journal of Law & Business.  
15 My work has been cited by numerous courts, scholars, and popular media outlets, such as the  
16 New York Times, USA Today, and the Wall Street Journal. I am also frequently invited to speak  
17 at symposia and other events about class action litigation, such as the ABA National Institutes on  
18 Class Actions in 2011, 2015, 2016, and 2017, and the ABA Annual Meeting in 2012. Since  
19 2010, I have also served on the Executive Committee of the Litigation Practice Group of the  
20 Federalist Society for Law & Public Policy Studies. In 2015, I was elected to the membership of  
21 the American Law Institute.

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

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

11  
 12 <sup>1</sup> *See, e.g., Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (relying on  
 13 article to assess fees); *Grice v. Pepsi Beverages Co.*, 2019 WL 340714, at \*2 (S.D.N.Y. Jan. 28,  
 14 2019); *Rodman v. Safeway Inc.*, 2018 WL 4030558, at \*5 (N.D. Cal. Aug. 23, 2018) (same);  
 15 *Little v. Washington Metro. Area Transit Auth.*, 2018 WL 1997257, at \*7 (D.D.C. Apr. 27, 2018)  
 16 (same); *Hillson v. Kelly Servs. Inc.*, 2017 WL 3446596, at \*4 (E.D. Mich. Aug. 11, 2017) (same);  
 17 *Good v. W. Virginia-Am. Water Co.*, 2017 WL 2884535, at \*23, \*27 (S.D.W. Va. July 6, 2017)  
 18 (same); *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y.  
 19 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC*, 2017 WL 1021025, at \*9 (E.D. Pa.  
 20 Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 1629349, at \*17  
 21 (S.D.N.Y. Apr. 24, 2016) (same); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D.  
 22 Ill. 2016) (same); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1246 (D.N.M. 2016)  
 23 (same); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, 2016 WL 721680, at \*42 (N.D. Cal. Jan.  
 24 28, 2016) (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, 2015 WL 4528880, at  
 25 \*19-20 (E.D. La. July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015  
 26 WL 2147679, at \*2-4 (N.D. Ill. May 6, 2015) (same); *In re: Checking Account Overdraft Litig.*,  
 27 2015 WL 12642178, at \*15 (S.D.Fla. Apr. 2, 2015) (same); *Craftwood Lumber Co. v. Interline*  
 28 *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.



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

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

#### Case Background

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

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

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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).

1           8.       The settlement between the private plaintiffs and the defendants was reached on  
2 behalf of a class of most current and former owners and lessees of the affected Ram and Jeep  
3 vehicles. *See* Settlement Agreement ¶ 2.19. The court preliminarily approved it on February 11.  
4 The settlement calls for all class members to each receive a cash payment of between \$990 and  
5 \$3075; for current owners to receive a repair to their vehicles that reduces their emissions; and for  
6 current owners who repaired their vehicles to receive an extended warranty on the repaired  
7 components and related engine systems. *See id.* at ¶ 4.3.1. In addition to all this, the defendants  
8 will separately pay attorneys’ fees, expenses, and notice and administration costs. *See id.* at ¶¶  
9 5.6, 8.4, 11.1. All told, the settlement could be worth more than \$600 million.

10           9.       The defendants have agreed to pay class counsel \$59 million in attorneys’ fees and  
11 \$7 million in expenses. Class counsel have now asked the court to award them these amounts for  
12 their work in bringing about the settlement. As I explain below, the requested fees reflect only  
13 10% to 18% of the settlement depending on how the court values the settlement. In my opinion,  
14 any of these percentages would be well within the range of reasonableness. Moreover, as I  
15 explain, the expense request is in line with typical awards.

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

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

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

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

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

28

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

14           14.     Under the percentage method, courts must 1) calculate the value of the settlement  
15 and then 2) select a percentage of that value to award to class counsel. When calculating the  
16 value of the settlement, in my opinion courts should (and they usually do) include any cash  
17 compensation to class members, cash the defendant must pay to third parties, non-cash relief that  
18 can be reliably valued, attorneys’ fees and expenses, and administrative costs paid by the  
19 defendant. *See, e.g., Rainbow Bus. Sols. v. MBF Leasing LLC*, No. 10-CV-01993-CW, 2017 WL  
20 6017844, at \*2 n.1 (N.D. Cal. Dec. 5, 2017); *Weeks v. Kellogg Co.*, No. CV 09-08102 MMM  
21 RZX, 2013 WL 6531177, at \*29 (C.D. Cal. Nov. 23, 2013); *In re Brokerage Antitrust Litig.*, 579  
22 F.3d 241, 283 (3d Cir. 2009). When selecting what percentage to award class counsel, in my  
23 opinion courts should hypothesize what class members would have been willing to pay class  
24 counsel at the outset of the litigation in order to induce them to take the case, *see, e.g., Williams v.*  
25 *Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) (“When attorney’s fees are  
26 deducted from class damages, the district court must try to assign fees that mimic a hypothetical  
27 *ex ante* bargain between the class and its attorneys.”), but that is not the Ninth Circuit’s approach.  
28 In the Ninth Circuit, courts use 25% as the “‘bench mark’ percentage for the fee award,” which

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

- 9 (1) the results achieved by class counsel, *see Six Mexican Workers*, 904 F.2d at  
10 1311; *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002);
- 11 (2) the length the case has transpired, *see Six Mexican Workers*, 904 F.2d at  
12 1311; *Vizcaino*, 290 F.3d at 1050;
- 13 (3) the complexity of the case, *see Six Mexican Workers*, 904 F.2d at 1311; *In*  
14 *re Pacific Enters. Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995);
- 15 (4) the risks the case involved, *see In re Pacific Enters. Securities Litig.*, 47  
16 F.3d at 379; *Vizcaino*, 290 F.3d at 1048-49;
- 17 (5) the percentages awarded in other class action cases, *see Vizcaino*, 290 F.3d  
18 at 1050;
- 19 (6) any non-monetary benefits obtained by class counsel, *see In re Pacific*  
20 *Enters. Securities Litig.*, 47 F.3d at 379; *Vizcaino*, 290 F.3d at 1049; *Staton*  
21 *v. Boeing*, 327 F.3d 938, 946 (9th Cir. 2003);
- 22 (7) the percentages in standard contingency-fee agreements in similar  
23 individual cases, *see Vizcaino*, 290 F.3d at 1049; and
- 24 (8) class counsel’s lodestar, *see id.* at 1050-51.

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

### Valuation of the Settlement

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

15           17.     There are circumstances, however, in which I and other scholars believe that the  
16 face-value approach can incentivize class action lawyers to generate theoretical compensation and  
17 deterrence rather than actual compensation and deterrence. In those circumstances, we favor  
18 basing fees on how much the defendant will actually (or is likely to) payout. Sometimes we have  
19 to wait until the end of the claims process to know how much defendants are likely to payout, but  
20 this is not one of those cases. In particular, we know that the defendants face significant fines and  
21 penalties (more than \$6,000 per vehicle) if they fail to repair 85% of the class vehicles.  
22 Preliminary Approval Order at 6-7, 13. As the Court observed, all parties to this settlement are  
23 motivated to “maximize the cars to get fixed.” Preliminary Approval Hr’g Tr. at 30. Given this  
24 framework, it is my opinion that it is not necessary or appropriate to wait until the claims process  
25 is over to award fees. We already know that, whatever the total eventually comes to, the  
26 defendants will certainly pay out *hundreds of millions of dollars* and, as I explain, *even the most*  
27 *conservative estimate* of how many hundreds of millions is more than sufficient to justify class  
28 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;



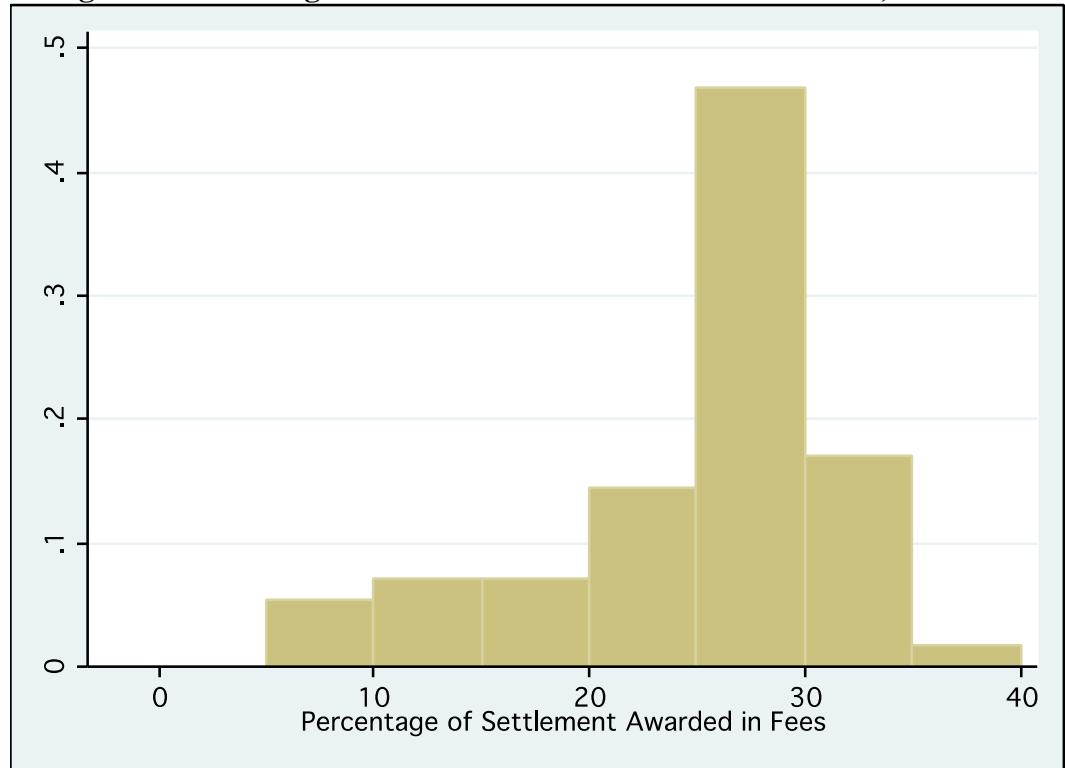
1 the \$448.5 million 85%-cash-plus-50%-warranty number; or something in between—class  
2 counsel’s fee request is *well* below Ninth Circuit’s benchmark and in line with, or even  
3 significantly below, the average percentages from comparably-sized settlements. In my opinion,  
4 any percentage in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

### 5 Selecting the Percentage

6 21. Consider first the factor that looks at how this request measures up against others:  
7 (5) the percentages awarded in other class action cases. According to my empirical study, the  
8 most common fee percentages awarded in common fund class actions are 25%, 30%, and 33%,  
9 with the mean and median at 25%. *See Fitzpatrick, Empirical Study, supra*, at 833, 838. The  
10 numbers for the 111 settlements in the Ninth Circuit where the percentage method was used were  
11 quite similar: the most common percentages were also 25%, 30%, and 33%, with the vast  
12 majority of awards also between 25% and 35%, and a mean of 23.9% and median of 25%. My  
13 numbers agree with the other large-scale academic study of class action fee awards. *See*  
14 Eisenberg-Miller 2010, *supra*, at 260 (finding mean and median of 24% and 25% nationwide, and  
15 25% in Ninth Circuit); Eisenberg-Miller 2017, *supra*, at 951 (finding mean and median of 27%  
16 and 29% nationwide, and 26% and 25% in Ninth Circuit). Needless to say, all of these numbers  
17 greatly exceed the fee requested here no matter which valuation of the settlement is used.

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

25  
26  
27  
28

**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.<sup>2</sup>  
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 <sup>2</sup> 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.<sup>3</sup>

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 \_\_\_\_\_  
27 <sup>3</sup> The best studies of class member recoveries come from securities fraud cases. *See, e.g., Recent*  
28 *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](http://www.nera.com/content/dam/nera/publications/2015/PUB_2014_Trends_0115.pdf) at 9, 33 (finding that 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,<sup>4</sup> 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

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18 <sup>4</sup> 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

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

3                           **Assessment of the reasonableness of the request for expenses**

4           37. Class counsel have requested \$7 million in expenses in connection with this  
5 settlement. Although I have not reviewed each dollar of these expenses in any detail, the overall  
6 number is modest compared to other settlements. Even under my most conservative estimate of  
7 the value of the settlement (\$328.5 million), the expenses here come to only 2.1%. If we use  
8 more realistic estimates, the expense percentage would be even lower. Indeed, if we use the face  
9 value of the settlement, the expenses here would be only 1.2%. By comparison, in my empirical  
10 study, expense awards averaged 3.3% of the settlements with a median of 1.9%. The Eisenberg-  
11 Miller study found much the same. *See Eisenberg-Miller 2010, supra*, at 267 (mean and median  
12 of 2.8% and 1.7% before 2002 and 2.7% and 1.7% thereafter); *Eisenberg-Miller 2017, supra*, at  
13 945 (mean and median of 3.9% and 1.7% since 2009). The expense request here is therefore  
14 easily in line with typical awards.

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

16 Dated: March 11, 2019  
17 Nashville, TN

18  
19 

20 \_\_\_\_\_  
Brian T. Fitzpatrick

# **EXHIBIT 1**

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**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)

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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](http://www.jeep.com) and [www.ramtrucks.com](http://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](http://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:

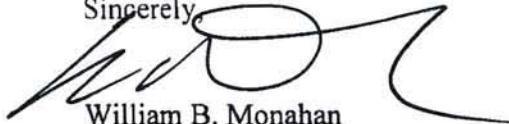
1. Consolidated Consumer Class Action Complaint, dated July 19, 2017; Amended Consolidated Consumer Class Action Complaint, dated September 29, 2017; and Second Amended Consolidated Consumer Class Action Complaint, dated May 16, 2018;
2. the Proposed Settlement and all attachments thereto, including 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**

<b>Jurisdiction</b>	<b>Estimated Number of Eligible Vehicles Currently Registered*</b>	<b>Percentage of Total</b>
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%



<b>Jurisdiction</b>	<b>Estimated Number of Eligible Vehicles Currently Registered*</b>	<b>Percentage of Total</b>
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

+

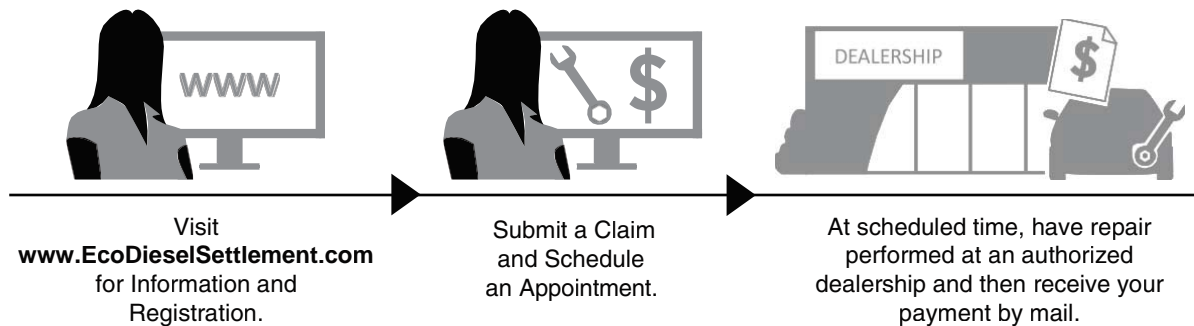
### GET YOUR VEHICLE FIXED

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](http://www.EcoDieselSettlement.com), and you can also sign up for e-mail updates at [www.EcoDieselSettlement.com](http://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](http://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/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

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



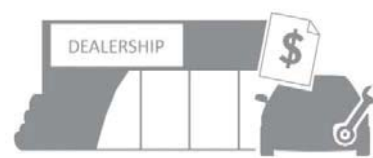
#### **Step 1**

Visit  
[www.EcoDieselSettlement.com](http://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](http://www.EcoDieselSettlement.com), and you can also sign up for e-mail updates at [www.EcoDieselSettlement.com](http://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](http://www.EcoDieselSettlement.com) for more details on the Class Action Settlement, to register, and to review your rights and options.

[www.EcoDieselSettlement.com](http://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

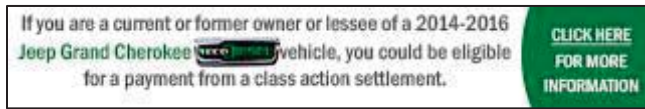
LEARN MORE

👍 Like    💬 Comment    ➦ Share

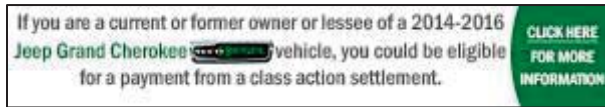
# Exhibit 5

**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**

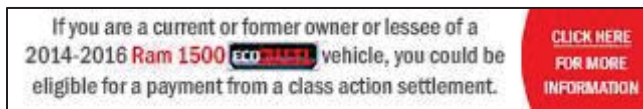


vehicle, you  
could be  
eligible for a  
payment from  
a class action  
settlement.

[CLICK HERE](#)  
FOR MORE  
INFORMATION

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

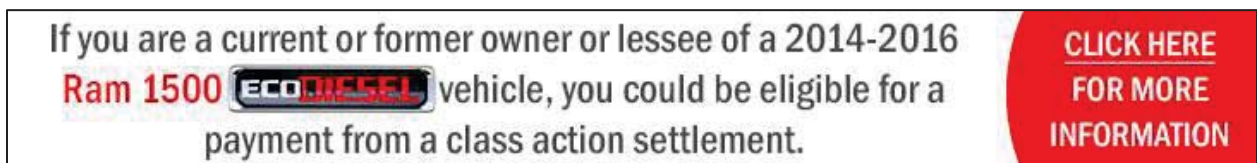
1. 320x50



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

+

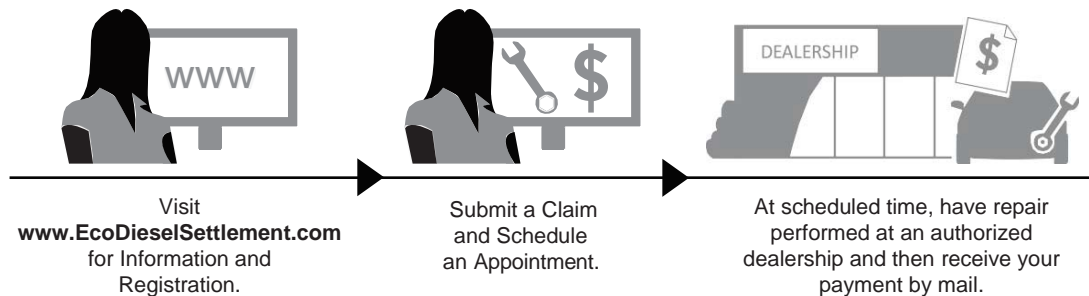
#### GET YOUR VEHICLE FIXED

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](http://www.EcoDieselSettlement.com), and you can also sign up for e-mail updates at [www.EcoDieselSettlement.com](http://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](http://www.EcoDieselSettlement.com) for more details on the Class Action Settlement, to register, and to review your rights and options.

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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.

1 **II. THE REQUESTED ATTORNEYS' FEES AND COSTS**

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

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

18 A lodestar cross-check confirms the reasonableness of the award sought. Both the hours  
19 worked and the rates billed (a blended average rate of \$453 per hour) are customary, reasonable,  
20 and below the average in comparable settlements. *See, e.g., In re Volkswagen "Clean Diesel"*  
21 *Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at \*5  
22 (N.D. Cal. Mar. 17, 2017) (approving blended average hourly billing rate of \$529 per hour in  
23 similar litigation); Fitzpatrick Decl. ¶¶ 34-35 (analyzing empirical data relating to average hours  
24 billed and average blended billing rates in comparable settlements). The total lodestar yields a  
25 multiplier of 1.17 for work done to-date and anticipated future work to implement and protect the  
26 settlement. Declaration of Elizabeth J. Cabraser, Dkt. No. 538-1 ¶¶ 17-19. This multiplier is  
27 significantly below the average for similarly-valued settlements, and is well within the range of  
28 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.  
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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

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HON. EDWARD M. CHEN  
United States District Judge