

1 Elizabeth J. Cabraser (State Bar No. 083151)
ecabraser@lchb.com
2 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
3 San Francisco, CA 94111-3339
Telephone: 415.956.1000
4 Facsimile: 415.956.1008

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

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

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11
12 IN RE CHRYSLER-DODGE-JEEP
13 ECODIESEL ® MARKETING, SALES
14 PRACTICES, AND PRODUCTS
15 LIABILITY LITIGATION

16 This Document Relates to:

17 ALL CONSUMER AND RESELLER
18 ACTIONS

Case No. 3:17-md-2777-EMC

**MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT
AND DIRECTION OF NOTICE UNDER
FED. R. CIV. P. 23(e)**

Hearing: January 23, 2019
Time: 10:00 a.m.
Courtroom: 5, 17th Floor

The Honorable Edward M. Chen

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24
25
26
27
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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION: THE PROPOSED SETTLEMENT	1
II. BACKGROUND AND PROCEDURAL HISTORY	2
A. FACTUAL BACKGROUND	2
B. PROCEDURAL BACKGROUND	3
1. Litigation Track	3
2. Settlement Track	5
III. SUMMARY OF SETTLEMENT TERMS	6
A. THE SETTLEMENT CLASS DEFINITION	6
B. SETTLEMENT CLASS MEMBER BENEFITS	7
IV. LEGAL STANDARD FOR APPROVAL	7
V. ARGUMENT	8
A. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	8
1. The Settlement is the Product of Good Faith, Informed, and Arm’s- Length Negotiations.	8
2. Class Representatives and Class Counsel Have and Continue to Zealously Represent the Class.	9
3. The Settlement Provides Significant Benefits in Exchange for the Compromise of Strong Claims.	9
a. The Settlement Mitigates the Risks, Expenses, and Delays the Class Would Bear with Continued Litigation.	10
b. Class Members Are Eligible for Relief Through a Straightforward Claims Process.	11
c. Counsel Will Seek Reasonable Attorneys’ Fees and Costs.	11
4. The Proposed Settlement Treats All Class Members Equitably Relative to One Another.	12
B. THE COURT WILL BE ABLE TO CERTIFY THE CLASS FOR SETTLEMENT PURPOSES UPON FINAL APPROVAL.	13
1. The Settlement Class Meets the Requirements of Rule 23(a).....	13
a. The Class is Sufficiently Numerous.....	13
b. There Are Common Questions of Law and Fact.	14
c. The Settlement Class Representatives’ Claims Are Typical of Other Class Members’ Claims.....	15
d. The Settlement Class Representatives and Class Counsel Have and Will Protect the Interests of the Settlement Class.....	16
2. The Settlement Class Meets the Requirements of Rule 23(b)(3).....	17
a. Common Issues of Law and Fact Predominate.....	17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS
(continued)

	Page
b. Class Treatment Is Superior to Other Available Methods for the Resolution of This Case.	19
3. The Proposed Settlement Merits Approval Under This District’s Procedural Guidance.	20
a. The Litigation and Settlement Classes Are Essentially Identical.	20
b. The Settlement Recovery is a Fair Proxy for the Recovery Available if Plaintiffs Had Prevailed on Each of Their Claims.	20
c. The Proposed Allocation Plan for the Settlement Fund.	21
d. A Substantial Number of Class Members Are Expected and Incentivized To Participate.	21
e. Reversion.	21
f. The Settlement Administrator Selection Process and Costs.	22
g. Attorneys’ Fees.	22
h. Incentive Awards.	22
i. Notice of Compliance with CAFA.	22
j. Information About Past Distributions in Comparable Class Settlements.	23
C. THE PROPOSED NOTICE PROGRAM PROVIDES THE BEST PRACTICABLE NOTICE.	24
D. THE PROPOSED FINAL APPROVAL HEARING SCHEDULE.	25
VI. CONCLUSION.	25

TABLE OF AUTHORITIES

	Page
Cases	
<i>Amchem Prods. v. Windsor</i> , 521 U.S. 591 (1997).....	13, 18
<i>Astiana v. Kashi Co.</i> , 291 F.R.D. 493 (S.D. Cal. 2013).....	14
<i>Butler v. Sears, Roebuck & Co.</i> , 702 F.3d 359 (7th Cir. 2012).....	17
<i>Clemens v. Hair Club for Men, LLC</i> , No. C 15-01431 WHA, 2016 WL 1461944 (N.D. Cal. Apr. 14, 2016).....	16, 17
<i>Cohen v. Trump</i> , 303 F.R.D. 376 (S.D. Cal. 2014).....	14
<i>Evon v. Law Offices of Sidney Mickell</i> , 688 F.3d 1015 (9th Cir. 2012).....	15, 16
<i>Friedman v. 24 Hour Fitness USA, Inc.</i> , No. CV 06-6282 AHM (CTx), 2009 WL 2711956 (C.D. Cal. Aug. 25, 2009).....	18
<i>Guido v. L'Oreal, USA, Inc.</i> , 284 F.R.D. 468 (C.D. Cal. 2012).....	14
<i>In re Bluetooth Headset Prods. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011).....	8
<i>In re First Alliance Mortg. Co.</i> , 471 F.3d 977 (9th Cir. 2006).....	18
<i>In re: Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.</i> , No. 2672 CRB (JSC), 2016 WL 4010049 (N.D. Cal. July 26, 2016).....	passim
<i>In re: Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.</i> , No. MDL 2672 CRB (JSC), 2016 WL 6248426 (N.D. Cal. Oct. 25, 2016), <i>aff'd sub nom. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.</i> , 895 F.3d 597 (9th Cir. 2018).....	passim
<i>Jimenez v. Allstate Ins. Co.</i> , 765 F.3d 1161 (9th Cir. 2014).....	14
<i>Kim v. Space Pencil, Inc.</i> , No. C 11-03796 LB, 2012 WL 5948951 (N.D. Cal. Nov. 28, 2012).....	10
<i>Klay v. Humana, Inc.</i> , 382 F.3d 1241 (11th Cir. 2004).....	18
<i>Leuthold v. Destination Am., Inc.</i> , 224 F.R.D. 462 (N.D. Cal. 2004).....	19
<i>Marshall v. Holiday Magic, Inc.</i> , 550 F.2d 1173 (9th Cir. 1977).....	9
<i>Mendoza v. Tucson Sch. Dist. No. 1</i> , 623 F.3d 1338 (9th Cir. 1980).....	24
<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950).....	24
<i>Negrete v. Allianz Life Ins. Co. of N. Am.</i> , 238 F.R.D. 482 (C.D. Cal. 2006).....	14
<i>Palmer v. Stassinios</i> , 233 F.R.D. 546 (N.D. Cal. 2006).....	14
<i>Parsons v. Ryan</i> , 754 F.3d 657 (9th Cir. 2014).....	15
<i>Pierce v. Rosetta Stone, Ltd.</i> , No. C 11-01283 SBA, 2013 WL 5402120 (N.D. Cal. Sept. 26, 2013).....	8
<i>Radcliffe v. Experian Info. Sols., Inc.</i> , 715 F.3d 1157 (9th Cir. 2013).....	16

NOTICE OF MOTION AND MOTION

TO ALL THE PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 23, 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, Lead Counsel and the Plaintiffs' Steering Committee, on behalf of a proposed Settlement Class of certain owners and lessees of Ram- and Jeep-branded EcoDiesel vehicles defined in the proposed Settlement Agreement, will and hereby do move the Court for an order granting preliminary approval of the Class Action Settlement and directing notice to the Class under Fed. R. Civ. P. 23(e)(1); appointing Settlement Class Counsel and Class Representatives under Fed. R. Civ. P. 23(g)(3); and scheduling a final approval hearing under Fed. R. Civ. P. 23(e)(2).

As discussed in the attached Memorandum of Points and Authorities, the Parties have negotiated a Settlement that provides substantial compensation to consumers for their economic losses, a robust extended warranty, and, in conjunction with the simultaneously submitted US-CA Consent Decree, takes action to mitigate the environmental harms caused by the EcoDiesel Vehicles at the center of this litigation by incentivizing and compensating the Class to bring them in for federal and California-approved and tested repairs to bring them into full emission compliance with federal and state law. The proposed notice program, which includes direct mail and e-mail notice, publication, and extensive multimedia outreach, fulfills the requirements of Rule 23 and due process as the best notice practicable under the circumstances. Plaintiffs thus respectfully request that the Court grant preliminary approval, direct notice to the proposed Class, and schedule a final approval hearing.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION: THE PROPOSED SETTLEMENT

Approximately 100,000 2014-2016 EcoDiesel Jeep Grand Cherokees and Ram 1500 trucks were marketed and sold by Fiat Chrysler in the United States. These EcoDiesel models commanded a premium price over their gas counterparts because they promised a package of benefits: traditional diesel performance and fuel economy (mpg) attributes, plus environmentally responsible emissions levels. These vehicles delivered on the first two benefits, but, unknown to their buyers and lessees, were rigged to cheat on the third. In actual operation, their emissions were higher than government regulations permitted. This case and the related proceedings by federal and state regulators were prosecuted, and the resulting class action and government settlements were negotiated, to bring the vehicles into compliance with emissions regulations, to incentivize their owners to bring them in for approved emissions fixes, and to compensate owners and lessees for the lost part of the diesel premium package they paid for but did not receive.

The proposed Settlement provides Class Members with substantial compensation. Most Class Members—current owners of EcoDiesel Vehicles—will receive \$3,075. All Class Members will receive significant benefits as summarized in this chart:

Category	Benefits	Class Member Payment
Eligible Owner (acquired vehicle on or before January 12, 2017)	Owner Payment + Approved Emissions Modification + Extended Warranty	\$3,075
Eligible Owner (acquired vehicle after January 12, 2017)	Owner Payment + Approved Emissions Modification + Extended Warranty	\$2,460 (if an Eligible Former Owner or Lessee also makes a valid claim for benefits) OR \$3,075 (if no other valid claim for same vehicle)
Eligible Former Owner	Former Owner Payment	\$990

1	Eligible Lessee	Lessee Payment	\$990
2		+	
3		Approved Emissions Modification	
4		+	
		Extended Warranty	
	Eligible Former Lessee	Lessee Payment	\$990

5 Further, in conjunction with the simultaneously negotiated US-CA Consent Decree, the Class
6 Settlement mitigates environmental harm by offering an Approved Emissions Modification (the
7 “AEM” or “Emissions Fix”) designed and tested to bring the Vehicles into compliance with the
8 emissions standards to which they were originally certified, without materially affecting the
9 Vehicles’ key attributes and fuel economy. All Class Members who receive an Emissions Fix
10 will also receive a robust extended warranty for the greater of (i) 10 years from the date of initial
11 sale or 120,000 actual miles on the vehicle odometer, whichever comes first; and (ii) 4 years or
12 48,000 miles, from date and mileage of installing the Emissions Fix, whichever comes first.
13 None of these benefits will be reduced to pay Class Counsel’s attorneys’ fees or expenses.

14 **II. BACKGROUND AND PROCEDURAL HISTORY**

15 **A. FACTUAL BACKGROUND**

16 As the operative class complaint alleges, this case involves the misleading marketing and
17 sale of 2014-2016 EcoDiesel Ram 1500 and Jeep Grand Cherokees (the “EcoDiesel Vehicles” or
18 “Vehicles”¹). Working together, Defendants² designed and programmed hidden software features
19 that significantly reduced the effectiveness of the Vehicles’ nitrogen oxide (NOx) reduction
20 technology when operated under everyday driving conditions. As a result, the Vehicles emit
21 harmful pollutants at illegally high levels, exceeding what a reasonable consumer would expect
22 from an “Eco” vehicle. *See* Second Amended Complaint (“SAC”) Dkt. 310. Class Members
23 paid a premium for the EcoDiesel option (the “EcoDiesel Premium”) for fuel-efficient and
24 powerful vehicles that were environmentally friendly. *See* Dkt. 327 at 43-44. But they didn’t get
25

26 ¹ “Eligible Vehicle” means the EcoDiesel Vehicles that are eligible to participate in the
Settlement, as defined in the Settlement.

27 ² “Defendants” are Fiat Chrysler Automobiles N.V., FCA US LLC, VM Motori S.p.A., VM
28 North America, Inc. (collectively, “FCA”) and Robert Bosch GmbH and Robert Bosch LLC,
(together, “Bosch”) unless otherwise noted.

1 the whole package. The proposed Settlement provides it.

2 **B. PROCEDURAL BACKGROUND**

3 On January 12, 2017 the U.S. Environmental Protection Agency (“EPA”) and California
 4 Air Resources Board (“CARB”) issued notices of violation (“NOV”) to Fiat Chrysler
 5 Automobiles N.V. and FCA US LLC, alleging the EcoDiesels contained undisclosed technology
 6 resulting in excess NOx emissions. The Department of Justice then filed a complaint against
 7 FCA on behalf of the EPA for violations of the Clean Air Act, and consumers across the country
 8 sued Defendants to vindicate their economic injuries. On April 5, 2017, the Judicial Panel on
 9 Multidistrict Litigation transferred all these federal actions to this Court. On June 19, 2017, the
 10 Court appointed Elizabeth J. Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP as Lead
 11 Counsel as well as a 9-firm Plaintiffs’ Steering Committee (“PSC”) (together, “Class Counsel”)
 12 to oversee the litigation on behalf of affected owners, lessees, and dealers. On July 13, 2017, the
 13 Court appointed Kenneth Feinberg as Settlement Master. In the 18 months that followed, a fully-
 14 deployed PSC has worked tirelessly both to prosecute the consumers’ claims and to work with the
 15 Defendants, the regulators, and the Settlement Master to achieve a global resolution. Lead
 16 Counsel created working groups within the PSC to ensure that the prosecution and settlement
 17 tracks proceeded in parallel and that the enormous amount of work was completed in the most
 18 organized and efficient manner possible.

19 **1. Litigation Track**

20 This case has been intensively litigated from its inception. The length and detail of the
 21 Amended, First Amended, and Second Amended Consolidated Consumer Class Action
 22 Complaints reflect the arduous process undertaken by Class Counsel to analyze the multi-party
 23 fraud alleged in this case, and to research, develop and assert the various claims and the remedies
 24 available to those harmed by Defendants’ conduct. Class Counsel filed a 365-page Complaint
 25 asserting claims for violations of The Racketeer Influenced and Corrupt Organizations Act
 26 (“RICO”), the Magnuson-Moss Warranty Act (“MMWA”), common law fraud, and consumer
 27 protection under all fifty States’ and the District of Columbia’s applicable statutes. Those
 28 allegations were later detailed and refined in a 375-page Amended Complaint (“FAC”). Rigorous

1 motion practice ensued. Both FCA and Bosch moved to dismiss the FAC, which Class Counsel
2 opposed in a consolidated 75-page opposition. After oral argument, the Court granted in part and
3 denied in part the motions, upholding Plaintiffs' RICO claim and granting leaving to amend to
4 provide clarifying detail on the common law fraud and consumer protection claims. Plaintiffs
5 then filed their 438-page Second Amended Complaint ("SAC"), and the parties conducted an
6 aggressive second round of dismissal briefing. All told, the two rounds of motions to dismiss
7 comprised 19 briefs with over 301 pages of briefing argued at three lengthy hearings.

8 The litigation also has included substantial class certification activity. Plaintiffs moved to
9 certify a nationwide class of owners/lessees of the Vehicles under RICO, the MMWA, and most
10 states' common law fraud and statutory consumer protection claims. The Parties submitted 780
11 pages of class certification briefing, including 17 highly technical briefs on the class certification
12 liability and damages experts.

13 The Parties have also conducted extensive discovery, including nearly 100 depositions.
14 After the PSC negotiated comprehensive expert, deposition, preservation, confidentiality, and ESI
15 protocols, it served FCA with 37 interrogatories, 130 document requests, and 188 requests for
16 admission, and Bosch with 45 interrogatories, 56 document requests, and 34 requests for
17 admission. *See* Declaration of Elizabeth J. Cabraser ("Cabraser Decl.") ¶ 4. In response,
18 Defendants produced over *5 million* pages of documents, and the PSC reviewed and analyzed
19 nearly 4 million of them through a massive, around-the-clock effort. *See* Declaration of Elizabeth
20 Koenig Decl. ¶¶ 4-7. To effectively analyze these productions, the PSC was required to
21 understand profoundly complicated emissions treatment system technology and the legal
22 complexities of Plaintiffs' claims, and, to master the difficulties and nuances of working with
23 documents written in German and Italian. The massive research, review, and analysis efforts
24 informed Plaintiffs' strategy for class certification and dispositive motion briefing and for 31
25 affirmative depositions of Defendants' engineers, executives, and experts. Cabraser Decl. ¶ 4.

26 The Parties litigated multiple discovery disputes, featuring multiple all-day in-person meet
27 and confer sessions and a voluminous exchange of letters. After hearings, Magistrate Judge
28 Corley resolved two of these disputes in Plaintiffs' favor by ordering Bosch to produce contested

1 documents.

2 All the proposed Settlement Class Representatives searched for, and provided documents
3 and information responsive to, Defendants' numerous discovery requests (which totaled
4 approximately 9,000 documents); completed a comprehensive 12-page fact sheet; and sat for
5 deposition, often traveling many hours away from home to do so. Cabraser Decl. ¶ 12. In all,
6 Class Counsel defended over 60 Plaintiff depositions in 17 states in approximately three months.

7 **2. Settlement Track**

8 Earnest settlement negotiations began shortly after the Court's appointment of Lead
9 Counsel and the Settlement Master in July 2017. *See* Cabraser Decl. ¶ 6. Lead Counsel and the
10 PSC's settlement working group engaged in extraordinarily complex arm's-length settlement
11 negotiations with FCA and Bosch in an effort to resolve the consumer claims alongside those
12 brought by the DOJ and CA AG. *Id.* ¶ 7. The Parties communicated regularly with the
13 Settlement Master alone and in various combinations, in briefings, meetings, and formal
14 negotiation sessions. *Id.* ¶ 8. Throughout the process, the PSC pushed FCA hard on two fronts:
15 (1) to provide significant cash compensation to the class members, and (2) to offer a broad
16 extended warranty to protect them from any future problems caused by the AEM. *Id.* ¶ 7.

17 The parties heeded the Court's direction to move with dispatch, and benefited from the
18 assistance of Settlement Master Feinberg, who played a crucial role in supervising the
19 negotiations and in helping to bridge the parties' differences in order to reach this Settlement.
20 The result of all these meetings and negotiations is a comprehensive settlement, which the parties
21 propose as an excellent, principled, and successful conclusion to this multi-party litigation.
22 Because of the intense and continuous efforts undertaken by counsel, the Settlement Class
23 Representatives, Settlement Master Feinberg, and this Court to move intensive settlement
24 negotiations forward in parallel to the zealous litigation of Plaintiffs' claims, this Settlement
25 comes just two years after news of the EcoDiesel scandal broke, and approximately 18 months
26 after commencement of the MDL.

1 **III. SUMMARY OF SETTLEMENT TERMS**

2 The Settlement provides substantial benefits to current and former Eligible Vehicle³
 3 owners and lessees by compensating their economic losses and through the additional value and
 4 of a robust extended warranty to protect repaired vehicles. None of these payments or benefits
 5 will be reduced by Class Counsel’s fees or expenses.

6 **A. THE SETTLEMENT CLASS DEFINITION**

7 The Settlement Class is a nationwide class of all Persons (including United States citizens,
 8 residents, or United States military, or diplomatic personnel that are living or stationed overseas,
 9 and entities) who (1) on January 12, 2017 owned or leased a Ram 1500 or Jeep Grand Cherokee
 10 3.0-liter diesel vehicle in the United States or its territories; or who (2) between January 12, 2017
 11 and the Claim Submission Deadline for Eligible Owners and Eligible Lessees become the owner
 12 or lessee of an Eligible Vehicle in the United States or its territories; or who (3) own or lease an
 13 Eligible Vehicle in the United States or its territories at the time of participation in the Repair
 14 Program. The Class includes automobile dealers who are not FCA Authorized Dealers and who
 15 otherwise meet the Class definition.⁴

16 ³ All capitalized terms used in this section have the meaning set forth in the Class Action
 17 Agreement.

18 ⁴ Those excluded from the Class are:

- 19 (a) Owners or lessees who acquired an Eligible Vehicle after January 12, 2017, and
 20 transferred title or terminated their lease before April 1, 2019;
- 21 (b) Owners or lessees who acquired an Eligible Vehicle after January 12, 2017, and
 22 transferred title or terminated their lease after April 1, 2019, as a result of a total loss, but before
 the Claim Submission Deadline for Eligible Owners and Eligible Lessees;
- 23 (c) Owners who acquired an Eligible Vehicle on or before January 12, 2017, and transferred
 24 title after January 10, 2019, but before April 1, 2019, unless title was transferred as a result of a
 total loss;
- 25 (d) Lessees who leased their Eligible Vehicles on or before January 12, 2017, acquire
 26 ownership after January 10, 2019, and transfer ownership before the AEM is performed on the
 Eligible Vehicle;
- 27 (e) Owners whose Eligible Vehicle is not Registered in the United States as of the date the
 AEM is performed;
- 28 (f) Defendants’ officers, directors and employees; Defendants’ affiliates and affiliates’
 officers, directors and employees; their distributors and distributors’ officers, directors and
 employees; and Authorized Dealers and Authorized Dealers’ officers and directors;
- (g) Judicial officers and their immediate family members and associated court staff assigned
 to this case; and
- (h) All those otherwise in the Class who or which timely and properly exclude themselves

Footnote continued on next page

1 **B. SETTLEMENT CLASS MEMBER BENEFITS**

2 In addition to providing the AEM free of charge, Defendants will pay up to an estimated
3 \$307,460,800 in cash compensation to Class Members, if all Class Members participate in the
4 Claims Program. Eligible Owners are eligible to receive the AEM plus a cash payment of \$3,075
5 if no Eligible Former Owner or Former Lessee makes a valid claim on the same vehicle or \$2,460
6 if an Eligible Former Owner or Former Lessee does make a valid claim on the same vehicle.
7 Former Owners, Lessees, and Former Lessees are all eligible to receive \$990. These payments
8 “*exceed* the economic harm suffered” under Plaintiffs’ EcoDiesel Premium damages theory “in
9 nearly all cases,” Declaration of Ted Stockton (“Stockton Decl.”) ¶ 46 (emphasis added)—a
10 remarkable result for a compromise of vigorously contested and litigated claims.

11 FCA will also provide an Extended Warranty for all Vehicles that receive an Emissions
12 Fix, estimated to cost FCA \$105,000,000. Plaintiffs’ expert calculates the consumer value of the
13 warranty at \$239,500,000.⁵ *See* Declaration of Kirk Kleckner (“Kleckner Decl.”) at ¶¶ 1, 6.

14 **IV. LEGAL STANDARD FOR APPROVAL**

15 Federal Rules of Civil Procedure 23(e) governs a district court’s analysis of the fairness of
16 a proposed class action settlement and creates a multistep process for approval. First, a court
17 must determine that it is likely to (i) approve the proposed settlement as fair, reasonable, and
18 adequate, after considering the factors outlined in Rule 23(e)(2), and (ii) certify the settlement
19 class after the final approval hearing. *See* Fed. R. Civ. P. 23(e)(1)(B); *see also* 2018 Advisory
20 Committee Notes to Rule 23 (standard for directing notice is whether the Court “likely will be
21 able both to approve the settlement proposal under Rule 23(e)(2) and . . . certify the class for
22 purposes of judgment on the proposal”). Second, a court must direct notice to the proposed
23 settlement class, describing the terms of the proposed settlement and the definition of the
24 proposed class, to give them an opportunity to object to or to opt out of the proposed settlement.
25 *See* Fed. R. Civ. P. 23(c)(2)(B); Fed. R. Civ. P. 23(e)(1), (5). Third, after a hearing, the court may

26 Footnote continued from previous page
from the Class as provided in this Class Action Agreement.

27 ⁵ Class Counsel engaged Mr. Kleckner to independently value the Extended Warranty provisions
28 in the Settlement based on the estimated costs to FCA. FCA has not reviewed or endorsed the
retail value calculations conducted by Mr. Kleckner.

1 grant final approval of the proposed settlement on a finding that the settlement is fair, reasonable,
 2 and adequate, and certify the settlement class. Fed. R. Civ. P. 23(e)(2). In this District, a
 3 movant's submission should also include the information called for under the District's recently
 4 updated Procedural Guidance for Class Action Settlements. *See* Procedural Guidance for Class
 5 Action Settlements ("Procedural Guidance").

6 **V. ARGUMENT**

7 The proposed Settlement presents a fair, reasonable, and adequate resolution of this
 8 litigation. Indeed, in securing payments that "*exceed* the economic harm suffered" under
 9 Plaintiffs' damages theory "in nearly all cases," the Settlement is an extraordinary result. All of
 10 the relevant factors weigh in favor of preliminary approval, and there can be no doubt that the
 11 Agreement was reached in a procedurally fair manner given Settlement Master Feinberg's
 12 ongoing guidance and assistance.

13 **A. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.**

14 Rule 23(e)(2) identifies criteria for the Court to use in deciding whether to grant
 15 preliminary approval of a proposed class settlement and direct notice to the proposed class. The
 16 Class Settlement proposed here satisfies each one.

17 **1. The Settlement is the Product of Good Faith, Informed, and Arm's-**
 18 **Length Negotiations.**

19 The proposed Settlement Agreement arises out of serious, informed, and non-collusive
 20 negotiations facilitated by Court-appointed Settlement Master Feinberg over the course of nearly
 21 eighteen months. *See* Fed. R. Civ. P. 23(e)(2)(B). A settlement process facilitated by a court-
 22 appointed mediator weighs heavily in favor of approval. *Rosales v. El Rancho Farms*, No. 1:09-
 23 CV-00707-AWI, 2015 WL 4460635, at *16 (E.D. Cal. July 21, 2015), *report and*
 24 *recommendation adopted*, 2015 WL 13659310 (E.D. Cal. Oct. 2, 2015) ("[T]he 'presence of a
 25 neutral mediator [is] a factor weighing in favor of a finding of non-collusiveness.'" (citation
 26 omitted)); *Pierce v. Rosetta Stone, Ltd.*, No. C 11-01283 SBA, 2013 WL 5402120, at *5 (N.D.
 27 Cal. Sept. 26, 2013) (same). So too does the participation of government entities in negotiations.
 28 *See In re: Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL

1 2672 CRB (JSC), 2016 WL 6248426, at *14 (N.D. Cal. Oct. 25, 2016), *aff'd sub nom. In re*
 2 *Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, 895 F.3d 597 (9th Cir.
 3 2018) (government participation in negotiations weighed “heavily in favor” of approval);
 4 *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) (“The participation of a
 5 government agency serves to protect the interests of the class members, particularly absentees,
 6 and approval by the agency is an important factor for the court’s consideration.”) (citation
 7 omitted). Both were an integral part of the negotiations here. The procedurally fair manner in
 8 which this Settlement was reached weighs strongly in favor of granting preliminary approval.

9 **2. Class Representatives and Class Counsel Have and Continue to**
 10 **Zealously Represent the Class.**

11 The Class Representatives and Class Counsel have prosecuted this action on behalf of the
 12 Class with vigor and dedication for over a year-and-a-half. *See* Fed. R. Civ. P. 23(e)(2)(A). As
 13 detailed above, Class Counsel engaged in significant motion practice and massive offensive
 14 discovery efforts to prosecute the Class claims. *See supra*, § II B. 1. Counsel defended against
 15 two rounds of motions to dismiss and moved for and extensively litigated class certification and
 16 attendant expert issues. *See id.* The Settlement Class Representatives were likewise actively
 17 engaged—each produced numerous documents, sat for a lengthy deposition, and regularly
 18 communicated with counsel up to and including evaluating and approving the proposed
 19 Settlement. *See id.* Each of them was consulted on, and support, the terms of the settlement, and
 20 have expressed their continued willingness to protect the Class until the Settlement is approved
 21 and its administration completed. *See* Cabraser Decl. ¶ 14.

22 **3. The Settlement Provides Significant Benefits in Exchange for the**
 23 **Compromise of Strong Claims.**

24 The Settlement provides substantial Class relief, considering (i) the costs, risks, and delay
 25 of trial and appeal; (ii) the effectiveness of the proposed distribution plan; and (iii) the fair terms
 26 of the separately-negotiated proposed award of attorney’s fees. *See* Fed. R. Civ. P. 23(e)(2)(C).
 27 Along with the US-CA consent decree, this comprehensive Class resolution mitigates
 28 environmental harms, incentivizes current owners and lessees to effectuate the environmental

1 goals of all settlements by bringing their vehicles in for the AEM, and compensates the Class for
 2 the economic losses suffered in purchasing or leasing them. All PSC members—an experienced
 3 group including preeminent class action litigators, consumer and environmental advocates, trial
 4 lawyers, and auto litigation veterans—support this Settlement, acknowledging the uncertainty in
 5 whether the Class could achieve a better outcome through further litigation. Continued litigation,
 6 trial, and appeal certainly would not secure the emissions modification program as swiftly as it
 7 will take place under current resolution.

8 **a. The Settlement Mitigates the Risks, Expenses, and Delays the**
 9 **Class Would Bear with Continued Litigation.**

10 The Settlement secures significant benefits, even in the face of the inherent uncertainties
 11 of litigation. Compromise in exchange for certain and timely provision of the benefits under the
 12 Settlement is an unquestionably reasonable outcome. *See Nobles v. MBNA Corp.*, No. C 06-3723
 13 CRB, 2009 WL 1854965, at *2 (N.D. Cal. June 29, 2009) (“The risks and certainty of recovery in
 14 continued litigation are factors for the Court to balance in determining whether the Settlement is
 15 fair.”) (citing *Kim v. Space Pencil, Inc.*, No. C 11-03796 LB, 2012 WL 5948951, at *5 (N.D. Cal.
 16 Nov. 28, 2012) (“The substantial and immediate relief provided to the Class under the Settlement
 17 weighs heavily in favor of its approval compared to the inherent risk of continued litigation, trial,
 18 and appeal, as well as the financial wherewithal of the defendant.”)).

19 This is a risky case. Defendants chose to fight, not concede. Defendants’ motions to
 20 dismiss—including a challenge to the RICO claim—remain pending. The outcome of these
 21 motions could have a significant impact on the Class’ prospects of a favorable resolution.
 22 Plaintiffs’ Class Certification motion is also challenged and undecided. FCA and Bosch dispute
 23 Plaintiffs’ damages theories and submitted multiple expert declarations to support their argument
 24 that damages are not calculable on a classwide basis. If the Court were to deny class certification,
 25 the case would be dead, and the Class Members would receive nothing. Even if a class were to be
 26 certified and upheld on appeal, the Class would face the risk, expense, and delay of trial and
 27 potentially lengthy appellate process, likely delaying any recovery for years.⁶

28 ⁶ A further consideration is the involvement of foreign defendants including FCA N.V.

1 Avoiding years of additional litigation in exchange for the immediate economic and
2 environmental certainties of this Settlement is even more compelling because it halts ongoing
3 environmental damage. Class Member actions under the Settlement will serve as the mechanism
4 to bring the EcoDiesel Vehicles into compliance with the emissions standards to which they were
5 originally certified, reducing further environmental damage and air pollution in the near term.
6 *See Volkswagen*, 2016 WL 6248426, at *12.

7 **Class Members Are Eligible for Relief Through a**
8 **Straightforward Claims Process.**

9 The Settlement framework provides an emissions fix, a robust extended warranty, and
10 substantial monetary compensation to the Class Members through a straightforward claims
11 process designed to be as convenient to Class Members as possible. Each Class Member will
12 receive information about the Emissions Fix through the proposed Notice Program. Class
13 Members will then submit a simple Claim Form online or by mail that contains basic information
14 and required documentation (e.g., identification, lease, registration). After a claim is reviewed for
15 completeness and eligibility, FCA will extend an offer to eligible Class Members. The Class
16 Member may accept the offer and get paid, or if they own or lease an Eligible Vehicle, schedule
17 an appointment to receive an AEM. The AEM will then be performed, and the Class Member
18 promptly will receive their Class Member Payment.

19 **Counsel Will Seek Reasonable Attorneys' Fees and Costs.**

20 None of the settlement benefits will be reduced to pay Court-awarded attorneys' fees or
21 costs to Class Counsel. These will be paid by Defendants in addition to class benefits. Plaintiffs'
22 success in persuading Defendants to pay fees and costs in addition to Class Benefits has
23 tremendous monetary value to the Class Members, who otherwise would have had to pay such
24 fees and costs themselves out of their Settlement recovery. The terms of the Settlement
25 Agreement were finalized only yesterday, so the Parties have not yet had the opportunity to

26 *Footnote continued from previous page*
27 (Netherlands), Bosch GmbH (Germany), and VM Motori S.p.A. (Italy). Plaintiffs' allegations
28 against these companies implicate 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 negotiate the amount of attorneys' fees. Waiting until after the Settlement terms are nailed down
 2 before discussing fees is a practice routinely approved by courts as in the Class' best interest. *See*
 3 *Volkswagen.*, 2016 WL 6248426, at *23. Class Counsel will provide information on the amount
 4 of attorneys' fees and costs sought before the preliminary approval hearing, in the class notice,
 5 and in a fee application, so that Class Members will have the opportunity to comment on or object
 6 under Fed. R. Civ. P. 23(h) prior to the final approval hearing.

7 **4. The Proposed Settlement Treats All Class Members Equitably**
 8 **Relative to One Another.**

9 The proposed Settlement fairly and reasonably allocates benefits among Eligible Owners,
 10 Eligible Lessees, Eligible Former Owners, and Eligible Former Lessees, without any unwarranted
 11 preferential treatment of class representatives or segments of the Class. *See* Fed. R. Civ. P.
 12 23(e)(2)(D). Specifically, Eligible Owners who submit a valid claim will each receive \$3,075 in
 13 compensation. An Eligible Owner's compensation will be reduced to \$2,460 if an Eligible Former
 14 Owner also submits a valid claim for the same Eligible Vehicle, to allow compensation for the
 15 former owner of the same Vehicle. Eligible Former Owners, Lessees, and Former Lessees will
 16 each be entitled to \$990. The higher payment to Eligible Owners is designed to incentivize them
 17 to bring in their Vehicles for the emissions modification—which is the primary mechanism to get
 18 these Vehicles fixed and stop their excess emissions. FCA sold these Vehicles as EcoDiesels, but
 19 it will take the Class to make them so.

20 Class Counsel intends to apply for service awards for the Settlement Class
 21 Representatives, to be paid by Defendants in addition to the Class compensation. Service awards
 22 “are fairly typical in class action cases” and “are intended to compensate class representatives for
 23 work done on behalf of the class, to make up for financial or reputational risk undertaken in
 24 bringing the action, and, sometimes, to recognize their willingness to act as a private attorney
 25 general.” *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

26 A service award is appropriate here and does not constitute preferential treatment. No
 27 Class Representative was promised, nor conditioned their representation on the expectation of a
 28 service award. *See* Cabraser Decl. ¶ 15. The Representatives have each spent between 35 and 50

1 hours developing the case, conferring with counsel, answering discovery requests, searching for
 2 and producing documents, and preparing and testifying at their depositions. *Id.* Given this
 3 significant commitment, service awards are particularly appropriate, especially considering that
 4 Defendants will pay them in addition to the Class compensation.

5 **B. THE COURT WILL BE ABLE TO CERTIFY THE CLASS FOR**
 6 **SETTLEMENT PURPOSES UPON FINAL APPROVAL.**

7 Certification of a settlement class is “a two-step process.” *In re: Volkswagen “Clean*
 8 *Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2016 WL 4010049, at
 9 *10 (N.D. Cal. July 26, 2016) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997)).
 10 First, the Court must find that the proposed settlement class satisfies Rule 23(a)’s four
 11 requirements. *Id.* (citing Fed. R. Civ. P. 23(a)). Second, the Court must find that “a class action
 12 may be maintained under either Rule 23(b)(1), (2), or (3).” *Id.* (citing *Amchem Prods.*, 521 U.S.
 13 at 613). Here, the Class readily satisfies all Rule 23(a)(1)-(4) and (b)(3) certification
 14 requirements, and certification should be granted for settlement purposes. *See Volkswagen*, 2016
 15 WL 6248426 at *28 (certifying analogous settlement class of owners and lessees of Volkswagen-
 16 and Audi-branded “clean diesel” vehicles). When “[c]onfronted with a request for settlement-
 17 only class certification, a district court need not inquire whether the case, if tried, would present
 18 intractable management problems ... for the proposal is that there will be no trial.” *Amchem*
 19 *Prods.*, 521 U.S. at 620.

20 **1. The Settlement Class Meets the Requirements of Rule 23(a).**

21 **a. The Class is Sufficiently Numerous.**

22 Rule 23(a)(1) is satisfied where, as here, “the class is so numerous that joinder of all class
 23 members is impracticable.” Fed. R. Civ. P. 23(a)(1). Numerosity is generally satisfied when the
 24 class exceeds forty members. *See, e.g., Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal.
 25 2000). It is undisputed that approximately 100,000 Class Vehicles were sold and leased
 26 nationwide and that the Settlement Class—which includes current and former owners and lessees
 27 of these Vehicles—includes more than 100,000 members. The large size of the Settlement Class
 28 and its geographic dispersal across the United States also renders joinder impracticable. *See*

1 *Palmer v. Stassinis*, 233 F.R.D. 546, 549 (N.D. Cal. 2006) (“Joinder of 1,000 or more co-
2 plaintiffs is clearly impractical.”). Numerosity is satisfied.

3 **b. There Are Common Questions of Law and Fact.**

4 “Federal Rule of Civil Procedure 23(a)(2) conditions class certification on demonstrating
5 that members of the proposed class share common ‘questions of law or fact.’” *Stockwell v. City*
6 *& Cty. of San Francisco*, 749 F.3d 1107, 1111 (9th Cir. 2014). Commonality “does not turn on
7 the number of common questions, but on their relevance to the factual and legal issues at the core
8 of the purported class’ claims.” *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014).
9 Indeed, “[e]ven a single question of law or fact common to the members of the class will satisfy
10 the commonality requirement.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369 (2011).

11 Courts routinely find commonality where, as here, the class claims arise from the
12 defendant’s uniform course of conduct. *See, e.g., Cohen v. Trump*, 303 F.R.D. 376, 382 (S.D.
13 Cal. 2014) (“Here, Plaintiff argues his RICO claim raises common questions as to ‘Trump’s
14 scheme and common course of conduct, which ensnared Plaintiff[] and the other Class Members
15 alike.’ The Court agrees.”); *Negrete v. Allianz Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 488 (C.D.
16 Cal. 2006) (finding common core of factual and legal issues in “the questions of whether Allianz
17 entered into the alleged conspiracy and whether its actions violated the RICO statute.”).⁷

18 Here, the Settlement Class claims are rooted in commons questions of fact as to
19 Defendants’ fraudulent scheme to deceive regulators and consumers as to the true nature of
20 EcoDiesel emissions and the hidden technology that made it possible. *See, e.g., SAC at ¶ 325;*
21 *see also Volkswagen*, 2016 WL 4010049, at *10 (similar scheme). These common questions will,
22 in turn, generate common answers “apt to drive the resolution of the litigation” for the Settlement
23 Class as a whole. *See Dukes*, 564 U.S. at 350. As the Settlement Class’s “injuries derive from

24 _____
25 ⁷ Likewise, courts routinely find commonality in cases where uniform misrepresentations and
26 omissions were employed to deceive the public. *See Ries v. Ariz. Beverages USA LLC*, 287
27 F.R.D. 523, 537 (N.D. Cal. 2012) (“Courts routinely find commonality in false advertising
28 cases.”); *Astiana v. Kashi Co.*, 291 F.R.D. 493, 501-02 (S.D. Cal. 2013) (same); *see also Guido v. L’Oreal, USA, Inc.*, 284 F.R.D. 468, 478 (C.D. Cal. 2012) (whether misrepresentations “are unlawful, deceptive, unfair, or misleading to reasonable consumers are the type of questions tailored to be answered in ‘the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation’”) (quoting *Dukes*, 564 U.S. at 350).

1 [D]efendants’ alleged ‘unitary course of conduct,’” Plaintiffs have “‘identified a unifying thread
 2 that warrants class treatment.” *Sykes v. Mel Harris & Assocs. LLC*, 285 F.R.D. 279, 290
 3 (S.D.N.Y. 2012), *aff’d*, 780 F.3d 70 (2d Cir. 2015). Just like *Volkswagen*, “[w]ithout class
 4 certification, individual Class Members would be forced to separately litigate the same issues of
 5 law and fact which arise from Volkswagen’s use of the defeat device and Volkswagen’s alleged
 6 common course of conduct.” 2016 WL 4010049, at *10 (citation omitted).

7 c. **The Settlement Class Representatives’ Claims Are Typical of**
 8 **Other Class Members’ Claims.**

9 Rule 23(a)(3)’s typicality requirement counsels that “‘the claims or defenses of the
 10 representative parties are typical of the claims or defenses of the class.’” *Parsons v. Ryan*, 754
 11 F.3d 657, 685 (9th Cir. 2014) (quoting Fed. R. Civ. P. 23(a)(3)). “Like the commonality
 12 requirement, the typicality requirement is ‘permissive’ and requires only that the representative’s
 13 claims are ‘reasonably co-extensive with those of absent class members; they need not be
 14 substantially identical.’” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting
 15 *Hanlon*, 150 F.3d at 1020). Typicality “assure[s] that the interest of the named representative
 16 aligns with the interests of the class.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168,
 17 1175 (9th Cir. 2010) (quoting *Hanlon*, 976 F.2d at 508). Thus, where a plaintiff suffered a
 18 similar injury and other class members were injured by the same course of conduct, typicality is
 19 satisfied. *See Parsons*, 754 F.3d at 685; *see also Evon v. Law Offices of Sidney Mickell*, 688 F.3d
 20 1015, 1030 (9th Cir. 2012) (“The test of typicality is whether other members have the same or
 21 similar injury, whether the action is based on conduct which is not unique to the named plaintiffs,
 22 and whether other class members have been injured by the same course of conduct.”).

23 Here, the same course of conduct that injured the Settlement Class Representatives injured
 24 other Settlement Class Members in the same way. The 60 Settlement Class Representatives, like
 25 other Settlement Class Members, purchased or leased Eligible Vehicles that emit excessive NOx
 26 pollutants without knowing the truth about the Vehicles’ emissions, and include both current and
 27 former owners and lessees, from 42 states. Like all Class Members, the Settlement Class
 28 Representatives have testified that they would not have done so, or would have paid less, had the

1 truth been disclosed. And finally, both the Representatives and Class Members will similarly—
 2 and equitably—benefit from the relief provided by the Settlement. The typicality requirements
 3 are satisfied. *See Volkswagen*, 2016 WL 4010049, at *11 (typicality satisfied for comparable
 4 settlement class).

5 **d. The Settlement Class Representatives and Class Counsel Have**
 6 **and Will Protect the Interests of the Settlement Class.**

7 Rule 23(a)(4)'s adequacy requirement is met where, as here, “the representative parties
 8 will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “This
 9 requirement is rooted in due-process concerns—‘absent class members must be afforded adequate
 10 representation before entry of a judgment which binds them.’” *Radcliffe v. Experian Info. Sols.,*
 11 *Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013) (quoting *Hanlon*, 150 F.3d at 1020). Adequacy entails
 12 a two-prong inquiry: “(1) do the named plaintiffs and their counsel have any conflicts of interest
 13 with other class members and (2) will the named plaintiffs and their counsel prosecute the action
 14 vigorously on behalf of the class?” *Evon*, 688 F.3d at 1031 (quoting *Hanlon*, 150 F.3d at 1020).
 15 Both prongs are readily satisfied here.

16 The Settlement Class Representatives have no interests antagonistic to Settlement Class
 17 Members and will continue to vigorously protect class interests, as they have throughout this
 18 litigation. *See Clemens v. Hair Club for Men, LLC*, No. C 15-01431 WHA, 2016 WL 1461944,
 19 at *2-3 (N.D. Cal. Apr. 14, 2016). Indeed, the Settlement Class Representatives “are entirely
 20 aligned [with the Settlement Class] in their interest in proving that [FCA and Bosch] misled them
 21 and share the common goal of obtaining redress for their injuries.” *Volkswagen*, 2016 WL
 22 4010049, at *11. The Representatives understand their duties as class representatives, have
 23 agreed to consider the interests of absent Settlement Class Members, and have actively
 24 participated in this litigation. *See Cabraser Decl.* ¶ 14. *See, e.g., Trosper v. Styker Corp.*, No. 13-
 25 CV-0607-LHK, 2014 WL 4145448, at *29 (N.D. Cal. Aug. 21, 2014) (“All that is necessary is a
 26 ‘rudimentary understanding of the present action and ... a demonstrated willingness to assist
 27 counsel in the prosecution of the litigation.’”). The proposed Settlement Class Representatives
 28 are more than adequate.

1 Rule 23(g) requires this Court to appoint class counsel to represent the Settlement Class.
2 See Fed. R. Civ. P. 23(g). At the outset of the MDL, as part of a competitive application process,
3 the Court chose Lead Counsel and each member of the PSC due to their qualifications,
4 experience, and commitment to the successful prosecution of this case. The criteria that the Court
5 considered in appointing Lead Counsel and the PSC were substantially similar to the
6 considerations set forth in Rule 23(g). See, e.g., *Clemens*, 2016 WL 1461944, at *2. Class
7 Counsel, and their respective law firms, have undertaken an enormous amount of work, effort,
8 and expense in this litigation and demonstrated their willingness to devote whatever resources
9 were necessary to see it through to a successful outcome. See Cabraser Decl. ¶ 5. This Court
10 found at the outset, and they have demonstrated in action, their ability to represent the interests of
11 the Settlement Class. See Dkt. 173. They should be appointed as Settlement Class Counsel under
12 Rule 23(g)(3), and confirmed under 23(g)(1) upon final approval.

13 **2. The Settlement Class Meets the Requirements of Rule 23(b)(3).**

14 Rule 23(b)(3)'s requirements are also satisfied. Here, (i) "questions of law or fact
15 common to class members predominate over any questions affecting only individual members";
16 and (ii) a class action is "superior to other available methods for fairly and efficiently adjudicating
17 the controversy." Fed. R. Civ. P. 23(b)(3).

18 **a. Common Issues of Law and Fact Predominate.**

19 "The predominance inquiry 'asks whether the common, aggregation-enabling, issues in
20 the case are more prevalent or important than the non-common, aggregation-defeating, individual
21 issues.'" *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted).
22 "When 'one or more of the central issues in the action are common to the class and can be said to
23 predominate, the action may be considered proper under Rule 23(b)(3) even though other
24 important matters will have to be tried separately, such as damages or some affirmative defenses
25 peculiar to some individual class members.'" *Id.* (citation omitted). At its core, "[p]redominance
26 is a question of efficiency." *Butler v. Sears, Roebuck & Co.*, 702 F.3d 359, 362 (7th Cir. 2012).
27 Thus, "[w]hen common questions present a significant aspect of the case and they can be resolved
28

1 for all members of the class in a single adjudication, there is clear justification for handling the
2 dispute on a representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022.

3 The Ninth Circuit favors class treatment of fraud claims stemming from a “common
4 course of conduct,” like the scheme alleged here. *See In re First Alliance Mortg. Co.*, 471 F.3d
5 977, 990 (9th Cir. 2006); *Hanlon*, 150 F.3d at 1022-23. Even outside of the settlement context,
6 predominance is readily met for RICO and consumer claims arising from the defendants’
7 fraudulent scheme or common course of conduct. *See Amchem Prods.*, 521 U.S. at 625; *Wolin*,
8 617 F.3d at 1173, 1176 (consumer claims based on uniform omissions certifiable where
9 “susceptible to proof by generalized evidence,” even if individualized issues remain);
10 *Friedman v. 24 Hour Fitness USA, Inc.*, No. CV 06-6282 AHM (CTx), 2009 WL 2711956, at *8
11 (C.D. Cal. Aug. 25, 2009) (“Common issues frequently predominate in RICO actions that allege
12 injury as a result of a single fraudulent scheme.”); *see also Klay v. Humana, Inc.*, 382 F.3d 1241,
13 1256-57 (11th Cir. 2004) (affirming certification of RICO claim where “all of the defendants
14 operate nationwide and allegedly conspired to underpay doctors across the nation, so the
15 numerous factual issues relating to the conspiracy are common to all plaintiffs [and the] corporate
16 policies constitute[d] . . . the very heart of the plaintiffs’ RICO claims”).

17 Here, too, questions of law and fact common to the claims of the Settlement Class
18 Members predominate over any questions affecting only individual members, and the underlying
19 class certification briefs allow this Court to conduct the “thorough predominance analysis” that
20 the Ninth Circuit requires. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod.*
21 *Liab. Litig.*, 895 F.3d 597, 609 n.17 (9th Cir. 2018) (distinguishing *In re Hyundai & Kia Fuel*
22 *Econ. Litig.*, 881 F.3d 679, 690 (9th Cir. 2018), which was later vacated). As in *Volkswagen*, a
23 uniform scheme to mislead regulators and consumers by concealing the defeat devices in the
24 Class Vehicles is central to the claims asserted in the operative complaint. *Compare, e.g.*,
25 Dkt. 310 (SAC), at ¶¶ 32, 292, 325, 329, *with Volkswagen*, 2016 WL 4010049, at *12. Plaintiffs
26 here allege Defendants “perpetrated the same fraud in the same manner against all [Settlement]
27 Class Members.” *Volkswagen*, 2016 WL 4010049, at *12. Predominance is satisfied.

1 **b. Class Treatment Is Superior to Other Available Methods for**
2 **the Resolution of This Case.**

3 Superiority asks “whether the objectives of the particular class action procedure will be
4 achieved in the particular case.” *Hanlon*, 150 F.3d at 1023. In other words, it “requires the court
5 to determine whether maintenance of this litigation as a class action is efficient and whether it is
6 fair.” *Wolin*, 617 F.3d at 1175-76. Under Rule 23(b)(3), “the Court evaluates whether a class
7 action is a superior method of adjudicating plaintiff’s claims by evaluating four factors: ‘(1) the
8 interest of each class member in individually controlling the prosecution or defense of separate
9 actions; (2) the extent and nature of any litigation concerning the controversy already commenced
10 by or against the class; (3) the desirability of concentrating the litigation of the claims in the
11 particular forum; and (4) the difficulties likely to be encountered in the management of a class
12 action.’” *Trosper*, 2014 WL 4145448, at *17 (citation omitted).

13 Class treatment here is far superior to the litigation of thousands of individual consumer
14 actions. “From either a judicial or litigant viewpoint, there is no advantage in individual members
15 controlling the prosecution of separate actions. There would be less litigation or settlement
16 leverage, significantly reduced resources and no greater prospect for recovery.” *Hanlon*, 150
17 F.3d at 1023; *see also Wolin*, 617 F.3d at 1176 (“Forcing individual vehicle owners to litigate
18 their cases, particularly where common issues predominate for the proposed class, is an inferior
19 method of adjudication.”). The damages sought by each Settlement Class Member are small
20 relative to the cost of prosecuting each one’s individual claims. *See Smith v. Cardinal Logistics*
21 *Mgmt. Corp.*, No. 07-2104 SC, 2008 WL 4156364, at *11 (N.D. Cal. Sept. 5, 2008) (small
22 interest in individual litigation where damages averaged \$25,000-\$30,000 per year of work).

23 Class resolution is superior from an efficiency and resource perspective. Indeed, “[i]f
24 Class Members were to bring individual lawsuits against [Defendants], each Member would be
25 required to prove the same wrongful conduct to establish liability and thus would offer the same
26 evidence.” *Volkswagen*, 2016 WL 4010049, at *12. With a class of approximately 100,000,
27 “there is the potential for just as many lawsuits with the possibility of inconsistent rulings and
28 results.” *Id.* “Thus, classwide resolution of their claims is clearly favored over other means of

1 adjudication, and the proposed Settlement resolves Class Members' claims at once." *Id.*⁸
 2 Superiority is met here, and Rule 23(e)(1)(B)(ii) is satisfied.

3 **3. The Proposed Settlement Merits Approval Under This District's**
 4 **Procedural Guidance.**

5 This District recently updated its Procedural Guidance for Class Action Settlements. Its
 6 provisions are relevant to this Agreement are addressed below.

7 **a. The Litigation and Settlement Classes Are Essentially Identical.**

8 Where a litigation class has not been certified, the Guidance instructs a party to explain
 9 differences between the settlement class and claims to be released compared to the class and
 10 claims in the operative complaint. *See Guidance*, Preliminary Approval (1)(a), (1)(c). Here, the
 11 proposed Settlement Class is essentially identical to the class in the operative complaint.
 12 Dkt. 310 (SAC) at ¶ 258. The Settlement Class buttons up the class period, which had been left
 13 open in the SAC, and treats Class Members equitably according to their date of purchase or lease
 14 vis-à-vis the EPA's January 12, 2017 NOV. Such refinement in the definition of the Settlement
 15 Class from that in the SAC is appropriate to facilitate a principled and equitable Settlement.
 16 Those relatively few people who may have been class members under the previously-proposed
 17 definition but are not members of the proposed Settlement Class are not releasing their claims.

18 **b. The Settlement Recovery is a Fair Proxy for the Recovery**
 19 **Available if Plaintiffs Had Prevailed on Each of Their Claims.**

20 The Guidance instructs a party to explain the potential class recovery if plaintiffs had fully
 21 prevailed on each of their claims and the factors bearing on the amount of the compromise. *See*
 22 *Procedural Guidance* (1)(e). In this case, Plaintiffs submitted the reports of experts Colin Weir
 23 and Steven Gaskin that present two methods of calculating overpayment damages—one based on
 24 a conjoint analysis and the other based on the EcoDiesel premium overpayment. The conjoint

25 ⁸ Moreover, all private federal actions seeking relief for the Settlement Class are before this Court
 26 as part of the MDL. That the JPML saw fit to consolidate all related federal cases demonstrates
 27 that a single proceeding is preferable to a multiplicity of lawsuits. The government's suit is also
 28 pending before this Court, thereby enabling this Court to approve and enforce the provisions of
 the related settlements as a global resolution to this litigation. *See Volkswagen*, 2016 WL 4010049, at
 *12.

1 model, however, was simply “demonstrative” and was to be altered if, for example, a fix became
 2 available, as it now has. *See, e.g.*, Dkt. 421 at 3, 5, 13. Thus, the damages awards under this
 3 Settlement are based on the EcoDiesel premium model, which also accords with the Court’s
 4 recognition of a premium damages model in its Rule 12 Order. *See* Dkt. 290 at 8-9, 43.

5 If Plaintiffs had fully prevailed on each their claims, it is possible they would have
 6 received treble damages under their civil RICO claim. 18 U.S.C. § 1964(c). But success on this
 7 claim was by no means guaranteed, as this Court had cautioned the parties. And, as general
 8 matter, “courts do not traditionally factor treble damages into the calculus for determining a
 9 reasonable settlement value.” *Rodriguez*, 563 F.3d at 964. The Settlement secures compensation
 10 that meets or significantly exceeds virtually all Class Members’ actual single damages, an
 11 excellent result by any measure, and avoid the lengthy delay of litigation and appeal, while also
 12 enabling the Eligible Vehicles to be expeditiously fixed.

13 **c. The Proposed Allocation Plan for the Settlement Fund.**

14 The Procedural Guidance requires an explanation of the proposed allocation for the
 15 settlement fund. *See* Procedural Guidance (1)(f). As explained above, the settlement provides
 16 three possible compensation levels tied to a Class Members’ status. *See supra*, § I. The
 17 differences reflect an equitable apportionment based on economic principles, and incentivizes
 18 owners to have their vehicles’ emissions systems fixed as quickly as possible.

19 **d. A Substantial Number of Class Members Are Expected and**
 20 **Incentivized To Participate.**

21 The Settlement is designed, in conjunction with the Consent Decree, to incentivize and
 22 facilitate a minimum claims rate of 85%, and the parties are committed to achieving the highest
 23 claims rate possible. Class Members themselves are financially incentivized to participate in the
 24 recall, because the Emissions Fix is a prerequisite to compensation for current keyholders.
 25 Because both Class Members and Defendants are financially motivated to achieve a high
 26 participation rate, the parties anticipate significant participation. *See* Procedural Guidance (1)(g).

27 **e. Reversion**

28 The Settlement is designed as a “claims-made” settlement, meaning Defendants will

1 compensate each valid claim for compensation. Thus “[i]f every consumer comes in for the
 2 settlement ..., every penny ... gets spent.” *Volkswagen*, 2016 WL 6248426, at *22. FCA has
 3 strong incentives to compensate as many Class Members as possible, because any money it could
 4 potentially save by not compensating Class Members would be lost, in the form of penalties of
 5 more than \$6,000 per vehicle, for failing to achieve the 85% participation required by the
 6 Consent Decree. *See* Procedural Guidance (1)(h).

7 **f. The Settlement Administrator Selection Process and Costs**

8 The Parties solicited bids from five well-known and experienced notice and settlement
 9 administration vendors. *See* Cabraser Decl. ¶ 9. After reviewing multiple detailed and
 10 competitive bids, the Parties agreed on the Angeion Group to serve as the Settlement Claims and
 11 Notice Administrator. Lead Counsel has selected Angeion as the Settlement Claims and Notice
 12 Provider in five cases over the last two years, but has also worked with numerous other
 13 Settlement Claims and Notice Administrators over this time period. *Id.*, ¶ 10. Angeion estimates
 14 that the administrative costs of administering the settlement will be approximately \$ 1,500,000.
 15 *See* Declaration of Steven Weisbrot (“Weisbrot Decl.”), ¶ 53. FCA will pay these costs. *See*
 16 Settlement Agreement, § 8.4. *See* Procedural Guidance (2).

17 **g. Attorneys’ Fees**

18 As detailed above, Class Counsel will seek reasonable attorneys’ fees, negotiated
 19 separately from the Settlement under the Rule 23(h) procedure, which will not reduce Class
 20 Members’ recovery in any way. *See supra*, § V. A. 3. C. *See* Procedural Guidance (6).

21 **h. Incentive Awards**

22 Plaintiffs will seek appropriate service awards for Representatives in light of their
 23 commitment and dedication to this litigation. *See supra*, V. A. 4.

24 **i. Notice of Compliance with CAFA.**

25 Pursuant to the Settlement Agreements and as required by CAFA, the settling Defendants
 26 will serve notices in accordance with the requirements of 28 U.S.C. § 1715(b) within ten days of
 27 the filing of this motion. This Court has jurisdiction over the instant matter pursuant to 28 U.S.C.
 28 § 1332(d) and CAFA, which vest the Court with original jurisdiction over any multi-state class

1 action where the aggregate amount in controversy exceeds \$5 million and where the citizenship
2 of any member of the class of plaintiffs is different from that of any defendant. Because it does
3 not provide for a recovery of coupons (28 U.S.C. § 1712), do not result in a net loss to any Class
4 Member (28 U.S.C. § 1713), and do not provide for payment of greater sums to some Class
5 Members solely on the basis of geographic proximity to the Court (28 U.S.C. § 1714), the
6 Settlement Agreement is fully complies with CAFA.

7 **j. Information About Past Distributions in Comparable Class**
8 **Settlements.**

9 The Procedural Guidance requests estimates on the number and percentage of claimants
10 based on recent similar settlements. This case is unusual in that it aims to halt and mitigate
11 ongoing harm as well as compensate damages. In that respect, it has similarities to, and
12 differences from, the recent 2.0-liter, 3.0-liter, and Bosch class settlements in the VW “Clean
13 Diesel” MDL. In the recently completed 2.0-liter settlement, approximately 483,000 class
14 members submitted claims for an overall participation rate of nearly 95%. *See* 11/27/18 Report
15 of Independent Claims Supervisor, Dkt. 5585, available at cand.uscourts.gov/crb/vwmdl. The
16 3.0-liter settlement, not yet complete, but with a class size (80,000 vehicles) most similar to this
17 one, has already seen nearly 70,000 claims, and a participation rate exceeding 85% for each
18 subset of 3.0-liter vehicles. *See* 12/13/18 Claims Supervisor Report, Dkt. 5715. The \$327.5
19 Bosch Settlement, which involves neither buybacks or repairs, but simply pays compensation
20 ranging from \$175 to \$1500 to 2.0- and 3.0-liter owners and lessees, while also not yet
21 completed, reflects similarly high claims and distribution rates.

22 This case will utilize a similar notice and outreach program, government-approved
23 emissions repairs, substantial compensation, and a simplified administration that does not involve
24 buybacks, enabling the reasonable prediction that the participation rate will be similarly high and
25 that most of the money committed to the consumer settlement will be paid out, and addressing the
26 “reversion” inquiry of the Procedural Guidance. Class Members are not expected to leave
27 Defendants’ money on the table at a rate that would impair the Settlement’s fairness, adequacy
28 and reasonableness. Given the significantly smaller Class size and much simpler administration,

1 notice and administration costs, paid by Defendants in addition to Class benefits, will be less than
2 those for the VW-related settlements.

3 **C. THE PROPOSED NOTICE PROGRAM PROVIDES THE BEST**
4 **PRACTICABLE NOTICE.**

5 Rule 23(e)(1) requires that before a proposed settlement may be approved, the Court
6 “must direct notice in a reasonable manner to all class members who would be bound by the
7 proposal.” “Notice is satisfactory if it ‘generally describes the terms of the settlement in sufficient
8 detail to alert those with adverse viewpoints to investigate and come forward and be heard.’”
9 *Churchill*, 361 F.3d at 575 (citation omitted). For a Rule 23(b)(3) Settlement class, the Court must
10 “direct to class members the best notice that is practicable under the circumstances, including
11 individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P.
12 23(c)(2)(B). The best practicable notice is that which is “reasonably calculated, under all the
13 circumstances, to apprise interested parties of the pendency of the action and afford them an
14 opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S.
15 306, 314 (1950).

16 The proposed notice program meets these standards. The Parties created this proposed
17 notice program—including both the content and the distribution plan—with the Angeion Group,
18 an experienced firm specializing in comprehensive noticed settlement management in complex
19 class litigation. The Program includes a Short and Long Form Notice, and a comprehensive
20 Settlement Website (www.EcoDieselSettlement.com), that are clear and complete, and that meet
21 all the requirements of Rule 23 and the Procedural Guidance. *See* Procedural Guidance (3).

22 The Long Form Notice is designed to explain Class Members’ rights and obligations
23 under the Settlement in clear terms and in a well-organized and reader-friendly format. It
24 includes an overview of the litigation; an explanation of the Settlement benefits; contact
25 information for Class Counsel; the address for a comprehensive Settlement Website that will
26 house links to the notice, motions for approval, attorneys’ fees, and other important documents;
27 instructions on how to access the case docket; and detailed instructions on how to participate in,
28 object to, or opt out of the Settlement. The Short Form Notice is in eye-catching “postcard” form

1 conveying the basic structure of the Settlement and designed to capture Class Members' attention
 2 with concise, plain language. It directs readers to the Settlement Website (where the Long Form
 3 Notice is available) for more information.⁹ The principal method of reaching Class Members will
 4 be through individual direct mail notice, consisting of postcard notices by U.S. first class mail to
 5 all readily identifiable Class Members. Direct mail notice will be coupled with individual notice
 6 by email (designed specifically to avoid spam filters), a robust paid-media campaign including
 7 national newspapers and magazines and digital banner advertisement, a toll-free telephone
 8 number and a Settlement Website. Weisbrot Decl. ¶¶ 10-12, 16-43. This Notice Plan, grounded
 9 in individual notice, comports with accepted standards and with this District's Procedural
 10 Guidance regarding notice and opt-outs.

11 **D. THE PROPOSED FINAL APPROVAL HEARING SCHEDULE**

12 The last step in the settlement approval process is the fairness hearing, at which the Court
 13 may hear any evidence and argument necessary to evaluate the Settlement and the application for
 14 attorneys' fees and costs. The Parties propose a detailed schedule for final approval and
 15 implementation in ¶ 12.3 of the Settlement Agreement, and incorporate it by reference herein.

16 **VI. CONCLUSION**

17 Plaintiffs respectfully request that the Court (1) determine under Rule 23(e)(1) that it is
 18 likely to approve the Settlement and certify the Settlement Class; (2) direct notice to the Class
 19 through the proposed notice program; and (3) schedule the final approval hearing under
 20 Rule 23(e)(2).

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28 ⁹ These notices cover all of the elements outlined in Rule 23(c)(2)(B).

1 Dated: January 10, 2019

Respectfully submitted,

LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP

By: /s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
Telephone: 415.956.1000
Facsimile: 415.956.1008
E-mail: *ecabraser@lchb.com*

Plaintiffs' Lead Counsel

9 Roland K. Tellis
10 BARON & BUDD, P.C.
11 15910 Ventura Boulevard, Suite 1600
12 Encino, CA 91436
13 Telephone: 818.839.2320
14 Facsimile: 818.986.9698
15 Email: *rtellis@baronbudd.com*

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

14 Lesley E. Weaver
15 BLEICHMAR FONTI & AULD, LLP
16 555 12th Street, Suite 1600
17 Oakland, CA 94607
18 Telephone: 415.445.4003
19 Facsimile: 415.445.4020
20 Email: *lweaver@bflaw.com*

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

18 Steve W. Berman
19 HAGENS BERMAN
20 1918 8th Avenue, Suite 3300
21 Seattle, WA 98101
22 Telephone: 206.623.7292
23 Facsimile: 206.623.0594
24 Email: *steve@hbsslaw.com*

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

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

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

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

Plaintiffs' Steering Committee

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CERTIFICATE OF SERVICE

I hereby certify that, on January 10, 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