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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION	MDL No. 2672 CRB The Honorable Charles R. Breyer
This Document Relates to: Porsche Gasoline Litigation	**REPLY IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND AWARD OF ATTORNEYS' FEES AND COSTS**

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The Settlement before the Court provides at least $80 million (and up to $85 million) in non-reversionary funds to settle claims for Class members who purchased and leased approximately 500,000 Porsche Class Vehicles. Plaintiffs allege that all the Class Vehicles were impacted by testing practices that skewed emissions and fuel economy test results. The degree of impact for particular vehicles was borne out by a comprehensive vehicle-testing program and significant other discovery. *See* Settlement Agreement, Dkt. 7971-1 at 1.

Class members' individual compensation reflects the potential impact of the relevant testing practices on their Class Vehicles.[1] In short summary: Class members with Fuel Economy Class Vehicles—those vehicles with a measured fuel economy impact resulting in a modified Monroney label—will be eligible to receive compensation ranging from $250 to $1,109.66 per Class Vehicle. Class members with Other Class Vehicles stand to receive up to $200 per vehicle. Class members with Sport+ Class Vehicles subject to an emissions recall and repair will *automatically* receive $250 after completing their free software upgrade, paid in addition to the Fuel Economy and Other Class Vehicle benefits. This compensation constitutes a very high percentage (for many, 100%) of Class members' potential recoverable damages. *See* Dkt. 7971 at 23 and n.10. In all likelihood, participating Class members actually stand to recover even more, given the intended redistribution of any remaining funds.

At bottom, the total settlement value, as well as the individual compensation, provide the Class and its members with substantial compensation for a compromise of contested claims. In light of this compensation and, as detailed below, the overwhelmingly positive response and engagement from the Class to date, the Court should affirm its earlier conclusion that the Settlement is "fair, reasonable, and adequate" (Dkt. 7997 at 2) and grant its final approval.

A. The notice and claims program has already seen great success, and there is every reason to believe it will continue that way.

The Settlement reflects an excellent result for a difficult case—and the Class agrees. There are approximately 500,000 Class Vehicles, but only two Class members (plus one non-

[1] All capitalized terms used herein have the meaning set forth in the Consumer Class Settlement Action Agreement and Release ("Settlement," "Settlement Agreement," or "Agreement"), and the Motion for Preliminary Approval, unless otherwise indicated.

Class member) have objected to any aspect of the Settlement, and only ten have opted out.[2] This is a vanishingly small percentage of the class (well under 0.002%). In contrast, as of October 11, 2022, more than 109,846 claims have been submitted, covering 99,491 (19.68%) unique Class VINs. Keough Decl. ¶ 12.[3] In addition, 13,773 Class members have already brought their Sport+ Class Vehicles in for an ECR and will automatically receive payment (without the need for submitting a claim). *Id.* ¶ 13. More than 10,000 of those are unique VINs, meaning that, based on claims submitted to date, payments will be made for approximately 109,715 (21.71%) of the Class Vehicles. *Id.*

This is a very strong result—already well above the mean (9%) and median (4%) claims rates[4]—and the parties are continuing to work hard to ensure the remaining two months[5] of the claim program are just as successful. After completing the notice campaign, the parties worked closely with JND to send additional reminder email notices to Class members who had not yet filed claims. Keough Decl. ¶¶ 4-7. Porsche Cars North America, Inc., too, conducted robust outreach to potential Class members through its own customer email campaign, sent to approximately 612,611 recipients, providing yet another reminder of the Settlement to its customers and directing them to the official settlement website. These reminder efforts, and others to come, will continue to generate a significant number of additional claims. *Id.*

Given the success of the notice program—which reached "virtually all Class members through direct, individual notice"—and the strong participation rates, it is particularly significant that there are just three objectors and ten valid opt-outs. *Id.* ¶¶ 3, 14-15. This silent support speaks volumes—especially given the number of Class members and the sums at stake—and strongly

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[2] In total, twenty-seven opt-out requests were submitted. Eleven complied with the requirements in the Settlement and the Class Notice, but one of those eleven Class members subsequently rescinded his opt-out and filed a claim for compensation. Supplemental Declaration of Jennifer Keough ("Keough Decl.") ¶ 14. The parties and the settlement administrator have reached out to the remaining Class members in an attempt to cure the deficiencies.

[3] An additional 2,155 claims were submitted with ineligible VINs. However, the claims administrator anticipates that a significant number of those claims involve transcription errors and will be cured before the end of the claim period.

[4] *See* Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns, *FTC Staff Report* (Sept. 2019) at 11, 21.

[5] The parties have agreed to extend the claims deadline from November 7, 2022, to December 7, 2022, and will do so with the Court's approval.

supports Plaintiffs' motion. *See, e.g., Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming district court's approval of settlement where forty-five of 90,000 class members objected to the settlement, and 500 class members opted out); *Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723-JSC, 2022 WL 425559, at *6 (N.D. Cal. Feb. 11, 2022) ("Courts have repeatedly recognized that the absence of a large number of objections to a proposed class action settlement" is a factor suggesting "that the terms of a proposed class settlement action are favorable to the class members . . . Thus, the Court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it.") (citing *Garner v. State Farm Mut. Auto. Ins*. Co., No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *14 (N.D. Cal. Apr. 22, 2010)).

B. The three objectors offer no reason to reject the Settlement.

The few objections that were lodged misunderstand the Settlement and dissolve under careful scrutiny. First comes Wes Lochridge who is represented by arguably the "most prolific 'serial objector' in the country,"[6] the Bandas Law Firm, which has faced serious discipline for its objection-related misconduct. *See, e.g., Edelson PC v. Bandas L. Firm PC*, No. 1:16-CV-11057, 2019 WL 272812, at *1-2 (N.D. Ill. Jan. 17, 2019). Lochridge takes issue with three features of the proposed Settlement—the claims process, the class definition, and the attorneys' fees—but his arguments misconstrue the relevant settlement provisions. Dkt. 8060. Next is Matthew Killen who implies, incorrectly, that any fair settlement requires a buyback. Dkt. 8065. Finally, Nicholas Bugosh appears to be antagonistic to class actions generally and simply does not want any Class members to recover anything at all. Dkt. 8055. None of these arguments should change the Court's conclusion that the Settlement is "fair, reasonable, and adequate" (Dkt. 7997 at 2), and each objection should be overruled.

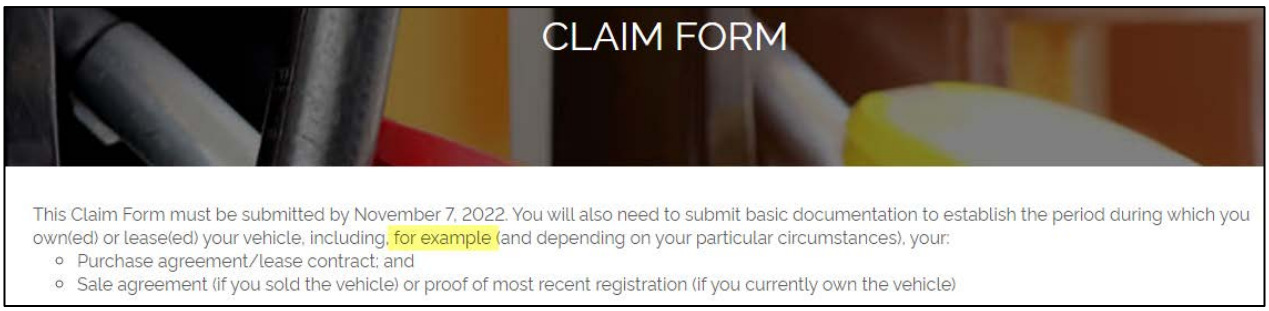
1. The claim process documentation requirements are reasonable, but regardless, they have already been relaxed.

Compensation for Fuel Economy Class members like Lochridge depends on when the Class members possessed their Class Vehicles and for how long. The claim process therefore

[6] Michael Bologna, *Notorious 'Serial Objector' May Have Filed His Last Objection*, Bloomberg Law (March 12, 2019), https://news.bloomberglaw.com/class-action/notorious-serial-objector-may-have-filed-his-last-objection-1.

requests basic documentation to establish these basic facts. Without such documents, the claims administrator would, for example, have difficultly resolving competing claims on overlapping time periods.

This Court has already approved nearly identical documentation requirements in the similarly structured Audi CO_2 settlement. *See* Dkt. 6634-4, Attachment 3, ¶ 22 (explaining claim process); Dkt. 7244 at 4 (granting final approval). But here, as before, the documentation requirements were never rigid. As explained in an earlier approval brief, Class members were asked to submit only "basic documentation sufficient to establish their ownership or lease of a Class Vehicle and the duration for which they did so (e.g., purchase agreement, sale documentation, and/or proof of current registration)." Dkt. 7971 at 26. The online claims portal—where the overwhelming majority of claims are submitted—has always been clear that the specific documents that Lochridge complains are required were merely "*example[s]*" of sufficient documentation[7]:



From the very beginning, the Long Form Notice and website FAQs have said the same thing. *See* Dkt. 7971-3 at 73 (Long Form Notice, Q6); Settlement Website FAQ No. 6, at https://www.porschegasolinesettlementusa.com/faq. Even the PDF claim form that Lochridge cites selectively in his objection encourages Class members to visit the settlement website or call the hotline "[f]or additional information about what types of documentation are acceptable." Dkt. 7971-3, Ex. C (Claim Form).[8]

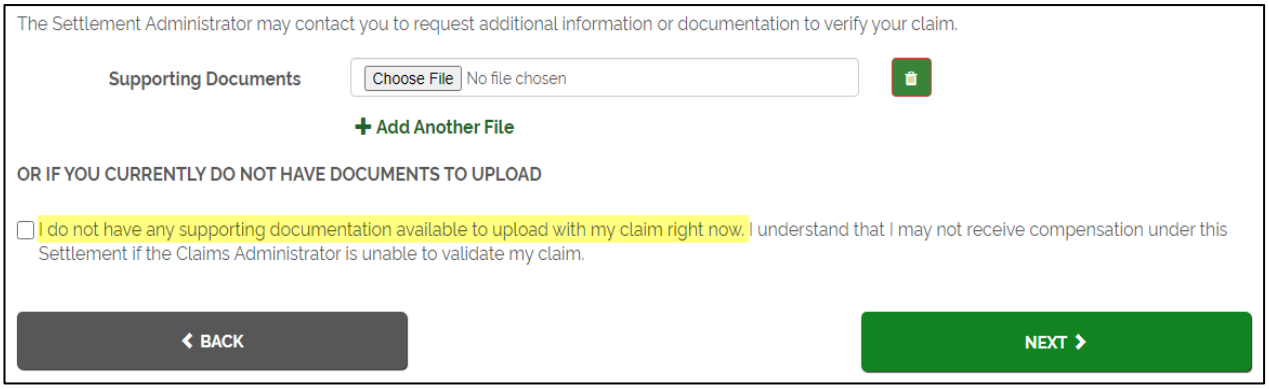
In sum, Lochridge is simply incorrect in arguing a claim cannot succeed without a purchase agreement. Indeed, based on all the information cited above, it should come as no

[7] https://secure.porschegasolinesettlementusa.com/

[8] Nevertheless, for complete consistency, the parties will modify the paper claim form to clarify that the documentation sources identified are mere examples, as is apparent from the online claims portal, the long form notice, and the settlement website, among other places.

surprise that here, as in the Audi CO_2 settlement, the claims administrator will accept alternative forms of documentation like the ones Lochridge submitted with his claim (a "sworn statement, Carfax report, and copy of title"). Dkt. 8060 at 7; Keough Decl. ¶ 5.

But the parties have actually taken it one step further. Class Counsel is committed to finding ways to pay as many Class members as possible. In that spirit, shortly after the claims process began—and long before Lochridge lodged his objection—the parties added an option for Class members to submit claims *without any documentation at all*, as reflected below:



Keough Decl. ¶ 8. Of course, for the reasons stated above, the claims administrator will need to verify the dates of possession to calculate the appropriate settlement payments and resolve any conflicts. Counsel expect that much of that verification can be done on the back-end without further Class member involvement. And as the website makes clear, where appropriate, "the Settlement Administrator may contact [Class members] to request additional information or documentation." The recently sent reminder email confirms this and encourages Class members who may not have completed the claim process to try again. *Id.* ¶ 5 ("If you were previously unable to file a claim because your documents were unavailable, you now have the option to submit your claim without supporting documentation….").

To recap, the parties are committed to paying as many Class members as possible, and the documentation component of the claim process is already less demanding than what Lochridge requests.

2. All Class members have standing.

The bulk of Lochridge's objection pertains to standing. According to him, it is "undisputed" that many Class members (those with Other Class Vehicles) do not have claims or

damage and thus have no standing to bring (or resolve) claims. Dkt. 8060 at 10. This objection misunderstands the law on standing and the facts of this case.

As the Ninth Circuit recently reaffirmed, when parties settle prior to class certification and summary judgment, "general factual allegations of injury resulting from the defendant's conduct" suffice to establish standing. *In re Apple Inc. Device Performance Litig.*, No. 21-15758, 2022 WL 4492078, at *8 (9th Cir. Sept. 28, 2022) (quoting *Transunion LLC v. Ramirez*, 141 S. Ct. 2190 (2021) and *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 561 (1992) ("At the time the parties settled, prior to class certification or summary judgment, plaintiffs alleged that all putative class members experienced throttling from Apple's allegedly unlawful intrusion into their phones. That sufficed to establish standing.")). Plaintiffs easily satisfy that standard here.

In the operative complaint, Plaintiffs detail two schemes, one of which, the "Axle Ratio fraud," involves allegations that Porsche submitted "testing results from doctored vehicles that differed in material ways from the production models." Dkt. 7969 ¶ 69. The "vehicles affected by the Axle Ratio fraud," Plaintiffs allege, "obtained worse fuel economy than represented" and "were illegal to import or sell." *Id.* ¶ 77. Critically, Plaintiffs aver that the Axle Ratio fraud affected a long, enumerated list of vehicles, including every single Fuel Economy *and* Other Class Vehicle. *Id.* ¶ 79.

These allegations of economic harm clearly "suffice[] to establish standing," *In re Apple Inc. Device Performance Litig.*, 2022 WL 4492078, at *8, and nothing in the Settlement structure or Lochridge's cherry-picked excerpts from the briefing undermines it. The Settlement's distinction between Fuel Economy and Other Class Vehicles is rooted in the realities (and limitations) of the discovery conducted to investigate allegations of widespread fraud spanning nearly two decades. Through extensive document analysis and a thorough vehicle-testing regime, the parties identified certain vehicles with a fuel economy deviation significant enough to result in a revised Monroney label. What remained were vehicles with damages that Plaintiffs allege were significantly smaller and more difficult to quantify, but certainly not zero. For some of them, for example, testing showed only a minimal fuel economy differential that did not result in revised Monroney label. Others appeared to be potentially affected based on careful review of

technical engineering documents, but due to vehicle age and other issues, the testing could not be relied on for precise results. And all of them were produced in an era where Plaintiffs allege the widespread Axle Ratio fraud affected vehicle testing in ways both big and small.

Despite all this, there may be a "possibility that some" small number of "class members suffered no damages," but as the Ninth Circuit explained, that possibility does *not* "mean that they lack standing and must be dismissed." *In re Apple Inc. Device Performance Litig.*, 2022 WL 4492078, at *8.[9] The entire Class has standing.

3. There are no conflicts.

Lochridge's intra-class conflict objection fails for similar reasons. According to him, a conflict arises from the fact that Fuel Economy claims are stronger than the Other Class Vehicle Claims. But Class Counsel may, and often do, represent different groups before the same court. In fact, as many courts have recognized, these situations can actually inure to the class's benefit because counsel can "leverage a better settlement for both sets of plaintiffs due a defendant's desire to obtain a global resolution." *Byrd v. Aaron's, Inc.*, No. CV 11-101, 2017 WL 4326106, at *13 (W.D. Pa. Aug. 4, 2017), *report and recommendation adopted*, No. CV 11-101, 2017 WL 4269715 (W.D. Pa. Sept. 26, 2017); *Sherman v. CLP Res., Inc.*, No. CV 12-8080-GW(PLAX), 2015 WL 13542762, at *6 (C.D. Cal. Feb. 4, 2015) (same, citing Newberg on Class Actions). Here, it is precisely because Class Counsel represents both groups of Plaintiffs that they were able to achieve such outstanding results for both groups in relation to the respective strengths of their claims. *Cf. In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, 895 F.3d 597, 609 (9th Cir. 2018) (rejecting claim of intra-class conflict and noting that "eligible sellers"—including the objector—actually "benefitted from being in the class alongside vehicle owners").

None of Lochridge's authority holds otherwise. He relies primarily on *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591 (1997) and *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999), but those

[9] Lochridge seems to understand that *In re Apple* sinks his objection and so argues that the Ninth Circuit misinterpreted *TransUnion*. It did not, but regardless, "[t]he district court does not have the authority to ignore circuit court precedent," *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1211 (9th Cir. 2016), "*even if* the district court is of the opinion that the circuit court decision misapplied the law, or conflicts with Supreme Court precedent." *Valspar Corp. v. PPG Indus., Inc.*, No. 16-CV-1429 (SRN/SER), 2017 WL 3382063, at *3 (D. Minn. Aug. 4, 2017) (citing *City of Dover v. EPA*, 40 F. Supp. 3d 1, 4 (D.D.C. 2013)).

asbestos cases involved different kinds of injuries over different time periods (some in the past and some in the future). Here, in contrast, all Class members allege injury from the same practices over the same time frame, and none seek to recover for speculative injuries that may or may not accrue in the future. The Ninth Circuit already found such circumstances distinguishable and free of conflict. *In re Apple Inc. Device Performance Litig.*, 2022 WL 4492078, at *8 (distinguishing *Amchem*, noting that separate representation is not required even when some class members may not have "actionable claim[s]," and holding that "no . . . conflict exists" where all injured class members "experienced injury during the same time frame and in the same manner"); *Chambers v. Whirlpool Corp.*, 980 F.3d 645, 670 (9th Cir. 2020) (distinguishing *Ortiz* for similar reasons). Lochridge's conflict objection should be overruled.

4. Class Counsel's fee request is reasonable and well supported.

The dispute about attorneys' fees is relatively small. Lochridge (the only objector who addresses fees) advocates for the 25% benchmark, whereas Class Counsel have sought a modest upward adjustment (30% of the guaranteed $80,000,000 non-reversionary settlement fund and 28.2% of the settlement's total potential monetary value). The only support Lochridge provides, however, is his assertion that the settlement may not offer "complete recovery for all Fuel Economy Class Members"—something Lochridge finds offensive given that the Settlement compensates Class members he believes were not injured. Dkt. 8060 at 12-13. This argument again misapprehends both the facts and law.

To begin, it is worth noting that it is "highly unusual"—virtually unprecedented outside this MDL—for a class action settlement to recover what is, by some measures, close to if not all of what the Class could recover at trial. *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 895 F.3d at 610. But that's exactly what this Settlement does. For Fuel Economy Class members like Lochridge, the Settlement covers the difference in cost for the amount of gasoline that would have been required under the original Monroney fuel economy label and the greater amount required under the adjusted fuel economy label, along with a payment of an additional 15% of those damages. Dkt. 7971-1 ¶ 4.1. The fuel price used for that calculation is $3.97—a generous, inflation-adjusted estimate for the cost of premium gasoline

over the relevant time period. Dkt. 7971 at 23. Based on that estimate, the parties are able to represent that the Settlement offers *full compensation* for the 82% of Fuel Economy Class Vehicles (including Lochridge's Class Vehicle) for which the 96 months of compensated fuel usage has already concluded. Counsel are confident the same will be true for the remaining 18% whose 96 months are ongoing, especially given the 15% premium applied to all vehicles. What's more, even under the most ambitious participation scenarios (which Counsel are working hard to achieve), additional funds will remain for re-distribution, which will further increase the compensation for every Class member who submits a valid claim (potentially by hundreds of dollars).

In sum, every Fuel Economy Class member is likely getting 100¢ on the dollar, or more, and Lochridge's speculation that those Class members would receive *even more* under a re-negotiated deal if the Other Class Vehicles are excluded—i.e., if the Defendants get less peace—is belied by common practice.

Regardless, Counsel's fee request is justified even if some small portion of the Class were receiving something slightly below "complete recovery," as Lochridge argues. "The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award," *In re Omnivision Techs.*, Inc., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008), and courts commonly "justif[y] upward departures from the 25% benchmark" with "[f]ar lesser results (with 20% recovery of damages or less)." *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-MD-2541-CW, 2017 WL 6040065, at *3 (N.D. Cal. Dec. 6, 2017), *aff'd*, 768 F. App'x 651 (9th Cir. 2019) (collecting cases); *see also In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005) (settlement recovering 36% of available damages was "exceptional result" justifying fee award of 33.33%) (collecting additional cases); *Andrews, et al. v. Plains All Am. Pipeline L.P., et al.*, No. CV154113PSGJEMX, 2022 WL 4453864, at *2 (C.D. Cal. Sept. 20, 2022) (settlement recovering between 25% and 65% of potential compensatory damages justified awarding 32% of $230 million common fund) (collecting additional cases).

No matter how you slice it, the settlement recovery here is "significantly better than the

norm" and justifies a commensurate "upward adjustment [from the federal benchmark]." *Id.* (quoting *Rodman v. Safeway, Inc.*, No. CV 11-3003 JST, 2018 WL 4030558, at *3 n.3 (N.D. Cal. Aug. 22, 2018)). Indeed, if a settlement providing 100% of damages (or close to it) does not warrant a modest deviation, then the benchmark would, in reality, become a ceiling, undercutting decades of Ninth Circuit jurisprudence.

Lochridge's final argument—that Counsel should somehow identify and excise lodestar related to the Other Class Vehicles—fares no better. Counsel did not know going into this litigation which vehicles would be affected by which issues and to what degree; that's what the year-and-half of document discovery, expert testing, and negotiations were designed to tease out. In other words, time spent identifying Other Class Vehicles cannot be separated, conceptually or logistically, from time spent working on the rest of the case. Regardless, the Court can approve or reject the Settlement, but cannot alter its terms. *Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 630 (9th Cir. 1982). That means that if the Court is awarding fees, it has approved a settlement that includes the Other Class Vehicles and therefore would have no reason to exclude time dedicated to them (even assuming such an exercise were possible).

Class Counsel's fee request is reasonable and well-justified under the facts of this case. Lochridge's objection should be overruled.

5. Fairness does not require a buy-back.

Notwithstanding the factors addressed above, Objector Matthew Killen also argues the Settlement does not offer fair fuel compensation, and in any case, thinks all Class members are entitled to a buyback. Killen is not actually a Class member[10] and therefore lacks standing to object; even so, his arguments are easily addressed.

As to the fuel economy compensation, Killen outlines a formula that he thinks would result in greater compensation. It is not entirely clear how he arrives at the projected output ($616.70), but regardless, the inputs he uses—MPG differential and miles driven—are not

[10] Killen indicates that he purchased his 2013 Porsche Boxster on June 20, 2022. While this model is among the Fuel Economy Class Vehicles, Killen purchased his vehicle well after the 96-month useful life period compensated under the Settlement. Because Killen's vehicle does not qualify for compensation, he is not a Class member (and is not releasing any claims).

accurate or meaningful. In constructing the fuel compensation formula, the Parties had access to very detailed data, including the precise Monroney label changes for each Fuel Economy Class Vehicle and model-level analyses of average annual miles driven based on thousands of data points. With this information, the parties were able to accurately determine the number of gallons necessary to power each Fuel Economy Class Vehicle over its useful life using (A) the fuel economy stated on the revised Monroney and (B) the original Monroney label. The parties calculated the additional gallons required (A – B), multiplied that number by an average gasoline price ($3.97), and then added a 15% bonus. Killen does not meaningfully engage with this formula, and his made-up calculations do not undermine its fairness.

As to Killen's buyback argument, it is simply not the law that car companies are required to offer buybacks in every case involving fuel economy and emissions, especially where, as here, the vehicles remain legal to drive. As exemplified in a recent automotive defect trial before Judge Chen, even a plaintiff verdict at trial would be unlikely to require one. *Siqueiros v. General Motors LLC*, No. 3:16-cv-07244-EMC, Dkt. 566 (N.D. Cal. Oct. 4, 2022).[11] Unsurprisingly, then, this Court has approved several settlements in this MDL with no buyback option. One example is the Audi CO_2 settlement, which compensated class members for extra fuel that they purchased (as a result of a similar fraud) through a substantially similar formula. *See* Dkt. 6634-1 (settlement); 7244 (final approval order). Another example is the 3.0-liter diesel settlement that offered no buyback option for Generation 2 vehicles that could be repaired to the emissions standards at which they were certified. Dkt. 3229 at 28-29. That is precisely what the Emissions Compliant Repair does for the Sport+ Class Vehicles here.

As this Court put it previously, "[s]ome Class Members will inevitably wish they could recover more. But 'the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes.'" Dkt. 2102 at 22 (citing *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d at 624). The Settlement provides generous compensation, and the absence of a buyback option does not erode its fairness or adequacy.

[11] Bonnie Eslinger, *GM Hit with Over $100M Verdict in Engine Defect Class Action*, Law360 (Oct. 4, 2022), https://www.law360.com/articles/1537233/gm-hit-with-over-100m-verdict-in-engine-defect-class-action.

6. The "zero dollar" objection is adverse to the interests of the Class.

Whereas Killen argues the Settlement offers too little, Bugosh complains it offers too much. But Bugosh offers no specific criticism of the Settlement, its compensation framework, or the notice or claims process. Instead, Bugosh asks the Court to "reject the suit's request and award zero dollars" to the entire Class based only on his belief that his single Class Vehicle[12] "meet[s] all of the performance [and fuel economy] specifications." Dkt. 8055 at 2. Bugosh's personal observations in no way justify the relief (or lack of relief) he requests. Official fuel economy estimates are derived using specific drive cycles in extremely controlled laboratory conditions, and Bugosh's personal on-the-road (and racetrack) fuel economy records are of little value in assessing whether—as alleged in this case—Porsche manipulated the fuel economy and emissions testing for some of its vehicles. Regardless, Bugosh's experiences in no way undermine the Settlement, which, as discussed above, accounts for the possibility that some Other Class Vehicles may not experience an easily measured fuel economy or emissions discrepancy.

In any case, the interests of objectors, like Bugosh, who "appear to support no recovery for the Class, . . . are adverse to the Class." *Perkins v. Linkedin Corp.*, No. 13-CV-04303-LHK, 2016 WL 613255, at *4 (N.D. Cal. Feb. 16, 2016). This is so because "the purpose of Rule 23(e)'s final approval process is the protection of absent class members, and not the Defendants." *Ko v. Natura Pet Prod., Inc.*, No. C 09-02619 SBA, 2012 WL 3945541, at *6 (N.D. Cal. Sept. 10, 2012) ("[A]n objection based on a concern for the Defendants and an apparent non-substantive assessment of the frivolity of the action are not germane to the issue of whether the settlement is fair."). Bugosh's objection should be overruled.

C. Conclusion

For all the foregoing reasons and those articulated in Plaintiffs' opening Memorandum and Points of Authorities, Plaintiffs respectfully request that the Court overrule the objections; certify the Settlement Class and appoint Settlement Class Counsel and Class Representatives; grant final approval to the Settlement; approve $250 service awards for each of the 33 Settlement Class Representatives; and approve an aggregate award of $24,710,733.89 in attorneys' fees and

[12] Bugosh identifies two Porsches, but one (MY 2002) is not a Class Vehicle. The 2012 Porsche 911 is an Other Class Vehicle.

costs to be allocated by Lead Counsel among participating PSC firms for their common benefit work devoted to obtaining this excellent result.

Dated: October 11, 2022

Respectfully submitted,

/s/ Elizabeth J. Cabraser

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CERTIFICATE OF SERVICE

I hereby certify that, on October 11, 2022, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the Court's electronic filing system.

/s/ *Elizabeth J. Cabraser*
Elizabeth J. Cabraser