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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	**MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND AWARD OF ATTORNEYS' FEES AND COSTS**

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

NOTICE OF MOTION AND MOTION

TO ALL THE PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 21, 2022 at 9:00 a.m. or at such other date and time as the Court may set, in Courtroom 6 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, Lead Counsel, on behalf of a proposed Settlement Class of current and former owners and lessees of certain Porsche gasoline vehicles, will and hereby do move the Court for an order and judgment granting final approval of the Class Action Settlement and the motion for attorneys' fees and costs, and appointing Settlement Class Counsel and Class Representatives under Fed. R. Civ. P. 23(g)(1).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Settlement before the Court resolves claims for consumers who purchased or leased certain model year 2005-2020 gasoline-powered Porsche vehicles (the "Class Vehicles"). As detailed in the operative Complaint, Plaintiffs allege that two historical practices improperly skewed the emissions and fuel economy test results for the Class Vehicles. The Settlement provides a guaranteed, non-reversionary fund of at least $80 million (and up to $85 million) to compensate Class members who purchased and leased these Class Vehicles.

As part of the extensive investigation efforts in this case, the Parties conducted and reviewed results from rigorous and comprehensive testing that they believe to have covered all vehicles potentially affected by the alleged practices. *See* Settlement Agreement ("SA"), Dkt. 7971-1 at 1. Testing results for a subset of the Class Vehicles—the "Fuel Economy Class Vehicles"—revealed that the real-world fuel economy may have been one or two miles per gallon lower than the MPG promised to Class members on the Monroney labels and in other marketing. As a result, Class members who purchased or leased a Fuel Economy Class Vehicle may have paid for more gasoline over time—and may have had to visit the gas station more frequently—than if the vehicles had performed as promised. Class members with Fuel Economy Class Vehicles will be eligible to receive Fuel Economy Cash Benefits, ranging from $250 to $1,109.66 per Class Vehicle. While market prices for gasoline fluctuate and future gas prices are unpredictable, the Fuel Economy compensation will pay all Fuel Economy Class members a very high percentage of their potential recoverable damages (and the vast majority of them 100% of damages). *See* Section II.A.

Class members with Class Vehicles that were also conceivably impacted by the testing practices at issue (the "Other Class Vehicles"), but for which no potential deviations were identified through the comprehensive vehicle testing program, will be eligible to receive cash payments of up to $200 per vehicle. Finally, in addition to the Fuel Economy and Other Class Vehicle compensation, Class members whose vehicles are equipped with a high-performance Sport+ Mode that are the subject of an ongoing emissions recall (the "Sport+ Class Vehicles")

will *also* be eligible for a free software upgrade and a cash payment of $250 ("Sport+ Cash Benefits"), which will be paid automatically, without the need for a claim form. As with the Fuel Economy Cash Benefits, the Sport+ and Other Class Vehicle payments provide substantial compensation to Class members tied to the potential impact of the practices at issue on their Class Vehicles.

The proposed Settlement is an outstanding result for the Class, and provides significant monetary value to the Class for the impact the alleged improper testing practices may have had on their Class Vehicles. For their work in securing this result, Class Counsel seek $24,000,000 in fees and $710,733.89 in costs. The requested fees are 30% of the guaranteed $80,000,000 non-reversionary settlement fund, and 28.2% of the settlement's total potential monetary value. This modest upward departure from the 25% benchmark is warranted in light of the exceptional results obtained for the Class, including a substantial payment available to all Class members to redress the relevant harms (arguably 100% of damages for most Class members). *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 1917, 2016 WL 4126533, at *5 (N.D. Cal. Aug. 3, 2016), *dismissed sub nom. In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 16-16368, 2017 WL 3468376 (9th Cir. Mar. 2, 2017) (awarding 30% of $576,750,000 fund); *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-MD-2541-CW, 2017 WL 6040065, at *2 (N.D. Cal. Dec. 6, 2017), *aff'd*, 768 F. App'x 651 (9th Cir. 2019) (observing that "many cases in this circuit . . . have granted fee awards of 30% or more," and, "in most common fund cases, the award exceeds the [25%] benchmark"). The reasonableness of the requested fees is further confirmed by a lodestar cross-check that yields a routine multiplier of just 1.86.

Plaintiffs thus respectfully request that the Court certify the Settlement Class, grant final approval to the Settlement, and approve an aggregate award of $24,710,733.89 in attorneys' fees and costs to be allocated by Lead Counsel among participating PSC firms for their common benefit work devoted to obtaining this excellent result.

II. BACKGROUND AND PROCEDURAL HISTORY

The Court is very familiar with the history of this litigation, much of which is detailed in Plaintiffs' preliminary approval briefing (Dkt. 7971). In the interest of efficiency, Plaintiffs will

not reiterate that history here and incorporate it by reference. A few points, however, bear emphasis.

A. The Settlement provides Class members with substantial cash compensation.

This case centers on allegations that Defendants altered fuel economy and emissions test results in certain gasoline-powered Porsche vehicles manufactured for model years 2005 through 2020. Specifically, Plaintiffs allege two improper strategies that could have impacted the emissions and fuel economy test results for the Class Vehicles: referred to in the Amended Complaint as the "Axle Ratio Fraud" and the "Sport+ Fraud." Dkt. 7969 at ¶¶ 68-90. As to the Axle Ratio Fraud, (referred to in the Settlement as the "Fuel Economy Matter"), Plaintiffs allege that Porsche used doctored vehicles for emissions and fuel economy testing, such that the hardware and software in the tested vehicles differed in material ways from the hardware and software in vehicles that were sold to the public. As a result, the tested vehicles obtained better fuel economy and emitted less CO_2 in the laboratory than the vehicles that were actually sold and leased to consumers. With respect to the Sport+ Fraud, Plaintiffs allege that some Class Vehicles exceeded emissions limits when driven in a user-selected, high-performance "Sport+" driving mode.

The proposed Settlement provides substantial cash payments to all Class members whose vehicles were or could have been impacted by one or both of these tactics. The amount of compensation available to each Class member is based on the model and model year Class Vehicle they purchased or leased, and the degree to which there is a measured impact on their Class Vehicle from the relevant conduct. Class members with a Fuel Economy Class Vehicle—for which testing and other discovery revealed a deviation in fuel economy—will receive cash compensation for (1) 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, and (2) a goodwill payment of an additional 15% of those damages to compensate for any inconvenience. Dkt. 7971-1 ¶ 4.1. Payments range from $250 to $1,109.66 for Class members who owned the vehicle for 96 months after it was first sold or leased. *Id.*, Ex. 1. Compensation for Class members who sold, purchased used, or leased their

Fuel Economy Class Vehicles follows the same concept, but will be prorated to the number of months of possession during the 96 month period.

Class members with "Other Class Vehicles"—for which emissions or fuel economy deviations were not identified through the Parties' extensive investigation and testing efforts, but nonetheless could conceivably have experienced a discrepancy given the time periods and places in which they were developed—will be offered meaningful cash payments of up to $200 per vehicle. If an *extraordinary* claims rate causes the payments allocated to the Other Class Vehicles to fall below $150 per vehicle, Defendants have agreed to pay an *additional* $5 million into the Settlement Fund, bringing the total to $85 million.

Finally, and in addition to the Fuel Economy and Other Class Vehicle compensation described above, Class members with a Sport+ Class Vehicle will be eligible to receive an Emissions Complaint Repair ("ECR"), a software reflash that upgrades the Sport+ program to Porsche's most up-to-date version and brings the vehicles into compliance with the relevant regulatory limits. The ECR does not compromise Sport+ performance, but Class members who receive it will *automatically* receive a $250 cash payment upon completion, without having to submit any further claim.[1] This significant payment will incentivize Class members to bring their Class Vehicle to a dealership for a software update and compensate them for their time and inconvenience in doing so.[2]

The $80 million available to the Class is non-reversionary. If there are any funds remaining after all valid, complete, and timely Claims are paid, the Settlement contemplates a redistribution of the remaining funds to Class members unless and until it is economically infeasible to do so. SA ¶ 4.4. Finally, any final balance (an amount which will be relatively modest given the Class member redistribution) will be directed *cy pres* to environmental remediation efforts subject to Court approval. *Id.* This ensures that *all* of the money secured by

[1] Sport+ Class members who complete or have already completed the ECR will have their information sent to the settlement administrator for automatic payment after final approval, thereby eliminating the need to submit a claim for the $250 payment.

[2] The ECRs for the vast majority of Sport+ Class vehicles has already been approved, and Defendants are in the process of obtaining regulatory approval for the remainder.

the Settlement will inure to the benefit of the Class and the interests advanced in this litigation.

B. The Case was complex, risky, and thoroughly investigated.

This $80 million settlement for the Class was not easily obtained. Indeed, the Porsche Gasoline cases presented a unique set of facts and complex issues from the beginning. The litigation traces back two years, when a prominent German news site *Der Spiegel* in August 2020 first broke news of possible emissions and fuel economy irregularities in Porsche gasoline vehicles. Class Counsel then dedicated two years to the extensive investigation, litigation, and discovery of the complex emissions and fuel economy test practices at issue.

Those two years brought significant challenges and required a lot of work. After the initial consolidation into this MDL, the Court tasked Plaintiffs' Lead Counsel (previously appointed in the diesel emissions cases) with filing a consolidated complaint for the Porsche Gasoline cases. *See* Dkt. 7756. This was no small feat. Unlike other recent vehicle emissions settlements, including within this MDL, no parallel action was filed by the government to bolster Plaintiffs' claims and assist in the investigation. As such, Plaintiffs had no formal Notice of Violation on which to ground their allegations and steer the focus of their investigation.[3] Without a roadmap from a formal government citation, Plaintiffs pushed forward to thoroughly investigate and aggressively pursue their claims, as evidenced by the detailed factual allegations and legal claims in the 417-page Consolidated Consumer Class Action Complaint. *See* Dkt. 7803.

In response to those allegations, Defendants filed a comprehensive motion to dismiss addressing numerous and complex issues, including, for example: Plaintiffs' standing to bring claims under Article III; preemption of Plaintiffs' claims by the federal Energy Policy and

[3] In this case, as detailed below (§ III.B.5), government agencies did later review and approve the fuel economy rating adjustments underpinning the proposed Settlement, as well as the ECR for Sport+ vehicles, but this confirmatory role did not serve to bolster Plaintiffs' allegations and investigation in the litigation track. For example, in the Fiat Chrysler EcoDiesel settlement, the government's issuance of a Notice of Violation, followed by their parallel investigation and prosecution of the emissions scheme at issue, resulted in a Consent Decree and additional fines that worked "in tandem" with the consumer litigation. *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 17-md-02777, 2019 WL 536661, at *3 (N.D. Cal. Feb. 11, 2019); *see also In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2016 WL 6248426, at *14 (N.D. Cal. Oct. 25, 2016) (consumer claims followed issuance of a Notice of Violation, and were supported by settlement negotiations conducted "alongside" the regulators).

Conservation Act of 1975 ("EPCA"), Federal Trade Commission ("FTC") regulations, and the Clean Air Act; and whether Plaintiffs' claims—which cover conduct reaching back nearly two decades—were barred by statutes of limitation. Dkt. 7862. Class Counsel then researched, drafted, and filed a 60-page opposition brief, and Defendants lodged a reply in support. Dkts. 7884, 7901. Those briefs, as well as subsequent developments in the law, reveal the strengths of Plaintiffs' claims, but also the very real risks Plaintiffs faced in advancing them. Indeed, as discussed further below, another court recently found—incorrectly, in Plaintiffs' view—that claims of falsified fuel economy ratings like this one are preempted by the EPCA. *See In re Ford Motor Co. F-150 & Ranger Truck Fuel Econ. Mktg. & Sales Pracs. Litig.*, No. 2:19-MD-02901, 2022 WL 551221, at *12 (E.D. Mich. Feb. 23, 2022).

In this context, and after detailed briefing, the parties agreed to commence settlement negotiations in earnest. Throughout these negotiations, Plaintiffs continued to press forward in parallel with significant factual investigation and discovery efforts. For example, Class Counsel retained technical experts to conduct testing on the Class Vehicles in on-road and laboratory settings, yielding comprehensive data and analysis to inform their understanding of the testing practices at issue. Declaration of David S. Stellings ("Stellings Decl.") ¶¶ 3. Defendants likewise conducted an extensive testing and review process in response to regulatory inquiries and Plaintiffs' claims. The Parties intended and believe that this detailed and extensive testing regime covered all affected vehicles. SA at pp. 1-2. Plaintiffs' counsel and their experts traveled to Porsche's facilities in Weissach, Germany, to monitor the Defendants' testing and to meet with several of the key engineers and personnel involved in the design and regulatory testing for the Class Vehicles. Stellings Decl. ¶¶ 8-10. Plaintiffs continued that discussion in March 2022 at Porsche's headquarters in Stuttgart, Germany, where they further evaluated Porsche's ongoing testing, reviewed updated test results, and held further meetings with Porsche's engineers and attorneys. *Id.*

The Parties also engaged in extensive document and information exchanges in this case apart from the comprehensive vehicle testing program. On this front, Plaintiffs took due advantage of their ability to access Defendants' documents in the MDL database. Specifically,

Plaintiffs developed, tested, and refined English and German-language search terms to isolate materials relevant to the Porsche vehicles and issues in this litigation. Through this rigorous process, Plaintiffs reviewed and analyzed millions of pages of relevant documents produced in this MDL. Plaintiffs also reviewed and analyzed additional documents through discovery in the Porsche Gasoline cases, including over 500,000 technical, German-language documents made available to Plaintiffs in Germany, and thousands of pages of additional documents.

Based on all of this investigation—and thus armed with a more comprehensive understanding of the technologies at issue—Plaintiffs recently filed a 425-page Amended Complaint that refined their theories of liability and presented detailed claims under federal law and the laws of all 50 states. Dkt. 7969. At the same time, the significant amounts of data, documents, and information exchanged facilitated an arm's-length, technical, and evidence-based settlement negotiation process, ultimately resulting in the proposed resolution now before the Court.

C. The Notice Program is proving a success, and Class members are already engaged and participating in the streamlined claims process in significant numbers.

Following preliminary approval, the Parties worked with respected class notice provider and settlement administrator JND to roll out the Court-approved Notice Program with great success. JND reports that the Notice Program is on track to reach "virtually all" Class members. Declaration of Jennifer Keough ("Keough Decl.") ¶ 6. To date, JND has sent 1,096,929 individual notices by email, and 555,294 by mail, to individual Class members. *Id.* ¶¶ 9-10. Banner notices have yielded 41,990,491 impressions, and sponsored search listings have been displayed 2,699 times. *Id.* ¶¶ 15-16. While the Notice program remains underway, and several months remain in the claims period, Class members are already visiting the Settlement Website at an impressive rate, with 684,208 page hits from 146,074 unique visitors so far. *Id.* ¶ 20.[4] As of

[4] In the preliminary approval motion, Plaintiffs estimated that the cost of notice and administration could reach approximately $2.5 million, depending on the "final tally of owners, lessees, and claims associated with the approximately 500,000 Class Vehicles." Dkt. 7971 at 10. Based on the strong initial response and the availability of more physical addresses than initially expected, Plaintiffs anticipate that the final cost may exceed that projection, proportionate to the needs of effectuating the best notice practicable to the Class in this case.

August 26, moreover, JND had received 38,252 Settlement Claims, the vast majority of which were submitted through the streamlined submission portal available on the Settlement Website. *Id.* ¶ 25. In addition, at least 12,319 Class members had already obtained the ECR for their Sport+ Class Vehicles as of August 19, 2022. All of them will receive their Sport+ payments automatically after final approval. Stellings Decl. ¶ 16. Together, these are "encouraging" signs of the Class' engagement that—coupled with targeted claim stimulation efforts—will yield substantial participation from the Class. Keough Decl. ¶ 12. Regardless, to maximize the success of the settlement program, the Parties intend to send claim-stimulation reminder notices and may seek to extend the claim deadline, if appropriate.

III. ARGUMENT

A. The Settlement Class satisfies all requirements of Rule 23 and should be certified.

As the Court concluded in granting preliminary approval and directing notice to the Class, "the Class and its representatives likely meet all relevant requirements of Rule 23(a) and Rule 23(b)(3)." Dkt. 7997 at 4. This remains true, and the Settlement Class should be certified.

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

Rule 23(a)(1) is satisfied where, as here, "the class is so numerous that joinder of all class members is impracticable." Fed. R. Civ. P. 23(a)(1). Numerosity is generally met when the class exceeds forty members. *See, e.g.*, *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000). It is undisputed that several hundred thousand Class Vehicles were sold and/or leased nationwide and that the Settlement Class—which includes current and former owners and lessees of those Vehicles—includes at least as many Class members. The size of the Settlement Class and its geographic dispersal across the United States render joinder impracticable. *See Palmer v. Stassinos*, 233 F.R.D. 546, 549 (N.D. Cal. 2006) ("Joinder of 1,000 or more co-plaintiffs is clearly impractical."). Numerosity is satisfied.

2. Rule 23(a)(2): The Class Claims present common questions of law and fact.

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

Courts routinely find commonality where, as here, the class claims arise from a defendant's uniform course of fraudulent conduct. *See, e.g.*, *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 17-MD-02777-EMC, 2019 WL 536661, at *6 (N.D. Cal. Feb. 11, 2019) (commonality satisfied where claims arose from the defendants' "common course of conduct" in perpetrating alleged vehicle emissions cheating scheme); *Cohen v. Trump*, 303 F.R.D. 376, 382 (S.D. Cal. 2014) (finding "common questions as to 'Trump's scheme and common course of conduct, which ensnared Plaintiff[] and the other Class members alike.").[6]

Here, the Settlement Class claims are rooted in common questions of fact relating to alleged irregularities in the emissions and fuel economy test results for the Class Vehicles, and related misrepresentations to regulators and consumers. *See, e.g.*, Am. Compl. ¶ 1; *see also In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 557 (9th Cir. 2019) (similar common questions about misrepresented fuel economy ratings satisfied commonality requirement). These common

[5] Here, and throughout, internal citations are omitted unless otherwise indicated.

[6] Likewise, commonality is satisfied in cases where defendants deployed uniform misrepresentations to deceive the public (such as the Monroney labels and other advertisements for the Class Vehicles here). *See Ries v. Ariz. Beverages USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012) ("Courts routinely find commonality in false advertising 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).

questions will, in turn, generate common answers "apt to drive the resolution of the litigation" for the Settlement Class as a whole. *See Dukes*, 564 U.S. at 350. As the Settlement Class's "injuries derive from [D]efendants' alleged 'unitary course of conduct,'" Plaintiffs have "'identified a unifying thread that warrants class treatment.'" *Sykes v. Mel Harris & Assocs. LLC*, 285 F.R.D. 279, 290 (S.D.N.Y. 2012), *aff'd* 780 F.3d 70 (2d Cir. 2015). As in the *Volkswagen* diesel litigation and the Audi CO_2 cases, "[w]ithout class certification, individual Class members would be forced to separately litigate the same issues of law and fact which arise from Volkswagen's use of the [emissions cheat] and Volkswagen's alleged common course of conduct." *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2016 WL 4010049, at *10 (N.D. Cal. July 26, 2016) ("*VW 2L Preliminary Approval Order*").

3. Rule 23(a)(3): The Settlement Class Representatives' claims are typical of other Class members' claims.

Under Rule 23(a)(3), "'the claims or defenses of the representative parties'" must be "'typical of the claims or defenses of the class.'" *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (quoting Fed. R. Civ. P. 23(a)(3)). "Like the commonality requirement, the typicality requirement is 'permissive' and requires only that the representative's claims are 'reasonably co-extensive with those of absent class members; they need not be substantially identical.'" *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). Here, the same course of conduct injured the Settlement Class Representatives and the other members of the proposed Settlement Class in the same ways. The Settlement Class Representatives, like other Settlement Class members, purchased or leased Class Vehicles that did not or may not obtain the fuel economy and emissions performance they reasonably expected. As a result, they may have paid for more gas and visited the gas pump more frequently, and/or will take their vehicles in for a software upgrade to bring them into compliance with emissions regulations. The typicality requirements are satisfied. *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 672820, at *7 (N.D. Cal. Feb. 16, 2017); *see also In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 2212780, at *5 (N.D. Cal.

May 17, 2017).

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

Rule 23(a)(4)'s adequacy requirement is met where "(1) . . . the named plaintiffs and their counsel have [no] conflicts of interest with other class members and (2) . . . the named plaintiffs and their counsel [have] prosecute[d] the action vigorously on behalf of the class[.]'" *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting *Hanlon*, 150 F.3d at 1020). Both prongs are readily satisfied here.

The Settlement Class Representatives "are entirely aligned [with the Settlement Class] in their interest in proving that [Defendants] misled them and share the common goal of obtaining redress for their injuries." *VW 2L Preliminary Approval Order*, 2016 WL 4010049, at *11. The Representatives understand their duties, have agreed to consider the interests of absent Settlement Class members, and have reviewed and uniformly endorsed the Settlement terms. *See* Stellings Decl. ¶ 20. The proposed Settlement Class Representatives are more than adequate.

Furthermore, Lead Counsel and several of the PSC firms have undertaken an enormous amount of work, effort, and expense in this MDL and specifically in litigating the Porsche Gasoline cases. They have demonstrated their willingness to devote whatever resources were necessary to reach a successful outcome throughout the nearly two years of investigation, litigation, and parallel settlement negotiations. They, too, satisfy Rule 23(a)(4).

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

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

The Ninth Circuit therefore favors class treatment of fraud claims stemming from a "'common course of conduct.'" *See In re First Alliance Mortg. Co.*, 471 F.3d 977, 990 (9th Cir. 2006); *Hanlon*, 150 F.3d at 1022-23. Even outside of the settlement context, predominance is readily met for consumer claims arising from the defendants' common course of conduct. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1173, 1175 (9th Cir. 2010) (consumer claims based on uniform omissions certifiable where "susceptible to proof by generalized evidence," even if individualized issues remain); *Friedman v. 24 Hour Fitness USA, Inc*., No. CV 06-6282 AHM (CTx), 2009 WL 2711956, at *8 (C.D. Cal. Aug. 25, 2009) ("Common issues frequently predominate" in actions alleging "injury as a result of a single fraudulent scheme.").

Here, too, questions of law and fact common to the Settlement Class members' claims predominate over any questions affecting only individual members because the common issues "turn on a common course of conduct by the defendant . . . in [a] nationwide class action." *See Hyundai*, 926 F.3d at 559 (citing *Hanlon*, 150 F.3d at 1022–23). Similar to *Hyundai*, Defendants' common course of conduct—the alleged manipulation of emissions and fuel economy test results—are central to the claims asserted in the Amended Complaint. Common, unifying questions as to the Defendants' conduct include, for example, "(1) '[w]hether the fuel economy statements were in fact inaccurate'; and (2) 'whether [the Defendants] knew that their fuel economy statements were false or misleading.'" *Id.* The alleged misrepresentations to the Class were (among other sources) "uniformly made via Monroney stickers." *Id.* As such, Defendants allegedly "perpetrated the same fraud in the same manner against all Class Members." *VW 2L Preliminary Approval Order*, 2016 WL 4010049, at *12. Predominance is satisfied.

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

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

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

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

Class treatment here is far superior to the litigation of well over 500,000 individual consumer actions. "From either a judicial or litigant viewpoint, there is no advantage in individual members controlling the prosecution of separate actions. There would be less litigation or settlement leverage, significantly reduced resources and no greater prospect for recovery." *Hanlon*, 150 F.3d at 1023; *see also Wolin*, 617 F.3d at 1176 ("Forcing individual vehicle owners to litigate their cases, particularly where common issues predominate for the proposed class, is an inferior method of adjudication."). The maximum damages sought by each Settlement Class member (ranging from $250 to $1,109.66 per Fuel Economy Class Vehicle, up to $200 for each Other Class Vehicle, and an additional $250 for Sport+ Vehicles) are significant to individual Class members but relatively small in comparison to the substantial cost of prosecuting individual claims, especially given the technical nature of the claims at issue. *See Smith v. Cardinal Logistics Mgmt. Corp.*, No. 07-2104 SC, 2008 WL 4156364, at *11 (N.D. Cal. Sept. 5, 2008) (small interest in individual litigation where damages averaged $25,000-$30,000 per year of work).

Class resolution is also superior from an efficiency and resource perspective. Indeed, "[i]f Class Members were to bring individual lawsuits against [Defendants], each Member would be required to prove the same wrongful conduct to establish liability and thus would offer the same evidence." *VW 2L Preliminary Approval Order*, 2016 WL 4010049, at *12. Given that the conduct at issue involves over 500,000 Class Vehicles, "there is the potential for just as many lawsuits with the possibility of inconsistent rulings and results." *Id.* "Thus, classwide resolution of their claims is clearly favored over other means of adjudication, and the proposed Settlement

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

* * *

The Settlement Class meets all relevant requirements of Rule 23(a) and (b). Plaintiffs thus request that the Court confirm the certification of the Settlement Class and the appointment of the Settlement Class Representatives.

B. The Settlement is fair, reasonable, and adequate.

A "district court's task in reviewing a settlement is to make sure it is 'not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, 895 F.3d 597, 617 (9th Cir. 2018) (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982)). As detailed above, many Class members stand to recover their damages *in full* under the proposed Settlement, and all Class members are eligible for significant compensation tethered to the degree of impact on their specific vehicle model and year. This remarkable result, and all of the factors set forth in Fed. R. Civ. P. 23(e)(2), weigh strongly in favor of final approval. Indeed, in granting preliminary approval, the Court already observed that the proposed Settlement "appears to be fair, reasonable, and adequate" such that it would "likely" be able to approve it. Dkt. 7997 at 2, 4. These same conclusions support final approval here.

1. Rule 23(e)(2)(A): Class Counsel and the Settlement Class Representatives have and will continue to zealously represent the Class.

Class Counsel and the Class Representatives fought hard to protect the interests of the Class. These efforts find no better evidence than the outstanding results achieved through the proposed Settlement. Indeed, the vast majority of Fuel Economy Class members stand to be fully compensated for their damages, and Sport+ and Other Class Vehicle Class members will each be eligible for substantial cash compensation that reflects how their Class Vehicles were affected by the conduct at issue. *See* Section II.A.

As this outcome reflects, Class Counsel showed dedication to investigating, prosecuting, and resolving this action over the course more than two years. *See* Fed. R. Civ. P. 23(e)(2)(A). As detailed above, Class Counsel undertook significant efforts to uncover the facts to continuously pursue and refine the Class claims. Class Counsel also engaged in robust Rule 12 motion practice—including researching, drafting, and filing a 60-page brief in opposition to the Defendants' thorough motion to dismiss, a process that fleshed out the strengths and vulnerabilities of Plaintiffs' claims. Class Counsel were therefore well-positioned to evaluate the case and to negotiate a fair and reasonable Settlement. *See Ontiveros v. Zamora*, 303 F.R.D. 356, 371 (E.D. Cal. 2014). They have done so.

The Settlement Class Representatives are also actively engaged. Each was consulted on the terms of the Settlement and has expressed their support and continued willingness to protect the Class until the Settlement is approved and its administration completed. Stellings Decl. ¶ 20. The Class was and remains well represented.

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

As the Court observed in granting preliminary approval, the proposed Settlement arose out of "intensive, thorough, serious, informed, and non-collusive negotiations." Dkt. 7997 at 2; s*ee also* Fed. R. Civ. P. 23(e)(2)(B). Negotiations leading up to the proposed Settlement took place between sophisticated parties that endured for more than a year's time. The relatively lengthy timeframe reflects the detailed and technical nature of the negotiations, and efforts to inform and support them through a parallel investigatory process involving numerous experts and multiple rounds of vehicle testing by both Plaintiffs and Defendants. The Parties also engaged in extensive document and information exchanges. As part of this process, Plaintiffs carefully analyzed hundreds of thousands of documents obtained through discovery in this litigation, including many complex and technical German language documents made available to Plaintiffs in Germany, as well as a cache of documents produced in the MDL and identified through targeted searches. Stellings Decl. ¶¶ 5, 27.

In this case, the robust exchange of information and documents further demonstrates that the Settlement was reached in a procedurally fair manner between well-informed parties. *See* 4 Newberg § 13:49 (5th ed. 2012) (extensive exchange of information in litigation supports the assumption that "the parties have a good understanding of the strengths and weaknesses of their respective cases and hence that the settlement's value is based upon such adequate information"); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 320 (N.D. Cal. 2018) (concluding that an extensive discovery exchange gave the parties "a good sense of the strength and weaknesses of their respective cases" and was "indicative of a lack of collusion" between them); *Elder v. Hilton Worldwide Holdings, Inc.*, No. 16-CV-00278-JST, 2021 WL 4785936, at *7 (N.D. Cal. Feb. 4, 2021) ("[T]he extent of discovery completed supports approval of a proposed settlement" in particular where the litigation has "proceeded to a point at which both plaintiffs and defendants ha[ve] a clear view of the strengths and weaknesses of their cases."); *Ontiveros*, 303 F.R.D. at 371 (granting final approval where class counsel had "conducted discovery and non-discovery investigation" indicating that the parties carefully investigated claims before reaching a resolution).

So too does the government's role in reviewing and approving the revised fuel economy labels for the Class Vehicles—which will be posted on the official government website, www.fueleconomy.gov—and the ECR recall repair for the Sport+ Class Vehicles. These government-approved changes underlie the compensation model in the Settlement. The procedurally fair manner in which this Settlement was reached, coupled with the government's role, weighs "heavily in favor" of granting final approval. *See VW 2L Final Approval Order*, 2016 WL 6248426, at *14; *see also In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, 895 F.3d at 610 n.18 (recognizing "the presence of a governmental participant" as a factor favoring approval); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) ("The participation of a government agency serves to protect the interests of the class members, particularly absentees, and approval by the agency is an important factor for the court's consideration.").

Finally, it bears mention that Class Counsel, based on their own significant experience in complex vehicle emissions cases like this one, are confident in the proposed result and the process used to reach it. *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019 WL 2077847, at *1 (N.D. Cal. May 10, 2019) (granting final settlement approval where "Lead Counsel ha[d] . . . a successful track record of representing [plaintiffs] in cases of this kind . . . [and] attest[ed] that both sides engaged in a series of intensive, arm's-length negotiations" and there was "no reason to doubt the veracity of Lead Counsel's representations"). This, too, supports approval.

3. Rule 23(e)(2)(C): The Settlement provides substantial compensation in exchange for the compromise of strong claims.

Avoiding years of additional, risky litigation in exchange for immediate and significant cash payments is a principled compromise that works to the clear benefit of the Class in this case. *See* Fed. R. Civ. P. 23(e)(2)(C). The Settlement secures at least $80 million (and up to $85 million) to compensate Class members for the effects of Defendants' alleged practices of improperly influencing regulatory test results. The compensation available for Fuel Economy Class Vehicles consists of (1) 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, and (2) a goodwill payment of an additional 15% of those damages to compensate for any inconvenience. This compensation formula is nearly identical to that approved by the Court in the similar Audi CO_2 Fuel Economy matter, with the exception that the gas price increased from $3.54 to $3.97 to account for inflation in the years after that settlement, and the miles per year were pegged to real-world data about these specific vehicles. *See In re Volkswagen "Clean Diesel,"* No. 15-md-2672, Dkts. 6764, 7244.

The compensation for Sport+ and Other Class Vehicles is similarly significant, including a cash benefit of $250 to Sport+ Class members to incentivize and compensate them for the time in bringing their Class Vehicles to a dealership to receive the ECR, and a payment of up to $200 per vehicle to compensate Other Class Vehicle Class members whose vehicles conceivably could have been impacted by the conduct at issue, but for which no deviations were identified.

This is an exceptional result for the compromise of contested claims that have not yet survived a motion to dismiss. In short, the Settlement provides the Class significant cash payments now, not years from now (if ever). Clearly, the settlement reflects a fair, reasonable, and adequate compromise of Plaintiffs' claims, especially considering (i) the costs, risks, and delay of trial and appeal and (ii) the effectiveness of the proposed distribution plan. *See* Fed. R. Civ. P. 23(e)(2)(C).

a. The Settlement mitigates the risks, expenses, and delays the Class would bear with continued litigation.

Plaintiffs believed in the strength of their case and were prepared to take it all the way to trial. But many hurdles lay ahead. Most immediately, Plaintiffs' claims have not yet survived Defendants' comprehensive motion to dismiss. The outcome of this motion is by no means a guarantee.

For example, a court in the Eastern District of Michigan recently dismissed a similar lawsuit alleging that a vehicle manufacturer improperly influenced its testing and test results to obtain improperly inflated fuel economy ratings. The defendants there, like Defendants here, argued that such claims were preempted by the EPCA. The court agreed, and dismissed the case entirely. *See In re Ford Motor Co. F-150*, 2022 WL 551221, at *12. While other authority supports Plaintiffs' arguments against preemption in this case,[7] the *Ford Ranger* decision makes clear that the threat to Plaintiffs' claims from Defendants' preemption arguments is very real.

Success on Plaintiffs' individual state-law claims was likewise not guaranteed. Indeed, courts have dismissed similar state-law claims in recent automotive cases. *See, e.g.*, *Gant v. Ford Motor Co.*, 517 F. Supp. 3d 707, 719 (E.D. Mich. 2021) (dismissing Michigan Consumer Protection Act claim and concluding that motor vehicle sales and lease transactions are not covered by the statute); *In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales Practices & Prods. Liab. Litig.*, 295 F. Supp. 3d 927, 1027 (N.D. Cal. 2018) (dismissing plaintiffs' common law fraud claims, and various other state-law claims for lack of privity and failure to obtain approval

[7] *See* Dkt. 7884 at 19-30; *see also, e.g.*, *In re Toyota Rav4 Hybrid Fuel Tank Litig.*, 534 F. Supp. 3d 1067, 1095 (N.D. Cal. 2021) (rejecting EPCA/FTC preemption where plaintiffs alleged that failure to obtain advertised mileage range was due to diminished fuel tank capacity).

of state attorneys general); *Counts v. Gen. Motors, LLC*, 237 F. Supp. 3d 572, 594 (E.D. Mich. 2017) (similar). Plaintiffs would likely face these same challenges, and others, here.

If Defendants were to prevail in dismissing some (or all) of Plaintiffs' claims, Plaintiffs would lose considerable leverage. And even if not, Plaintiffs would still face an expensive, lengthy, and uncertain process for certifying a litigation class. Assuming their claims ultimately made it to trial, moreover, Plaintiffs would still have to prove an intricate and technical multi-party fraud, among many other things. And if Plaintiffs prevailed at trial, they would have to re-litigate virtually all of these issues in the inevitable appeals. Notably, Plaintiffs would stand alone in facing all of these challenges in continued litigation, without governmental support in the litigation or discovery efforts.

The proposed Settlement eliminates all of this risk and expense, cuts through the delay, and provides immediate and significant compensation to the Class. This factor strongly favors final approval. *See Nobles v. MBNA Corp.*, No. C 06-3723 CRB, 2009 WL 1854965, at *2 (N.D. Cal. June 29, 2009) ("The risks and certainty of recovery in continued litigation are factors for the Court to balance in determining whether the Settlement is fair.") (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000); *Kim v. Space Pencil, Inc.*, No. C 11-03796 LB, 2012 WL 5948951, at *5 (N.D. Cal. Nov. 28, 2012) ("The substantial and immediate relief provided to the Class under the Settlement weighs heavily in favor of its approval compared to the inherent risk of continued litigation, trial, and appeal, as well as the financial wherewithal of the defendant."); *VW 2L Final Approval Order*, 2016 WL 6248426, at *12; Fed. R. Civ. P. 23(e)(2)(C)(i).

b. Class members will obtain relief through a straightforward claims process.

The Parties designed a simple and efficient claims process in order to maximize Class member participation. For Fuel Economy and Other Class Vehicles, Class members need only submit a short claim form online or by mail with basic supporting documentation (*e.g.*, purchase agreement, sale documentation, and/or proof of current registration). No further action is required. Fuel Economy and Other Class members who have submitted a complete and valid claim will

receive compensation after the claims deadline, currently set for November 7, 2022. SA ¶ 2.6. Sport+ Class members will receive additional compensation ***automatically*** after completing an ECR Sport+ upgrade in their vehicle within eighteen months of the Preliminary Approval Order. SA ¶ 2.6.[8] Class members will be able to select streamlined forms of e-payments, including through Venmo, PayPal, and other forms of online transfer. The Settlement's method for processing claims and distributing relief is straightforward, fair, and reasonable. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii).

c. Counsel seek reasonable attorneys' fees and costs.

Class Counsel's reasonable fee request is detailed below (§ III.D) but in this context it is worth reiterating that "terms of . . . [the] proposed award of attorneys' fees" are fair and reasonable, particularly in light of the substantial recovery of a non-reversionary fund of at least $80 million (up to $85 million) that stands to provide ***full compensation*** for many Class members. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii).

4. Rule 23(e)(2)(D): The Proposed Settlement treats all Class members equitably relative to one another.

In granting Preliminary Approval, the Court observed that the proposed Settlement "does not improperly grant preferential treatment to . . . segments of the Class." Dkt. 7997 at ¶ 1. This remains true. Indeed, each Class member stands to receive a cash payment tied directly to how, and how much, their Class Vehicles were demonstrably affected by the alleged testing practices at issue. For Fuel Economy Class Vehicles, the Settlement fairly and reasonably allocates payments among the Class members pursuant to a straightforward formula tied to the duration of possession of the Class Vehicle and the difference between the original and amended mileage ratings for each make and model. For Other Class Vehicles and Sport+ Class Vehicles, the Settlement offers a fixed cash payment (up to $200 and $250, respectively) that applies equally to all eligible Class members.

[8] The small population of Sport+ Class members for whom an ECR has not yet been formally approved by the regulators will receive notice of the need to submit a claim form. Should approval of the ECR occur prior to the conclusion of the Claims Period, they too will receive payments automatically without the need to submit a claim.

This system uses transparent and objective criteria to determine Class member payments, thus ensuring that the Settlement treats Class members equitably relative to one another. *See* Fed. R. Civ. P. 23(e)(2)(D); *see also In re Hyundai & Kia Fuel Econ. Litig.*, No. MDL 13-2424-GW(FFMx), 2014 WL 12603199, at *2 (C.D. Cal. Aug. 21, 2014) (approving similar settlement where payment amounts varied between make and model years and "correlated to the amount of the fuel economy misstatements" and thus "differences between the recovery amounts stem[med] mostly from differences in the damages suffered . . . rather than any improper favoring of one group of Class Members over another").

5. The Settlement satisfies the Ninth Circuit's approval factors.

The Ninth Circuit has identified a number of additional factors for courts to consider when evaluating the fairness, reasonableness, and adequacy of a class action settlement. Those factors include: (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). Many of these—*e.g.*, the strength of plaintiffs' case, the risk and duration of further litigation, and the amount offered—overlap with the Rule 23(e)(2)(C) factors and are addressed above. The remainder, addressed below, favor final approval as well.

a. Class Counsel endorse the Settlement.

In considering whether to grant final approval, courts are entitled to give "considerable weight" to the opinions of experienced class counsel who are familiar with the litigation. *Ontiveros*, 303 F.R.D. at 371 (citing *Hanlon*, 150 F.3d at 1026); *see also VW 2L Final Approval Order*, 2016 WL 6248426, at *14 ("Courts afford 'great weight to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.'") (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)); *see also In re Volkswagen*, 2019 WL 2077847, at *1 (granting final settlement approval where "Lead

Counsel . . . attest[ed] that both sides engaged in a series of intensive, arm's-length negotiations" and there was "no reason to doubt the veracity of Lead Counsel's representations").

Proposed Settlement Class Counsel are deeply experienced in complex class action litigation and settlement—including in complex cases of alleged emissions and fuel economy test irregularities like this one. Based on this experience, proposed Settlement Class Counsel firmly believe that the Settlement provides an excellent outcome for all Class members in the face of the uncertainties in continued litigation, and strongly recommend its approval.

b. The government's independent check on the fuel economy revisions and Sport+ recall repair favors final approval.

The EPA and CARB independently reviewed the test results on which the Settlement is predicated, including the adjustments to the Fuel Economy Class Vehicle mileage ratings that underpin the Settlement's payment formula for those vehicles. These revisions will be posted to the official U.S. Department of Energy website, www.fueleconomy.gov. Likewise, the regulators assessed and approved the ECR software reflash for Sport+ Class Vehicles. The government's independent review and confirmation demonstrates that the basis on which the Parties' reached the proposed resolution was sound and thus also counsels in favor of final approval.

c. The Class' initial response has been positive.

The Class is already showing their support for the Settlement. With many months remaining in the Claims period, more than 50,000 Class members have submitted claims or brought their vehicles in for an ECR. Keough Decl. ¶ 25; Stellings Decl. ¶ 16. In contrast, no potential Class member has objected to or commented on the Settlement. Keough Decl. ¶ 12. Class Counsel will provide a full accounting of the information outlined in the District's Procedural Guidance once the Notice Program has been completed in full. As it stands, the "encouraging" response from the Class supports final approval (*id.*), and Class Counsel have every reason to believe it will stay that way.

* * *

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

C. The Court should appoint Lead Plaintiffs' Counsel as Settlement Class Counsel under Rule 23(g)(1).

Lead Counsel and a number of the PSC firms have undertaken a significant amount of work, effort, and expense in litigating the Porsche Gasoline cases. *See generally,* Stellings Decl. Following these efforts, the Court previously appointed Lead Counsel as Interim Settlement Class Counsel at the preliminary approval stage. Dkt. 7997 at ¶ 10. In the intervening period, Lead Counsel has continued to demonstrate the skill and experience necessary to oversee and effectuate this Settlement through their efforts in the approval process and in overseeing the Notice Program roll out. Plaintiffs thus request that the Court appoint Lead Counsel as Settlement Class Counsel under Rule 23(g)(1) in connection with Final Approval of the Settlement.

D. Class Counsel's requested fee is fair, reasonable, and appropriate.

"[L]awyer[s] who recover[] a common fund . . . [are] entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980). In deciding whether a requested fee amount is appropriate, the Court's role is to determine whether such amount is "'fundamentally fair, adequate, and reasonable.'" *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)). In this Circuit, the determination typically involves analysis of a number of factors, including: (1) the results achieved by class counsel; (2) the complexity of the case and skill required; (3) the risks of litigation; (4) the benefits to the class beyond the immediate generation of a cash fund; (5) the market rate of customary fees for similar cases; (6) the contingent nature of the representation and financial burden carried by counsel; and (7) a lodestar cross-check. *See, e.g., In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig*., No. 2672 CRB (JSC), 2017 WL 1047834, at *1 (N.D. Cal. Mar. 17, 2017) ("*VW 2L Fee Order*") (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-52 (9th Cir. 2002)); *see also Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). Each of these factors supports Class Counsel's request in this case.

1. Class Counsel obtained substantial cash compensation for the Class.

The benefit Class Counsel secured for the Class is the single most important factor in evaluating the reasonableness of a requested fee. *In re Bluetooth*, 654 F.3d at 942; *In re*

Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008); *see also In re Nexus 6P Prod. Liab. Litig.*, No. 17-CV-02185-BLF, 2019 WL 6622842, at *12 (N.D. Cal. Nov. 12, 2019) ("The most critical factor is the results achieved for the class."); *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (same); Federal Judicial Center, *Manual for Complex Litigation* § 21.71 (4th ed.) ("The "fundamental focus is the result actually achieved for class members.") (citing Fed. R. Civ. P. 23(h) committee note). Put simply, "[o]utstanding results merit a higher fee." *CRT Antitrust Litig.*, 2016 WL 4126533, at *4 (citing *Omnivision Techs.*, 559 F. Supp. 2d at 1046). That principle strongly supports the requested fees here.

As described in detail above, the proposed Settlement provides sizeable monetary relief—at least $80 million and up to $85 million—to the Class. Individual compensation to Class members is similarly substantial, and fairly reflects the potential impact of the relevant practices on their Class Vehicles. The settlement provides the vast majority of Fuel Economy Class members with 100% of their damages. The remainder stand to receive at a minimum a very high percentage of recoverable damages, depending on the future, unknown price of gas.[9] *See, e.g.*, Dkt. 6634-3, Declaration of Edward M. Stockton, (opining that analogous compensation framework provided "full" compensation to class members in a similar fuel economy settlement).

The compensation Other Class Vehicles and Sport+ Class Vehicles is similarly significant. Payments include a cash benefit of $250 to Sport+ Class members to compensate them for the time in bringing their Class Vehicles to a dealership to receive the ECR Sport+ upgrade, and a payment of up to $200 per vehicle to compensate Other Class Vehicle Class members. Notably, the $250 Sport+ compensation will be paid to Class members *in addition to* the separate payments for the Fuel Economy and Other Class Vehicle matters.

[9] As explained in Plaintiffs' motion for preliminary approval (Dkt. 7971 at 23), for most of the Fuel Economy Class Vehicles (82%), the 96 months of fuel usage for which they will be compensated has already concluded. For these vehicles, the settlement payments provide full compensation because the $3.97 price of fuel in the settlement generously estimates the average amount that the Fuel Economy Class members actually paid at the pump. For a small subset of Fuel Economy Class Vehicles (approximately 18%) first sold or leased fewer than 96 months ago (*i.e.* model years 2015 and onward), the 96 month compensation period is ongoing. Because the parties cannot predict the uncertainty of future gas prices, the $3.97 figure—which is based on historic averages and adjusted for inflation—remains a fair and practicable way to approximate the fuel costs for these vehicles as well.

It also bears mention that even under the most ambitious potential claims rates—rates that Interim Settlement Class Counsel are working hard to achieve—funds are likely to remain.[10] This means that after redistribution back to the Class the compensation figures outlined above will only ***increase***, and all participating Class members are likely to receive full compensation, ***or more***.

It is "highly unusual" for a class action settlement to recover what is, by some measures, close to if not all of what the class could recover at trial. *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 895 F.3d at 610. That this Settlement achieves such substantial relief through the compromise of contested claims is a remarkable result and strongly supports the requested fees. *See In re Nexus 6P Prod. Liab. Litig.*, 2019 WL 6622842, at *13 (upward adjustment from the 25% benchmark was warranted where settlement "allow[ed] all class members to receive a monetary benefit").

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

This was a complex case, both factually and legally. It involves numerous Defendants and allegations of a wide-ranging and complex scheme. Defendants include three separate corporate entities (two of them based in Germany) that played various roles in the manufacture, testing, or sale of the Class Vehicles.

Investigating and uncovering the multiple strategies that could have led to irregularities in the Class Vehicles' fuel economy and emissions test results was even more technically challenging—in particular given the range of Class Vehicles that were or may have been implicated over the course of more than a decade of vehicle development—with vehicle models dating as far back as 2005. Plaintiffs alleged in the Amended Complaint that the Fuel Economy Class Vehicles' inflated fuel economy ratings can be traced back to Defendants' use of physically

[10] The FTC, for example, concluded after substantial analysis that the mean and median claims rates in class action settlements were 9% and 4% respectively, while the 90th percentile claims rate was 49%. *See* Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns, *FTC Staff Report* (Sept. 2019) at 11, 21. Settlements in this MDL have fared much better, and this one is likely to as well. But the point remains that even under the most optimistic projections significant funds will likely remain for redistribution.

doctored vehicles for emissions and fuel economy testing, such that the hardware and software in the tested vehicles differed in material ways from the hardware and software in vehicles that were sold to the public. Plaintiffs allege that this practice included testing vehicles with a lower gear ratio than the models ultimately produced. Dkt. 7969 ¶ 72. Investigating allegations of the physical alteration of a test vehicle in a laboratory nearly 20 years ago required comprehensive analysis of contemporaneous documentation and a rigorous vehicle testing program. Arriving at this nuanced understanding of the ways in which the Class Vehicles were or may have been impacted by the conduct at issue took time, effort, and expertise. To do so, Class Counsel worked closely with experts to understand the complex minutiae of the fuel economy and emissions testing processes and regulatory frameworks.

Complexities aside, it was a risky case, too, for several reasons. First, unlike many other emissions settlements, Class Counsel did not have the benefit or support of a Notice of Violation from the government on which to ground their allegations and support their plausibility. Second, and as detailed above, Plaintiffs claims have not yet survived a motion to dismiss, and would face significant challenges in doing so, particularly in light of recent authority finding similar claims to be preempted by the EPCA. *See* § III.B.3.a. Looking ahead, the case would face serious risks to certifying a class of more than 500,000 consumers who purchased or leased different vehicle models, for various reasons and from various sellers (including third parties not related to the Defendants), over the course of 15 years.

That Class Counsel achieved such substantial relief in the face of all of this complexity and risk speaks to their skill, effort, and dedication to the Class. It also strongly supports their fee request. *See, e.g.*, *Hanlon*, 150 F.3d at 1029 (The "complexity and novelty of the issues" can justify upward departure from benchmark); *In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1450–51 (N.D. Cal. 1994) (same).

3. Class Counsel's requested fee percentage is reasonable, appropriate, and strongly supported by precedent.

When a settlement establishes a common fund or calculable monetary benefit for a class, it is both appropriate and preferred to award attorneys' fees based on a percentage of the

monetary benefit obtained. *See Vizcaino*, 290 F.3d at 1047.

Class Counsel request 30% of the Settlement Fund in fees, plus reimbursement of costs they reasonably incurred in prosecuting this case, for a total of $24,710,733.89. As explained below, the requested fees, which represent a modest (and justified) upward departure from the Ninth Circuit's typical 25% benchmark, fall within the usual range of awards routinely approved. In fact, in this circuit, "fee awards exceed[] the [25%] benchmark" in "*most* common fund cases," and awards of 30% or more are common. *In re NCAA*, No. 4:14-MD-2541-CW, 2017 WL 6040065, at *2; *see also In re: CRT Antitrust Litig.*,, 2016 WL 4126533, at *5 (N.D. Cal. Aug. 3, 2016) (awarding 30% of $576,750,000 fund); *Hernandez v. Dutton Ranch Corp.*, No. 19-CV-00817-EMC, 2021 WL 5053476, at *6 (N.D. Cal. Sept. 10, 2021) (collecting cases and finding that"[d]istrict courts within this circuit . . . routinely award attorneys' fees that are one-third of the total settlement fund . . . [s]uch awards are routinely upheld by the Ninth Circuit").[11]

Regardless, this is no ordinary case. As discussed the above, the results achieved—recovery at or near 100% of potential damages—are unusually strong and more than justify the fees requested. Indeed, courts commonly "justif[y] upward departures from the 25% benchmark" with "[f]ar lesser results (with 20% recovery of damages or less)." *NCAA Antitrust Litig.*, 2017 WL 6040065, at *3 (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).

Consistent with this authority, in granting preliminary approval, the Court observed that the anticipated fee request seemed "appropriate under the circumstances." *See* June 29, 2022 Tr. at 3-4. Class Counsel respectfully submit the request is indeed appropriate, as supported by the exceptional results obtained for the Class in this case, and the thorough, focused, and technical

[11] *See also, e.g.*, *id.* ("[T]he Ninth Circuit uses 25 percent of the fund as the presumptively reasonable 'benchmark' for awarding fees . . . it also recognizes that 20 to 30 percent is the usual range for common fund fee recoveries . . .[The] exact percentage [awarded] varies depending on the facts of the case, and in most common fund cases, the award exceeds that benchmark.") (citations and quotation omitted); *In re TFT–LCD (Flat Panel) Antitrust Litigation*, No. MDL 3:07–md–1827 SI, 2011 WL 7575003, *1 (N.D. Cal. Dec. 27, 2011) (awarding attorneys' fees in the amount of 30 percent of $405 million settlement fund); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000), as amended (June 19, 2000) (upholding district court's award of 33 1/3 percent of the settlement fund).

work that Counsel undertook to obtain it.

4. Class Counsel carried considerable financial burden in prosecuting this complex litigation.

It is an established practice to reward attorneys who assume representation on a contingent basis to compensate them for the risk that they might be paid nothing at all. *See In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299-1300 (9th Cir. 1994). Such a practice encourages the legal profession to assume such a risk and promotes competent representation for plaintiffs who could not otherwise hire an attorney. *Id.*; *see also Vizcaino*, 290 F.3d at 1051. Class Counsel devoted thousands of hours and advanced whatever expenses were necessary to investigate and see this case through to a successful outcome, all with no guarantee of reimbursement. Stellings Decl. ¶¶ 23-35. In so doing, Class Counsel "turn[ed] down opportunities to work on other cases to devote the appropriate amount of time, resources, and energy necessary to responsibly handle this complex case." *VW 2L Fee Order*, 2017 WL 1047834, at *3. This factor further supports Class Counsel's request.

5. A lodestar cross-check confirms the requested fees are reasonable.

"Because the benefit to the class is easily quantified in common-fund settlements," the Ninth Circuit permits district courts "to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar." *Bluetooth*, 654 F.3d at 942. In common fund cases, "the primary basis of the fee award remains the percentage method." *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-2420-YGR, 2019 WL 3856413, at *7 (N.D. Cal Aug. 16, 2019) (quoting *Vizcaino*, 290 F.3d at 1050 & n.5); *cf. Craft v. Cty. of San Bernardino*, 624 F. Supp. 2d 1113, 1122 (C.D. Cal. 2008) ("A lodestar cross-check is not required in this circuit, and in some cases is not a useful reference point."); *Aichele v. City of Los Angeles*, No. CV-12-10863-DMG, 2015 WL 5286028, at *6 (C.D. Cal. Sept. 9, 2015) (same). Nevertheless, courts sometimes employ a "streamlined" lodestar analysis to "cross-check" the reasonableness of a requested award. *See, e.g.*, *Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award."). In so doing, "[t]he lodestar crosscheck need not

entail either mathematical precision or bean counting." *Rieckborn v. Velti PLC*, No. 13-3889, 2015 WL 468329, at *21 (N.D. Cal. Feb. 3, 2015).

As explained below and in the accompanying Stellings Declaration,[12] Class Counsel worked a reasonable number of hours billed at reasonable rates under the circumstances of this complex, multi-district litigation. The resulting lodestar of $12,261,791.50 yields a modest multiplier of 1.96 for work performed to date and 1.86 including time anticipated for the on-the-ground work necessary to implement, oversee, and protect this Settlement through potential appeals. Stellings Decl. ¶¶ 23-25. Either multiplier is well within—and, indeed, on the low end of—the "presumptively acceptable range of 1.0-4.0" in this Circuit. *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014); *see also Vizcaino*, 290 F.3d at 1051 n.6 (approving 3.65 multiplier, and citing appendix of cases showing "a range of 0.6-19.6, with most . . . from 1.0-4.0 and a bare majority . . . in the 1.5-3.0 range").

Notably, this lodestar calculation is based on the historical, "then-present" billing recorded in the monthly time reports submitted to Lead Counsel since the inception of this case. Stellings Decl. ¶ 26. This is, if anything, a conservative calculation of the lodestar given that it is a "well established" common practice for "attorneys in common fund cases" to adjust their billing to their current rates to account for "any delay in payment." *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983, at *14 n.17 (N.D. Cal. Dec. 18, 2018) (quoting *Fischel v. Equitable Life Assurance Soc'y of U.S.*, 307 F.3d 997, 1010 (9th Cir. 2002)). Had Counsel made

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

those adjustments here, the lodestar would have increased and the multiplier decreased significantly.

a. Class Counsel expended a reasonable number of hours advancing this complex litigation.

As summarized above, this was a technical case requiring thorough investigation and analysis. *See, e.g.*, § II, *supra*; Stellings Decl. ¶¶ 2-11. Class Counsel reviewed and analyzed hundreds of thousands of documents obtained through discovery for Plaintiffs' claims in the Porsche Gasoline matter, and millions more of pages of relevant documents in the MDL, all of which informed the efforts to prosecute Plaintiffs' claims. Stellings Decl. ¶¶ 5, 27. Reviewing, coding, analyzing and summarizing this discovery was a very significant undertaking that was critical to the litigation and resolution of this case. *Id.* So too were the extensive testing efforts that were undertaken throughout the pendency of the litigation and settlement process on an evolving—and large—group of affected and potentially affected vehicles. *Id.* ¶¶ 5, 9-10. Class Counsel also engaged in thorough legal research and briefing efforts on dispositive issues at the motion to dismiss stage. *Id.* ¶¶ 6, 28. The settlement process itself also took a lot of time and persistence, and involved dozens of meetings, conferences, calls, and much more, including in New York, Stuttgart, and Weissach. *Id.* ¶¶ 8-10. Underpinning all of this was Class Counsel's work to fully understand the complex regulations and procedures for fuel economy measurement, testing, and reporting in the United States that provided the framework for understanding the allegations and alleged damages in this case. As this (partial) list demonstrates, this litigation (and its result) took a lot of effort.

In furtherance of these common benefit efforts, among many others, Class Counsel worked a reasonable 27,888.80 hours. *Id.* ¶¶ 23-28. Based on their experience in defending and implementing other automotive class settlements, Class Counsel estimate that approximately 1,500 more hours will be necessary for the on-the-ground efforts to finalize, implement, and protect the Settlement. This will include, for example, work required to: (1) obtain final approval of the Settlement; (2) protect the Settlement on appeal (if any appeals are lodged); and (3) oversee and help implement the Settlement, which will include, among other things, responding to

inquiries from Class members who owned or leased one of the approximately 500,000 Class Vehicles. *Id.* ¶ 24. Class Counsel's reasonable hours appropriately reflect the efforts necessary to secure and protect the favorable outcome here.

b. Class Counsel billed reasonable rates for those hours.

The blended average billing rate for the work described above is approximately $439.67 per hour. *Id.* ¶ 23. This is in line with average rates in this District and reasonable here given the skill, experience, and reputation of Class Counsel and the PSC—all of whom were appointed through a competitive leadership application process. *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), Dkt. 3396-2 ¶ 29 (N.D. Cal. June 30, 2017) (noting that the average blended rate of 40 class action settlements approved in this District in 2016 and 2017 was $528.11 per hour); *VW 2L Fee Order*, 2017 WL 1047834, at *5 (approving blended average billing rate of $529 per hour in this MDL).[13]

c. Class Counsel's performance and the results achieved justify a reasonable lodestar multiplier.

The Ninth Circuit *requires* an upward multiplier when certain risk factors are present and authorizes a multiplier for certain "reasonableness" factors, including the quality of representation, the complexity of the issues presented, and most importantly, the benefit obtained for the class. *See, e.g.*, *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975); *In re Bluetooth*, 654 F.3d at 942. As noted above, in this Circuit, multipliers in the 1-4 range are "presumptively acceptable." *Dyer*, 303 F.R.D. at 334. Moreover, multipliers for large settlements, like this one, tend to fall on the high end of this range. The Eisenberg-Miller 2017 study, for example, found that the average multiplier in cases valued over $67.5 million was 2.72. Theodore Eisenberg, Geoffrey Miller, & Roy Germano, *Attorneys' Fees in Class Actions 2009-2013*, 92 N.Y.U. L. Rev. 937, 967 (2017). Class Counsel's requested multiplier—1.86 with anticipated future time and 1.96 without, *see*

[13] A number of other courts in this District have also recently approved fee requests based on similar hourly rates. *See, e.g.*, *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *17 (N.D. Cal. Aug. 17, 2018); *In re Intuit Data Litig.*, No. 15-CV-1778-EJD-SVK, 2019 WL 2166236, at *1 (N.D. Cal. May 15, 2019); *Carlotti v. Asus Comput. Int'l*, No. 18-CV-03369-DMR, 2020 WL 3414653, at *5 (N.D. Cal. June 22, 2020).

Stellings Decl. ¶¶ 23—is therefore significantly below the average multiplier awarded in similar cases and more than justified by the exceptional results in this case. *See VW 2L Fee Order*, 2017 WL 1047834, at *5 (approving multiplier of 2.63 in 2.0-liter settlement); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 3175924, at *4 (N.D. Cal. July 21, 2017) ("*VW 3L Fee Order*") (approving multiplier of 2.02 in 3.0-liter settlement); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 2178787, at *3 (N.D. Cal. May 17, 2017) ("*VW/Bosch Fee Order*") (approving multiplier of 2.32 in Bosch settlement); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), Dkt. 7244 at 5 (March 2, 2020) (approving multiplier of 2.06 in Audi CO2 settlement).

E. Class Counsel's expenses are reasonable and appropriate.

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

Here, Class Counsel seek $710,733.89 in litigation expenses, which includes $560,733.89 already expended by Lead Counsel and PSC firms to advance the common benefit pursuant to the terms of PTO 11. Stellings Decl. ¶ 32, Tbl. 3 (breaking out the costs across categories of work undertaken to advance the litigation). It also includes $150,000 that Class Counsel are responsibly reserving to cover the anticipated costs associated with the future on-the-ground administration and Settlement implementation efforts. *Id.* At 0.89% of the total Settlement value, these costs are significantly less than the average costs awarded in class action settlements. Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical Legal Stud. 248, 267 (2010) (mean and median of 2.8% and 1.7% before 2002 and 2.7% and 1.7% thereafter); Eisenberg-Miller 2017 at 963 (mean and median of 3.9% and 1.7%

since 2009).

More importantly, these costs are commensurate with the stakes, complexity, and intensity of this particular litigation. This includes, for example, approximately $169,227.47 to employ technical experts on emissions system functionality, testing processes, and software programming and code analysis. These experts worked hand-in-hand with Class Counsel from the beginning of the case in, among other things: (1) designing testing protocols for the Class Counsel's independent testing of the vehicles; (2) testing multiple vehicles several times under the various protocols; (3) evaluating and analyzing Class Counsel's test results; (4) evaluating and analyzing the Defendants' test protocols, data, and results; and (5) working with Class Counsel to prepare for and evaluate vehicle testing in Germany, attending and monitoring the testing, and consulting with Class Counsel on the results. Stellings Decl. ¶ 34. As is evident from this list, the experts' involvement was significant and their contributions were critical to the litigation and resolution.

The costs also include the funds used to purchase vehicles for emissions and fuel economy testing. These vehicles were expensive, but critical to the litigation and settlement efforts, and counsel have deducted the vehicles' reasonable projected resale value. *Id.* ¶ 33.

Other significant costs included $65,907.98 for the eDiscovery services and document processing platform necessary for processing, maintaining, and analyzing the millions pages of documents produced in this litigation, and $131,096.29 for travel expenses related to, among other things, negotiation sessions in New York, as well as two separate, multi-day vehicle testing and discovery meetings in Stuttgart and Weissach, Germany. *Id.* ¶¶ 35-36.

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

F. The Settlement Class Representatives have earned the requested service awards.

Class Counsel request service awards of $250 for each of the 33 proposed Settlement Class Representatives, to be paid from the settlement fund. Dkt. 7971-1 ¶¶ 16.2. This amount falls far below the $5,000 "presumptively reasonable" service award in this Circuit, and is well-supported by the time and efforts the proposed Representatives dedicated to prosecuting this case. *CRT Antitrust Litig.*, 2016 WL 4126533, at *11. *See also, e.g.*, *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (affirming awards of $5,000); *In re Mego Fin. Corp.*, 213 F.3d at 463 (same). The Settlement Class Representatives have served to protect the interests of the Class by, among other things: committing to investigate and prosecute this case on behalf of the Class; regularly communicating with counsel to stay abreast of developments in this litigation; working with counsel to review and evaluate the terms of the proposed Settlement Agreement; and expressing their continued willingness to protect the Class until the Settlement is approved and its administration completed. *See* Stellings Decl. ¶ 20. They have earned the moderate service awards requested.

IV. CONCLUSION

Settlement Class Representatives and Settlement Class Counsel respectfully request that the Court certify the Settlement Class and appoint Settlement Class Counsel and Class Representatives; grant final approval to the Settlement; and award $24 million in attorneys' fees and $710,733.89 in reasonable costs to be allocated by Lead Counsel among the PSC firms performing work under Pretrial Order Nos. 7 and 11.

Dated: August 26, 2022

Respectfully submitted,

/s/ Elizabeth J. Cabraser

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Plaintiffs' Lead Counsel and Interim Settlement Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that, on August 26, 2022, 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*
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Plaintiffs' Lead Counsel

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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

I, DAVID S. STELLINGS, declare:

1. I am counsel of record for the Plaintiffs in these proceedings, and serve, pursuant to Pretrial Order No. 7: Order Appointing Plaintiffs' Lead Counsel, Plaintiffs' Steering Committee and Government Coordinating Counsel (Dkt. 1084), as a member of Lead Counsel for Plaintiffs in the actions consolidated in *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, And Products Liability Litigation*. I respectfully submit this Declaration in support of the Motion for Final Approval of Class Action Settlement and Attorneys' Fees and Costs. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently to them.

Litigation and Settlement History for the Porsche Gasoline Litigation

2. Beginning in August 2020—following revelations that a whistleblower at Porsche reported at least one suspected defeat device in certain gasoline-powered vehicles, prompting Porsche to report these findings the KBA and the EPA—consumers filed a number of class action lawsuits in federal courts across the country. The actions were consolidated before this Court in the pending MDL, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC), and ultimately styled as the "Porsche Gasoline Litigation."

3. Immediately following these news reports, Plaintiffs commenced a rigorous, time-consuming, and expensive independent technical investigation of the underlying factual allegations of emissions and fuel economy test manipulation for Porsche gasoline vehicles. That investigation included, among other things, thorough expert testing of implicated gasoline-powered Porsche vehicles to measure and compare their emissions and fuel economy under laboratory and on-road driving conditions. Plaintiffs worked with their experts for many months to test several Porsche vehicles under approved federal vehicle testing procedures. Plaintiffs' experts also conducted on-road emissions testing and data collection using portable emissions measurement systems on several vehicles. Plaintiffs also analyzed and translated the German-language press reporting regarding the alleged fraud in Porsche vehicles.

4. This investigation and analysis informed Plaintiffs' 417-page Consolidated Class Action Complaint for the Porsche Gasoline Litigation, which they set to work drafting immediately after this Court ordered them to do so (Dkt. 7756). In that Consolidated Class Action Complaint, Plaintiffs alleged detailed claims under the Magnusson-Moss Warranty Act, common law fraud, and the consumer protection and warranty laws of all 50 states (*see* Dkt. 7803).

5. Investigating and prosecuting this complex litigation required significant work, effort, and expense over the course of nearly two years. The Parties conducted substantial, technical discovery in this case, facilitated by early negotiation of comprehensive expert, deposition, preservation, confidentiality, and Electronically Stored Information (ESI) protocols in the MDL. As a result, a significant number of documents were produced to and reviewed by members of the Court-appointed Plaintiff Steering Committee, including millions of pages of documents that had been produced as part of the broader MDL proceedings. Defendants also provided approximately 500,000 technical German-language documents that relate to the design, development, and testing of the Class Vehicles in this case, which they made available to Plaintiffs in Germany, and produced thousands of additional pages of documents as well, including technical presentations and data that Porsche provided to the regulators. All told, the review of many millions of pages of relevant documents informed Plaintiffs' understanding and evaluation of the strengths and weaknesses of their case throughout the course of this litigation and settlement.

6. In the midst of this extensive discovery, the Parties litigated the Defendants' motion to dismiss the Consolidated Complaint, which resulted in approximately 200 pages of exhaustive briefing. *See* Dkts. 7862 (Motion), 7884 (Opposition), 7901 (Reply).

7. In November 2021, however, with a hearing on Defendants' motions to dismiss then set for December 10, 2021, the Parties agreed to commence settlement negotiations in earnest. Dkts. 7904, 7905. Settlement discussions endured for seven months thereafter, ultimately resulting in the proposed Settlement now before the Court. Meanwhile, Plaintiffs continued to investigate the strengths and weaknesses of their case through the robust discovery efforts described above.

8. The Parties held numerous in-person settlement negotiation sessions in locations including New York City, Stuttgart, Germany, and Weissach, Germany. The Parties ensured that many of those sessions included in-house counsel, high-level engineers, and experts to further the negotiations in an efficient and meaningful way. The Parties supplemented these in-person meetings with dozens of zoom telephone conferences and exchanges of information.

9. In support of both the litigation and settlement efforts, Plaintiffs' counsel retained technical experts to conduct testing on multiple Porsche gasoline vehicles from a range of model years under approved federal vehicle testing procedures. This testing regime enabled Plaintiffs to measure and compare, among other things, the vehicles' emissions and fuel economy results to those represented when the vehicles were originally certified, and whether driving Sport+ mode caused the vehicles to exceed relevant emissions limitations.

10. In response to regulatory inquiries and this litigation, Defendants also undertook their own comprehensive testing and analysis of the emissions and fuel economy of the gasoline-powered Porsche vehicles. Plaintiffs' counsel and their experts reviewed Defendants' testing data, discussed the testing methodology with Defendants and their engineers at length, and observed some of the testing in person. In October 2021, Plaintiffs and their experts traveled to Porsche's facilities in Weissach, Germany to observe Porsche's fuel economy and emissions testing for the Class Vehicles and to assess first-hand the Emissions Compliant Repair that Porsche developed (and the regulators approved) for Sport+ Class Vehicles. During that trip, Plaintiffs' counsel met with several high-level engineers and other personnel responsible for investigating the alleged testing manipulation in the Class Vehicles. Plaintiffs continued that discussion in March 2022 at Porsche's headquarters in Stuttgart, Germany. There, Plaintiffs further evaluated Porsche's testing, reviewed updated test results, and held further discussions with Porsche's engineers and attorneys.

11. As can be attested by the duration and frequency of the settlement talks, the thoroughness of the information exchanged (both before and after the Settlement was reached), and the excellent compensation secured for the class, the negotiations were conducted at arm's-length.

Settlement Benefits and Anticipated Recovery

12. The Settlement benefits are discussed at length in the motion for final approval and in the Long Form Notice, among other places. In short, the Settlement secures at least $80 million for the benefit of the proposed Settlement Class.

13. Those funds are used to make substantial cash payments to any Class Member who submits a valid claim and/or obtains the Sport+ Emissions Compliant Repair. The amount of compensation available to each Class Member is based on the model and model year Class Vehicle they purchased or leased, and the degree to which there is a measured impact on their Class Vehicle from the conduct and testing practices at issue.

14. Class members with a Fuel Economy Class Vehicle will receive cash compensation for (1) 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, and (2) a goodwill payment of an additional 15% of those damages to compensate for any inconvenience. *See* Dkt. 7971-1, *Settlement Agreement* ¶ 4.1. The payments range from $250 to $1,109.66 for Class members who owned the vehicle for all 96 months after the vehicle was first sold or leased (the full useful life of the vehicle). *Id.*, Ex. 3. Compensation for Class members who sold, purchased used, or leased their Fuel Economy Class Vehicles follows the same concept but will be prorated to the number of months of their ownership or possession. Critically, this compensation is intended to fully compensate for the damages incurred in driving these Class Vehicles and will provide full compensation for the significant majority of vehicles for which the 96 months eligible for compensation has already concluded, and at least a very high percentage of recoverable damages for the remainder. *Settlement Agreement* ¶ 4.1; *see also, e.g.*, Dkt. 6634-3, Declaration of Edward M. Stockton, (opining that analogous compensation framework provided "full" compensation for class members' damages in a comparable fuel economy settlement).

15. In addition to the Fuel Economy Class Vehicles, testing indicated that certain Class Vehicles equipped with "Sport+" driving mode exceeded emissions limits when driven in that mode. Class members with a Sport+ Class Vehicle will be offered an emissions compliant

repair software update to bring them into compliance with the relevant regulatory limits. Class members with a Sport+ vehicle will automatically receive a $250 cash payment upon completion of the repair, without having to submit any further claim for compensation. This is a significant payment that will incentivize Class members to bring their Class Vehicle to a Porsche dealership for a repair, and compensate them for their time and inconvenience in doing so.

16. By August 19, 2022, more than a year before the Sport+ Claim Deadline, at least 12,319 Sport+ Class Vehicles had an already received an ECR. This represents nearly 40% of all Sport+ Class Vehicles for which an ECR is currently available.

17. Finally, Class members with "Other Class Vehicles" for which emissions or fuel economy deviations were not identified through the parties' extensive investigation and testing efforts—but which could conceivably have experienced a discrepancy given the timing and circumstances of their development and manufacture—will also be offered meaningful cash payments of up to $200 per vehicle (potentially more after redistribution), depending on the overall settlement claims rate.

18. If there are any funds remaining in the Settlement Value after all valid, complete, and timely Claims are paid, the parties anticipate a redistribution of the remaining funds to Class members unless and until it is economically infeasible to do so. *See Settlement Agreement* ¶ 4.4. Finally, after a redistribution, and subject to Court approval, any final balance will be directed cy pres to environmental remediation efforts. *Id*. This ensures that all of the money secured by the Settlement will inure to the benefit of the Class and the interests advanced in this litigation.

19. Furthermore, I expect that a substantial percentage of the Class will complete the relatively streamlined claims process to collect their Settlement payments. For example, a recent settlement that were previously negotiated by Class Counsel in this MDL—the Audi CO_2 settlement (Dkt. 7244)—reached a participation rate of over 20%. Three other settlements previously negotiated by Class Counsel in this MDL—the 2.0-liter settlement (Dkt. 1685), the 3.0-liter settlement (Dkt. 2894), and the Bosch settlement (Dkt. 2918)— reached participation rates of over 70%.

The Proposed Settlement Class Representatives

20. The Settlement Class Representatives are actively engaged. Each reviewed and approved the Amended Consolidated Class Action Complaint. Each of them has also worked with counsel to evaluate the terms of the proposed Settlement Agreement and has endorsed the Settlement's terms. The Representatives have each expressed their continued willingness to protect the Class until the Settlement is approved and its administration completed.

Time and Expense Submission

21. Pursuant to PTOs 7 and 11, each participating PSC firm, as well as other Participating Counsel authorized by Lead Counsel to perform common benefit work, submitted monthly time and expense reports to Lead Counsel. Attorneys and staff working at the direction and under the supervision of Lead Counsel collected these common benefit submissions and have maintained a database of all submitted time and expenses.

22. These attorneys and staff reviewed and (using best reasonable efforts) audited the submissions to ensure that only time and expenses that inured to the benefit of the Class and that advanced the claims resolved in the Class Action Settlement have been included in the time and costs presented in the fee motion.

Hours Incurred and Rates Billed

23. In furtherance of the work described above, among other tasks and responsibilities, Participating Counsel have incurred 27,888.80 hours of common benefit time. The lodestar resulting from those hours is $12,261,791.50 and the blended average billing rate is $439.76. Using this time alone, the lodestar multiplier resulting from Class Counsel's fee request is 1.96.

24. However, even more work will be required to: (1) obtain final approval of the Settlement; (2) protect the Settlement on appeal (if any appeals are lodged); and (3) oversee and help implement the Settlement until the end of the Claim Period, which will include, among other things, responding to inquiries from Class members who owned or leased one of the approximately 500,000 Class Vehicles.

25. I anticipate that Settlement Class Counsel here will incur no fewer than 1,500 hours ($659,500.85 in lodestar, at the current blended rate) to finalize, protect, and implement the Settlement. This brings the total lodestar to $12,921,292.35 and yields a multiplier of 1.86.

26. The hours and lodestar incurred for various categories of activities as well as the "reserved" or projected time described above are detailed in Table 1 below. To be conservative, the billing rates used in this Declaration are the historical, "then-present" rates recorded in the monthly time reports. Had Counsel adjusted their lodestar to account for current billing rates—a "well established" common practice for "attorneys in common fund cases," *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983, at *14 n.17 (N.D. Cal. Dec. 18, 2018)—the lodestar would have increased and the multiplier decreased significantly.

Table 1

Lodestar and Rates			
Category	**Total Hours**	**Total Lodestar**	**Blended Average Rate**
Lead Counsel & PSC Calls, Meetings, & other Duties	1,360.50	$654,602.00	$481.15
Discovery, Research, & Document Analysis	21,967.70	$9,124,287.50	$415.35
Litigation Strategy, Pleadings, Motions, Briefs, and Legal	3,715.50	$1,957,097.50	$526.74
Experts/Consultants	66.00	$38,851.00	$588.65
Settlement	779.10	$486,953.50	$625.02
Subtotal	27,888.80	$12,261,791.50	$439.67
Reserved	1,500.00	$659,500.85	$439.67
Total	**29,388.80**	**12,921,292.35**	**$439.67**

27. Each of these categories and subcategories is described in PTO 11. A few merit additional discussion. Discovery, research, and document analysis, for example, comprises a significant portion of the total hours billed. But it bears repeating that the Defendants produced the electronic equivalent of millions of pages of documents in this MDL. The MDL document production included significant volumes of Porsche documents relevant to this case, and analyzing those documents—in addition to hundreds of thousands of highly technical, German-language documents produced specifically for the Porsche Gasoline cases—was a massive

undertaking that encompassed much more than simple "doc review," as some (improperly) understand that term. To streamline the review of MDL documents for this litigation, Lead Counsel developed and honed targeted search terms to isolate documents relevant to the Class Vehicles and the emissions and fuel economy testing practices at issue. Lead Counsel developed a nuanced coding panel and trained attorneys in its use and in the case contours. Those attorneys then carefully reviewed, analyzed, and coded the Defendants' productions. That analysis and coding was reviewed for quality control and, critically, compiled into an "acronym key" (necessary to interpreting the complex and jargon-filled technical documents), various "hot document" reports and memoranda (summarizing key information about critical documents and evidence) and a "chronology" (weaving the documents into a chronological, narrative format)—all of which was essential in understanding the strengths and weaknesses of the case. As to the review of German-language documents, attorneys in Germany—several of whom had an automotive background—conducted similar efforts and likewise produced sophisticated work product including an acronym key, chronology, and various hot document memoranda to analyze and synthesize key information from the highly technical documents specific to the Class Vehicles.

28. Significant hours were also expended for litigation strategy, pleadings, motions, and briefing. This includes, among other things: (1) investigating, researching and drafting several multi-hundred page complaints; and (2) analyzing, researching, and drafting complex motion to dismiss briefing as well as the settlement approval briefing; (3) analyzing the complex regulations and procedures for fuel economy and emissions measurement, testing, and reporting in the United States; (4) working to identify the evolving lists of potentially-affected models and model years; and (5) staying abreast of the steady flow of case-related information and other case developments reported in the international press, and translating that information so that it could be incorporated into the legal analysis. All of this was critical to the success of the case.

29. In Table 2, below, I provide the hours worked, lodestar incurred, range of billing rates, and average blended billing rates for each of the timekeeper categories.

Table 2

Lodestar and Rates By Timekeeper Category				
Timekeeper Category	**Total Hours**	**Total Lodestar**	**Billing Range**	**Blended Average Rate**
Partner / Counsel	2,549.40	$1,773,550.00	$485 – $1,325	$695.67
Associate	4,072.10	$1,785,083.50	$350 – $690	$438.37
Non-Partner-Track Attorney	19,940.50	$8,201,186.50	$350 – $450	$411.28
Paralegals and Other Professionals	1,326.80	$501,971.50	$220 – $485	$378.33
Total	**27,888.80**	**$12,261,791.50**	**NA**	$439.67

30. The categories used above differ slightly from those listed in PTO 11, which identifies Partners, Associates, Contract Attorneys, and Paralegals. This is because the label "contract attorney" is inaccurate in that it does not capture the full range of attorneys, including full-time, career attorneys employed by PSC firms who are not on a traditional partner track. Thus, for the purpose of this Declaration, I label such attorneys "Non-Partner-Track." This designation includes some traditional "contract attorneys" who are hired (either through an agency or directly by Participating Counsel) only for work on a specific case. Using such attorneys can be vitally important when plaintiffs' firms in the business of contingency representation are required to quickly "staff up" to meet the needs of a particular case. This was necessary here given the complexity of this case and the scope of the document production in the MDL and in Germany. However, many of the Non-Partner-Track attorneys who participated in this case are more appropriately considered "staff attorneys" (the specific labels vary by firm). These are full-time employees of the PSC firms who receive salaries, vacation time, health insurance, office space, and other benefits. There are many reasons why these attorneys choose non-partner-track positions (e.g., more flexible hours, potentially less demanding workloads, etc.), but this does not change the fact that they are skilled, experienced, and well-credentialed lawyers who perform the same type and quality of work as partner-track associates (and even partners).

Costs Incurred

31. Class Counsel seek reimbursement of $710,733.89 in litigation expenses. This includes $560,733.89 in costs that have already been incurred for the benefit of the Class, as well as $150,000 in projected costs that Settlement Class Counsel is responsibly reserving to cover expenses associated with the on-the-ground enforcement and assistance efforts this Settlement will require—including, for example, maintaining the document hosting platform as well as the test maintaining and storing the test vehicles until the effective date, after all potential appeals are resolved.

32. In Table 3, below, those costs are broken down by the categories enumerated in PTO 11. Contributions to the litigation's common benefit fund (Category 1: Assessment Fees) have been reallocated into appropriate PTO 11 category. So, for example, monies paid from the litigation fund to compensate experts were moved from Category 1 to Category 15.

Table 3

Costs by Category	
PTO 11 Category	**Common Benefit Costs**
1 - Assessment Fees	$0.00
2 - Federal Express / Local Courier, etc.	$1,293.34
3 - Postage Charges	$28.18
4 - Facsimile Charges	$0.00
5 - Long Distance	$820.12
6 - In-House Photocopying	$2,125.00
7 - Outside Photocopying	$65.26
8 - Hotels	$33,292.19
9 - Meals	$5,398.23
10 - Mileage	$0.00
11 - Air Travel	$92,405.87
12 - Deposition Costs	$0.00
13 - Lexis/Westlaw	$11,760.09
14 - Court Fees	$5,130.31
15 - Witness / Expert Fees	$169,227.47
16 - Investigation Fees / Service Fees	$19,245.98
17 - Transcripts	$42.35
18 - Ground Transportation	$10,353.56
19 - Miscellaneous	$5,687.29
eDiscovery Platform	$65,907.98

Costs by Category	
PTO 11 Category	**Common Benefit Costs**
Test vehicle acquisition	$337,950.67
Test vehicle projected resale	-$200,000.00
Subtotal	**$560,733.89**
Reserved	$150,000.00
Total	**$710,733.89**

33. Again, most of these categories are self-explanatory, but a few merit additional discussion. The largest expenditure ($337,950.67), for example, was for the purchase of four vehicles that Lead Counsel used for emissions and fuel economy testing.[1] These vehicles were expensive, but purchasing them was essential to enable independent expert testing and therefore critical to both the litigation and settlement efforts. Once the litigation is final—i.e., if the Settlement is approved and after all potential appeals are resolved—Class Counsel will sell those vehicles and likely recoup some of the costs. Although Class Counsel cannot precisely predict the Post-Appeal Date after which the vehicles can be sold, the resale credit applied here reflects a modest reduction from the vehicles' present trade-in value to reflect inevitable depreciation.

34. The second highest cost category ($169,227.47)—and the highest specifically set forth in PTO—relates to experts. This is not surprising given the technical nature of the litigation and the efforts undertaken to resolve it. To effectively prosecute this case, Class Counsel employed experts on emissions system and fuel economy functionality who worked hand-in-hand with Class Counsel from the beginning of the case in, among other things: (1) designing testing protocols for the Class Counsel's independent testing of the vehicles; (2) testing multiple vehicles several times under the various protocols; (3) evaluating and analyzing Class Counsel's test results; (4) evaluating and analyzing the Defendants' test protocols, data, and results; and (5) working with Class Counsel to prepare for and evaluate vehicle testing in Germany, attending and monitoring the testing, and consulting with Class Counsel on the results. This category also includes the significant costs of insuring, maintaining, and storing Class Counsel's test vehicles.

[1] It also includes the un-recouped costs relating to the purchase of fifth test vehicle purchased by a PSC firm and sold earlier in the litigation.

As is evident from this (partial) list of tasks and activities, the experts' involvement was significant and their contributions were critical to the litigation and resolution.

35. Another significant cost ($65,907.98) was for the eDiscovery services and document processing platform, which was necessary for processing, maintaining, and analyzing the millions pages of documents produced in this case.

36. Air travel, hotels, and meals together added another $131,096.29, which includes all the travel-related expenses related to, among other things, negotiation sessions in New York, as well as two separate, multi-day vehicle testing and discovery meetings in Weissach and Stuttgart, Germany.

* * *

37. For the foregoing reasons, and those outlined in Plaintiffs' Motion, Plaintiffs seek final approval of the Settlement as well as an award of $24 million in fees and $710,733.89 in costs pursuant to Federal Rule of Civil Procedure 23(h), to be allocated by Plaintiffs' Lead Counsel among the PSC firms and additional counsel that performed work in the Porsche case under PTOs 7 and 11.

I declare under penalty of perjury that the forgoing is true and correct. Executed in New York, New York, this 26th day of August 2022.

/s/ *David S. Stellings*

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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 This Documents Relates to: Porsche Gasoline Litigation	MDL 2672 CRB **DECLARATION OF JENNIFER KEOUGH ON SETTLEMENT NOTICE PLAN PROGRESS** The Honorable Charles R. Breyer

I, Jennifer Keough, hereby declare and state as follows:

1. I am the Chief Executive Officer and President of JND Legal Administration LLC ("JND"). As the CEO and President of JND, I oversee all facets of our company's operations, including monitoring and implementing our notice and claims administration programs. This Declaration is based on my personal knowledge as well as upon information provided to me by experienced JND employees, and if called upon to do so, I could and would testify competently thereto.

2. This Declaration describes the implementation of the Notice Plan,[1] as outlined in my Declaration on Settlement Notice Plan, dated June 15, 2022 (ECF 7971-3, the "Initial Declaration") and provides an update on the claims administration process. The Notice Plan is ongoing and was designed to inform Class Members of the proposed Settlement and their rights and options.

CAFA NOTICE

3. As set forth in my Initial Declaration, on June 24, 2022, JND mailed notice of the Porsche Gasoline Emissions Settlement to the United States Attorney General and to the appropriate State officials pursuant to Class Action Fairness Act of 2005.

DIRECT NOTICE

A. Class Member Identification

4. To prepare direct notice to Class Members, JND obtained the Vehicle Identification Numbers (VINs) for each of the Class Vehicles and contact information for potential Class Members. Defendants provided JND with data that identified 505,477 unique Class Vehicle VINs. The files from the Defendants also included customer contact (email and mailing address) and Class Vehicle information, among other information.

5. Using the Class Vehicle VIN data, JND staff worked with a third-party data aggregation service to acquire vehicle registration information from the state Departments of Motor Vehicles ("DMVs") for all fifty states and U.S. Territories. This data compiled the contact

[1] All capitalized terms not defined herein have the meanings given to them in my Initial Declaration.

information for all current and former owners and lessees of Class Vehicles, and enabled JND to further identify potential Class Members.

6. JND combined, analyzed, de-duplicated and standardized the data that it received from the Defendants and the DMVs to provide individual notice to virtually all settlement Class Members.

7. JND promptly loaded the VINs and potential Class Member contact information into a case-specific database for the Settlement. A unique identification number was assigned to each Class Member to identify them throughout the administration process.

8. JND conducted a sophisticated email append process to obtain email addresses for as many potential Class Members as possible. The email append process utilized skip tracing tools to identify any email address by which the potential Class Member may be reached if an email address was not provided in the initial data. JND then reviewed the data to identify any undeliverable email addresses and duplicate records. Furthermore, JND performed advanced address research using skip trace databases and the United States Postal Service ("USPS") National Change of Address ("NCOA") database[2] to obtain the most current mailing address information for potential Class Members.

B. Direct Email Notice

9. The direct email notice campaign commenced on July 15, 2022. JND emailed notice to all potential Class Members for whom JND obtained a valid email address through either the Defendants or the append process noted above. The email notice included the same language as the Short Form Notice (ECF 7971-3, Exhibit E) and JND customized the emails to include the potential Class Member's name, address, and VIN. The email notice contained links to the Settlement Website and directed the potential Class Member to visit the website to learn more information and submit their settlement claim. As of August 26, 2022, JND sent a total of 1,096,929 email notices, of which 108,675 emails bounced back and were not deliverable.

[2] The NCOA database is the official USPS technology product that makes changes of address information available to mailers to help reduce undeliverable mail pieces.

C. Direct Mail Notice

10. JND supplemented the direct email effort by sending a postcard notice to all potential Class Members for whom an email notice bounced back as undeliverable, or for whom a valid email address was not obtained. The postcard notice included the same language as the Short Form Notice, and JND customized the postcard to include the potential Class Member's name, address, and VIN. The postcard notice provided the URL and a QR code to the Settlement Website and directed the potential Class Member to visit the website to learn more information and submit their settlement claim. JND began mailing the postcard notices on August 19, 2022, and has sent the postcard notices to 555,294 potential Class Members.

11. For any potential Class Member who had more than 10 VINs associated with their name and address, JND sent the Short Form Notice and included a cover letter advising them of the process to submit a bulk claim for more than 10 Class Vehicles.

D. Reminder Notices

12. In my opinion, the level of class member engagement with the (ongoing) notice program has been encouraging. Nevertheless, to ensure the highest reasonable participation rate, JND will also send reminder notices to potential Class Members to remind them of the November 7, 2022 claim filing deadline. JND will send these reminder notices on or about October 1, 2022, to potential Class Members who have not yet submitted a claim and have not opted out of the Settlement or unsubscribed from the email notice campaign.

13. JND will continue to confer with Counsel to determine whether further reminder notices may be needed with respect to potential Class Members.

14. In sum, the statistics on the direct mail and email notice to date reinforce the fact that the notice program is broad in scope and designed to reach the greatest practicable number of settlement Class Members.

SUPPLEMENTAL DIGITAL NOTICE

A. Digital Campaign

15. As detailed in the Initial Declaration, JND supplemented the direct notice effort with a four-week digital campaign through GDN, a vast network that reaches over 90% of

internet users, popular Porsche forums, and related websites. The digital ads included an embedded link to the Settlement Website, where potential Class Members can get more information about the Settlement and file a claim online. As of August 19, 2022, a total of 41,990,491 impressions (i.e. display of the ad on a search result page or other site on the Google Network) were delivered through GDN, Porsche forums, and related websites, which resulted in 6,714 clicks.

B. Internet Search Campaign

16. JND implemented an internet search campaign to assist potential Class Members with locating the Settlement Website. JND purchased ads tied to keywords related to the Settlement so when those terms were searched, an advertisement with a hyperlink to the Settlement Website would appear on the results page. As of August 19, 2022, a total of 2,699 impressions were delivered through key word searches, resulting in 660 clicks.

SETTLEMENT WEBSITE AND OTHER CLASS MEMBER NOTICE

A. Settlement Website

17. On July 5, 2022, JND launched an interactive, case-specific Settlement Website at www.PorscheGasolineSettlementUSA.com, and this URL was listed in the direct notices. The website provides comprehensive information about the settlement, including answers to frequently asked questions ("FAQs"), contact information for the Settlement Administrator, key dates, and links to important case documents, including the Long Form Notice, the Short Form Notice, the Class Vehicle List, the Claim Form, and the Consumer Class Action Settlement Agreement and Release.

18. In addition, the Settlement Website provides a Benefit Calculator feature, where potential Class Members can input their VIN and dates/months of ownership to determine whether their vehicle may be eligible for compensation under the Settlement Agreement and how much money they can expect to receive.

19. The Settlement Website also features an online Claim Form with document upload capabilities for the submission of claims. Additionally, as noted above, a Claim Form is posted on

the Settlement Website for download for those Class Members who prefer to submit a Claim Form by mail.

20. As of August 26, 2022, the Settlement Website has tracked a total of 146,074 unique users who registered 684,208 page views. JND will continue to update and maintain the Settlement Website throughout the settlement administration process.

B. Settlement Administrator Email Address

21. JND has established a dedicated email address, info@PorscheGasolineSettlementUSA.com, to receive and respond to Class Member inquiries. As of August 26, 2022, JND has received 1,725 emails to the case email inbox.

C. Settlement Administrator Toll-Free Number

22. JND maintains a 24-hour, toll-free telephone line that Class Members can call to obtain information about the Settlement. During business hours, JND's call center is staffed with operators who are trained to answer questions about the Settlement. As of August 26, 2022, JND has received 3,650 calls to the case telephone number.

D. Settlement Administrator Post Office Box

23. JND has established two separate post office boxes to administer this settlement—one to receive Class Member correspondence and paper Claim Forms, and another solely to receive exclusion requests.

CLAIMS RECEIVED

24. Class Members may file a claim online through the Settlement Website or submit the Claim Form via postal mail. Class Members who do not wish to submit their claim online may download and print a Claim Form through the Settlement Website, or request a mailed copy of a Claim Form by contacting the Settlement Administrator.

25. As of August 26, 2022, JND has received 38,252 Claim Forms, of which 37,765 were submitted electronically online and 487 were submitted via mail.

26. JND continues to receive and process Claim Form submissions and will continue to report to Counsel on the status of the claim intake and review. The claim filing deadline for Class Members is November 7, 2022.

OBJECTIONS

27. The Short Form Notice and Long Form Notice (collectively, the "Notices") informed recipients that any Class Member who wanted to object to the proposed Settlement could do so by submitting a written statement on or before September 30, 2022. As of August 26, 2022, JND has received or is otherwise aware of zero objections.

REQUESTS FOR EXCLUSION

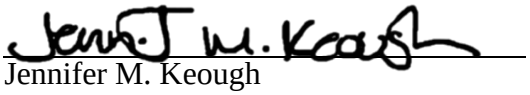
28. The Notices also informed Class Members of their right to opt out of the Settlement and the September 30, 2022 postmark deadline to do so. As of August 26, 2022, JND has received or is otherwise aware of three requests for exclusion. Not later than 10 days before the date of the Fairness Hearing, JND will prepare and provide to Counsel a list of those persons who have excluded themselves from the Settlement.

CONCLUSION

29. In my opinion, the Notice Program is providing the best notice practicable under the circumstances of this case. I will provide a supplemental declaration to the Court prior to the Final Approval Hearing to provide updated information regarding the implementation of the Notice Plan and the claims administration process.

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

Executed August 26, 2022, at Seattle, Washington.

By: 
Jennifer M. Keough

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

This Document Relates to:

Porsche Gasoline Cases

MDL No. 2672 CRB

The Honorable Charles R. Breyer

[PROPOSED] ORDER OF DISMISSAL WITH PREJUDICE AND JUDGMENT GRANTING FINAL APPROVAL OF CLASS SETTLEMENT AND AWARD OF ATTORNEYS' FEES AND COSTS

Before the Court is Plaintiffs' Motion for Final Approval of Class Action Settlement and Award of Attorneys' Fees and Costs (the "Motion"). The background, procedural history, and Settlement terms were summarized in the Court's Order Granting Preliminary Approval of Class Settlement and Direction of Notice Under Rule 23(e), familiarity with which is presumed. *See* Dkt. No. 7997 ("Preliminary Approval Order"). In brief, the Settlement provides at least $80 million to compensate the Class through a non-reversionary settlement fund. Individual payments range from up to $200 to $1,109 per Class Vehicle, plus an additional $250 for certain Sport+ Class Vehicles subject to an ongoing recall.

Following the Court's Preliminary Approval Order, notice was sent to the Class via a

Court-approved notice program, and the Class has had an opportunity to respond. The Court has considered the Parties' briefs and accompanying submissions, the reactions of Class members, and presentations at the hearing on these matters, and the Court hereby **GRANTS** the Motion.

I. CLASS CERTIFICATION AND SETTLEMENT APPROVAL

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

The Court concluded that the Class and its Representatives were likely to satisfy these requirements in its Preliminary Approval Order and finds no reason to disturb its earlier conclusions. *See* Dkt. No. 7997 at 3-4. The requirements of Rule 23(a) and Rule 23(b)(3) were satisfied then and they remain so now. As such, the Court concludes that certification of the Settlement Class is appropriate.

Assuming a proposed settlement satisfies Rules 23(a) and (b), the Court must then determine whether it is fundamentally fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e)(2). The Court is thoroughly familiar with the standards applicable to certification of a settlement class and has applied them in several recent settlements in this MDL. *See, e.g.*, Dkt. No. 7997 at 3-4 (collecting cases). In preliminarily approving the Settlement, the Court applied these standards and concluded that the Settlement appeared to be "fair, reasonable, and adequate." Dkt. No. 7997 at 2.

Those conclusions stand and are bolstered by the Class's favorable reaction to Settlement. Indeed, no Class member has objected to any aspect of the Settlement or the request for attorneys' fees and costs, and only three potential Class members have submitted valid opt-out requests. This additional factor further supports final approval. *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); *Van Lith v. iHeartMedia + Entm't, Inc.*, No. 1:16-CV-00066-SKO, 2017 WL 4340337, at *14 (E.D. Cal. Sept. 29, 2017) ("Indeed, '[i]t is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members.'") (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004)); *Cruz v. Sky Chefs, Inc.*, No. C-12-02705 DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) ("A court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it.").

Pursuant to Federal Rule of Civil Procedure 23, the Court hereby fully and finally approves the Settlement Agreement in all respects (including, without limitation: the amount of the Settlement; the releases provided for therein; and the dismissal with prejudice of the claims asserted against Defendants in the Action) and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Class. The Court further finds that the Settlement is the result of arm's-length negotiations between experienced and informed counsel representing the interests of the Parties. Accordingly, the Settlement Agreement and the Settlement embodied therein are hereby finally approved in all respects. The Parties are hereby directed to perform its terms.

The terms of the Settlement Agreement and of this Order and Judgment shall be forever binding on Defendants, Plaintiffs and all other Class Members (regardless of whether or not any individual Class Member submits a Claim Form), as well as their respective successors and assigns.

The releases set forth in section 10 of the Settlement Agreement, together with the definitions contained in section 2 of the Settlement Agreement relating thereto, are expressly incorporated herein in all respects. The releases are effective as of the Effective Date, except as provided in paragraph 2.33 of the Settlement Agreement. Accordingly, this Court orders that:

(a) Without further action by anyone, upon the Effective Date of the settlement, Plaintiffs and each of the other Class Members, on behalf of themselves, and each of their respective heirs, executors, administrators, predecessors, successors, assigns, parents, subsidiaries, affiliates, officers, directors, agents, fiduciaries, beneficiaries or legal representatives, in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully,

finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Claim (including Unknown Claims) against any of the Released Persons, and shall forever be barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any or all of the Released Claims against any of the Released Persons.

(b) Without further action by anyone, upon the Effective Date of the settlement, each of the Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally and forever released, relinquished, and discharged Plaintiffs, Class Members (except any Class Member who timely and validly requests exclusion from the Class), and Lead Counsel from all claims and causes of action of every nature and description (including Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement, or resolution of the Litigation, except claims to enforce the Settlement and the terms of the Settlement Agreement and claims or defenses arising from claims by any Class Member concerning a deficiency in administration of the Settlement.

Notwithstanding the paragraph above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

Only Class Members filing valid and timely Claim Forms shall be entitled to participate in the Settlement and receive a distribution from the Settlement Fund for Fuel Economy Class Vehicles and Other Class Vehicles. Class Members with Sport+ Class Vehicles shall be entitled to participate in the Settlement and receive a distribution from the Settlement Fund upon timely completion of an Emissions Compliant Repair ("ECR") for their Class Vehicle and without filing a Claim Form. All Class Members shall, as of the Effective Date, be bound by the releases set forth herein whether or not they submit a valid and timely Claim Form.

II. THE REQUESTED ATTORNEYS' FEES AND COSTS

Class Counsel requests an award of $24 million in attorneys' fees and $710,733.89 in costs (for a total of $24,710,733.89) for work undertaken in prosecuting the claims resolved by the Settlement. This amount is to be paid from the Settlement Fund. *See* Dkt. No. 7971-1 ¶ 12.1.

Federal Rule of Civil Procedure 23(h) provides that, "[i]n a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the

parties' agreement." Fed. R. Civ. P. 23(h). "Attorneys' fees provisions included in proposed class action agreements are, like every other aspect of such agreements, subject to the determination whether the settlement is 'fundamentally fair, adequate and reasonable.'" *Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003) (citation omitted). Thus, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

When, as here, a settlement establishes a calculable monetary benefit for a class, a court has discretion to award attorneys' fees based on a percentage of the monetary benefit obtained, or by using the lodestar method. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at *1 (N.D. Cal. Mar. 17, 2017); *see also Staton*, 327 F.3d at 967. The $80 million (and up to $85 million) available to the class is non-reversionary, eliminating incentive to discourage Class Members' participation in the Settlement and ensuring that the full value is put towards the interests of the Class in this litigation. Class Counsel's requested fee represents 30% of the total settlement value and 28.2% of the settlement's total potential monetary value. This modest upward departure from the 25% benchmark is more than justified under the facts of case, particularly given the exceptional results obtained for the Class. *See, e.g.*, *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-MD-2541-CW, 2017 WL 6040065, at *2 (N.D. Cal. Dec. 6, 2017), *aff'd*, 768 F. App'x 651 (9th Cir. 2019) (noting that "fee awards exceed[] the [25%] benchmark" in "*most* common fund cases" and that "courts commonly "justif[y] upward departures from the 25% benchmark" with "[f]ar lesser results (with 20% recovery of damages or less)"); *Hernandez v. Dutton Ranch Corp.*, No. 19-CV-00817-EMC, 2021 WL 5053476, at *6 (N.D. Cal. Sept. 10, 2021) (collecting cases and finding that"[d]istrict courts within this circuit . . . routinely award attorneys' fees that are one-third of the total settlement fund . . . [s]uch awards are routinely upheld by the Ninth Circuit"); *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).

A lodestar cross-check also confirms the reasonableness of the award sought. Both the

hours worked and the rates billed (a blended average rate of $439.76 per hour) are customary and reasonable. *See, e.g.*, *Volkswagen*, 2017 WL 1047834, at *5 (approving blended average hourly billing rate of $529 per hour in this MDL). The total lodestar yields a multiplier of 1.96 for work done to-date and 1.86 including a reasonable estimate of anticipated future work to implement and protect the Settlement. Either multiplier is well within the range of reason and supported by the facts of this case. *See, e.g.*, *Volkswagen*, 2017 WL 1047834, at *5 (approving multiplier of 2.63 in this MDL); *In re Volkswagen*, No. 2672 CRB (JSC), 2017 WL 2178787, at *3 (N.D. Cal. May 17, 2017) (approving multiplier of 2.32 in this MDL); *In re Volkswagen*, No. 2672 CRB (JSC), 2017 WL 3175924, at *4 (N.D. Cal. July 21, 2017) (approving multiplier of 2.02 in this MDL); Theodore Eisenberg, Geoffrey Miller, & Roy Germano, *Attorneys' Fees in Class Actions 2009-2013*, 92 N.Y.U. L. Rev. 937, 967 (2017) (finding that the average multiplier in cases valued over $67.5 million was 2.72).

In sum, both the percentage of the fund and the lodestar multiplier are reasonable in light of the substantial benefits obtained for the Class and the risks and complexities of this litigation. Moreover, as noted above, no Class member has objected to the requested fees and costs. Class Counsel's request for $24 million in attorneys' fees and $710,733.89 in costs (for a total of $24,710,733.89) is hereby **GRANTED**.

Finally, Plaintiffs request a service award of $250 to be paid to the Settlement Class Representatives in addition to the Settlement compensation. This is reasonable under the facts of this case, and supported by the time and efforts the Class Representatives dedicated to participating in this litigation. The request for service awards for each of the settlement class representatives is therefore **GRANTED**.

III. CONCLUSION

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

1. The Court hereby **CERTIFIES** the Settlement Class and **GRANTS** the Motion for Final Approval of the Settlement. The Court fully and finally approves the Settlement in the form contemplated by the Settlement Agreement (Dkt. No. 7971-1) and finds its terms to be fair,

reasonable and adequate within the meaning of Fed. R. Civ. P. 23. The Court directs the consummation of the Settlement pursuant to the terms and conditions of the Settlement Agreement.

2. The Court **DISMISSES** the Action and all claims contained therein, as well as all of the Released Claims, with prejudice as to the Parties, including the Class. The Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement.

3. Only those persons who timely submit valid requests to opt out of the Settlement Class are not bound by this Order and are not entitled to any recovery from the Settlement.

4. The Court **CONFIRMS** the appointment of Lead Plaintiffs' Counsel as Settlement Class Counsel.

5. The Court **CONFIRMS** the appointment of the Settlement Class Representatives listed as Plaintiffs in the Amended Consolidated Consumer Class Action Complaint.

6. The Court **CONFIRMS** the appointment of JND as Claims and Notice Administrator.

7. The Court **GRANTS** Class Counsel's request for attorneys' fees and costs, and **AWARDS** Class Counsel $24,710,733.89 in attorneys' fees and costs, and to be allocated by Lead Counsel among the PSC firms performing common benefit work pursuant to terms of Pretrial Order No. 11.

8. The Court **AWARDS** the Settlement Class Representatives service awards of $250 each, to be paid in addition to the compensation available to the Class.

9. The Court hereby discharges and releases the Released Claims as to the Released Parties, as those terms are used and defined in the Settlement Agreement.

10. The Court hereby permanently bars and enjoins the institution and prosecution by Class Plaintiffs and any Class Member of any other action against the Released Parties in any court or other forum asserting any of the Released Claims, as those terms are used and defined in the Settlement Agreement.

11. The Court further reserves and retains exclusive and continuing jurisdiction over the Settlement concerning the administration and enforcement of the Settlement Agreement and to effectuate its terms. Dkt. No. 7971-1 at ¶ 10.15.

IT IS SO ORDERED.

DATED: _____

_____
THE HONORABLE CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE