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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

ALI ASGHARI, DANIEL TRAN, YUNG KIM, ARA DERSARKISSIAN, and KATRINA NOBLE individually, and on behalf of a class of similarly situated individuals, Plaintiffs, vs. VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, AND AUDI AG, Defendants.	Case No. CV13-02529-MMM-(JEMx) Hon. Margaret M. Morrow CLASS ACTION **PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, COSTS** Date: May 4, 2015 Time: 10:00 am Place: Courtroom 780

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on May 4, 2015, at 10:00 a.m., or as soon thereafter as counsel can be heard, before the Honorable Margaret M. Morrow, in Courtroom 780 of the United States District Court for the Central District of California, located at 255 East Temple Street Los Angeles, California 90012, Plaintiffs will, and hereby do, move for entry of an order awarding attorneys' fees, expenses, costs, and class representative incentive awards. Plaintiffs bring this motion pursuant to Rule 23(h) of the Federal Rules of Civil Procedure on the grounds that the parties' Settlement Agreement authorizes the award, which is also warranted under, *inter alia*, the Consumers Legal Remedies Act, Civ. Code section 1780(e), and the Private Attorney General Statute, Cal. Civ. Proc. Code section 1021.5. The motion is based upon this Notice; the accompanying Memorandum in support thereof; the Declarations of Jordan Lurie, Payam Shahian, Dara Tabesh, Larry Lee, Edward W. Choi, Hovanes Margarian, and Mark Yablonovich; the Declaration of Hon. Howard B. Wiener (Ret.); the Declaration of William Rubenstein; the Declaration of Colin Johns; the Proposed Order; and such argument and other evidence as may be presented at or before the hearing of this motion.

Dated: February 27, 2015

Respectfully submitted,

By: /s/

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Across the country, owners and lessees of certain Audi vehicles began experiencing problems with their engines that resulted in excessive oil consumption. As a result, Plaintiffs Ali Asghari, Daniel Tran, Yung Kim, Ara Dersarkissian, and Katrina Noble filed a class action to remedy these problems. The efforts of Plaintiffs, along with those of their attorneys, have now paid off, resulting in an exceptional Settlement for current and former owners and lessees of the Class Vehicles. The benefits of the Settlement to the Class include at least the following:

Service Adjustment Program: For a period of 18 months after the Notice date, Volkswagen without any time or mileage limitations will provide a free Service Adjustment for Settlement Class Members who did not previously receive one.

Reimbursement For Service Adjustment Prior To Notice Date: Volkswagen without any time or mileage limitations will reimburse Class Members *in full* for all service adjustments (both parts and labor).

Warranty Extension for Current Owners or Lessees: The applicable New Vehicle Limited Warranties is extended from 4 years/50,000 miles to 8 years/80,000 miles, or one year or 12,000 miles from the date of the Service Adjustment, whichever is later, to cover any repairs needed to correct excessive oil consumption. The extension will also cover any future oil consumption test performed by Audi dealers.

Considered individually or in the aggregate, these are outstanding benefits. Indeed, the Service Adjustments and reimbursements for past repairs contemplated by the Settlement provide benefit to the Class of approximately **$23.7 million**. This amount does not even include the value of the extended warranty; nor does it take into account the money consumers will save in the future by avoiding the excessive oil consumption (and associated costs) that plagued the Class Vehicles.

These benefits are particularly notable in light of the economy with which Lead Class Counsel—Strategic Legal Practices, APC ("Strategic") and Capstone Law APC

("Capstone")—managed this case. The instant settlement resolves the claims of three separate actions, now combined, and involves the participation of no fewer than seven separate law firms. Notwithstanding this, Strategic and Capstone, undertook the majority of responsibility for prosecuting this case and allocated work in an efficient manner amongst Plaintiffs' counsel, avoiding unnecessary and duplicative work.

As part of the Settlement, Plaintiffs seek Court approval of a negotiated resolution of their claim for attorneys' fees, expenses, costs, and class representative incentive awards. The underlying Settlement provides substantial benefits to approximately 229,581 current and former owners and lessees of approximately 126,168 Settlement Class Vehicles.

After their negotiations, the parties ultimately agreed that, subject to Court approval, Defendants would pay Class Counsel's[1] attorneys' fees up to $2.3 million, and costs and expenses up to $100,000. (*See* Settlement Agreement § C.)[2]

The Court's function under Rule 23(h) is to ensure that the parties' agreement on fees and expenses is reasonable and does not reflect a collusive settlement that places the interests of counsel above the interests of the Class. Here, the parties carefully separated their negotiations for class recovery from their negotiation for attorneys' fees and expenses, so there can be no possibility of collusion. Moreover, the amount the parties agreed upon is reasonable under either the percentage-of-the-award or lodestar/multiplier methods for calculating an appropriate fee award. (Declaration of William Rubenstein ["Rubenstein Decl."] ¶¶ 18-36.)[3]

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[1] Lead Class Counsel consists of Strategic and Capstone. (Settlement Agreement § I. Definitions, F.) Strategic, Capstone, Diversity Law Group, P.C., Law Office of Choi & Associates, EcoTech Law Group, P.C., and the Law Office of Hovanes Margarian, are "Plaintiffs' Counsel." (*Id.*, Definitions, Q.)

[2] Among the firms seeking fees for work done in this case is former counsel for Plaintiff Ali Asghari, the Law Offices of Mark Yablonovich, which withdrew from this case on March 25, 2013. (*See* CM/ECF Dkt. Nos. 59-61.)

[3] In *Browne v. Am. Honda Motor Co.*, No. CV 09-06750 MMM DTBX, 2010 WL 9499073, at *7 (C.D. Cal. Oct. 5, 2010), this Court accepted Mr. Rubenstein's analysis of attorney hourly billing rates in connection with a motion for attorney fees.

II. FACTS RELEVANT TO MOTION

A. The Proposed Settlement's Benefits to the Class

The Settlement provided remarkable benefits to the Class, including:

- Service Adjustment Program: Under the Settlement, owners and lessees will now be able to obtain oil consumption repairs from Volkswagen and Audi dealers without pre-conditions, *i.e.*, without any mileage/year limitations and without having to submit their vehicles to their dealers for diagnostic testing in order to verify the problem. (Settlement Agreement § II.B.) This is an exceptional remedy, because dealers must perform the necessary repairs on **every** vehicle that has not previously received the repairs, regardless of whether a vehicle is currently experiencing any oil consumption problem, so long as certain documentary proof of compliance with the oil and oil filter maintenance requirements and schedule is provided. (*Id.*) More importantly, this remedy was made available to Settlement Class Members as soon as the Class Notices were sent, and eligibility only requires making an appointment with an authorized Audi dealer within 18 months of the Notice Date. (*Id.*)
- Reimbursements for Past Repairs and Replacements: Class Members who paid for a Service Adjustment—in part or in whole—prior to the Notice date will be entitled to a 100% reimbursement of those costs. (Settlement Agreement § II.A.) The Class Members complete and submit the claim form within 150 days of the Class Notice, along with sufficient documentary proof of the repair expense. (*Id.*)
- Warranty Extension: Volkswagen will also extend the applicable New Vehicle Limited Warranties for the Settlement Class Vehicles from 4 years/50,000 miles to 8 years/80,000 miles (whichever occurs first) to cover any engine repair needed to correct any excessive oil consumption by an authorized Audi dealer ("Extended Warranty"). (Settlement Agreement § C.) Under the Settlement Agreement, the Extended Warranty will cover a period of either (i) eight years or 80,000 miles (whichever occurs first) from the In-Service Dateof the Settlement Class Vehicle, or (ii) one year or 12,000 miles (whichever occurs first) from the date that the Service Adjustment was

performed, whichever date occurs later. (*Id.*)

1. The value of the Service Adjustment Program

The value of the Service Adjustment program is more than sufficient to support the fee request. Based on data produced by Defendants, Plaintiffs' expert estimates that, if a free Service Adjustment were performed on the remaining vehicles for which a Service Adjustment had not previously been performed, the value to the Class Members would be $23,671,151 (Declaration of Colin Johns ["Johns Decl.'] ¶¶ 13-18.)[4]

The number of Class Vehicles on which an oil consumption Service Adjustment has been performed through the end of January 2015 is 66,285. (*Id.* ¶ 14.) The total number of Class Vehicles covered by the Settlement Agreement is 126,168. (*Id.* ¶ 15.) The number of Class Vehicles on which a Service Adjustment has not been performed as of the end of January 2015 is, therefore, 59,883 (126,168 less 66,285). (*Id.* ¶ 16.)

Defendant has stated that the average cost of a Service Adjustment (parts and labor) is $412.95, and that the amount they would pay to dealers for performance of a Service Adjustment is $359.29. (*Id.* ¶ 18.)

Accordingly, if a free Service Adjustment were performed on these 59,883 Class Vehicles, the value received by Class Members under the Settlement Agreement would be $23,671,151 (59,883 * $395.29). (*Id.*) Stated differently, $23,671,151 is the amount that Defendants have made available for Class Members to claim with respect to the free Service Adjustment. (*Id.*)

2. Additional value provided by the Settlement

According to Plaintiffs' expert, any Class Vehicle to which the reimbursement program component of the Settlement Agreement applies would be included in the 96,424 vehicles calculated above. (Johns Decl. ¶ 21.) As a result, the amounts

[4] In *Aarons v. BMW of N. Am., LLC*, No. CV 11-7667 PSG CWX, 2014 WL 4090564, at *12 (C.D. Cal. Apr. 29, 2014) objections overruled, No. CV 11-7667 PSG CWX, 2014 WL 4090512 (C.D. Cal. June 20, 2014), a judge in this district cited Mr. Johns's declaration with approval in connection with his method of evaluating a consumer defect class action settlement.

reimbursable under this provision would be subsumed within the $23.7 million settlement value described above. (*Id.*) Further, this $23.7 million value does not take into account any value of the Settlement's Extended Warranty. (*Id.* ¶ 23.)[5] *See In re Audi and VW Warranty Extension Litig.*, No. 07-01790, at 27-28 (D. Mass.) (valuing extended warranties at their aggregate retail price of $73,938,851).[6]

3. Advantages of this Settlement over those in analogous cases

As discussed further in the parties' final approval papers, a number of features in analogous settlement agreements are not present here. First, settlement agreements in analogous cases often provide only some automobile owners relief, typically tethering relief to proof of damage. This Settlement ensures that 100% of the Class Members who have not yet received a Service Adjustment are eligible to receive one for free, simply by driving into an Audi service center, regardless of whether the problem has manifested itself. The Settlement is therefore uniquely both reparative and prophylactic. (Rubenstein Decl. ¶ 34.)

Second, settlement agreements in analogous cases often provide a cap to the amount of reimbursement class members can receive. This settlement agreement provides no such cap. (*Id.*)

Third, many settlement agreements allow class members to recover only a portion of the amount expended to correct a vehicle defect, and are subject to certain time and mileage limitations. This settlement agreement allows class members to receive 100% of the cost of repairs, and is not subject to any such limitation. (*Id.*)

[5] The $23.7 million estimate also does not include a further benefit to Class Members: the Service Adjustments will substantially decrease the number of oil changes that Class Members need to perform.

[6] In addition to the extended warranty benefit, Plaintiffs have conferred additional benefits to the class in the form of notice and claim administration costs. *See Staton v. Boeing Co.*, 327 F.3d 938, 975 (9th Cir. 2003) (holding that the cost of providing notice to the class can reasonably be considered a benefit to the class).

Fourth, other settlement agreements set much shorter claim windows than this settlement, which allows class members seeking reimbursement 150 days to file a claim and class members seeking service repair 18 months for such a repair appointment. (*Id.*)

B. Plaintiffs' Counsel's Expertise and Tenacity Were Instrumental to Achieving the Settlement Benefits

As set forth below, the benefits conferred on the Class are largely attributable to the expertise and tenacity of Plaintiffs' Counsel, who worked strategically, aggressively, diligently, and tirelessly for about three years without any pay or reimbursement for the substantial time and expenses devoted to the Class.

Plaintiffs' Considerable Investigation and Discovery:

Both prior to and after filing these actions, Plaintiffs thoroughly investigated and litigated this case. (*See, e.g.*, Shahian Decl. ¶¶ 12-19; Lurie Decl. ¶¶ 2-5; Declaration of Edward W. Choi ["Choi Decl."], ¶ 2; *see also generally* Lee Decl., Declaration of Hovanes Margarian ["Margarian Decl."].) Among other things, Plaintiffs fielded inquiries from prospective Class Members; consulted and retained automotive experts; researched publicly available materials and information provided by the National Highway Traffic Safety Administration ("NHTSA") concerning consumer complaints about excessive oil consumption; reviewed and researched consumer complaints and discussions of excessive oil consumption in articles and forums online; reviewed various manuals and technical service bulletins discussing the alleged defect; conducted research into the various causes of actions; drafted three oppositions to motions to dismiss; and two oppositions to motions to transfer. (*Id.*)

Plaintiffs also propounded discovery on Defendants. (Shahian Decl. ¶ 18; Lurie Decl. ¶ 3.) In response, Defendants produced over 80,000 lines of nationwide warranty claims data in an excel spreadsheet and over 100,000 pages of documents, including: owners' manuals, maintenance and warranty manuals, design documents (*e.g.*, technical drawings), VIN Decoders, technical service bulletins, field reports, customer comments detail reports, and other documents. (*Id.*)

In addition to reviewing Defendant's documents, Plaintiffs also conducted their own testing, which included, among other things, hiring experts, purchasing an exemplar Class Vehicle for expert analysis, and conducting extensive testing regarding the alleged oil consumption defect, which allowed Plaintiffs' counsel to evaluate Defendants' representations concerning the alleged excessive oil consumption issue and repair solutions. (Shahian Decl. ¶ 19; Lurie Decl. ¶ 3.) Plaintiffs prepared for and took the deposition of Defendants' Rule 30(b)(6) corporate representative in New York, further confirming that the Settlement is fair and reasonable. (*Id.*) Plaintiffs also scrutinized the repair logs to understand the true extent of the problem, including the mileage of the vehicles that were fixed, the geographic locations, and whether there were accompanying repairs. (*Id.*)

In short, in light of the pervasiveness of the oil consumption problem, Plaintiffs' Counsel made an exhaustive effort to ensure that any negotiated remedy will directly benefit the Class as a whole.

<u>The Parties' Protracted Arm's-Length Settlement Negotiations</u>:

The proposed Settlement was the culmination of protracted discussions between the Parties, extensive consultation with their experts, discovery, and thorough analysis of the pertinent facts and law at issue. (Shahian Decl. ¶¶ 20-26; Lurie Decl. ¶¶ 6-10.)

The Parties initially discussed the potential resolution of this matter when they met in person in New York in advance of their July 29, 2013 Rule 26 conference to discuss Plaintiffs' discovery requests and other related issues. (Shahian Decl. ¶ 21.) That meeting did not result in a resolution, and the Parties continued to litigate this matter. (*Id.*) However, the Parties began settlement negotiations in earnest following the Court's July 29, 2013 tentative ruling, which denied in material part Defendants' Motion to Dismiss on July 29, 2013. (*Id.* ¶ 22.) To that end, the Parties met in New Jersey in October 2013 and had numerous follow-up telephone conferences in the following months to discuss the contours of a potential settlement. (Lurie Decl. ¶ 6.) During these negotiations, the Parties advocated their positions, discussed the terms of a fair and

appropriate settlement, and were able to reach an agreement on a number of material terms of the proposed relief to the Class, but were unable to reach an agreement on all the material terms. (Shahian Decl. ¶ 22; Lurie Decl. ¶ 6.)

Accordingly, on March 27, 2014, the Parties attended a mediation in San Diego with the Honorable Howard B. Wiener. (Declaration of Howard B. Wiener ["Wiener Decl."] ¶ 4.) In advance of the mediation, the Parties submitted mediation briefs setting forth their positions. (*Id.* ¶ 5.) At mediation, the Parties were able to reach an agreement on all material terms of the proposed relief to the Class. (*Id.* ¶ 6.) Only after the Parties had reached this agreement did they negotiate attorneys' fees, costs, and incentive awards. (*Id.* ¶ 7.) Ultimately, the Parties reached an agreement on these terms as well. (*Id.* ¶ 8.) Subsequent to the mediation, *inter alia*, the Parties formalized the Settlement Agreement, including drafting and finalizing the notice to the class and claim form.

Class Counsel's Ongoing Efforts to Enforce the Settlement Terms:

Following this Court's order granting preliminary approval (Dck. No. 156) and dissemination of the Class Notice, Class Counsel received over a hundred calls from Class Members inquiring as to how they can participate in the class action settlement. (Lurie Decl. 12; Shahian Decl. ¶ 25.) Class Members also had questions as to the scope of the benefits. (*Id.*) Class Counsel answered Class Members' questions, included following up when needed, and is continuing to monitor the response of Class Members to the Settlement. Class Counsel expects to field many more calls from Class Members in the ensuing months. (*Id.*) As part of their service to Class Members, Class Counsel researched the laws in different states regarding the obligations of automobile repair businesses to maintain purchase and repair records so as to better advise Class Members who have lost or misplaced their repair documentation. (*Id.*)

Moreover, Class Counsel called over a hundred Audi Service Centers—across all fifty states as well as Puerto Rico—to confirm that Defendants have advised them of the Class Action Settlement and that they are aware of their obligations under that Settlement. (Lurie Decl. ¶ 13.) Class Counsel personally spoke to either the Service Manager or the

Service Advisor at numerous Service Centers where Class Counsel would determine if the Audi personnel understands the terms and conditions of the Settlement. (*Id.*) In the course of these conversations, Class Counsel also learned that most Service Centers contacted have already performed numerous Service Adjustments under the program. Based on this rigorous enforcement effort, Class Counsel is satisfied that Defendants are complying with their duty to fully advise Audi dealerships and service centers of their obligation to provide Service Adjustments to Class Members. (*Id.*)

III. ARGUMENT

At the conclusion of a class action, Plaintiffs' Counsel may apply for an award of "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h); *see also Sadowska v. Volkswagen Group of America*, No. 11-00665, 2013 WL 9600948, at *7 (C.D. Cal. Sept. 25, 2013). The Court has an obligation to ensure that the award of attorneys' fees, even if negotiated, is reasonable. *See In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). As Plaintiffs' right to a fee arises under state law, settled *Erie* principles require application of California law in assessing the amount of a reasonable fee. *See Mangold v. Cal. Public Utilities Commission*, 67 F.3d 1470, 1478 (9th Cir. 1995) (in diversity actions, state law applies "in determining not only the right to fees, but also in the method of calculating the fees"). Here, Plaintiffs seek attorneys' fees and costs pursuant to the parties' agreement.[7] (Rubenstein Decl. ¶ 1 n.5 (citing Fed. R. Civ. P. 23(h).)

A. The Settlement Resulted From Arm's-Length Negotiations

In class actions, the parties may properly negotiate not only the settlement of the action itself, but also the payment of attorneys' fees. *Evans* v. *Jeff D.*, 475 U.S. 717, 734-

[7] Under California law, Plaintiffs' claim to attorneys' fees and costs is also authorized under the Consumers Legal Remedies Act, California Civil Code section 1780(e), and the Private Attorney General Statute, California Civil Procedure section 1021.5. Further, Plaintiffs are also entitled to fees and expenses under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(2), and the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1794(d).

35, 738 n.30 (1980). This is in keeping with the powerful public policy of encouraging and approving non-collusive settlements, including those in class actions. *In re Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009) ("'Public policy generally favors the compromise of complex class action litigation.'") (citing *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723, n.14 (2006) and *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000)).

When considering whether an agreed-upon fee was negotiated at arm's-length, the court may apply different levels of scrutiny. "[S]ince the proper amount of fees is often open to dispute and the parties are compromising precisely to avoid litigation, the court need not inquire into the reasonableness of the fees even at the high end with precisely the same level of scrutiny as when the fee amount is litigated." *Staton*, 327 F.3d at 966. Here, the Parties have negotiated $2.3 million in attorneys' fees after resolving the class benefits, following intense and thorough arm's-length negotiations between the parties (and ultimately before an experienced and well-respected mediator[8]), conducted by experienced counsel who, by having conducted extensive investigation, research, and discovery, were well-informed of the case's strengths and weaknesses. (Weiner Decl. ¶¶ 6-9.) Furthermore, any fee not awarded will revert to Defendants and not benefit the Class, for whom their attorneys have achieved tremendous benefits. Therefore, at the outset, the Court should apply the appropriate level of scrutiny,

[8] The involvement of a mediator in settlement negotiations helps ensure that the proceedings are free of collusion and undue pressure. *In re Apple Computer, Inc. Derivative Litig.*, 2008 WL 4820784, at *3 (N.D. Cal. 2008) (citing *D'Amato v. Deutsche Bank*, 236 F. 3d 78, 85 (2d Cir. 2001)). As evidenced by the declaration of the mediator, Justice Howard B. Wiener (Ret.), the negotiations were protracted, contested, substantive, and conducted in the utmost good faith. (*See generally* Wiener Decl.) In sum, Justice Wiener's participation weighs considerably against any inference of a collusive settlement. *Sadowska*, 2013 WL 9600948, at *4 (finding that the settlement was entitled to a presumption of fairness because, among other things, "arms-length negotiations took place before respected mediator Judge Wiener, a former California Superior and Appellate Court Judge."). *See also In re Apple Computer, Inc.*, 2008 WL 4820784, at *3 (presentation of evidence by the parties that proposed award of attorneys' fees was negotiated separately from class relief is further evidence that negotiations were conducted at arm's length).

deferential to the parties' careful considerations and consent, in evaluating the separately negotiated fees requested by Plaintiffs here.

B. According to any Accepted Method of Calculation, Plaintiffs' Fees Are Reasonable

"Existing Ninth Circuit precedent has applied California state law in determining not only the right to fees, but also in the method of calculating the fees." *Mangold v. Cal. Pub. Utils. Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995). Under both California and federal law, "courts possess the 'discretion to apply either a lodestar method or the percentage-of-the-fund method in calculating a fee award.'" *Fraley v. Facebook, Inc.*, 2013 WL 4516806, *2 (N.D. Cal. Aug. 26, 2013) (quoting *Fischel v. Equitable Life. Assur. Soc'y*, 307 F.3d 997, 1006 (9th Cir. 2002)); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001) (courts may use "percentage of recovery method" or "lodestar/ multiplier method" to calculate attorney fees in civil class actions). California courts specifically note the advantages of using the percentage-of-the-award method over the lodestar/multiplier method. *See, e.g.*, *Lafitte v. Robert Half Int'l Inc.*, 231 Cal. App. 4th 860, 878 (2014) (noting application of the percentage method in California cases); *Lealao v. Beneficial Calif.*, 82 Cal. App. 4th 19, 50-51 (2000) (analyzing fee request under the percentage method of the maximum payout even "though the settlement did not create a common fund out of which fees are to be paid").

Whether the percentage or lodestar method is used, "the critical inquiry is whether the 'fees and expenses ultimately awarded [are] reasonable in relation to what the plaintiffs recovered.'" (*See* Rubenstein Decl. ¶ 19 (citing *Koumoulis v. LPL Fin. Corp.*, No. 09CV1973-DMS BLM, 2010 WL 4868044, at *5 (S.D. Cal. Nov. 19, 2010) (alteration in original) (quoting *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000)).)

1. Plaintiffs' request for attorneys' fees is reasonable under the percentage-of-the-award method

Under the "percentage-of-the-award"[9] method for calculating attorney fees, federal courts frequently evaluate the reasonableness of a fee request by viewing it as a percentage of the total value of settlement fund as a benefit to the Class. *See Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989). This method is appropriate where, as here, "the class benefit can be monetized with a reasonable degree of certainty." *Johansson-Dohrmann v. Cbr Systems, Inc.*, 2013 WL 3864341, *8 (S.D. Cal. Jul. 24, 2013) (citing *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26-27 (2000); *see also Bolton v. U.S. Nursing Corp.*, 2013 WL 5700403, *5 (N.D. Cal. Oct. 18, 2013) ("[P]ercentage-of-the-fund method is appropriate where the amount of the settlement is fixed without any reversionary payment to the defendant."); *Smith v. CRST Van Expedited, Inc.*, 2013 WL 163293, *4 (S.D. Cal. Jan. 14, 2013) (same).

Automobile defect cases of this type are amenable to precise valuation justifying application of the percentage-of-the-award method, *i.e.*, by calculating the fee request as a percentage of the total value of the warranty provisions conferred. *See Alin v. Honda Motor Co.*, No. CIV.A. 08-4825 KSH, 2012 WL 8751045, *19 (D.N.J. Apr. 13, 2012) (awarding fees of $2,423,523.23 based on 6.3% of the benefit conferred, which consisted of partial reimbursements in connection with air conditioning system problems); *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 609 (D.N.J. 2010) *rev'd and remanded sub nom. Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170 (3d Cir. 2012) (awarding fees of $9,207,248.19 based on 13.3% of the benefit conferred, which consisted of reimbursements and service work in connection with water leakage problems); *In re Toyota Motor Corp.*, No. 8:10ML-02151- JVS, 2013 U.S. Dist. LEXIS 94485, *211 (C.D. Cal. June 17, 2013) (valuing the relief involving the installation of a break override

[9] This is also referred to as the "percentage method," "percentage-of-the-recovery method," "percentage-of-the-fund method," "common fund method," etc.

system at $400 million); *In re Audi and Volkswagen Warranty Extension Litig.*, No. 07-01790 (D. Mass.), Dck. No. 430 at 32 (valuing reimbursements, oil-change discounts, extended warranties, and education campaign at $101,148,498 and awarding $15,468,000 in fees, which is equivalent to 15.3% of the benefits conferred). Here, as explained above in § II.A, *supra*, the Service Adjustment and reimbursement portions of the settlement have conferred a value to the Class of about $23.7 million. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 480 (1980) (explaining a class action settlement is valued based on total benefits made available, not just those claimed, because whether or not a class member exercises his right to recovery in a common fund, the right itself is a benefit "created by the efforts of the class representatives and their counsel," as each class member is an equitable owner of his share of the recovery, and "latent claims against unclaimed money in the judgment fund may not defeat each class member's equitable obligation to share the expenses of litigation").[10] Accordingly, the Court may use the percentage-of-the-award method to evaluate the reasonableness of Plaintiffs' fee request in light of that valuation.

In the Ninth Circuit, 25% of the overall recovery is considered the "benchmark award for attorneys' fees" when applying the percentage-of-the-award method. *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1029 (9th Cir. 1998). Significantly, Plaintiffs' request for attorney fees of $2.3 million is less than 10% of the value of Plaintiffs' recovery under the Settlement, and as such, is extremely reasonable under the circumstances. *See In Re Nissan Radiator/Transmission Cooler Litigation*, 2013 WL 4080946, at *16 (S.D.N.Y. 2013) (approving requested fee of less than ten percent of the estimated value of the settlement in a consumer defect case, which is comparable to fees awarded in similar class actions) (citing *Henderson v. Volvo Cars of N. Am. LLC*, 2013 WL

[10] Notably, a district court's failure to abide the Supreme Court's directive in Boeing when calculating counsel's fee constitutes reversible error. *See Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423 (2d Cir. 2007) (district court erred in calculating the percentage of the fund on the basis of the claims made against the fund, rather than on the entire fund created by the efforts of counsel).

1192479, at *18 (D.N.J. Mar. 22, 2013)); *see also In re Warner Communications Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985) (collecting cases and noting that 10% of the estimated value of settlement is less than the percentage traditionally awarded in class action litigations). (Rubenstein Decl. ¶ 36.)[11]

Nevertheless, the 25% benchmark only serves as the starting point of the court's analysis and should be adjusted, after taking into account various factors such as (1) the quality of the settlement, (2) the amount of work performed by Class Counsel, and (3) expert handling of the case. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002) (affirming fee award of 28% of the settlement sum); *see also Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301(9th Cir. 1990) (affirming award of 25% of the settlement sum). Here, these factors all militate in favor of granting Plaintiffs' request for attorney fees.

First, as explained above in § II.A, *supra*, the Settlement, by any measure, produced an exceptional benefit to the Class. Second, as explained above in § II.B, *supra*, Plaintiffs' Counsel spent a considerable amount of time and effort using their expertise to produce the substantial benefits to the Class provided by the Settlement. Third, in comparison to the extraordinary success achieved, Plaintiffs' expertise in handling of the case resulted in eminently fair amount in attorneys' fees. Indeed, the requested award falls on the extreme low end of percentage-of-the-recovery cases, as "[i]n the Ninth Circuit particularly, the most common percentages awarded were 25 percent, 30 percent and 33 percent." *In re Toyota Motors*, 2013 U.S. Dist. LEXIS 94485, at *218 (citing a survey conducted by the plaintiffs' expert of Ninth Circuit cases from 2006 and 2007); *see also Vizcaino*, 290 F.3d at 1043 (surveying fee awards from dozens of large common fund settlements in the Ninth Circuit, finding that most fell between 20-30%).

[11] The actual value of the recovery exceeds this $2.3 million value, given the value conferred by the Extended Warranty, and the avoidance of future costs associated with excessive oil consumption (and related maintenance) by the Class Vehicles.

Given that these factors would normally support awarding a recovery *higher* than the 25% benchmark, the fee request here, which represents less than 10% of the recovery, is reasonable and should be awarded for Plaintiffs.

2. Plaintiffs' request for attorneys' fees is reasonable in light of a lodestar cross-check

The lodestar/multiplier method is a two-step process of fee calculation under which the Court first determines a lodestar value for the fees by multiplying the time reasonably spent by counsel on the case by a reasonable hourly rate. *In re Consumer Privacy Cases*, 175 Cal. App. 4th at 556-57. The Court may then enhance the lodestar by applying a multiplier to take into account the contingent nature and risk associated with the action, as well as other factors, including the degree of skill required and the results achieved for the class. *Id.*; *Ketchum v. Moses*, 24 Cal. 4th 1122, 1130, 1137 (2001).

The lodestar approach is used mainly in cases where, unlike here, "there is no way to gauge the net value of the settlement or any percentage thereof." *Hanlon*, 150 F.3d at 1029; *see also Bluetooth*, 654 F.3d at 941, 942 (lodestar method appropriate when relief obtained "is primarily injunctive in nature and thus not easily monetized," whereas in common-fund cases "the benefit to the class is easily quantified"); 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* §14.7 (4th ed. 2002; Supp. 2013) (hereafter "*Newberg on Class Actions*") ("[T]he lodestar method is often employed precisely because there is no common fund or because the monetary outcome of the lawsuit is not the key component of the plaintiff's recovery."). Nevertheless, using the lodestar/multiplier method is useful as a "cross-check" in confirming the value of a fee award calculated according to the percentage-of-the-award method. *See Vizcaino*, 290 F.3d at 1050; *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997) ("It is reasonable for the district court to compare the lodestar fee, or sum of lodestar fees, to the 25% benchmark, as one measure of the reasonableness of the attorneys' hours and rates."); *Kakani v. Oracle Corp.*, No. C 06-06493 WHA, 2007 U.S. Dist. LEXIS 95496, at *6 (N.D. Cal. Dec. 21, 2007).

As explained below, applying the lodestar/multiplier cross-check to this case confirms that the fee award negotiated by the parties is reasonable. Indeed, approving the fee award provided by the parties' Settlement Agreement would be equivalent to awarding Plaintiffs' Counsel the product of their lodestar and a modest multiplier calculated presently to be approximately 1.43.

(a) Plaintiffs' Counsel's lodestar calculation

The lodestar value of Plaintiffs' Counsel's services is calculated by multiplying their time spent by reasonable hourly rates for attorneys of similar skill and experience. *In re Consumer Privacy Cases*, 175 Cal. App. 4th at 556. Plaintiffs' Counsel devoted a significant amount of their time to this matter over the course of about three years, generating a total lodestar to date of $1,601,509.25, which is based on over 3051 hours of attorney time at their customary hourly rates. (Labat Decl. ¶ 15; Shahian Decl. ¶¶ 31-33; Tabesh Decl. ¶¶ 6-7; Lee Decl. ¶¶ 10-11; Choi Decl. ¶ 10; Margarian Decl. ¶ 17; Yablonovich Decl. ¶ 5.[12]) *See Winterrowd v. American General Annuity Ins. Co.*, 556 F.3d 815, 827 (9th Cir. 2009) ("In California, an attorney need not submit contemporaneous time records in order to recover attorney fees . . . . Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.") (quoting *Martino v. Denevi*, 182 Cal. App. 3d 553, 558 (1986)); *see also Lobatz v. U.S. West Cellular of California, Inc.*, 222 F. 3d 1142, 1148 (9th Cir. 2000) (detailed timesheets not required where fees were agreed upon in settlement agreement).

Plaintiffs' Counsel's hourly rates, which vary based on the experience and skill of the attorney performing the work, are fully set forth in the separate Declarations of Jordan Lurie, Payam Shahian, Dara Tabesh, Larry W. Lee, Edward W. Choi, Hovanes Margarian, and Mark Yablonovich. (Labat Decl. ¶¶ 11-13; Shahian Decl. ¶¶ 31-33; Tabesh Decl. ¶¶ 1-7; Lee Decl. ¶ 10; Choi Decl. ¶¶ 9-10; Margarian Decl. ¶¶ 2-3 & 9-17;

[12] Former counsel is entitled to recover fees. *See, e.g., L.A. Printex Indus. v. William Carter Co.*, 2010 U.S. Dist. LEXIS 130529, at **20-21 (C.D. Cal. 2010).

Yablonovich Decl. ¶ 7.)

Plaintiffs have asked Professor William Rubenstein, the Sidley Austin Professor of Law at Harvard Law School and sole author of *Newberg on Class Actions*, to conduct an analysis of the requested fee award and to opine on its reasonableness.

First, Professor Rubenstein attests to the reasonableness of Plaintiffs' Counsel's hours. (Rubenstein Decl. ¶¶ 27 (analyzing 13 automobile defect cases an concluding that based on these, the hours spent by counsel in the instant matter "are completely standard) & 28 (explaining that based on a qualitative assessment of the tasks undertaken, "Class Counsel's less-than-1,000 hours/year of time billed to this case is reasonable.").)[13]

Second, Professor Rubenstein attests to the reasonableness of Plaintiffs' Counsel's hourly rates. (Rubenstein Decl. ¶ 23 (analyzing 16 Central District of California decisions that approved specific fee rates in class action cases in the past five years and concluding that Plaintiffs' Counsel's "fees are completely standard.").) *See Winterrowd*, 556 F. 3d at 827 (affirming district court's holding that class counsel's rate was reasonable, on the grounds that the district court's hourly rate was in line with the range suggested by plaintiff's expert).

Indeed, Plaintiffs' Counsel's hourly rates have recently been approved as reasonable in several other automobile defect class action cases. *Aarons*, 2014 WL 4090564, at *16; *Sadowska*, 2013 WL 9600948, at *10.; *Kennedy-Lebar et al. v. Volkswagen Group of America, Inc.*, Case No. 10-05126-KM-MF, Dkt. No. 100 (D.N.J. 2013); *Keegan v. American Honda Motor Co., Inc.*, Case No. 10-cv-09508-MMM-AJW, Dkt. No. 171 (C.D. Cal. Jan. 1, 2014). (*See also* Shahian Decl. ¶ 40; Labat Decl. ¶ 13.)

(b) An enhancer/multiplier to the lodestar is justified

The requested fees of $2.3 million represent a modest multiplier of 1.43 on Plaintiffs' Counsel's $1,601,509.25 lodestar. A multiplier of 1.43 is well within the range

[13] Indeed, comparing the instant action against 13 other class actions, Professor Rubenstein concludes that the number of hours expended by Plaintiffs' Counsel is within the range of hours expended by counsel in other class action cases, and are thus reasonable in relation to other cases. (Rubenstein Decl. ¶¶ 23-27.)

of multipliers typically applied by California courts, demonstrating that the parties negotiated at arm's-length and reached agreement on a reasonable fee to be paid Plaintiffs' Counsel. *See, e.g.*, *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 551 (2009) (affirming a 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) ("Multipliers can range from 2 to 4 or even higher."); *Parkinson*, 796 F. Supp. 2d at 1171 (applying lodestar/multiplier analysis pursuant to fee-shifting provisions of the CLRA and Private Attorney General statute); *Sadowska*, 2013 WL 9600948, at *9 (applying a multiplier of 1.37 and awarding $2.2 million in fees to counsel, who obtained a new warranty for transmission parts for the class); *Browne v. American Honda Motor Co., Inc.*, No. CV 09-06750 (C.D. Cal. 2010) (applying multiplier of 1.5 and awarding $2 million in fees for settlement authorizing partial reimbursement to class members for costs of replacing brake pads).

Awarding Plaintiffs' Counsel an effective multiplier of 1.43 is appropriate in light of the various factors courts consider when assigning a multiplier, which may include the: (1) risks presented by the litigation; (2) results obtained on behalf of the class; (3) skill exhibited by counsel; (4) continuing obligation to devote time and effort to the litigation; and (5) extent to which the litigation precluded other employment by attorneys. *See, e.g.*, *In re Consumer Privacy Cases*, 175 Cal. App. 4th at 556; *Natural Gas Anti- Trust Cases I, II, III & IV*, 2006 WL 5377849, at *3 (Cal. Super. 2006). (*See* Rubenstein Decl. ¶¶ 29-32 (analyzing cases presenting similar circumstances and empirical studies on such cases and concluding that multiplier of 1.43 proposed here below the mean for all cases analyzed, below the Ninth Circuit mean, below the mean for consumer defect casts, and only slightly above the mean for automobile defect cases).)

<u>Class Counsel faced considerable risks in taking this case</u>

Attorneys are entitled to a fee larger than just their lodestar when their compensation is contingent in nature. *See Vizcaino*, 290 F.3d at 1049-50. This enhancement stems from the "established practice in the private legal market to reward attorneys for taking the risks of non-payment by paying them a premium over their

normal hourly rates for winning contingency cases." *In re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994); *see also In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. Jan. 9, 2008) ("The importance of assuring representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis to a larger fee than if they were billing by the hour or on a flat fee."). As attorneys pursuing claims on contingency will sometimes lose after expending thousands of hours, and often advancing tens of thousands in expenses, despite litigating diligently and expertly, an enhancement ensures that the risks of contingency representation do not outstrip the incentives to pursue claims on behalf of consumers or employees. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1333 (2001) (""A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.").

Plaintiffs' Counsel also knowingly assumed a significant financial risk when they filed this case. In addition to the 3051.15 hours of time spent prosecuting this action, Plaintiffs' Counsel spent $140,315.79 in costs, which they would not have recovered in the event of no recovery on behalf of the Class.[14] (Rubenstein Decl. ¶ 33 (explaining risks undertaken by Plaintiffs' Counsel.)

[14] Indeed, this case presented several difficult legal issues for Plaintiffs' counsel to address, and doing so was instrumental in convincing Defendant to settle on such favourable terms. As but one example, while the existence of an oil consumption is a question of fact, the existence of a defect may not lead to legal liability under federal or state statutes. *See, e.g.*, *Smith v. Ford Motor Co.*, 749 F. Supp. 2d 980, 991-92 (N.D. Cal. 2010) (granting defendant's motion for summary judgment and finding that alleged ignition-lock defect did not present a safety risk), *aff'd*, 462 F. App'x 660 (9th Cir. 2011). Accordingly, Plaintiffs must meet a high burden to establish the necessary elements for violation under state and federal consumer protection and warranty statutes. Likewise, Plaintiffs may well not have been able to maintain class status through trial, as plaintiffs who bringing automotive defect actions are frequently denied class certification due to lack of common proof. *See, e.g.*, *Grodzitsky v. Am. Honda Motor Co.*, No. 2-01142-SVW, 2014 U.S. Dist. LEXIS 24599 (C.D. Cal. Feb. 19, 2014); *Edwards v. Ford Motor Co.*, No. 11-1058-MMA, 2012 U.S. Dist. LEXIS 81330, *21-22 (S.D. Cal. June 12,

A brief survey of the outcomes of recent automobile defect class actions underscores the enormous risks attendant to such an undertaking. *See, e.g.*, *Grodzitsky v. Am. Honda Motor Co.*, No. 2-01142-SVW, 2014 U.S. Dist. LEXIS 24599 (C.D. Cal. Feb. 19, 2014) (denying certification due to lack of evidence that common materials were used for all defective "window regulators" in the class); *Edwards v. Ford Motor Co.*, No. 11-1058-MMA, 2012 U.S. Dist. LEXIS 81330, **21-22 (S.D. Cal. June 12, 2012) (denying certification because Plaintiffs failed to show that the sudden acceleration problem is caused by a common design defect in the electronic throttle system); *Cholakyan v. Mercedes-Benz USA, LLC*, 281 F.R.D. 534, 553 (C.D. Cal. 2012) ("There is also no evidence that a single design flaw that is common across all of the drains in question is responsible for the alleged water leak defect . . . ."). (*See* Rubenstein Decl. ¶ 33 ("Class Counsel invested more than 3,000 hours in this case, as well as out-of-pocket expenses, which means that it effectively lent the class nearly $2 million of its own money; the firms involved risked losing all of that money on the outcome of this case and invested much of it when the case's outcome was uncertain.").

<u>The results obtained on behalf of the Class were significant</u>

As explained above in § II.A, *supra*, Plaintiffs' Counsel's efforts resulted in an excellent Settlement, including making available to Class Members a Service Adjustment program, reimbursement for past repairs and replacements, and a warranty extension. This provides Class Members with relief similar to what each might have achieved were the Class to have prevailed at trial. Nevertheless, if Plaintiffs *had* litigated this action through trial and ultimately obtained a judgment against Defendants, there is no guarantee that the judgment would be superior to the Settlement. *See, e.g.*, *Samuel-Bassett v. Kia Motors America, Inc.*, 34 A.3d 1 (Penn. 2011) (nearly 12 years after the commencement of the action—following, among other things, a contested motion for class certification, trial, post-trial motions, and appeal to the Superior Court—the Supreme Court of

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2012); *Cholakyan v. Mercedes-Benz USA, LLC*, 281 F.R.D. 534, 553 (C.D. Cal. 2012).

Pennsylvania ultimately affirmed an award of $600 for brake repairs for each class member, which was based on the class vehicles having a useful life of 100,000 miles).

Moreover, Plaintiffs' Counsel should be rewarded for resolving the Class Action expeditiously. The efficiency of the resolution improves the quality of the Settlement because the parties can locate Class Members with greater ease and distribute benefits more readily than if the case had dragged on. Conversely, awarding a lower amount because Plaintiffs' Counsel settled the matter relatively quickly would distort financial incentives by encouraging counsel to needlessly prolong litigation. It is for this reason that courts reject awarding a lower fee when a case is resolved early. *See, e.g., In re Vitamin Cases*, 2004 WL 5137597, at *12 (San Francisco Sup. Ct., 2004) (holding that limiting fees because the action settled early would "create a perverse financial incentive where, as here, Plaintiffs' Counsel negotiated an outstanding recovery without subjecting their clients to the uncertainties of class certification or trial."). (*See also* Rubenstein Decl. ¶ 34 (noting advantages of results achieved in present Settlement).)

Class Counsel expertly handled the difficult issues present in this litigation

As set forth in detail in § II.B, *supra*, Plaintiffs' Counsel used great skill and effort in achieving the excellent Settlement, which provides Class Members with relief roughly equal to what each might have achieved were the Class to have prevailed at trial, including a warranty extension, reimbursement program for 100% for covered repairs, and a Service Adjustment program.

Continuing obligations to the Class

Under California law, Plaintiffs' Counsel has a continuing obligation to assist Class Members even after the judgment has been entered. *Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546-547 (2009) ("[C]lass counsel must represent all of the absent class members' interests throughout the litigation to the extent there are class issues."). Many Class Members have contacted Class Counsel asking questions about the terms of the Settlement Agreement and claims process; Class Counsel anticipate many more such inquiries in the future. (Shahian Decl. ¶ 29.) In fact, because Class Members

have 18 months after the Notice Date to schedule participation in the Service Adjustment Program, and considering that the extended warranties for the oldest Class Vehicles expire at the end of 2017, it is likely that Plaintiffs' Counsel will be fielding calls and providing assistance to Class Members for years to come. Additionally, under the Settlement, Plaintiffs' Counsel must not only continuously monitor the performance of the Claim Administrator, but also ensure Defendants' dealers are abiding by the terms of the Service Adjustment and Extended Warranty Programs (and the Settlement Agreement generally). (*See* Settlement Agreement §§ III.B.6. & VII.A.) To the extent either the Claim Administrator or the dealers depart from the terms of the Settlement, Class Counsel will bring those issues to Defense counsel's attention.

Preclusion of other employment

Plaintiffs' Counsel were required to commit a significant number of hours to investigate and resolve the claims of the Class. (Lurie Decl. ¶¶ 2-13; Labat Decl. ¶¶ 15-24; Shahian Decl. ¶¶ 32-33; Tabesh Decl. ¶¶ 6-7; Lee Decl. ¶¶ 10-11; Choi Decl. ¶¶ 9-10; Margarian Decl. ¶¶ 7-17; Yablonovich Decl. ¶¶ 5-6.) The case was staffed primarily by attorneys from seven law firms, and required a significant commitment by those attorneys, making them unavailable to pursue other opportunities.

C. The Requested Fee Is Modest When Compared to Fees Awarded in Comparable Litigations

By any conventional metric—whether it be calculated as a lodestar or a percentage of the award—Plaintiffs' fee request is reasonable when compared to other automobile defect consumer class actions. *See, e.g.*, *In re: Volkswagen and Audi Warranty Extension* Litigation, No. 07-01790 (D. Mass.) ($15,468,000 in attorneys' fees costs awarded); *Keegan v. American Honda Motor Co., Inc.*, No. 10-09508 (C.D. Cal.) ($2,853,585.35 in attorneys' fees, costs, and expenses awarded); *Sadowska*, 2013 WL 9600948, at **9-10 ($2,375,000 in attorneys' fees, expenses, and costs approved); *Aarons v. BMW of North America*, No. 11-7667, 2014 WL 4090564, at *18 (C.D. Cal. Apr. 29, 2014) ($1,992,500 in attorneys' fees and costs awarded); *Browne v. American*

Honda Motor Co., 2010 WL 9499073, at *13 (C.D. Cal. Oct. 10, 2010) ($2 million in attorneys' fees and costs approved); *Alin v. Honda Motor Co., Ltd.*, No. 08-4825, 2012 WL 8751045, at *23 (D.N.J. Apr. 13, 2012) ($2,525,000 in attorneys' fees and expenses approved); *Zwicker v. General Motors Corp.*, No. C07-291 JCC (W.D. Wash. 2008) ($2,372,000 in attorneys' fees and costs approved); *Henderson v. Volvo Cars of N. Am., LLC*, No. CIV.A. 09-4146 CCC, 2013 WL 1192479, at *19 (D.N.J. Mar. 22, 2013), appeal dismissed (May 30, 2013) ($3 million in attorneys' fees and expenses approved); *Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160, 1177 (C.D Cal. 2010) ($3.7 million in attorneys' fees approved). (*See* Rubenstein Decl. ¶ 37.)

D. The Parties' Negotiated Amount Includes Reimbursement for Plaintiffs' Counsel's Litigation Expenses

In settling Plaintiffs' Counsel's claims to attorneys' fees, the parties also settled Plaintiffs' Counsel's claims for reimbursement of their litigation expenses, which are $140,315.79, and are set forth in the accompanying Lurie, Shahian, Lee, Choi, and Margarian Declarations.[15] (Labat Decl. ¶ 25; Shahian Decl. ¶¶ 42-43; Lee Decl. ¶ 11; Choi Decl. ¶¶ 9-10; Margarian Decl. ¶¶ 9-18.).[16] Under the Settlement Agreement,

[15] Once received, Lead Class Counsel shall distribute the attorneys' fees and expenses awarded by the Court between and among Plaintiffs' Counsel, pursuant to the Parties' Settlement Agreement.

[16] Under federal law, a prevailing party on a claim with fee-shifting may recoup both "taxable costs" authorized by statute, and non-taxable expenses, if they are not included in the billing as overhead. *Missouri v. Jenkins*, 491 U.S. 274, 285 (1989). And with respect to expenses, the rule is that prevailing parties may recover, "litigation expenses . . . when it is 'the prevailing practice in the given community' for lawyers to bill those costs separate from their hourly rates." *Trs. of the Constr. Indus. and Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258 (9th Cir. 2006) (citation omitted). In Southern California, attorneys are reimbursed for out-of-pocketexpenses "such as '1) meals, hotels, and transportation; 2) photocopies; 3) postage, telephone, and fax; 4) filing fees; 5) messenger and overnight delivery; 6) online legal research; 7) class action notices; 8) experts, consultants, and investigators; and 9) mediation fees.'" *Johnson v. General Mills, Inc.*, No. 10-00061-CJC, 2013 U.S. Dist. LEXIS 90338, **20-21 (C.D. Cal. June 17, 2013) (quoting *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007) (both courts awarding requested expenses, including for expert witnesses, mediation, photocopying and computerized research based on the prevailing billing practices of Southern California law firms).

Plaintiffs' Counsel has agreed not to seek reimbursement for costs and expenses in excess of $100,000.[17]

E. Plaintiffs' Requested Incentive Awards Are Reasonable

Federal and California law approve incentive awards to representative plaintiffs in class actions consistent with the nature and extent of their participation. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 669 (E.D. Cal. 2008); *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 804-07 (2009). A modest incentive payment of $2,500 to each of the named Plaintiffs is fair and reasonable given their invaluable contributions to this action. Each Plaintiff experienced the oil consumption problem and agreed to participate in a class action as a class representative to benefit the class. And to help Class Counsel in the prosecution of the class action, each Plaintiff supplied his or her experiences and their relevant documents to Class Counsel. Each Plaintiff also reviewed the Settlement, individually conferring with his or her attorney before agreeing to the Settlement terms. (*See* Declaration of Ali Asghari ¶¶ 2-13; Declaration of Daniel Tran ¶¶ 2-9; Declaration of Yung Kim, ¶¶ 2-11; Declaration of Katrina Noble, ¶¶ 2-12.) Given the duration of the litigation, and the effort expended as Class Representative, the lack of other personal benefit enjoyed by them as a result of the litigation, a modest amount of $2,500 to each Plaintiff for his or her service is appropriate.

In light of the recovery obtained, these incentive awards are modest and well within the range of service awards that have been approved in recent class litigation. *See, e.g.*, *Hopson v. Hanesbrands Inc.*, CV-08-0844 EDL, 2009 U.S. Dist. LEXIS 33900, at **27-28 (N.D. Cal. Apr. 3, 2009) ("In general, courts have found that $5000 incentive payments are reasonable."); *Villegas v. J.P. Morgan Chase & Co.*, 2012 U.S. Dist. LEXIS 114597, at *18 (N.D. Cal. Aug. 8, 2012) ("[T]he Settlement provides for an incentive award to the Plaintiff in the amount of $10,000. In this District, a $5,000

[17] Had this been a combined settlement of $2.4 million for all costs, fees, and expenses (*i.e.*, if Plaintiffs' Counsel would have been fully reimbursed for their $140,315.79 in costs and expenses), then the multiplier used under the lodestar method would be about 1.4.

incentive award is presumptively reasonable."); *Carter v. Anderson Merchandisers, LP*, EDCV 08-0025-VAP OPX, 2010 U.S. Dist. LEXIS 55629, at *17 (C.D. Cal. May 11, 2010) (same).

IV. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request the Court grant their motion for fees, expenses and costs, and award Plaintiffs' Counsel $2,300,000, and an incentive award of $2,500 to each Plaintiff.

Dated: February 27, 2015

Respectfully submitted,

By:_____/s/_____

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