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11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 STEVE FERRARI, et al.,

14 Plaintiffs,

15 v.

16 AUTOBAHN, INC. DBA AUTOBAHN
17 MOTORS; MERCEDES-BENZ USA, LLC;
18 AND SONIC AUTOMOTIVE, INC.

19 Defendants.

Case No. 17-CV-00018-YGR

**PLAINTIFFS' NOTICE OF MOTION
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF FINAL
APPROVAL OF PRO TANTO CLASS
ACTION SETTLEMENT**

The Honorable Yvonne Gonzalez Rogers
Date: January 15, 2019
Time: 2 P.M.
Courtroom: 1

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NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 15, 2019 at 2:00 p.m., or as soon thereafter as the matter may be heard, in Courtroom 1, 4th Floor of the United States District Court, Oakland Courthouse, located at 1301 Clay Street, Oakland, California, 94612, before the Honorable Yvonne Gonzalez Rogers, Plaintiffs Steve Ferrari, Michael Keynejad, Patricia Rubin, John Diaz, Ray Gapasin, and Harold Fethe (“Plaintiffs”) will, and hereby do, move the court, pursuant to Federal Rule of Civil Procedure 23 for an Order granting final approval of the Class Action Settlement Agreement (“Settlement”) and entering partial final Judgment in this matter.

Plaintiffs’ motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities below, the Declaration of the Settlement Administrator and, the papers filed in support of Plaintiffs’ motion for preliminary settlement approval, the papers filed in support of Class Counsel’s application for attorneys’ fees, the record in this case, and any additional argument and evidence the Court may consider.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to FRCP Rule 23(e) and this Court’s Preliminary Approval Order (Doc. 160), Plaintiffs Ferrari, Keynejad, Diaz, Rubin, Fethe, and Gapasin (collectively, “Plaintiffs” or “Named Plaintiffs”), respectfully request that this Court grant final approval of the proposed settlement (“Settlement”) reached between Plaintiffs and Defendants Autobahn Motors and Sonic Automotive Inc. (collectively “Autobahn” or the “Autobahn Defendants”).

At the preliminary approval stage, this Court took a hard look at the proposed Settlement and briefing and suggested certain changes to simplify the process for class members and thereby maximize participation. The parties agreed to make numerous modifications suggested by the Court. As to the revised process, the Court concluded that conditional certification of the Settlement Class was appropriate for settlement purposes and that the Settlement appeared to be “fair, reasonable, and adequate, entered into in good faith, free of collusion, and within the range of possible judicial approval.” Doc. 160, at 3.

The revised process worked well. Among the indications that the process went exactly as anticipated are: (1) the success of the Settlement Administrator in individually providing notice to approximately 99% of the Settlement Class; (2) the lack of objections to the Settlement (aside from one comment by a former named plaintiff who had already settled individually and opted out); and (3) the extremely low opt out rate—only three members of the more than 50,000 members of the Settlement Class elected to opt out beyond the non-representative named plaintiffs who settled individually. Additionally, as to Class 2 (which was the only Class where a claim was required to receive benefits), the claims rate tracked what Class Counsel anticipated it would be at the preliminary approval stage.

As further demonstrated herein, consideration of the appropriate fairness factors strongly weighs in favor of final approval. This Court should grant Plaintiff’s Motion for Final Approval.

1 **II. BACKGROUND**

2 **A. PLAINTIFF'S CLAIMS**

3 This case involves claims alleging violation of Civil Code Section 1750 (Consumers
4 Legal Remedies Act), B&P Code Section 17200 (Unfair Competition Act), violation of B&P
5 Code Section 17200 (Unfair Competition Law and California Vehicle Code 11713.18), violation
6 of B&P Code Section 17500 (Misleading Advertising), and Trespass to Chattels surrounding
7 Autobahn's alleged use of non-Genuine Mercedes-Benz parts in the service and repair of
8 customer vehicles. Plaintiffs alleged that Autobahn did not sufficiently disclose when customers
9 received non-Genuine parts, at least until 2013.
10

11 First, Plaintiffs alleged that the Autobahn Defendants regularly invoiced maintenance and
12 repair customers for Genuine Mercedes-Benz Parts. Plaintiffs further alleged that, unbeknownst
13 to the customers, Autobahn also installed non-Genuine parts and retained the price difference as
14 additional profit. Plaintiffs contended that regular maintenance items such as air filters, oil
15 filters, oil, spark plugs, etc., were routinely invoiced by the Autobahn Defendants as Genuine
16 Mercedes-Benz Parts, but customers were routinely provided less expensive non-Genuine
17 versions. Importantly, the evidence has established that any non-Genuine parts used by
18 Autobahn were made by the same manufacturer as the Genuine Parts and were of the same (but
19 not greater) quality as Genuine Parts.
20

21 Second, Defendants sold Certified Pre-Owned ("CPO") Mercedes Vehicles as having
22 been reconditioned to original specifications with Genuine Mercedes Parts. Plaintiffs alleged
23 that Autobahn regularly used non-Genuine parts in the reconditioning process for these vehicles.
24 Plaintiffs further asserted that the use of non-Genuine parts made the CPO vehicles non-
25 conforming to the CPO program.
26

27 Third, Plaintiffs alleged that Sonic and Autobahn included the fluid "zMax," which may
28

1 be added to engine oil and/or other fluids, in some of their standard maintenance programs.
2 Plaintiffs asserted that the Autobahn Defendants failed to adequately disclose that zMax was not
3 approved or endorsed by Mercedes at the time it was sold.

4 Plaintiffs also asserted claims against MBUSA surrounding its marketing of Genuine
5 parts as superior and longer lasting than non-Genuine parts. Under the terms of the Settlement,
6 Plaintiffs have agreed to settle only with the Autobahn Defendants. Certain claims against
7 MBUSA, specifically those arising out of MBUSA's advertisement of Mercedes-Benz branded
8 (i.e., Genuine) parts as superior and longer-lasting, shall remain pending if and when this
9 Settlement obtains final approval. At that time, Plaintiffs will file an amended complaint that
10 will only include the remaining claims against MBUSA.

11 **B. PROCEDURAL HISTORY**

12 This lawsuit has a long and tortured history, including years of extensive merits discovery
13 and two trials in related litigation. When this action was first filed by Plaintiffs on September
14 24, 2015, its primary focus was on federal RICO claims asserted under 18 U.S.C. § 1961 et al.
15 (Case No. 4:15-cv-04379-YGR). However, on December 12, 2016, the federal court dismissed
16 with prejudice the federal claims and dismissed the state law claims without
17 prejudice. (Doc. 117).

18 The state law claims were re-filed in state court and Defendants removed the action to
19 federal court under the Class Action Fairness Act. (Doc. 1). The First Amended Complaint was
20 filed on January 25, 2017 (Doc. 14) and the Autobahn Defendants' Motion to Dismiss the First
21 Amended Complaint was filed on February 14, 2017 (Doc. 26). By order dated July 21, 2017,
22 the Court granted in part and denied in part the Autobahn Defendants' motion. (Doc.
23 64). Plaintiffs were granted leave to amend their Complaint. Plaintiffs' Second Amended
24 Complaint was filed on August 8, 2017. (Doc. 69).

1 On September 5, 2017 the Autobahn Defendants filed a Motion to Compel Arbitration,
2 to Dismiss and to Stay Further Proceedings regarding Plaintiff's Second Amended Complaint.
3 (Doc. 82). However, before the Court ruled on this motion, Plaintiffs requested leave of Court to
4 file a Third Amended Complaint, which substantially clarified the claims and narrowed the scope
5 of the class action. (Doc. 104).

6
7 While Defendants' motion was pending, the parties engaged in the first mediation on
8 November 8, 2017, before the Hon. Raul Ramirez of ADR Services, Inc. The case did not settle.

9 By order dated January 18, 2018 (Doc. 117) this Court granted the Autobahn Defendant's
10 motion to compel arbitration as to some of the Plaintiffs, again denied in part and granted in part
11 the Autobahn Defendant's motion to dismiss, and again allowed Plaintiffs leave to
12 amend. Plaintiffs' Third Amended Complaint was filed on February 6, 2018. (Doc. 126).

13
14 On January 29, 2018, this Court entered an Order (Doc. 129) staying proceedings to
15 permit Plaintiffs and the Autobahn Defendants to participate in a further mediation session with
16 Judge Ramirez. The second mediation session was held on March 9, 2018. As a result of this
17 second mediation session, Plaintiffs and the Autobahn Defendants reached a class settlement that
18 resolves all claims against the Autobahn Defendants.

19 On May 4, 2018, Plaintiffs' Notice of Motion and Motion for Preliminary Approval of
20 Class Action Settlement and Certification of Settlement Class was filed (Doc. 136), which
21 attached the proposed Settlement.

22
23 By Order dated May 10, 2018 (Doc. 138), this Court directed submission of supplemental
24 information in support of Plaintiffs' Motion for Preliminary Approval, and in particular
25 requested that Plaintiffs submit a chart summarizing the settlement as part of supporting papers.

26 On May 22, 2018 Plaintiffs filed the Fourth Amended Complaint (Doc. 139) which
27 amended the complaint to narrow the claims against MBUSA and to remove non-class
28

1 representatives from the case who had opted out.

2 Plaintiffs' Memorandum of Law in Support of Preliminary Approval of Pro Tanto Class
3 Action Settlement was filed on May 24, 2018 (Doc. 140). This filing included the summary
4 chart that the Court had requested (Doc. 138).

5 On June 20, 2018 the Court entered its Order directing supplemental briefing (Doc. 146)
6 and additional briefing was submitted by the parties on July 3, 2018 (Doc. 151) to address minor
7 modifications to the Settlement and Notice program and to address timing of attorney fees.

8 A Preliminary Approval Hearing was conducted on July 31, 2018. During the hearing,
9 the Court requested revisions to the class notice process and the claims process for Class 2 that
10 were designed to simplify and streamline the process. Plaintiffs negotiated such changes to the
11 notice, check election, and Class 2 claims processes and submitted a Second Supplemental Brief
12 in Support of Preliminary Approval describing these changes on August 21, 2018. (Doc. 158).
13

14 On August 28, 2018, this Court entered its order Granting Preliminary Approval of the
15 settlement as revised by the parties, and setting a Final Approval Hearing for January 15, 2018.
16

17 In accordance with that Order, the Notice Program was completed pursuant to the
18 Settlement and the Preliminary Approval Order. (*See* Ex. 1, Declaration of Ritesh Patel).

19 The deadline for objecting or opting out of this Settlement was October 31, 2018. The
20 deadline for electing to receive cash in lieu of a voucher and for Class 2 claims was Nov. 13,
21 2018.
22

23 **III. SUMMARY OF THE SETTLEMENT**

24 The proposed Settlement contains the following material terms. First, the proposed
25 Settlement Class is defined as follows:

26 All consumers who during the Class Period received service from
27 Autobahn, together with all consumers who purchased a CPO
28 ["Certified Pre-Owned] automobile from Autobahn during the
period January 1, 2007 through December 31, 2012.

1
2 The “Class Period” is January 1, 2005 through February 28, 2018.

3 **Subclasses and Settlement Consideration**

4 The Settlement consideration consists of multiple components. The Settlement Class is
5 broken down into three classes, two of which are further divided into subclasses with
6 corresponding Settlement Benefits. Due to the additional defenses available to the Autobahn
7 Defendants regarding claims beyond the limitations period, vouchers based on service conducted
8 prior to 2011 are for lesser amounts than vouchers based on service conducted more recently.
9

10 Class 1 is the “Non-Genuine Parts Class,” and is divided into subclasses 1A and 1B
11 depending on the date of the last pertinent transaction. Class 2 is the “zMax Class.” Class 3 is
12 the “CPO Class” and is divided into subclasses 3A and 3B depending on the date of the last
13 pertinent transaction. A Settlement class member may fall under more than one Class.

14 Each member of Class 1 and 3 who did not request cash will automatically receive an
15 Autobahn Service Voucher that can be used just like cash to purchase goods or services offered
16 by Autobahn. Alternatively, class members had the option of electing (through the settlement
17 website linked directly to their notice) to elect to receive cash instead of a voucher. The amount
18 of each Voucher and/or cash redemption amount is determined by class membership, the date of
19 the pertinent transactions, and for Class 1, the number of service visits by the class member as
20 indicated in Autobahn’s service records.
21

22 Each member of Class 2 was provided access to an online Claim Form (which was linked
23 electronically to the email notices, and for which the URL was included in the postcard notices)
24 to request an Autobahn Service Voucher if the class member stated that he or she would not have
25 purchased zMax or chosen to have it added to their automobiles had he or she understood that it
26 had not been endorsed or approved by MBUSA. As with Classes 1 and 3, Class 2 members also
27
28

1 had the opportunity to choose to use the Autobahn Service Voucher towards service at Autobahn
2 or redeem it for cash.

3 The Subclass definitions and Subclass Benefits under the Settlement are as follows:
4

- 5 a. Class 1A: All Settlement Class members who last serviced
6 automobiles at Autobahn on or after January 1, 2011.
- 7 i. a voucher for \$20.00 towards any service at Autobahn (with a cash
8 value of \$8.22) if such class member visited Autobahn for service
9 1–3 times; or a voucher for \$30.00 towards any service at
10 Autobahn (with a cash value of \$12.33) if such class member
11 visited Autobahn for service 4–6 times; or
- 12 ii. a voucher for \$40.00 towards any service at Autobahn (with a cash
13 value of \$16.44) if such class member visited Autobahn for service
14 7–9 times; or
- 15 iii. a voucher for \$50.00 towards any service at Autobahn (with a cash
16 value of \$20.55) if such class member visited Autobahn for service
17 10 or more times.
- 18 b. Class 1B: All Settlement Class members who last serviced their
19 automobiles at Autobahn during the period January 1, 2005 through
20 December 31, 2010.
- 21 i. a voucher for \$5.00 towards any service at Autobahn (with a cash
22 value of \$2.34) if such class member visited Autobahn for service
23 1–3 times; or
- 24 ii. a voucher for \$7.50 towards any service at Autobahn (with a cash
25 value of \$3.51) if such class member visited Autobahn for service
26 4–6 times; or
- 27 iii. a voucher for \$10.00 towards any service at Autobahn (with a cash
28 value of \$4.67) if such class member visited Autobahn for service
7–9 times; or
- iv. a voucher for \$12.50 towards any service at Autobahn (with a cash
value of \$5.84) if such class member visited Autobahn for service
10 or more times.
- c. Class 2: All Settlement Class members who purchased a fluid known
as zMax from Autobahn in conjunction with service at Autobahn
during the Class Period according to Autobahn’s records, together with
all Settlement Class members who purchased from Autobahn a CPO

1 automobile on or after January 1, 2007, into which zMax may have
2 been added during the reconditioning process.

3 A Claim Form to make a claim for a voucher for \$40.00 towards
4 any service at Autobahn (with a cash value of \$15.98). The claim
5 form allows eligible class members to attest that they would not
6 have purchased zMax or chosen to have it added to their
automobiles had they understood that it has not been endorsed or
approved by MBUSA.

7 d. Class 3A: All Settlement Class members who last purchased a CPO
8 automobile from Autobahn during the period January 1, 2011 through
December 31, 2012.

9 i. a voucher for \$50.00 towards any service at Autobahn (with a cash
10 value of \$20.55).

11 e. Class 3B: All Settlement Class members who last purchased a CPO
12 automobile from Autobahn during the period January 1, 2007 through
December 31, 2010.

13 i. a voucher for \$12.50 towards any service at Autobahn (with a cash
14 value of \$5.84).

15 Although class members had the option of electing cash by going to the settlement
16 website when they received notice, all members of Classes 1 and 3 who did not elect a cash
17 payment will automatically receive Vouchers even if they take no action at all. This structure
18 allows all Class 1 and 3 members to receive benefits under the Settlement, not just those who file
19 a claim form. As 98% of class members are in Classes 1 and/or 3, the overwhelming majority
20 of the class will receive benefits from the Settlement, setting it apart from most class settlements,
21 which follow a pure claims made settlement structure.

22
23 **Release**

24 In exchange for the forgoing consideration, Plaintiffs and Settlement Class Members will
25 release the Autobahn Defendants from all claims arising out of the allegations in the Fourth
26 Amended Complaint.

Attorney Fees, Costs and Incentive Awards

Class Counsel has filed a separate motion and memorandum requesting court approval of agreed upon attorney fees of \$577,000 (“Attorney Fees”) calculated using the lodestar method. Class Counsel has also sought reimbursement of customary, reasonable, and documented out-of-pocket litigation expenses not to exceed \$22,000 (“Costs”). Likewise, the Named Plaintiffs have filed a motion and memorandum requesting approval of the Incentive Awards as follows: Ferrari: \$2,500; Keynejad: \$8,000; Rubin: \$2,500; Fethe: \$4,000; Diaz: \$5,000; and Gapasin: \$2,500.

The proposed Settlement can be summarized in chart form as follows:

Preapproval Stage	
Ferrari v. Autobahn, Inc.	
<i>All figures are best estimates as of December 10, 2018</i>	
	% Settlement
Total settlement \$1.9M	100%
Net class benefits (cash and vouchers) \$1.2M	61%
Voucher payout \$1.1M	
Cash payout \$.02M	
Class Mbrs 50,310 total	
Median benefit per class mbr \$23*	
Class 1 -- 49,289 mbrs -- \$1.12M	
Class 2 -- 9,254 mbrs -- \$0.02M	
Class 3 -- 2,923 mbrs -- \$0.07M	
Number of claims: 460	
Class 1 -- N/A - all mbrs receive benefits	
Class 2 -- 460**	
Class 3 -- N/A - all mbrs receive benefits	
Expected residual \$0	0%
Expected cy pres \$0	
Expected reversion N/A	
Attorney fees requested \$0.58M	30%
Lodestar \$1.8M***	
Hours 3,405	
Melded billing rate \$528/hr	
Multiplier 1/3 (fees sought are less than lodestar)	
Attorney costs <\$0.1M	1%
Administrative costs \$0.16M	6%
Class representative awards <<\$0.1M	1%
The median distribution to class members will be \$23.	
<i>* Settlement per class member is a median; actual individual payout may be higher or lower, depending on factual circumstances.</i>	
<i>** Only Class 2 requires a claim form; compensation is automatic for Classes 1 and 3.</i>	
<i>*** Lodestar exceeds fees requested.</i>	

Postclaim Filing Audit	
Ferrari v. Autobahn, Inc.	
<i>All figures are actual amounts as of XXXXXX</i>	
	% Settlement
Total settlement	100%
Net class voucher benefits	
Net class cash benefits	
Total amt - cashed checks	
Actual voucher payout	
Class Mbrs _____	
Total voucher benefits redeemed: _____	
Avg voucher benefit redeemed: _____	
Number of claims: 460	
Actual residual _____	
Actual cy pres \$_____	
Actual reversion N/A	
Attorney fees approved/paid \$_____	
Lodestar \$____M	
Hours _____	
Melded billing rate \$____/hr	
Multiplier _____	
Attorney costs paid \$_____	
Administrative costs paid \$_____	
Class rep awards approved/paid \$_____	

1 IV. STANDARD OF REVIEW FOR CLASS ACTION SETTLEMENTS

2 Federal Rule of Civil Procedure 23(e), requires judicial approval for any settlement
3 agreement that will bind absent class members. *See* Fed. R. Civ. P. 23(e); *see also Briggs v.*
4 *United States*, No. C 07–05760 WHA, 2010 WL 1759457, at *3 (N.D. Cal. Apr. 30, 2010). It is
5 well-settled in the Ninth Circuit that settlements are favored, particularly in class actions and
6 other complex cases where substantial resources can be conserved by avoiding the time, cost,
7 and rigor of prolonged litigation. *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992);
8 *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). These economic gains
9 multiply in pre-certification settlements since class certification undeniably represents a
10 significant risk for Plaintiffs. *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 392 (C.D. Cal.
11 2007).

12 A court must take three steps in considering approval of a proposed settlement: (1) the
13 court must preliminarily approve the proposed settlement; (2) members of the class must be
14 given notice of it; and (3) a final hearing must be held, after which the court must decide whether
15 the tentative settlement is fair, reasonable, and adequate. *See* MANUAL FOR COMPLEX
16 LITIGATION (FOURTH) § 21.632, at 320-21 (4th ed. 2004) (“MANUAL (FOURTH)”). The
17 decision to approve a proposed class-action settlement is within the sound discretion of the
18 district court judge who “is exposed to the litigants, and their strategies, positions, and proof.” *In*
19 *re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000); *see also Class Plaintiffs v.*
20 *City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *accord Bruno v. Quten Research Inst., LLC*,
21 No. SACV 11–00173 DOC (Ex), 2013 WL 990495, at *1 (C.D. Cal. Mar. 13, 2013).

22 Evaluating a class-action settlement proposal at the final approval stage requires the
23 District Court to determine whether the proposed settlement, taken as a whole, is fair, reasonable
24 and adequate. *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) (citing *Hanlon v. Chrysler*
25 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1997)). To do so, a court should balance the following
26 factors: (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely
27 duration of further litigation; (3) the risk of maintaining class action status throughout the trial;

28

1 (4) the benefits offered in the settlement; (5) the extent of discovery completed and the stage of
2 the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
3 participant; and (8) the reaction of the class members to the proposed settlement. *Hanlon*, 150
4 F.3d at 1026.

5 Application of these factors to the facts of this case and Settlement demonstrates that the
6 Settlement is fair, reasonable and adequate. Consequently, the Settlement should be finally
7 approved by this Court.

8 **A. THE STRENGTH OF PLAINTIFF’S CASE BALANCED AGAINST THE**
9 **RISK, EXPENSE AND LIKELY DURATION OF FURTHER LITIGATION**

10 “In determining the probability and likelihood of a plaintiff’s success on the merits of a
11 class action litigation, ‘the district court’s determination is [often] nothing more than an amalgam
12 of delicate balancing, gross approximations and rough justice.’” *Moore v. PetSmart, Inc.*, 2015
13 U.S. Dist. LEXIS 102804, at *19 (N.D. Cal. Aug. 4, 2015) (quoting *Officers for Justice v. Civil*
14 *Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)). “There is no
15 particular formula by which that outcome must be tested.” *PetSmart*, LEXIS 102804, at *19.
16

17 As discussed below, Plaintiffs and their counsel conducted extensive discovery in two
18 related state court actions, including conducting full trials in one case (which was bifurcated into
19 separate bench and jury trials) and proceeding as far as jury selection in the second. The
20 discovery obtained in these cases enabled the parties to assess the strength and weaknesses of
21 their claims. The view of Plaintiffs’ counsel is that they developed a fairly strong but not
22 bulletproof case against the Autobahn Defendants on the merits of their disclosure-based claims
23 involving use non-genuine parts, but from a valuation standpoint, the amount at issue turned out
24 to be very small in comparison with overall sales of parts by Autobahn during the Class Period.
25

26 As to Classes 1 and 3, which involve the use of non-Genuine parts and fluids, Plaintiffs’
27 counsel obtained invoices from the parts suppliers which show that the Autobahn Defendants
28

1 did, in fact, purchase such non-Genuine parts and fluids. Discovery showed that the total amount
2 of non-Genuine parts purchased during this period (dating back to 2005) was at most in the low
3 single digit millions of dollars, which would have been less than 5% of the parts Autobahn
4 purchased during the period. Plaintiffs deposed the parts suppliers and determined that the
5 difference in price between Genuine and non-Genuine parts ranges from 10% -30%. There is no
6 dispute that the non-Genuine parts at issue were made by the same manufacturer as the Genuine
7 Parts and were of the same quality (but not greater quality) as Genuine parts. Accordingly, the
8 measure of potential damages assuming success on these claims would be limited to the
9 difference in price.
10

11 But tying the use of non-genuine parts to particular consumers and proving reliance
12 would be much more difficult. Plaintiffs' counsel obtained repair invoices purporting to show
13 that Genuine parts were used in repairing consumer vehicles. While it may be simple to show
14 that a Genuine part was listed on the repair invoice, proving that any particular consumer instead
15 received a non-Genuine part in its place would be difficult. Plaintiffs cannot simply look at the
16 parts in consumer vehicles today—all the service parts like oil filters that were used years ago
17 have already been replaced and evidence indicates that the use of non-Genuine parts ended years
18 ago. In addition, testimony obtained in discovery indicated that customers sometimes requested
19 non-Genuine parts, or otherwise received better disclosures. This variation in individualized
20 circumstances pertaining to disclosure and reliance is a further hurdle for the Plaintiffs.
21

22 Moreover, calculating individualized damages for each customer would be cost
23 prohibitive given the thousands of individual transactions at issue and the relatively small
24 amounts at issue. Discovery revealed the price difference between Genuine and non-Genuine oil
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26
27
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1 filters is on the order of a few dollars.¹ Prices fluctuated over time and differ for different parts
2 and models, but in general, for most regular maintenance visits, the non-Genuine part “damage”
3 component would only be several dollars per visit.

4 As for the claims regarding zMax (i.e., the Class 2 claims), Plaintiffs developed evidence
5 that zMax was not approved by Mercedes; however, the evidence also showed that Mercedes did
6 not prohibit use of zMax in its vehicles. Mercedes instead required a disclosure that the product
7 had not been approved by Mercedes. Plaintiffs would argue that the disclosure provided by
8 Autobahn was insufficient, and Plaintiffs developed evidence indicating that some consumers
9 may have purchased zMax on the belief that it had been approved. On the other hand, others
10 may have purchased it without any such mistaken belief, and there was evidence that some
11 specifically requested zMax based upon their own research. And, after extensive discovery,
12 there is no evidence that zMax caused harm to internal components of vehicles owned by any
13 Plaintiff or Class Member, reducing the damages to the cost of the product itself.

14
15
16 Given the extremely contentious nature of this case to date, it is likely that the litigation
17 would have continued for a substantial amount of time. Indeed, Autobahn sued two of the
18 named Plaintiffs and class counsel Herman Franck for defamation surrounding the claims
19 asserted in this matter. This tactic further entrenched both sides and resulted in substantial
20 litigation. This matter involved numerous motions to dismiss by each of the Defendants, several
21 amended complaints, formal mediation, and the production of documents relating to the
22 Plaintiffs’ transactions. In the parallel state court litigation, over two dozen depositions were
23 taken on these issues, and two complete trials were taken with sworn testimony from a number
24

25
26
27 ¹ By way of example, the price difference between a Mercedes-Benz branded oil filter and an
28 identical OEM substitute made by Mann at a nationwide retailer was recently \$1.05.
Similarly, the price difference between a different Mercedes-Benz branded oil filter and its
identical OEM substitute made by Mann at that same retailer was \$2.98.

1 of overlapping witnesses. Undoubtedly, there would have been a substantial duration of
2 additional and costly litigation if this case did not settle when it did.

3 The benefits of Settlement balanced against the length, expense, and uncertainty
4 surrounding future litigation weigh heavily in favor of final approval. *See Rodriguez v. West*
5 *Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009); *In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK,
6 2016 U.S. Dist. LEXIS 115056, at *20-22 (N.D. Cal. Aug. 25, 2016); *Nat'l Rural Telecomms.*
7 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (“The Court shall consider the
8 vagaries of litigation and compare the significance of immediate recovery by way of the
9 compromise to the mere possibility of relief in the future, after protracted and expensive
10 litigation.”) (citation omitted); 4 Alba Conte & Herbert B. Newberg on Class Actions §11.50 (4th
11 ed. 2002) (“In most situations, unless the settlement is clearly inadequate, its acceptance and
12 approval are preferable to lengthy and expensive litigation with uncertain results.”).
13
14

15 **B. RISK OF MAINTAINING CLASS ACTION STATUS THROUGH TRIAL**

16 The risks associated with maintaining a class action through trial are a relevant
17 criterion in evaluating the reasonableness of a proposed class action settlement. *Amchem*,
18 521 U.S.at 591; *see also In re Heritage Bond Litig.*, 2005 WL 1594403 (C.D. Cal. June 10,
19 2005). It is well-recognized that “[a] district court may decertify a class at any time.”
20 *Rodriguez*, 563 F.3d at 968 (9th Cir. 2009) (citing *Gen. Tel. Co. of Sw v. Falcon*, 457 U.S.
21 147, 160 (1982)).
22

23 Plaintiffs anticipate that the Autobahn Defendants would vigorously contest class
24 certification and their briefing of their Motion to Dismiss indicates that they have carefully
25 considered various possible defenses against class certification. While Plaintiffs believe the
26 criteria of Rule 23 are satisfied here, Plaintiffs recognize the risks inherent in obtaining, and
27 maintaining, class certification. For example, some class members may have specifically
28

1 requested that zMax be added to their vehicle, and others might have purchased the product
2 without relying on Autobahn's representations one way or the other. This possibility could
3 have provided an argument that the predominance of individualized issues defeats
4 certification.

5
6 Additionally, statute of limitations issues would have complicated certification
7 because the claims cover transactions that go back as far as 2005. As set forth in Plaintiffs'
8 Third Amended Complaint, Plaintiffs have an argument that the limitations period was tolled
9 until the class members discovered the facts underlying their claims. However, Plaintiffs
10 must acknowledge that such arguments may involve individualized factual issues that would
11 be difficult to establish on a class basis.

12
13 Arbitration agreements present another potential barrier to certification. In its order
14 dated January 18, 2018, this Court determined that the arbitration clause in the Autobahn
15 retail installment agreement required arbitration of claims against Autobahn. (Doc. 117).
16 The practical effect of that ruling is to prevent class treatment of the claims related to the
17 purchase of CPO cars, eliminating the CPO Class (Class 3) completely from the case. It
18 would also likely have been a major impediment to the certification of Class 1 and Class 2, or
19 would have required excluding all individuals who purchased or leased vehicles from
20 Autobahn from those classes.

21
22 Even if Plaintiffs were successful in obtaining class certification, the Autobahn
23 Defendants would likely pursue an interlocutory appeal pursuant to Rule 23(f). The outcome
24 of such an appeal would also be uncertain, and, at a minimum, would delay and add
25 complexity and additional risk and cost to the proceedings, delaying or eliminating the
26 possibility of meaningful recovery for Plaintiffs and the Class.

27
28

1 **C. BENEFITS OF THE SETTLEMENT**

2 Discovery obtained by Class Counsel in related litigation, including documents,
3 deposition testimony, and trial testimony from disinterested, third-party distributors (who sold
4 non-Genuine parts to Autobahn) uncovered the key evidence that Plaintiffs would rely upon at
5 trial in this case to establish class damages. This evidence quantified the total amount Autobahn
6 spent during the Class Period to purchase non-Genuine parts. The total *cash redemption value* of
7 the Settlement Benefits to Class 1 corresponds to the estimated total difference in the cost of all
8 non-Genuine parts sold by Autobahn during the Class Period and the cost of the corresponding
9 Genuine parts as indicated by records obtained in discovery. In other words, the *cash value* of
10 the Vouchers is equal to the total amount of damages that Class 1 could be expected to recover at
11 trial, if successful. The total value of the Vouchers, which may be used to purchase goods and
12 services from Autobahn, is *more than twice* the amount of damages that Class 1 could expect to
13 recover if successful at trial.
14

15 The Parties also endeavored to reach a reasonable resolution for the zMax Class. Some
16 class members knowingly purchased zMax based upon its advertised benefits, while others may
17 have purchased or received zMax without a full understanding of what they were getting. Only
18 the latter class members would be entitled to a monetary recovery; therefore, a Claim Form was
19 used to allow those class members who would not have purchased zMax had they understood
20 that it has not been endorsed or approved by Mercedes to self-identify. The parties agree this is a
21 reasonable way for the zMax class to be fairly compensated. A copy of the Claim Form is
22 attached to the Settlement as Exhibit D.
23

24 Further, the parties negotiated a Settlement that provides relief to all class members while
25 also taking into consideration Autobahn's assertion that older claims are likely beyond the statute
26 of limitations. Rather than exclude class members with older claims, such that they would
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1 receive nothing, Class 1 and Class 3 provide for reduced amounts for class members whose
2 purchase may be beyond the limitations period. This compromise provides relief for those
3 Settlement Class members while not reducing the settlement benefit disproportionately for
4 Settlement Class members within the limitations period.

5
6 Finally, the proposed settlement includes Settlement Class members who could have been
7 excluded due to the arbitration clause in the Autobahn sale contracts. Although they might have
8 been excluded from the class if the case had proceeded, through negotiation, customers who
9 purchased or leased a vehicle from Autobahn have been brought back into the Settlement Class
10 and shall be eligible to fully participate in the settlement. Because the expense and effort
11 required to bring such claims individually would likely outweigh any recovery, class members
12 subject to arbitration likely would have little motivation to bring such claims. Accordingly, the
13 only way for the great majority of these class members to benefit is through this Settlement. The
14 fact that the Settlement provides substantial benefits for class members who otherwise likely
15 would not get any compensation weighs heavily in favor of approval.

16
17 Class Counsel worked long and hard to construct a settlement that provides meaningful
18 benefits to all Settlement Class members, that is tailored to remedy the specific issues raised by
19 Plaintiffs' allegations as well as the defenses available to Autobahn. It is highly unlikely that a
20 successful result at trial would garner any better result than that achieved by the proposed
21 Settlement. But even if it did, "[i]t is well-settled law that a cash settlement amounting to only a
22 fraction of the potential recovery will not *per se* render the settlement inadequate or unfair."
23 *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 628
24 (9th Cir. 1982) (*citing Flinn v. FMC Corp.*, 528 F.2d 1169, 1173-74 (4th Cir. 1975)). Given the
25 uncertainties of class certification and trial, the value of the Settlement plainly meets (and
26 exceeds) the adequacy standard and renders this factor supportive of the proposed Settlement.
27
28

1 Furthermore, in evaluating the benefits provided to the Settlement Class members, it is
2 important to note that they will retain the ability to pursue certain claims against MBUSA,
3 specifically, Plaintiffs’ claims arising out of MBUSA’s advertisement of Mercedes-Benz
4 branded (i.e., Genuine) parts as superior and longer-lasting remain live. Thus, portions of
5 Plaintiffs’ CLRA, UCL, FAL, fraud, and negligent misrepresentation claims against MBUSA
6 may go forward despite the settlement with the Autobahn Defendants.
7

8 **D. EXTENT OF DISCOVERY AND STAGE OF PROCEEDINGS**

9 For the parties “to have brokered a fair settlement, they must have been armed with
10 sufficient information about the case to have been able to reasonably assess its strengths and
11 value.” *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 396 (C.D. Cal. 2007). “A settlement
12 following sufficient discovery and genuine arms-length negotiation is presumed fair.” *Nat’l*
13 *Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).
14

15 The Court need not reach any ultimate conclusions on the contested issues of fact and law
16 underlying the merits of the dispute, for it is the uncertainty of outcome in litigation and
17 avoidance of wasteful and expensive litigation that induce consensual settlements. *Officers for*
18 *Justice v. Civil Serv. Comm’n of City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir.
19 1982). Approval of a class action settlement does not require that discovery be formal or
20 exhaustive. *See Clesceri v. Beach City Investigations & Protective Servs.*, 2011 WL 320998, at
21 *9 (C.D. Cal. Jan. 27, 2011) (“In the context of class action settlements, formal discovery is not a
22 necessary ticket to the bargaining table where the parties have sufficient information to make an
23 informed decision about settlement.” (*quoting Linney v. Cellular Alaska P’ship*, 151 F.3d 1234,
24 1239 (9th Cir. 1998))).
25

26 Class Counsel firmly believe that the claims in this action have merit and are supported
27 by ample evidence, while at the same time recognizing that the evidence developed through
28

1 years of discovery indicate that any recovery at trial is likely to not exceed the benefits the
2 Settlement Class receives under the Agreement. Class Counsel have been actively engaged in
3 this litigation for approximately 3 years (dating to the filing of the original action) and more
4 importantly, have been involved in hard-fought related litigation that has progressed through
5 years of formal discovery, two trials, and preparation for a third trial.
6

7 More specifically, Plaintiff Keynejad, through counsel Herman Franck, tried a case
8 against Autobahn in connection with a joint advertising program between his company,
9 Eurotech, and Autobahn. *Maskay Inc. v. Autobahn Motors, Inc.*, Case No. CIV525559 (San
10 Mateo Cty. Super. Ct.).² Mr. Franck also tried another case brought by Eurotech against
11 MBUSA that elicited documents, deposition testimony and trial testimony highly relevant to the
12 claims here. Additionally, Autobahn filed a defamation case against Plaintiffs Keynejad and
13 Diaz relating to statements made to the public concerning some of the allegations made in this
14 action. *Autobahn, Inc. v. Maskay Corporation*, Case No. CIV535413 (San Mateo Cty. Super.
15 Ct.).
16

17 In fact, years of discovery had been completed and the defamation action had progressed
18 to jury selection before the case was stayed to allow for settlement negotiations, which resulted
19 in the parties agreeing to the entry of a stipulated judgment with no money changing hands.
20 (Franck Declaration, Exhibit 2 to Plaintiffs' Memorandum of Law in Support of Motion for
21 Preliminary Approval, Doc. 140-2). Through those related cases, counsel for the class gathered
22 deposition and trial testimony as well as thousands of pages of discovery and exhibits. (Warwick
23 Declaration, Exhibit 1 to Plaintiffs' Memorandum of Law in Support of Motion for Preliminary
24 Approval, Doc. 140-1 at ¶27). As a result, Class Counsel had substantial discovery and
25
26

27 ² Eurotech prevailed at trial on one of its claims against Autobahn and was awarded
28 \$484,913.60 in damages. Autobahn and Eurotech settled that case and Autobahn has agreed
to dismiss its appeal.

1 documentation when settlement discussions began. Even a cursory review of the Third
2 Amended Complaint shows the breadth of the information obtained. Thereafter, Autobahn
3 provided additional information to facilitate settlement discussions. (*Id.*) All of this information
4 educated Class Counsel on the merits of the claims and the damages potentially recoverable at
5 trial. (*Id.*) Accordingly, this factor weighs in favor of granting final approval.

7 **E. EXPERIENCE AND VIEW OF COUNSEL**

8 Parties represented by competent counsel are better positioned than courts to produce a
9 settlement that fairly reflects each party's expected outcome in litigation. *In re Pacific*
10 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). The recommendations of
11 plaintiffs' counsel should be given a presumption of reasonableness. *Clesceri*, 2011 WL 320998,
12 at *10 ("Courts give weight to counsels' opinions regarding the fairness of a settlement, when it
13 is negotiated by experienced counsel.").

14 Although the law firm of Varnell & Warwick came into the case after substantial
15 discovery had been obtained, they amended the complaint, narrowed the issues and modified the
16 class definition. They also opened a dialog for settlement and helped to structure this Settlement.
17 The Varnell & Warwick firm has been named class counsel in more than 40 consumer class
18 actions across the country and has ample experience. See Declaration of Brian W. Warwick at
19 ¶3 filed in support of Plaintiffs' Motion for Attorney Fees (Doc. 164-6).

20
21 In the opinion of Class Counsel, this Settlement represents as much or even more than
22 class members could expect to obtain at trial and that, as a result, the settlement is fair, adequate
23 and reasonable. Thus, this factor too weighs in favor of granting final approval.

25 **F. PRESENCE OF GOVERNMENTAL PARTICIPATION**

26 While no governmental entity is a party to this litigation, notice was timely issued to the
27 appropriate federal and state officials in all 50 states, the District of Columbia, and the United
28

1 States territories in accordance with the 28 U.S.C. § 1715, and no governmental entity has filed
2 objections or concerns about the Settlement.

3 **G. LACK OF COLLUSION BETWEEN THE PARTIES**

4 Courts accord “considerable weight” to settlements that are the product of hard-fought
5 negotiations by experienced counsel. *Ellis*, 87 F.R.D. at 18; *Larsen v. Trader Joe’s Co.*, 2014
6 WL 3404531, *5 (N.D. Cal. July 11, 2014). Settlements that follow sufficient discovery and
7 genuine arm’s-length negotiation are presumed fair. *Nat’l Rural Telcoms. Coop. v. Directv, Inc.*,
8 2003 U.S. Dist. LEXIS 25375, *13 (C.D. Cal. 2004). When a settlement is achieved through
9 arm’s-length negotiations between experienced counsel, the Court should be hesitant to
10 substitute its own judgment for that of counsel absent a showing of fraud, collusion or other
11 forms of bad faith because the “[p]arties represented by competent counsel are better positioned
12 than courts to produce a settlement that fairly reflects each party’s expected outcome in
13 litigation.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (citing *In re*
14 *Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995)).

15
16
17 As set forth in the Declaration of Class Counsel, the Settlement is the product of hard-
18 fought arm’s-length negotiations. The Parties were aided in this process by a highly respected
19 mediator—Hon. Raul Ramirez (Ret.)—who assisted the negotiations during two separate
20 mediations. (Warwick Declaration, Doc. 140-1 ¶¶ 24, 25). Additionally, counsel for the parties
21 outlined the scope and format of this settlement during a two-day settlement conference in
22 Washington, DC. (*Id.*) Class counsel has experience in auto litigation and in class action
23 settlements with a similar structure.

24
25 Thus, the process pursuant to which the proposed settlement was achieved is a factor
26 weighing in favor of preliminary approval. *Adams v. Inter-Con Sec. Sys.*, 2007 U.S. Dist. LEXIS
27 83147 (N.D. Cal. Oct. 29, 2007) (the assistance of an experienced mediator in the settlement
28

1 process confirms that the settlement is non-collusive); *see also In re Immune Response Secs.*
2 *Litig.*, 497 F. Supp. 2d 1166, 1171 (S.D. Cal. 2007) (fact that a settlement was reached through
3 negotiations with an experienced mediator is highly indicative of fairness).

4 **H. REACTION OF THE CLASS TO THE SETTLEMENT**

5 After notice, the Class's response to the Settlement has been overwhelmingly positive.
6 As detailed in the Declaration of Ritesh Patel, on behalf of RSM US LLP (the Settlement
7 Administrator), the Settlement Administrator was highly successful in sending notice of the
8 Settlement to the Class members, with a presumed success rate of 99%. As Mr. Patel indicated
9 in the RSM declaration (attached hereto as Exhibit 1):

10 **a. Notice Process**

11 The Settlement Administrator used a hybrid email and postcard notice to send notice to
12 each of the 50,310 Settlement Class members individually. Patel Decl. ¶¶ 3–14. In total, the
13 Settlement Administrator delivered notice to 49,884 of the Settlement Class members,
14 successfully reaching 99% of the class. *Id.* ¶ 14.

15 **b. Email Notice**

16 Autobahn had email addresses on file for 39,233 Settlement Class members. *Id.* ¶ 5. Of
17 the 39,233 emails that the Settlement Administrator sent, 30,489 were successfully delivered,
18 while 8,744 were undeliverable. *Id.* ¶ 6. Of the 30,489 emails that were successfully delivered,
19 the Settlement Administrator was able to confirm that 12,733 were “opened” by the recipient.
20 *Id.* ¶ 7. While that 12,733 figure sets the floor as to the number of recipients who reviewed the
21 email, recipients who did not “open” the email may also have read the email by using the
22 preview feature of an email program like Microsoft Outlook, which allows users to see the full
23 contents of an email without “opening” it. *Id.* As to those 8,774 emails that were undeliverable,
24 the Settlement Administrator sent a second notice via mail. *Id.* ¶ 8.

25 **c. Mail Notice**

1 In addition to sending notice via mail to those 8,774 Settlement Class members where the
2 email notice was undeliverable, the Settlement Administrator also sent mail notice to those
3 11,077 Settlement Class members for whom Autobahn did not have an email address on file. *Id.*
4 In total, 19,821 notices were sent by mail. *Id.* Of the 19,821 mail notices that were sent to class
5 members, 987 were returned as undeliverable, 7 with forwarding addresses, 980 without
6 forwarding addresses. *Id.* ¶ 11. The Settlement Administrator forwarded the 7 mail notices
7 where a forwarding address was provided, and all 7 were successfully delivered. *Id.* ¶ 12. As to
8 the 980 mail notices where no forwarding address was provided, the Settlement Administrator
9 used the Accurint database to attempt to locate accurate addresses. *Id.* ¶ 13. The Settlement
10 Administrator was able to locate 517 forwarding addresses via Accurint, successfully delivering
11 514 of the originally undeliverable mail notices. *Id.* ¶ 13. In total, 19,355 postcard notices were
12 delivered. *Id.* ¶ 14.

13
14
15 **d. Notice Contents**

16 Both the mail and email notices followed the short form set by the Court at the
17 preliminary approval stage. *See* Dkt. 60, Ex. B. The notices provided Settlement Class members
18 with information about the Settlement, as well as access to the settlement website. The website
19 provided additional information about the Settlement, including the long form notice, and
20 selected pleadings from the case. Patel Decl. ¶¶ 16–17. Additionally, the website allowed each
21 Settlement Class member the opportunity to elect to receive cash in lieu of a voucher. *Id.* As to
22 Class 2, the only Class that was not automatically compensated, the settlement website also
23 provided an opportunity to make a claim. *Id.* ¶ 17.

24
25 **e. Response of the Class**

26 Of the 50,310 Settlement Class members, 2,193 filed Cash Election/Claim Forms by the
27 deadline of November 13, 2018. Of those Settlement Class Members who filed forms, 2,001, or
28

1 4% of the class, elected to receive cash in lieu of a voucher. The claims rate for members of
2 Class 2 was 5%, which matches Class Counsel’s prediction prior to preliminary approval.³ (Doc.
3 158 at 10 & Ex. B, Dahl Decl.). Members of Classes 1 and 3 will be compensated automatically
4 regardless of whether they file claims. Approximately 98% of the members of Class 2 are also
5 members of Class 1 or Class 3, and will receive compensation as members of those Classes
6 regardless of whether they filed a Class 2 claim.⁴ (Dahl Decl., Doc. 158, Ex. B ¶¶ 17–18). In
7 total, \$27,240.42 in cash will be distributed and \$1,144,427.50 in voucher benefits will be
8 distributed to Settlement Class members if the Settlement receives final approval from the
9 Court.⁵

10
11 To reiterate, the Settlement Administrator reports the following information in
12 connection with Final Approval:

- 13 1. The actual claims rate for Class 2 is 5%.
- 14 2. The percentage of Settlement Class members who elect to receive checks is 4%.
- 15 3. The total amount of cash benefits to be distributed is \$27,240.42.
- 16 4. The total amount of voucher benefits to be distributed is \$1,144,427.50.

17
18 The 5% actual claims rate for Class 2 is greater than the estimate (“claims rate of less
19 than 5% because consumers are simply unwilling to take even the smallest steps to participate”)
20 provided by counsel to this Court. See DE 158 at Page 10, footnote 11.

21
22 ³ Out of those 460 Class 2 claims, 401 elected cash, and 59 elected vouchers. The 401 Class 2
23 members who elected cash are included in the 2001 Settlement Class members (4%) who
24 elected cash.

25 ⁴ This is true even if none of the 2% of Class 2 members who are not members of Classes 1 or
26 filed claims forms.

27 ⁵ All of these figures are laid out in more detail in the Patel Declaration, attached hereto as
28 Exhibit 1. The voucher redemption rate will not be known until the vouchers are distributed
after final approval and the one-year redemption period expires.

1 While the redemption rate of the vouchers is not yet known, the evidence submitted by
2 Plaintiffs' counsel in this case establishes that the voucher component of this settlement is a true
3 benefit for Settlement Class members, particularly for those who would otherwise be shut out of
4 the settlement because they failed to take the time to make an election. See DE 158, Exhibit B,
5 Dahl Affidavit. Because of the automatic nature of the voucher issuance, the "effective claims
6 rate" for noticed Class members is 100%, and the effective claims rate to class members who
7 could be located will be greater than 97%. *Id.* at ¶17 and ¶ 18 (positing an effective claims rate
8 in excess of 98% prior to knowing the 5% actual claims rate for Class 2).

9
10 There were only three (3) requests for exclusion (opt-outs) from the Class beyond the
11 non-representative named Plaintiffs who settled their claims at mediation, which is well below
12 the 1% threshold for opt-outs in the Settlement Agreement. The only comment or objection on
13 the Settlement was from former Plaintiff Hooshang Jowza. Mr. Jowza was listed as a Plaintiff in
14 this action through the Third Amended Complaint. However, he was unwilling to act as a class
15 representative. His deposition was taken and his damages discussed in detail with counsel and
16 Autobahn. His individual claim with Autobahn was settled at mediation with Autobahn and he
17 opted out of the class in order to effectuate that individual resolution. Since he opted out of the
18 class before mailing his comment to the Court, Mr. Jowza's comment is not to be considered.⁶
19
20 As a result, there are currently no valid objections to this Settlement.

21 **V. CONCLUSION**

22 As the above analysis and supporting documents demonstrate, the proposed Settlement
23 clearly satisfies the criteria for final approval. Therefore, Plaintiffs respectfully request that this
24 Honorable Court enter an Order granting final approval to the Settlement.
25

26
27 ⁶ After discussions with counsel, and after being assured that his claims against Mercedes
28 would proceed, Mr. Jowza also withdrew his objection. See Exhibit 2, Jowza Withdrawal of
Objection, December 7, 2018.

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Respectfully submitted this 11th day of December, 2018.

VARNELL & WARWICK, P.A.

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