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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

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

MDL No. 2672 CRB

The Honorable Charles R. Breyer

19 This Document Relates to:
20 Porsche Gasoline Litigation
21

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

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NOTICE OF MOTION AND MOTION

TO ALL THE PARTIES AND COUNSEL OF RECORD:

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

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

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

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

26 **II. BACKGROUND AND PROCEDURAL HISTORY**

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

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

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

4 This case centers on allegations that Defendants altered fuel economy and emissions test
5 results in certain gasoline-powered Porsche vehicles manufactured for model years 2005 through
6 2020. Specifically, Plaintiffs allege two improper strategies that could have impacted the
7 emissions and fuel economy test results for the Class Vehicles: referred to in the Amended
8 Complaint as the “Axle Ratio Fraud” and the “Sport+ Fraud.” Dkt. 7969 at ¶¶ 68-90. As to the
9 Axle Ratio Fraud, (referred to in the Settlement as the “Fuel Economy Matter”), Plaintiffs allege
10 that Porsche used doctored vehicles for emissions and fuel economy testing, such that the
11 hardware and software in the tested vehicles differed in material ways from the hardware and
12 software in vehicles that were sold to the public. As a result, the tested vehicles obtained better
13 fuel economy and emitted less CO₂ in the laboratory than the vehicles that were actually sold and
14 leased to consumers. With respect to the Sport+ Fraud, Plaintiffs allege that some Class Vehicles
15 exceeded emissions limits when driven in a user-selected, high-performance “Sport+” driving
16 mode.

17 The proposed Settlement provides substantial cash payments to all Class members whose
18 vehicles were or could have been impacted by one or both of these tactics. The amount of
19 compensation available to each Class member is based on the model and model year Class
20 Vehicle they purchased or leased, and the degree to which there is a measured impact on their
21 Class Vehicle from the relevant conduct. Class members with a Fuel Economy Class Vehicle—
22 for which testing and other discovery revealed a deviation in fuel economy—will receive cash
23 compensation for (1) the difference in cost for the amount of gasoline that would have been
24 required under the original Monroney fuel economy label and the greater amount required under
25 the adjusted fuel economy label, and (2) a goodwill payment of an additional 15% of those
26 damages to compensate for any inconvenience. Dkt. 7971-1 ¶ 4.1. Payments range from \$250 to
27 \$1,109.66 for Class members who owned the vehicle for 96 months after it was first sold or
28 leased. *Id.*, Ex. 1. Compensation for Class members who sold, purchased used, or leased their

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

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

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

19 The \$80 million available to the Class is non-reversionary. If there are any funds
20 remaining after all valid, complete, and timely Claims are paid, the Settlement contemplates a
21 redistribution of the remaining funds to Class members unless and until it is economically
22 infeasible to do so. SA ¶ 4.4. Finally, any final balance (an amount which will be relatively
23 modest given the Class member redistribution) will be directed *cy pres* to environmental
24 remediation efforts subject to Court approval. *Id.* This ensures that *all* of the money secured by
25

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

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

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

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

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

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

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

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

1 Conservation Act of 1975 (“EPCA”), Federal Trade Commission (“FTC”) regulations, and the
2 Clean Air Act; and whether Plaintiffs’ claims—which cover conduct reaching back nearly two
3 decades—were barred by statutes of limitation. Dkt. 7862. Class Counsel then researched,
4 drafted, and filed a 60-page opposition brief, and Defendants lodged a reply in support. Dkts.
5 7884, 7901. Those briefs, as well as subsequent developments in the law, reveal the strengths of
6 Plaintiffs’ claims, but also the very real risks Plaintiffs faced in advancing them. Indeed, as
7 discussed further below, another court recently found—incorrectly, in Plaintiffs’ view—that
8 claims of falsified fuel economy ratings like this one are preempted by the EPCA. *See In re Ford*
9 *Motor Co. F-150 & Ranger Truck Fuel Econ. Mktg. & Sales Pracs. Litig.*, No. 2:19-MD-02901,
10 2022 WL 551221, at *12 (E.D. Mich. Feb. 23, 2022).

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

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

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

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

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

17 Following preliminary approval, the Parties worked with respected class notice provider
 18 and settlement administrator JND to roll out the Court-approved Notice Program with great
 19 success. JND reports that the Notice Program is on track to reach “virtually all” Class members.
 20 Declaration of Jennifer Keough (“Keough Decl.”) ¶ 6. To date, JND has sent 1,096,929
 21 individual notices by email, and 555,294 by mail, to individual Class members. *Id.* ¶¶ 9-10.
 22 Banner notices have yielded 41,990,491 impressions, and sponsored search listings have been
 23 displayed 2,699 times. *Id.* ¶¶ 15-16. While the Notice program remains underway, and several
 24 months remain in the claims period, Class members are already visiting the Settlement Website at
 25 an impressive rate, with 684,208 page hits from 146,074 unique visitors so far. *Id.* ¶ 20.⁴ As of

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

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

10 **III. ARGUMENT**

11 **A. The Settlement Class satisfies all requirements of Rule 23 and should be** 12 **certified.**

13 As the Court concluded in granting preliminary approval and directing notice to the Class,
14 “the Class and its representatives likely meet all relevant requirements of Rule 23(a) and Rule
15 23(b)(3).” Dkt. 7997 at 4. This remains true, and the Settlement Class should be certified.

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

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

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

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

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

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

23 _____
 24 ⁵ Here, and throughout, internal citations are omitted unless otherwise indicated.

25 ⁶ Likewise, commonality is satisfied in cases where defendants deployed uniform
 26 misrepresentations to deceive the public (such as the Monroney labels and other advertisements
 27 for the Class Vehicles here). *See Ries v. Ariz. Beverages USA LLC*, 287 F.R.D. 523, 537 (N.D.
 28 Cal. 2012) (“Courts routinely find commonality in false advertising cases”); *Astiana v. Kashi*
Co., 291 F.R.D. 493, 501-02 (S.D. Cal. 2013) (same); *see also Guido v. L’Oreal, USA, Inc.*, 284
 F.R.D. 468, 478 (C.D. Cal. 2012) (whether misrepresentations “are unlawful, deceptive, unfair, or
 misleading to reasonable consumers are the type of questions tailored to be answered in ‘the
 capacity of a classwide proceeding to generate common answers apt to drive the resolution of the
 litigation’”) (quoting *Dukes*, 564 U.S. at 350).

1 questions will, in turn, generate common answers “apt to drive the resolution of the litigation” for
2 the Settlement Class as a whole. *See Dukes*, 564 U.S. at 350. As the Settlement Class’s “injuries
3 derive from [D]efendants’ alleged ‘unitary course of conduct,’” Plaintiffs have “‘identified a
4 unifying thread that warrants class treatment.” *Sykes v. Mel Harris & Assocs. LLC*, 285 F.R.D.
5 279, 290 (S.D.N.Y. 2012), *aff’d* 780 F.3d 70 (2d Cir. 2015). As in the *Volkswagen* diesel
6 litigation and the Audi CO₂ cases, “[w]ithout class certification, individual Class members would
7 be forced to separately litigate the same issues of law and fact which arise from Volkswagen’s
8 use of the [emissions cheat] and Volkswagen’s alleged common course of conduct.” *In re*
9 *Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC),
10 2016 WL 4010049, at *10 (N.D. Cal. July 26, 2016) (“VW 2L Preliminary Approval Order”).

11 **3. Rule 23(a)(3): The Settlement Class Representatives’ claims are typical**
12 **of other Class members’ claims.**

13 Under Rule 23(a)(3), “the claims or defenses of the representative parties” must be
14 “‘typical of the claims or defenses of the class.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir.
15 2014) (quoting Fed. R. Civ. P. 23(a)(3)). “Like the commonality requirement, the typicality
16 requirement is ‘permissive’ and requires only that the representative’s claims are ‘reasonably co-
17 extensive with those of absent class members; they need not be substantially identical.’”
18 *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon v. Chrysler Corp.*, 150
19 F.3d 1011, 1020 (9th Cir. 1998)). Here, the same course of conduct injured the Settlement Class
20 Representatives and the other members of the proposed Settlement Class in the same ways. The
21 Settlement Class Representatives, like other Settlement Class members, purchased or leased Class
22 Vehicles that did not or may not obtain the fuel economy and emissions performance they
23 reasonably expected. As a result, they may have paid for more gas and visited the gas pump more
24 frequently, and/or will take their vehicles in for a software upgrade to bring them into compliance
25 with emissions regulations. The typicality requirements are satisfied. *See In re Volkswagen*
26 *“Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL
27 672820, at *7 (N.D. Cal. Feb. 16, 2017); *see also In re Volkswagen “Clean Diesel” Mktg., Sales*
28 *Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 2212780, at *5 (N.D. Cal.

1 May 17, 2017).

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

4 Rule 23(a)(4)'s adequacy requirement is met where "(1) . . . the named plaintiffs and their
 5 counsel have [no] conflicts of interest with other class members and (2) . . . the named plaintiffs
 6 and their counsel [have] prosecute[d] the action vigorously on behalf of the class[.]" *Evon v. Law*
 7 *Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting *Hanlon*, 150 F.3d at
 8 1020). Both prongs are readily satisfied here.

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

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

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

22 "The predominance inquiry 'asks whether the common, aggregation-enabling, issues in
 23 the case are more prevalent or important than the non-common, aggregation-defeating, individual
 24 issues.'" *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016). Thus, "[w]hen common
 25 questions present a significant aspect of the case and they can be resolved for all members of the
 26 class in a single adjudication, there is clear justification for handling the dispute on a
 27 representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022.
 28

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

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

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

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

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

10 *Trosper v. Styker Corp.*, No. 13-CV-0607-LHK, 2014 WL 4145448, at *17 (N.D. Cal. Aug. 21,
11 2014).

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

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

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

3 * * *

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

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

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

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

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

1 As this outcome reflects, Class Counsel showed dedication to investigating, prosecuting,
2 and resolving this action over the course more than two years. *See* Fed. R. Civ. P. 23(e)(2)(A). As
3 detailed above, Class Counsel undertook significant efforts to uncover the facts to continuously
4 pursue and refine the Class claims. Class Counsel also engaged in robust Rule 12 motion
5 practice—including researching, drafting, and filing a 60-page brief in opposition to the
6 Defendants’ thorough motion to dismiss, a process that fleshed out the strengths and
7 vulnerabilities of Plaintiffs’ claims. Class Counsel were therefore well-positioned to evaluate the
8 case and to negotiate a fair and reasonable Settlement. *See Ontiveros v. Zamora*, 303 F.R.D. 356,
9 371 (E.D. Cal. 2014). They have done so.

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

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

16 As the Court observed in granting preliminary approval, the proposed Settlement arose out
17 of “intensive, thorough, serious, informed, and non-collusive negotiations.” Dkt. 7997 at 2; *see*
18 *also* Fed. R. Civ. P. 23(e)(2)(B). Negotiations leading up to the proposed Settlement took place
19 between sophisticated parties that endured for more than a year’s time. The relatively lengthy
20 timeframe reflects the detailed and technical nature of the negotiations, and efforts to inform and
21 support them through a parallel investigatory process involving numerous experts and multiple
22 rounds of vehicle testing by both Plaintiffs and Defendants. The Parties also engaged in extensive
23 document and information exchanges. As part of this process, Plaintiffs carefully analyzed
24 hundreds of thousands of documents obtained through discovery in this litigation, including many
25 complex and technical German language documents made available to Plaintiffs in Germany, as
26 well as a cache of documents produced in the MDL and identified through targeted searches.
27 Stellings Decl. ¶¶ 5, 27.
28

1 In this case, the robust exchange of information and documents further demonstrates that
2 the Settlement was reached in a procedurally fair manner between well-informed parties. *See*
3 4 Newberg § 13:49 (5th ed. 2012) (extensive exchange of information in litigation supports the
4 assumption that “the parties have a good understanding of the strengths and weaknesses of their
5 respective cases and hence that the settlement’s value is based upon such adequate information”);
6 *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 320 (N.D. Cal. 2018) (concluding that an
7 extensive discovery exchange gave the parties “a good sense of the strength and weaknesses of
8 their respective cases” and was “indicative of a lack of collusion” between them); *Elder v. Hilton*
9 *Worldwide Holdings, Inc.*, No. 16-CV-00278-JST, 2021 WL 4785936, at *7 (N.D. Cal. Feb. 4,
10 2021) (“[T]he extent of discovery completed supports approval of a proposed settlement” in
11 particular where the litigation has “proceeded to a point at which both plaintiffs and defendants
12 ha[ve] a clear view of the strengths and weaknesses of their cases.”); *Ontiveros*, 303 F.R.D. at
13 371 (granting final approval where class counsel had “conducted discovery and non-discovery
14 investigation” indicating that the parties carefully investigated claims before reaching a
15 resolution).

16 So too does the government’s role in reviewing and approving the revised fuel economy
17 labels for the Class Vehicles—which will be posted on the official government website,
18 www.fueleconomy.gov—and the ECR recall repair for the Sport+ Class Vehicles. These
19 government-approved changes underlie the compensation model in the Settlement. The
20 procedurally fair manner in which this Settlement was reached, coupled with the government’s
21 role, weighs “heavily in favor” of granting final approval. *See VW 2L Final Approval Order*,
22 2016 WL 6248426, at *14; *see also In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., &*
23 *Prod. Liab. Litig.*, 895 F.3d at 610 n.18 (recognizing “the presence of a governmental participant”
24 as a factor favoring approval); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir.
25 1977) (“The participation of a government agency serves to protect the interests of the class
26 members, particularly absentees, and approval by the agency is an important factor for the court’s
27 consideration.”).

28

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

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

11 Avoiding years of additional, risky litigation in exchange for immediate and significant
12 cash payments is a principled compromise that works to the clear benefit of the Class in this case.
13 *See Fed. R. Civ. P. 23(e)(2)(C)*. The Settlement secures at least \$80 million (and up to \$85
14 million) to compensate Class members for the effects of Defendants’ alleged practices of
15 improperly influencing regulatory test results. The compensation available for Fuel Economy
16 Class Vehicles consists of (1) the difference in cost for the amount of gasoline that would have
17 been required under the original Monroney fuel economy label and the greater amount required
18 under the adjusted fuel economy label, and (2) a goodwill payment of an additional 15% of those
19 damages to compensate for any inconvenience. This compensation formula is nearly identical to
20 that approved by the Court in the similar Audi CO₂ Fuel Economy matter, with the exception that
21 the gas price increased from \$3.54 to \$3.97 to account for inflation in the years after that
22 settlement, and the miles per year were pegged to real-world data about these specific vehicles.
23 *See In re Volkswagen “Clean Diesel,”* No. 15-md-2672, Dkts. 6764, 7244.

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

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

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

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

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

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

27 ⁷ *See* Dkt. 7884 at 19-30; *see also, e.g., In re Toyota Rav4 Hybrid Fuel Tank Litig.*, 534 F. Supp.
28 3d 1067, 1095 (N.D. Cal. 2021) (rejecting EPCA/FTC preemption where plaintiffs alleged that failure to obtain advertised mileage range was due to diminished fuel tank capacity).

1 of state attorneys general); *Counts v. Gen. Motors, LLC*, 237 F. Supp. 3d 572, 594 (E.D. Mich.
2 2017) (similar). Plaintiffs would likely face these same challenges, and others, here.

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

11 The proposed Settlement eliminates all of this risk and expense, cuts through the delay,
12 and provides immediate and significant compensation to the Class. This factor strongly favors
13 final approval. *See Nobles v. MBNA Corp.*, No. C 06-3723 CRB, 2009 WL 1854965, at *2 (N.D.
14 Cal. June 29, 2009) ("The risks and certainty of recovery in continued litigation are factors for the
15 Court to balance in determining whether the Settlement is fair.") (citing *In re Mego Fin. Corp.*
16 *Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000); *Kim v. Space Pencil, Inc.*, No. C 11-03796 LB,
17 2012 WL 5948951, at *5 (N.D. Cal. Nov. 28, 2012) ("The substantial and immediate relief
18 provided to the Class under the Settlement weighs heavily in favor of its approval compared to
19 the inherent risk of continued litigation, trial, and appeal, as well as the financial wherewithal of
20 the defendant."); *VW 2L Final Approval Order*, 2016 WL 6248426, at *12; Fed. R. Civ. P.
21 23(e)(2)(C)(i).

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

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

1 receive compensation after the claims deadline, currently set for November 7, 2022. SA ¶ 2.6.
 2 Sport+ Class members will receive additional compensation *automatically* after completing an
 3 ECR Sport+ upgrade in their vehicle within eighteen months of the Preliminary Approval Order.
 4 SA ¶ 2.6.⁸ Class members will be able to select streamlined forms of e-payments, including
 5 through Venmo, PayPal, and other forms of online transfer. The Settlement’s method for
 6 processing claims and distributing relief is straightforward, fair, and reasonable. *See* Fed. R. Civ.
 7 P. 23(e)(2)(C)(ii).

8 **c. Counsel seek reasonable attorneys’ fees and costs.**

9 Class Counsel’s reasonable fee request is detailed below (§ III.D) but in this context it is
 10 worth reiterating that “terms of . . . [the] proposed award of attorneys’ fees” are fair and
 11 reasonable, particularly in light of the substantial recovery of a non-reversionary fund of at least
 12 \$80 million (up to \$85 million) that stands to provide *full compensation* for many Class
 13 members. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii).

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

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

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

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

9 **5. The Settlement satisfies the Ninth Circuit’s approval factors.**

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

21 **a. Class Counsel endorse the Settlement.**

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

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

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

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

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

17 **c. The Class’ initial response has been positive.**

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

26 * * *

27 The Settlement is fair, reasonable, and adequate, and merits final approval.
28

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

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

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

12 "[L]awyer[s] who recover[] a common fund . . . [are] entitled to a reasonable attorney's
 13 fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In deciding
 14 whether a requested fee amount is appropriate, the Court's role is to determine whether such
 15 amount is "fundamentally fair, adequate, and reasonable." *Staton v. Boeing Co.*, 327 F.3d 938,
 16 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)). In this Circuit, the determination typically
 17 involves analysis of a number of factors, including: (1) the results achieved by class counsel;
 18 (2) the complexity of the case and skill required; (3) the risks of litigation; (4) the benefits to the
 19 class beyond the immediate generation of a cash fund; (5) the market rate of customary fees for
 20 similar cases; (6) the contingent nature of the representation and financial burden carried by
 21 counsel; and (7) a lodestar cross-check. *See, e.g., In re Volkswagen "Clean Diesel" Mktg., Sales*
 22 *Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at *1 (N.D. Cal. Mar.
 23 17, 2017) ("VW 2L Fee Order") (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-52 (9th
 24 Cir. 2002)); *see also Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th
 25 Cir. 1990). Each of these factors supports Class Counsel's request in this case.

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

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

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

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

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

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

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

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

13 **2. The Settlement resulted from Class Counsel’s zealous representation**
 14 **in complex and risky litigation.**

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

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

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

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

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

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

25 **3. Class Counsel’s requested fee percentage is reasonable, appropriate,**
26 **and strongly supported by precedent.**

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

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

2 Class Counsel request 30% of the Settlement Fund in fees, plus reimbursement of costs
3 they reasonably incurred in prosecuting this case, for a total of \$24,710,733.89. As explained
4 below, the requested fees, which represent a modest (and justified) upward departure from the
5 Ninth Circuit’s typical 25% benchmark, fall within the usual range of awards routinely approved.
6 In fact, in this circuit, “fee awards exceed[] the [25%] benchmark” in “*most* common fund cases,”
7 and awards of 30% or more are common. *In re NCAA*, No. 4:14-MD-2541-CW, 2017 WL
8 6040065, at *2; *see also In re: CRT Antitrust Litig.*, 2016 WL 4126533, at *5 (N.D. Cal. Aug. 3,
9 2016) (awarding 30% of \$576,750,000 fund); *Hernandez v. Dutton Ranch Corp.*, No. 19-CV-
10 00817-EMC, 2021 WL 5053476, at *6 (N.D. Cal. Sept. 10, 2021) (collecting cases and finding
11 that “[d]istrict courts within this circuit . . . routinely award attorneys’ fees that are one-third of the
12 total settlement fund . . . [s]uch awards are routinely upheld by the Ninth Circuit”).¹¹

13 Regardless, this is no ordinary case. As discussed the above, the results achieved—
14 recovery at or near 100% of potential damages—are unusually strong and more than justify the
15 fees requested. Indeed, courts commonly “justif[y] upward departures from the 25% benchmark”
16 with “[f]ar lesser results (with 20% recovery of damages or less).” *NCAA Antitrust Litig.*, 2017
17 WL 6040065, at *3 (collecting cases); *see also In re Heritage Bond Litig.*, No. 02-ML-1475 DT,
18 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005) (settlement recovering 36% of available
19 damages was “exceptional result” justifying fee award of 33.33%) (collecting additional cases).

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

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

1 work that Counsel undertook to obtain it.

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

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

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

16 “Because the benefit to the class is easily quantified in common-fund settlements,” the
17 Ninth Circuit permits district courts “to award attorneys a percentage of the common fund in lieu
18 of the often more time-consuming task of calculating the lodestar.” *Bluetooth*, 654 F.3d at 942. In
19 common fund cases, “the primary basis of the fee award remains the percentage method.” *In re*
20 *Lithium Ion Batteries Antitrust Litig.*, No. 13-md-2420-YGR, 2019 WL 3856413, at *7 (N.D. Cal
21 Aug. 16, 2019) (quoting *Vizcaino*, 290 F.3d at 1050 & n.5); *cf. Craft v. Cty. of San Bernardino*,
22 624 F. Supp. 2d 1113, 1122 (C.D. Cal. 2008) (“A lodestar cross-check is not required in this
23 circuit, and in some cases is not a useful reference point.”); *Aichele v. City of Los Angeles*, No.
24 CV-12-10863-DMG, 2015 WL 5286028, at *6 (C.D. Cal. Sept. 9, 2015) (same). Nevertheless,
25 courts sometimes employ a “streamlined” lodestar analysis to “cross-check” the reasonableness of
26 a requested award. *See, e.g., Vizcaino*, 290 F.3d at 1050 (“[W]hile the primary basis of the fee
27 award remains the percentage method, the lodestar may provide a useful perspective on the
28 reasonableness of a given percentage award.”). In so doing, “[t]he lodestar crosscheck need not

1 entail either mathematical precision or bean counting.” *Rieckborn v. Velti PLC*, No. 13-3889,
2 2015 WL 468329, at *21 (N.D. Cal. Feb. 3, 2015).

3 As explained below and in the accompanying Stellings Declaration,¹² Class Counsel
4 worked a reasonable number of hours billed at reasonable rates under the circumstances of this
5 complex, multi-district litigation. The resulting lodestar of \$12,261,791.50 yields a modest
6 multiplier of 1.96 for work performed to date and 1.86 including time anticipated for the on-the-
7 ground work necessary to implement, oversee, and protect this Settlement through potential
8 appeals. Stellings Decl. ¶¶ 23-25. Either multiplier is well within—and, indeed, on the low end
9 of—the “presumptively acceptable range of 1.0-4.0” in this Circuit. *Dyer v. Wells Fargo Bank*,
10 *N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014); *see also Vizcaino*, 290 F.3d at 1051 n.6 (approving
11 3.65 multiplier, and citing appendix of cases showing “a range of 0.6-19.6, with most . . . from
12 1.0-4.0 and a bare majority . . . in the 1.5-3.0 range”).

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

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

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

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

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

22 In furtherance of these common benefit efforts, among many others, Class Counsel
23 worked a reasonable 27,888.80 hours. *Id.* ¶¶ 23-28. Based on their experience in defending and
24 implementing other automotive class settlements, Class Counsel estimate that approximately
25 1,500 more hours will be necessary for the on-the-ground efforts to finalize, implement, and
26 protect the Settlement. This will include, for example, work required to: (1) obtain final approval
27 of the Settlement; (2) protect the Settlement on appeal (if any appeals are lodged); and (3) oversee
28 and help implement the Settlement, which will include, among other things, responding to

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

4 **b. Class Counsel billed reasonable rates for those hours.**

5 The blended average billing rate for the work described above is approximately \$439.67
 6 per hour. *Id.* ¶ 23. This is in line with average rates in this District and reasonable here given the
 7 skill, experience, and reputation of Class Counsel and the PSC—all of whom were appointed
 8 through a competitive leadership application process. *See, e.g., In re Volkswagen "Clean Diesel"*
 9 *Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), Dkt. 3396-2 ¶ 29 (N.D. Cal.
 10 June 30, 2017) (noting that the average blended rate of 40 class action settlements approved in
 11 this District in 2016 and 2017 was \$528.11 per hour); *VW 2L Fee Order*, 2017 WL 1047834, at
 12 *5 (approving blended average billing rate of \$529 per hour in this MDL).¹³

13 **c. Class Counsel’s performance and the results achieved justify a**
 14 **reasonable lodestar multiplier.**

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

26 ¹³ A number of other courts in this District have also recently approved fee requests based on
 27 similar hourly rates. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK,
 28 2018 WL 3960068, at *17 (N.D. Cal. Aug. 17, 2018); *In re Intuit Data Litig.*, No. 15-CV-1778-
 EJD-SVK, 2019 WL 2166236, at *1 (N.D. Cal. May 15, 2019); *Carlotti v. Asus Comput. Int’l*,
 No. 18-CV-03369-DMR, 2020 WL 3414653, at *5 (N.D. Cal. June 22, 2020).

1 Stellings Decl. ¶¶ 23—is therefore significantly below the average multiplier awarded in similar
 2 cases and more than justified by the exceptional results in this case. *See VW 2L Fee Order*, 2017
 3 WL 1047834, at *5 (approving multiplier of 2.63 in 2.0-liter settlement); *In re Volkswagen*
 4 *"Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL
 5 3175924, at *4 (N.D. Cal. July 21, 2017) (“*VW 3L Fee Order*”) (approving multiplier of 2.02 in
 6 3.0-liter settlement); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab.*
 7 *Litig.*, No. 2672 CRB (JSC), 2017 WL 2178787, at *3 (N.D. Cal. May 17, 2017) (“*VW/Bosch Fee*
 8 *Order*”) (approving multiplier of 2.32 in Bosch settlement); *In re Volkswagen "Clean Diesel"*
 9 *Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), Dkt. 7244 at 5 (March 2,
 10 2020) (approving multiplier of 2.06 in Audi CO2 settlement).

11 **E. Class Counsel’s expenses are reasonable and appropriate.**

12 “Class counsel are entitled to reimbursement of reasonable out-of-pocket expenses.”
 13 *Wakefield v. Wells Fargo & Co.*, No. 3:13-cv-05053 LB, 2015 WL 3430240, at *6 (N.D. Cal.
 14 May 28, 2015); *see also Staton*, 327 F.3d at 974; Fed. R. Civ. P. 23(h). This includes expenses
 15 that are reasonable, necessary, directly related to the litigation, and normally charged to a fee-
 16 paying client. *See, e.g., Willner v. Manpower Inc.*, No. 11-cv-02846-JST, 2015 WL 3863625, at
 17 *7 (N.D. Cal. June 22, 2015); *Buccellato v. AT&T Operations, Inc.*, No. C10-00463-LHK, 2011
 18 WL 3348055, at *2 (N.D. Cal. June 30, 2011).

19 Here, Class Counsel seek \$710,733.89 in litigation expenses, which includes \$560,733.89
 20 already expended by Lead Counsel and PSC firms to advance the common benefit pursuant to the
 21 terms of PTO 11. Stellings Decl. ¶ 32, Tbl. 3 (breaking out the costs across categories of work
 22 undertaken to advance the litigation). It also includes \$150,000 that Class Counsel are responsibly
 23 reserving to cover the anticipated costs associated with the future on-the-ground administration
 24 and Settlement implementation efforts. *Id.* At 0.89% of the total Settlement value, these costs are
 25 significantly less than the average costs awarded in class action settlements. Theodore Eisenberg
 26 & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J.
 27 Empirical Legal Stud. 248, 267 (2010) (mean and median of 2.8% and 1.7% before 2002 and
 28 2.7% and 1.7% thereafter); Eisenberg-Miller 2017 at 963 (mean and median of 3.9% and 1.7%

1 since 2009).

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

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

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

21 No doubt, this was a technical case, and it was expensive to prosecute. But, as other courts
22 have recognized, "Class Counsel had a strong incentive to keep expenses at a reasonable level
23 due to the high risk of no recovery when the fee is contingent." *Beesley v. Int'l Paper Co.*, No.
24 3:06-CV-703-DRH-CJP, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014). This is true, and Class
25 Counsel expended only that which they believed was necessary to advance the interests of the
26 Class. The requested costs are reasonable and should be reimbursed.

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

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

16 **IV. CONCLUSION**

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

1 Dated: August 26, 2022

Respectfully submitted,

2 /s/ Elizabeth J. Cabraser

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16 *Plaintiffs' Lead Counsel and Interim Settlement*
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CERTIFICATE OF SERVICE

I hereby certify that, on August 26, 2022, service of this document was accomplished pursuant to the Court’s electronic filing procedures by filing this document through the ECF system.

/s/ Elizabeth J. Cabraser
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UNITED STATES DISTRICT COURT

9

NORTHERN DISTRICT OF CALIFORNIA

10

SAN FRANCISCO DIVISION

11

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

MDL No. 2672 CRB

The Honorable Charles R. Breyer

14 This Document Relates to:

**DECLARATION OF DAVID S. STELLINGS
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT
AND AWARD OF ATTORNEYS' FEES AND
COSTS**

15 Porsche Gasoline Litigation
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1 I, DAVID S. STELLINGS, declare:

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

10 **Litigation and Settlement History for the Porsche Gasoline Litigation**

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

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

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

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

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

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

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

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

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

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

Settlement Benefits and Anticipated Recovery

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

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

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

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

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

6 16. By August 19, 2022, more than a year before the Sport+ Claim Deadline, at least
7 12,319 Sport+ Class Vehicles had already received an ECR. This represents nearly 40% of all
8 Sport+ Class Vehicles for which an ECR is currently available.

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

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

21 19. Furthermore, I expect that a substantial percentage of the Class will complete the
22 relatively streamlined claims process to collect their Settlement payments. For example, a recent
23 settlement that were previously negotiated by Class Counsel in this MDL—the Audi CO₂
24 settlement (Dkt. 7244)—reached a participation rate of over 20%. Three other settlements
25 previously negotiated by Class Counsel in this MDL—the 2.0-liter settlement (Dkt. 1685), the
26 3.0-liter settlement (Dkt. 2894), and the Bosch settlement (Dkt. 2918)—reached participation
27 rates of over 70%.

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

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

Table 1

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

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

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

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

26 29. In Table 2, below, I provide the hours worked, lodestar incurred, range of billing
27 rates, and average blended billing rates for each of the timekeeper categories.
28

Table 2

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

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

Costs Incurred

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

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

Table 3

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

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

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

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

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

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

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

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

10 * * *

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

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

18
19 /s/ David S. Stellings

20 David S. Stellings
21 LIEFF CABRASER HEIMANN &
22 BERNSTEIN, LLP
23 250 Hudson Street, 8th Floor
24 New York, NY 10013
25 Phone: (212) 355-9500
26 Fax: (212) 355-9592
27 Email: dstellings@lchb.com
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

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

MDL 2672 CRB

**DECLARATION OF JENNIFER
KEOUGH ON SETTLEMENT NOTICE
PLAN PROGRESS**

This Documents Relates to:
Porsche Gasoline Litigation

The Honorable Charles R. Breyer

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

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

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

13 **CAFA NOTICE**

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

17 **DIRECT NOTICE**

18 **A. Class Member Identification**

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

24 5. Using the Class Vehicle VIN data, JND staff worked with a third-party data
25 aggregation service to acquire vehicle registration information from the state Departments of
26 Motor Vehicles (“DMVs”) for all fifty states and U.S. Territories. This data compiled the contact
27

28

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

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

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

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

9 8. JND conducted a sophisticated email append process to obtain email addresses for
10 as many potential Class Members as possible. The email append process utilized skip tracing
11 tools to identify any email address by which the potential Class Member may be reached if an
12 email address was not provided in the initial data. JND then reviewed the data to identify any
13 undeliverable email addresses and duplicate records. Furthermore, JND performed advanced
14 address research using skip trace databases and the United States Postal Service (“USPS”)
15 National Change of Address (“NCOA”) database² to obtain the most current mailing address
16 information for potential Class Members.

17 **B. Direct Email Notice**

18 9. The direct email notice campaign commenced on July 15, 2022. JND emailed
19 notice to all potential Class Members for whom JND obtained a valid email address through
20 either the Defendants or the append process noted above. The email notice included the same
21 language as the Short Form Notice (ECF 7971-3, Exhibit E) and JND customized the emails to
22 include the potential Class Member’s name, address, and VIN. The email notice contained links
23 to the Settlement Website and directed the potential Class Member to visit the website to learn
24 more information and submit their settlement claim. As of August 26, 2022, JND sent a total of
25 1,096,929 email notices, of which 108,675 emails bounced back and were not deliverable.

26
27
28 ² The NCOA database is the official USPS technology product that makes changes of address
information available to mailers to help reduce undeliverable mail pieces.

1 internet users, popular Porsche forums, and related websites. The digital ads included an
2 embedded link to the Settlement Website, where potential Class Members can get more
3 information about the Settlement and file a claim online. As of August 19, 2022, a total of
4 41,990,491 impressions (i.e. display of the ad on a search result page or other site on the Google
5 Network) were delivered through GDN, Porsche forums, and related websites, which resulted in
6 6,714 clicks.

7 **B. Internet Search Campaign**

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

13 **SETTLEMENT WEBSITE AND OTHER CLASS MEMBER NOTICE**

14 **A. Settlement Website**

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

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

26 19. The Settlement Website also features an online Claim Form with document upload
27 capabilities for the submission of claims. Additionally, as noted above, a Claim Form is posted on
28

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

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

6 **B. Settlement Administrator Email Address**

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

10 **C. Settlement Administrator Toll-Free Number**

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

15 **D. Settlement Administrator Post Office Box**

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

19 **CLAIMS RECEIVED**

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

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

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

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OBJECTIONS

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

REQUESTS FOR EXCLUSION

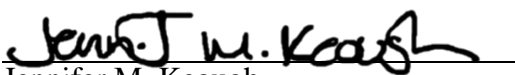
28. The Notices also informed Class Members of their right to opt out of the Settlement and the September 30, 2022 postmark deadline to do so. As of August 26, 2022, JND has received or is otherwise aware of three requests for exclusion. Not later than 10 days before the date of the Fairness Hearing,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

CONCLUSION

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

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

Executed August 26, 2022, at Seattle, Washington.

By: 
Jennifer M. Keough

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

MDL No. 2672 CRB
The Honorable Charles R. Breyer

This Document Relates to:
Porsche Gasoline Cases

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

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

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

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

4 **I. CLASS CERTIFICATION AND SETTLEMENT APPROVAL**

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

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

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

24 Those conclusions stand and are bolstered by the Class's favorable reaction to Settlement.
25 Indeed, no Class member has objected to any aspect of the Settlement or the request for attorneys'
26 fees and costs, and only three potential Class members have submitted valid opt-out requests. This
27 additional factor further supports final approval. *See, e.g., Churchill Vill., L.L.C. v. Gen. Elec.*, 361
28 F.3d 566, 577 (9th Cir. 2004) (affirming district court's approval of settlement where forty-five of

1 90,000 class members objected to the settlement, and 500 class members opted out); *Van Lith v.*
2 *iHeartMedia + Entm't, Inc.*, No. 1:16-CV-00066-SKO, 2017 WL 4340337, at *14 (E.D. Cal. Sept.
3 29, 2017) (“Indeed, ‘[i]t is established that the absence of a large number of objections to a
4 proposed class action settlement raises a strong presumption that the terms of a proposed class
5 action settlement are favorable to the class members.’”) (quoting *Nat’l Rural Telecomms. Coop. v.*
6 *DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004)); *Cruz v. Sky Chefs, Inc.*, No. C-12-02705
7 DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (“A court may appropriately infer that a
8 class action settlement is fair, adequate, and reasonable when few class members object to it.”).

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

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

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

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

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

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

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

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

23 **II. THE REQUESTED ATTORNEYS’ FEES AND COSTS**

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

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

1 parties' agreement." Fed. R. Civ. P. 23(h). "Attorneys' fees provisions included in proposed class
2 action agreements are, like every other aspect of such agreements, subject to the determination
3 whether the settlement is 'fundamentally fair, adequate and reasonable.'" *Staton v. Boeing Co.*,
4 327 F.3d 938, 964 (9th Cir. 2003) (citation omitted). Thus, "courts have an independent obligation
5 to ensure that the award, like the settlement itself, is reasonable." *In re Bluetooth Headset Prod.*
6 *Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

7 When, as here, a settlement establishes a calculable monetary benefit for a class, a court has
8 discretion to award attorneys' fees based on a percentage of the monetary benefit obtained, or by
9 using the lodestar method. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab.*
10 *Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at *1 (N.D. Cal. Mar. 17, 2017); *see also Staton*,
11 327 F.3d at 967. The \$80 million (and up to \$85 million) available to the class is non-reversionary,
12 eliminating incentive to discourage Class Members' participation in the Settlement and ensuring
13 that the full value is put towards the interests of the Class in this litigation. Class Counsel's
14 requested fee represents 30% of the total settlement value and 28.2% of the settlement's total
15 potential monetary value. This modest upward departure from the 25% benchmark is more than
16 justified under the facts of case, particularly given the exceptional results obtained for the Class.
17 *See, e.g., In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, No.
18 4:14-MD-2541-CW, 2017 WL 6040065, at *2 (N.D. Cal. Dec. 6, 2017), *aff'd*, 768 F. App'x 651
19 (9th Cir. 2019) (noting that "fee awards exceed[] the [25%] benchmark" in "most common fund
20 cases" and that "courts commonly "justif[y] upward departures from the 25% benchmark" with
21 "[f]ar lesser results (with 20% recovery of damages or less)"); *Hernandez v. Dutton Ranch Corp.*,
22 No. 19-CV-00817-EMC, 2021 WL 5053476, at *6 (N.D. Cal. Sept. 10, 2021) (collecting cases and
23 finding that "[d]istrict courts within this circuit . . . routinely award attorneys' fees that are one-third
24 of the total settlement fund . . . [s]uch awards are routinely upheld by the Ninth Circuit"); *In re*
25 *Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005)
26 (settlement recovering 36% of available damages was "exceptional result" justifying fee award of
27 33.33%) (collecting additional cases).

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

1 hours worked and the rates billed (a blended average rate of \$439.76 per hour) are customary and
2 reasonable. *See, e.g., Volkswagen*, 2017 WL 1047834, at *5 (approving blended average hourly
3 billing rate of \$529 per hour in this MDL). The total lodestar yields a multiplier of 1.96 for work
4 done to-date and 1.86 including a reasonable estimate of anticipated future work to implement and
5 protect the Settlement. Either multiplier is well within the range of reason and supported by the
6 facts of this case. *See, e.g., Volkswagen*, 2017 WL 1047834, at *5 (approving multiplier of 2.63 in
7 this MDL); *In re Volkswagen*, No. 2672 CRB (JSC), 2017 WL 2178787, at *3 (N.D. Cal. May 17,
8 2017) (approving multiplier of 2.32 in this MDL); *In re Volkswagen*, No. 2672 CRB (JSC), 2017
9 WL 3175924, at *4 (N.D. Cal. July 21, 2017) (approving multiplier of 2.02 in this MDL); Theodore
10 Eisenberg, Geoffrey Miller, & Roy Germano, *Attorneys' Fees in Class Actions 2009-2013*, 92
11 N.Y.U. L. Rev. 937, 967 (2017) (finding that the average multiplier in cases valued over \$67.5
12 million was 2.72).

13 In sum, both the percentage of the fund and the lodestar multiplier are reasonable in light of
14 the substantial benefits obtained for the Class and the risks and complexities of this litigation.
15 Moreover, as noted above, no Class member has objected to the requested fees and costs. Class
16 Counsel's request for \$24 million in attorneys' fees and \$710,733.89 in costs (for a total of
17 \$24,710,733.89) is hereby **GRANTED**.

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

23 **III. CONCLUSION**

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

25 1. The Court hereby **CERTIFIES** the Settlement Class and **GRANTS** the Motion for
26 Final Approval of the Settlement. The Court fully and finally approves the Settlement in the form
27 contemplated by the Settlement Agreement (Dkt. No. 7971-1) and finds its terms to be fair,
28

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

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

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

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

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

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

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

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

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

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

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

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IT IS SO ORDERED.

DATED: _____

THE HONORABLE CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE