

United States District Court
Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Case No. [15-md-02672-CRB](#)

**ORDER GRANTING MOTION FOR
FINAL APPROVAL OF
SETTLEMENT, GRANTING
ATTORNEYS’ FEES, AND
ENTERING FINAL JUDGMENT**

This Document Relates to:
Porsche Gasoline Litigation

The parties seek final approval of their settlement of this lawsuit brought on behalf of owners of approximately 500,000 gasoline-powered Porsche vehicles from model years 2005 through 2020. Plaintiffs allege that some Porsche vehicles had worse fuel economy and higher emissions than the test-specific models, due to a different axle ratio, while other vehicles with a high performance “Sport+ Mode” exceeded NO_x emissions limits while driven in that mode. See Am. Compl. (dkt. 7969).

In May 2021, Porsche and Volkswagen moved to dismiss. MTD (dkt. 7862). After full briefing, the Parties asked the Court to postpone the hearing while they pursued discovery and engaged in settlement discussions. See dkt. 7904. In June 2022, the parties filed a motion for certification of the class and preliminary approval of an \$80 million settlement. See Preliminary Approval Mot. (dkt. 7971). On July 8, 2022, the Court granted the motion for preliminary approval. See Order Granting Preliminary Approval (dkt. 7997).

On August 26, 2022, the parties moved for final approval of the settlement and an

1 award of attorneys’ fees and costs. See Final Approval Mot. (dkt. 8032). The Court held a
 2 final approval hearing on Friday, October 21, 2022. See dkt. 8073. The Court has
 3 considered the record, the Settlement Agreement, the briefing on this motion, the
 4 objections and comments it received, and the arguments at the hearing, and grants final
 5 approval of the settlement and Class Counsel’s motion for attorneys’ fees and costs, as
 6 modified by this Order.

7 **I. DEFINED TERMS**

8 Unless otherwise defined herein, all terms that are capitalized herein shall have the
 9 meanings ascribed to those terms in the Settlement Agreement.

10 **II. STANDING OF CLASS MEMBERS**

11 Courts considering class action settlements must verify that every class member has
 12 standing, and, as in the non-class action context, it is the plaintiffs’ burden to establish
 13 standing. TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2207–08 (2021). But a plaintiff
 14 need only “demonstrate standing ‘with the manner and degree of evidence required at the
 15 successive stages of the litigation.’” Id. at 2208 (quoting Lujan v. Defenders of Wildlife,
 16 504 U.S. 555, 561 (1992)). In TransUnion, which proceeded to trial, “the specific facts set
 17 forth by the plaintiff to support standing ‘must be supported adequately by the evidence
 18 adduced at trial.’” Id. (quoting Lujan, 504 U.S. at 561). In this case, which remains at the
 19 pleading stage, “general factual allegations of injury resulting from the defendant’s
 20 conduct may suffice.” Lujan, 504 U.S. at 561.

21 An objector, Wesley Lochridge, argues that the Other Class Vehicle Class Members
 22 in this settlement—who will receive up to \$200 if they submit a valid claim, Settlement
 23 Agreement (dkt. 7971-1) ¶ 4.2—do not have standing at this stage of this litigation because
 24 they “do not have claims or damages.”¹ Lochridge Obj. (dkt. 8060) at 10. This is because
 25 the Parties’ testing for purposes of settlement “identified” “no potential [fuel economy]
 26

27 _____
 28 ¹ There is no dispute as to whether the Fuel Economy Class Members or the Sport+ Class
 Members have standing.

1 deviations” among those vehicles, but because those vehicles were “conceivably
2 impacted,” they were included as Class Vehicles. Settlement Agreement at 3. Class
3 Counsel argues that this testing does not demonstrate that these Class Members “do not
4 have claims or damages”—rather, the testing revealed that some class members had
5 “damages that Plaintiffs allege were significantly smaller and more difficult to quantify,
6 but certainly not zero.” Final Approval Reply (dkt. 8069) at 6. In any case, Class Counsel
7 argues, the Ninth Circuit’s most recent decision on this issue, In re Apple Inc. Device
8 Performance Litigation, 50 F.4th 769 (2022), forecloses this objection.

9 In In re Apple, the parties settled claims alleging throttling due to iPhone software
10 updates after two motions to dismiss, but prior to class certification or summary judgment.
11 In re Apple, 50 F.4th at 777, 782. While the plaintiffs alleged that all class members
12 experienced throttling and “the iOS updates affected all Plaintiffs alike,” Apple contended
13 that some “users may not have . . . noticed any differences.” Id. at 781. Objectors argued
14 that allegations of throttling in the complaint were insufficient to establish class members’
15 standing under TransUnion. The Ninth Circuit disagreed, holding that, at that stage of the
16 litigation—after motions to dismiss but before class certification or summary judgment—
17 all that was required under Lujan is that the plaintiffs allege that all putative class members
18 experienced the injury, and the plaintiffs did so. Id. at 781–82.

19 Lochridge argues that this case is distinguishable from In re Apple because “the
20 undisputed evidence acknowledged by both parties established that a large and discrete set
21 of class members . . . do not have claims or damages,” while in In re Apple there was a
22 “possibility that some class members suffered no damages.” Lochridge Obj. at 9–10
23 (quoting In re Apple, 50 F.4th at 781–82). Lochridge attempts to turn discovery for
24 purposes of settlement into “undisputed evidence” adduced at trial, and he is unsuccessful.
25 The Plaintiffs’ testing for purposes of settlement has not been put before the Court, has
26 been neither “proven [n]or disproven,” and thus does not demonstrate that the Other Class
27 Vehicle Class Members have no claims or damages. In re Apple, 50 F.4th at 782. While
28 this testing may demonstrate that, for purposes of settlement, such class members have

1 weaker claims than the Fuel Economy or Sport+ Class Members, it does not demonstrate
 2 that they have experienced no injury for purposes of standing. If such testing were proven
 3 or stipulated to by the parties at trial, see TransUnion, 141 S. Ct. at 2209, the Court’s
 4 conclusion would be different; as it stands, testing for settlement purposes undertaken prior
 5 to a decision on a motion to dismiss does not prove that Other Class Vehicle Class
 6 Members have no standing. It only establishes the continued “possibility that some class
 7 members suffered no damages,” which, as Apple instructs, does not defeat standing at the
 8 pleading stage. The operative complaint in this case alleges that the axle ratio fraud
 9 affected every Fuel Economy and Other Class Vehicle. Am. Compl. ¶ 79. Other Class
 10 Vehicle Class Members have thus “maintain[ed] their personal interest in the dispute at
 11 [this] stage[] of litigation.” TransUnion, 141 S. Ct. at 2208 (quoting Davis v. FEC, 554
 12 U.S. 724, 733 (2008)).

13 Thus, the Court finds that all class members have standing to participate in the
 14 settlement.

15 **III. JURISDICTION**

16 This Court has jurisdiction over the subject matter of this Action, all parties to the
 17 Action, and all Class Members.

18 **IV. CERTIFICATION OF RULE 23(B)(3) CLASS FOR SETTLEMENT**

19 Plaintiffs seek to certify a single nationwide class under Federal Rule of Civil
 20 Procedure 23(a) and Rule 23(b)(3). Final Approval Mot. at 8–14. Upon granting
 21 preliminary approval, the Court found that it was likely to be able to certify the class, see
 22 Preliminary Approval Order at 4. The Court concludes that the settlement class has met all
 23 requirements of Rule 23(a) and Rule 23(b)(3) and grants certification for settlement.

24 **A. Rule 23(a) Requirements**

25 **1. Numerosity**

26 Under the first Rule 23(a) factor, the class must be “so numerous that joinder of all
 27 members is impracticable.” Fed. R. Civ. P. 23(a)(1). Some courts have held that
 28 numerosity may be presumed when the class comprises forty or more members. See, e.g.,

1 Krzesniak v. Cendant Corp., 05-cv-5156, 2007 WL 1795703, at *7 (N.D. Cal. June 20,
2 2007). Here, Class Counsel estimates that the class includes approximately “several
3 hundred thousand” members. Final Approval Mot. at 8. Joinder of thousands of class
4 members is “clearly impractical.” See Palmer v. Stassinios, 233 F.R.D. 546, 549 (N.D. Cal.
5 2006). Plaintiffs have therefore satisfied Rule 23(a)(1).

6 **2. Commonality**

7 Under the second Rule 23(a) factor, the class must share common questions of law
8 or fact. Fed. R. Civ. P. 23(a)(2). Not all questions of law or fact must be common: “The
9 existence of shared legal issues with divergent factual predicates is sufficient.” See
10 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). In cases like this one,
11 where fraud claims arise out of a uniform course of conduct, commonality is routinely
12 found. See, e.g., In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs., & Prods. Liab.
13 Litig., 17-md-2777, 2019 WL 536661, at *6 (N.D. Cal. Feb. 11, 2019). While the injuries
14 to each class member may not be precisely the same, because they are rooted in common
15 questions of fact and law regarding emissions and fuel economy test results and how the
16 realities differed from Porsche’s representations, commonality is found here. See In re
17 Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig., 15-md-2672, 2016
18 WL 4010049, at *10 (N.D. Cal. July 26, 2016) (“VW 2L Preliminary Approval Order”).
19 Plaintiffs have thus satisfied Rule 23(a)(2).

20 **3. Typicality**

21 Under the third Rule 23(a) factor, a representative party’s claims or defenses must
22 be “typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “The purpose
23 of the typicality requirement is to assure that the interest of the named representative aligns
24 with the interest of the class.” Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir.
25 1992) (citing Weinberger v. Thornton, 114 F.R.D. 599, 603 (S.D. Cal. 1986)). “Like the
26 commonality requirement, the typicality requirement is ‘permissive’ and requires only that
27 the representative’s claims are ‘reasonably co-extensive with those of absent class
28 members; they need not be substantially identical.’” Rodriguez v. Hayes, 591 F.3d 1105,

1 1124 (9th Cir. 2010) (quoting Hanlon, 150 F.3d at 1020).

2 The Class Representatives appear to be represented in each of the three settlement
 3 classes—Fuel Economy Class Members, Sport+ Class Members, and Other Class Vehicle
 4 Class Members. See Am. Compl. ¶ 8; Settlement Agreement Ex. 1–4. The Class
 5 Representatives all allege that they were injured by Porsche’s alleged fraudulent conduct
 6 and misrepresentations regarding the fuel economy of the Class Vehicles they owned or
 7 leased. See Am. Compl. ¶¶ 9–41. Because these alleged injuries are “reasonably co-
 8 extensive” with those of the rest of the class, typicality is satisfied. Rodriguez, 591 F.3d at
 9 1124.

10 4. Adequacy of Representation

11 Under the final Rule 23(a) factor, the representative party must “fairly and
 12 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Representative
 13 parties are required to protect the interests of the class by (1) retaining qualified counsel
 14 who will prosecute the case vigorously, and (2) ensuring they do not have any conflicts of
 15 interest with the class. See Hanlon, 150 F.3d at 1020.

16 Objector Wesley Lochridge argues, in a similar vein to his standing objection
 17 discussed above, that because the claims of Fuel Economy Class Members are arguably
 18 stronger than the Other Class Vehicle Class Members, that the creation of formal
 19 subclasses and separate representation is required under Rule 23(a)(4). Lochridge Obj. at
 20 10–12. But like the standing question, In re Apple also forecloses this argument: Where
 21 “[a]ll class members . . . experienced injury during the same time frame and in the same
 22 manner,” the interests of that class are aligned such that they are “not tantamount to two
 23 adverse groups requiring separate representation.” In re Apple, 50 F.4th at 781. Contrary
 24 to Lochridge’s argument, this case is not like Amchem or Ortiz, where the parties’ injuries
 25 stemmed from the same source but manifested over the past and the future, creating
 26 conflicting pay-now-versus-pay-later interests. Amchem Prods., Inc. v. Windsor, 521 U.S.
 27 591, 626 (1997); Ortiz v. Firebrand Corp., 527 U.S. 815, 856–57 (1999). Rather, this is a
 28 case where a company’s malfeasance—at the same time and in the same manner—may

1 have caused different degrees of harm to different class members. In re Apple, 50 F.4th at
 2 781. In such a case, the Ninth Circuit does not require the creation of subclasses or
 3 separate representation under Rule 23(a)(4).

4 **B. Rule 23(b) Requirements**

5 Plaintiffs seek to certify the class under Rule 23(b)(3). Final Approval Mot. at 11–
 6 14. To be certified under Rule 23(b)(3), the proposed class must meet two additional
 7 requirements: (1) common questions of law and fact must predominate over individual
 8 claims; and (2) the litigation as a class action suit must be superior to other methods of
 9 resolving the controversy. Fed. R. Civ. P. 23(b)(3).

10 **1. Predominance**

11 Because Rule 23(b)(3) “analysis presumes that the existence of common issues of
 12 fact or law have been established pursuant to Rule 23(a)(2),” a finding of predominance
 13 requires more than the existence of commonality. Hanlon, 150 F.3d at 1022. Instead,
 14 “[t]he ‘predominance inquiry tests whether proposed classes are sufficiently cohesive to
 15 warrant adjudication by representation’” and requires “courts to give careful scrutiny to the
 16 relation between common and individual questions in a case.” Tyson Foods, Inc. v.
 17 Bouaphakeo, 136 S. Ct. 1036, 1045 (2016) (quoting Amchem, 521 U.S. at 623). Common
 18 questions of law and fact predominate over individual claims when the common questions
 19 “present a significant aspect of the case and they can be resolved for all members of the
 20 class in a single adjudication” Hanlon, 150 F.3d at 1022 (internal quotation marks
 21 omitted).

22 This settlement meets the predominance requirement. Plaintiffs allege a common
 23 course of conduct—manipulation of emissions and fuel economy test results—that applies
 24 to all Class Members and is central to their claims. Even if that conduct injured Class
 25 Members to different degrees, the question of whether the fraud itself occurred is uniform:
 26 “If the Court were to find that [Porsche] has indeed engaged in a deceptive and fraudulent
 27 scheme, such a finding would apply to all of the Class Members’ claims.” VW 2L
 28 Preliminary Approval Order, 2016 WL 4010049, at *12. Because Porsche allegedly

1 “perpetrated the same fraud in the same manner against all Class Members,” predominance
2 is satisfied. Id.

3 **2. Superiority**

4 In determining whether a class action is superior to other methods of resolving
5 claims, courts consider whether the class action “will reduce litigation costs and promote
6 greater efficiency.” Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996).

7 A class action is also superior to other methods when it is the only realistic method of
8 adjudicating class members’ claims. Id. at 1234–35. Here, because the proposed class
9 likely includes “several hundred thousand” members, there is no realistic alternative to a
10 class action. In addition, because the maximum damages recoverable based on the fuel
11 economy differential is \$1,109.66 or lower, class members would likely find the cost of
12 litigating individual claims prohibitive. See Settlement Agreement Ex. 3; Local Joint
13 Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc., 244 F.3d 1152, 1163
14 (9th Cir. 2001) (explaining that a wide “disparity between [class members’] litigation costs
15 and what they hope to recover” favors a finding of superiority). Individual lawsuits also
16 risk “the possibility of inconsistent rulings and results” based on the same wrongful
17 conduct and the same evidence. In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., and
18 Prods. Liab. Litig., 15-md-2672, 2017 WL 672727, at *14 (N.D. Cal. Feb. 16, 2017). For
19 these reasons, the Court concludes that a class action is the superior method of resolving
20 this controversy.

21 Because Plaintiffs’ proposed class meets the requirements of Rule 23(a) and Rule
22 23(b)(3), the Court grants certification of the class for settlement under Rule 23(b)(3).

23 **V. APPOINTMENT OF CLASS COUNSEL**

24 The Court confirms its appointment of Plaintiffs’ Lead Counsel as Class Counsel
25 under Rule 23(g).

26 **VI. FINAL APPROVAL OF SETTLEMENT AS FAIR, REASONABLE, AND** 27 **ADEQUATE**

28 Under Federal Rule of Civil Procedure 23(e)(2), the Court may approve the

1 settlement “only on finding that it is fair, reasonable, and adequate.” In doing so, the Court
 2 must consider whether: (1) “the class representatives and class counsel have adequately
 3 represented the class”; (2) “the proposal was negotiated at arm’s length”; (3) “the relief
 4 provided for the class is adequate,” accounting for the risks of trial, the effectiveness of the
 5 proposed method of relief, and the terms of the fee award; and (4) “the proposal treats
 6 class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2). There are
 7 overlapping factors that the Ninth Circuit requires courts to also consider:

8 the strength of the plaintiffs’ case; the risk, expense,
 9 complexity, and likely duration of further litigation; the risk of
 10 maintaining class action status throughout the trial; the amount
 11 offered in settlement; the extent of discovery completed and
 12 the stage of the proceedings; the experience and views of
 13 counsel; the presence of a governmental participant; and the
 14 reaction of the class members to the proposed settlement.

15 Hanlon, 150 F.3d at 1026. Where settlement takes place before class certification,

16 settlement approval requires an even “higher standard of fairness” in order to protect
 17 absent class members. See Lane v. Facebook, 696 F.3d 811, 819 (9th Cir. 2012).

18 However, the Court’s role is not to determine “whether the settlement is perfect in [its]
 19 estimation”—but to determine if it is “fundamentally fair.” Id. (citing Hanlon, 150 F.3d at
 20 1027).

21 **A. Adequate Representation**

22 Rule 23(e)(2)(A) requires the Court to consider whether “the class representatives
 23 and class counsel have adequately represented the class.” This case was zealously
 24 litigated: In the motion to dismiss briefing, the parties thoroughly aired (over 60 pages
 25 each) the legal issues the class might face in seeking relief. See MTD (dkt. 7862); MTD
 26 Opp’n (dkt. 7884); MTD Reply (dkt. 7901). After deciding to pursue settlement, the
 27 parties conducted extensive discovery, reviewing hundreds of thousands of Defendants’
 28 documents and comprehensively testing the different vehicle models to assess emissions
 and fuel economy differentials. Stellings Decl. (dkt. 8032-1) ¶¶ 5, 10. Class Counsel is
 experienced at litigating complex issues like those in this case, having served as Lead
 Counsel in this MDL since 2016. See dkt. 1084. This factor thus favors final approval.

1 **B. Arm’s Length Negotiation**

2 Rule 23(e)(2)(B) requires the Court to consider whether “the proposal was
3 negotiated at arm’s length.” This factor also favors approval: After extensive briefing on
4 the motion to dismiss, the parties’ settlement negotiations, which included robust
5 document exchanges and extensive vehicle testing, went on for nearly a year. Stellings
6 Decl. ¶ 5. Extensive document discovery and lengthy discussion of settlement are viewed
7 as indicators of an arm’s-length negotiation. See, e.g., Elder v. Hilton Worldwide
8 Holdings, Inc., No. 16-CV-00278-JST, 2021 WL 4785936, at *7 (N.D. Cal. Feb. 4, 2021).
9 Because the Court sees no reason to doubt Lead Counsel’s representations that settlement
10 negotiations, like its litigation of this action prior, were “intensive, thorough, serious,
11 informed, and non-collusive,” the Court finds that this factor favors approval. Preliminary
12 Approval Order at 2; see also Stellings Decl. ¶¶ 2–11.

13 **C. Adequacy**

14 Rule 23(e)(2)(C) requires the Court to consider whether “the relief provided for the
15 class is adequate” in light of three enumerated factors: the “costs, risks and delay of trial
16 and appeal;” “the effectiveness of any proposed method of distributing relief to the class,
17 including the method of processing class-member claims;” and “the terms of any proposed
18 award of attorney’s fees.” Fed. R. Civ. P. 23(e)(2)(C).²

19 The Settlement Fund consists of \$80 million,³ to be distributed as follows: Fuel
20 Economy Class Members who submit a valid claim will be compensated based on the
21 difference in cost for the amount of gasoline that would have been required had the
22 original fuel economy label been accurate, for a 96-month use period. See Settlement
23 Agreement ¶ 4.1. Settlement benefits for Fuel Economy Class Members will range from
24 \$250 to \$1,109.66. Id. Ex. 3. Sport+ Class Members will receive a cash benefit of \$250

25 _____
26 ² There is a fourth factor, which asks the Court to assess the significance of related agreements.
27 Fed. R. Civ. P. 23(e)(2)(C)(iv). Because there are none here, the Court does not address this
28 factor.

³ Defendants may pay up to an additional \$5 million into the Settlement Fund to prevent recovery
for Other Class Vehicle Class Members from dipping below \$150. See Settlement Agreement
¶ 4.2.

1 for bringing their vehicles in to receive a software update. Id. ¶¶ 2.50; 4.3. And Other
2 Class Vehicle Class Members will receive a payment of up to \$200 because, though no
3 fuel economy deviations were identified in the Plaintiffs’ testing, those vehicles could have
4 been impacted by the same conduct that caused deviations for Fuel Economy Class
5 Vehicles. Id. ¶ 4.2; id. at 3.

6 These high settlement benefit amounts—described by the Parties as “a very high
7 percentage (for many, 100%) of the Class members’ potential recoverable damages,” Final
8 Approval Reply at 1—coupled with the favorability of the other 23(e)(2)(C) factors as
9 discussed below, militate in favor of finding the settlement fair, reasonable, and adequate.

10 **1. Costs, Risks, and Delay of Trial**

11 Class Counsel points to the many risks of continuing this case to trial. First,
12 Plaintiffs’ claims have not yet survived Defendants’ motion to dismiss, and there is no
13 guarantee that they will do so. For example, a court in Michigan has recently agreed with
14 Defendants’ argument that claims like the Plaintiffs’ are preempted by the ECPA. See In
15 re Ford Motor Co. F-150 & Ranger Truck Fuel Econ. Mktg. & Sales Pracs. Litig., 19-md-
16 2901, 2022 WL 551221 (E.D. Mich. Feb. 23, 2022). Second, even if Plaintiffs’ claims do
17 survive past the pleading stage, they will face significant and expensive hurdles at class
18 certification, summary judgment, and trial, where they would have to prove a complex and
19 technical fraud and prove injury to a class numbering in the hundreds of thousands who
20 purchased or leased hundreds of different vehicle models over the course of fifteen years.
21 The prospect of recovery, even after many years of hard-fought litigation, would be
22 uncertain.

23 Thus, the many risks associated with continuing this litigation militate in favor of
24 settlement.

25 **2. The Method of Distribution**

26 Further, the claim process and method of distribution is simple and straightforward.
27 Fuel Economy Class Members and Other Class Vehicle Class Members may submit their
28 claims on the settlement website, along with supporting documentation such as a purchase

1 agreement and/or proof of current registration.⁴ Sport+ Class Members need not even
2 submit claims—instead they will receive a \$250 settlement benefit automatically by taking
3 their vehicle in to receive the software update. Settlement Agreement ¶¶ 2.50, 4.3. This
4 method of processing claims is straightforward, fair, and reasonable.

5 The Lochridge objection, whose standing and class certification arguments were
6 discussed above, also argues that the claim process documentation requirements are
7 unreasonably onerous. Lochridge Obj. at 6–7. Lochridge points to a claim form that
8 purports to require a purchase or lease agreement, where many owners may not have such
9 documentation, many of the vehicles in the settlement being more than ten years old. *Id.* at
10 6.

11 Class Counsel contends that both the claim form and the FAQ page on the website
12 clarified that purchase or lease agreements were merely “examples” of the documentation
13 that class members could submit to substantiate their claims. Final Approval Reply at 4.
14 The Settlement Administrator has also taken the additional step to allow potential class
15 members to submit claims without any documentation on the settlement website, allowing
16 the settlement administrator to seek out the documentation independently (which can often
17 be found without further aid from the class member). *Id.* at 5; Third Keough Decl. (dkt.
18 8076) ¶ 3. On October 6, 2022, the Settlement Administrator also sent reminder notices to
19 the class members who have not yet submitted a claim, stating that they may file a claim
20 without documentation, and their claim will be verified based on the information they
21 provide. Third Keough Decl. ¶ 4.⁵ In any case, Lochridge’s concerns about the
22 unavailability of documentation have not been borne out by the majority of claimants:
23 According to the Settlement Administrator, of the 122,467 claims submitted, 100,657 have
24 included some form of documentation. *Id.* ¶ 6. Lochridge’s objection on this point is thus
25

26 ⁴ In response to an objection discussed below, the Settlement Administrator has begun allowing
27 class members to submit claims without accompanying documentation. Third Keough Decl. (dkt.
28 8076) ¶ 3.

⁵ While the claims deadline was previously set at November 7, 2022, at the request of the Parties
at the Fairness Hearing, the Court extended this deadline to December 7, 2022.

1 overruled.

2 **3. Attorneys' Fees**

3 The Court assesses Class Counsel's request for attorneys' fees below, see Section
 4 VIII.A, and finds it reasonable as applied to the net settlement fund. Thus, this factor
 5 comes out in favor of finding the settlement adequate.

6 The Lochridge objection's argument regarding attorneys' fees is that, because "the
 7 interests of [Fuel Economy Class Members] were compromised," attorneys' fees above the
 8 twenty-five percent benchmark are not warranted. Lochridge Obj. at 12–13. Because the
 9 Court concludes that the interests of the Fuel Economy Class Members were not
 10 "compromised" by the inclusion of the Other Class Vehicle Class Members in the class,
 11 see supra Sections II, IV.A.4, the objection is thus overruled. Particularly because the Fuel
 12 Economy Class Members—the class members whose rights Lochridge seeks to
 13 vindicate—will receive, by some measures, close to all of the cost of the damages they
 14 might recover at trial, it is unreasonable to conclude that such a settlement is a poor result
 15 simply because other Class Members with perhaps weaker claims may recover under the
 16 Settlement as well.

17 **4. Adequacy Objections**

18 Two additional objectors, Nicholas Bugosh and Matthew Killen, argue that the
 19 settlement is inadequate, though for different reasons. Both are without merit.

20 Killen⁶ objects to the fairness of the formula devised by the parties, devising his
 21 own formula based on his own estimates of average consumer driving. Killen then
 22 suggests that a buyback option for affected consumers is the appropriate remedy because
 23 "[c]onsumers deserve the right to return the car to [Porsche] and their subsidiaries for a full
 24 refund." Killen Obj.

25 Class Counsel argues that the Parties used much more detailed data to develop their

26
 27 ⁶ Killen's objection is invalid because, while he owns a Fuel Economy Class Vehicle, he
 28 purchased his vehicle after the 96-month period compensated under the Settlement, and thus is not
 a member of the class. Settlement Agreement ¶ 2.28. Nevertheless, for completion's sake, the
 Court addresses Killen's objection on its merits.

1 settlement plan than Killen’s estimates. Final Approval Reply at 10–11. In any case,
2 Killen does not argue that his calculation should be implemented, but rather that a buyback
3 option is required to make the settlement fair. Killen Obj. As Class Counsel points out,
4 many settlements of similar claims have been approved without providing such an
5 option—such as the Audi CO₂ settlement in this MDL. See Audi CO₂ Final Approval
6 Order (dkt. 7244) at 1. Because a buyback option is simply not required for this settlement
7 to be fair, reasonable, and adequate, Killen’s objection is overruled.

8 Bugosh argues essentially the opposite: That the settlement should be rejected
9 because he has performed his own testing on his two Porsche vehicles (only one of which
10 is a Class Vehicle), and they have passed his own personalized emissions and fuel
11 economy tests. He therefore argues that the Court should reject the settlement and
12 “award[] \$0.00 to the litigants because [the settlement] does not agree with [his]
13 experience.” Bugosh Obj. Bugosh’s objection, “an apparent non-substantive assessment
14 of the frivolity of the action,” does not convince the Court that this settlement is not fair,
15 reasonable and adequate, and is thus overruled. Ko v. Natura Pet Prods., Inc., 09-cv-2619,
16 2012 WL 3945541, at *6 (N.D. Cal. Sept. 10, 2012).

17 **D. Equitable Treatment of Class Members**

18 The Class Members are treated equitably here because their cash payments are tied
19 to the Plaintiffs’ testing, and thus roughly correspond to the strength of their claims and the
20 likelihood of damages at trial. For owners of Fuel Economy Class vehicles, for which
21 testing showed a clear discrepancy between tested fuel economy and the fuel economy on
22 the vehicle’s Monroney label, class members will receive the most compensation of the
23 three groups: between \$250 to \$1,109.66. Settlement Agreement at 3; Ex. 3. For Sport+
24 vehicles, for which testing indicated that they exceeded emissions standards while in
25 Sport+ mode, class members will receive \$250 and a software update to fix the issue. Id.
26 at 3; id. ¶¶ 2.50; 4.3. And for Other Class Vehicles, which were conceivably impacted but
27 for which testing did not identify fuel economy deviation, class members will receive up to
28 \$200. Id. at 3; id. ¶ 4.2.

1 Because these different recovery amounts “stem mostly from differences in the
2 damages suffered . . . rather than any improper favoring of one group of Class Members
3 over another,” this factor is also satisfied. In re Hyundai & Kia Fuel Econ. Litig., 13-md-
4 2424, 2014 WL 12603199, at *2 (C.D. Cal. Aug. 21, 2014), vacated and remanded, 881
5 F.3d 679 (9th Cir. 2018), aff’d on reh’g en banc, 926 F.3d 539 (9th Cir. 2019).

6 **E. Remaining Ninth Circuit Factors**

7 The majority of the Ninth Circuit factors have been addressed by consideration of
8 the 23(e)(2) factors. However, two remain to be considered: the endorsement of
9 experienced counsel and the reaction of the class.⁷ Hanlon, 150 F.3d at 1026.

10 **1. Endorsement of Experienced Counsel**

11 Class Counsel, of course, believes the settlement is an “excellent outcome for all
12 Class members.” Final Approval Mot. at 22. Because the Court has already confirmed
13 that Class Counsel is experienced, having served as Lead Counsel in this MDL since 2016,
14 see dkt. 1084, this factor favors final approval.

15 **2. Reaction of the Class**

16 Following an extensive notice program, only twenty-seven opt-outs were received
17 (eleven valid) and three objections (two valid), a tiny percentage of the overall class.
18 Second Keough Decl. (dkt. 8069-1) ¶¶ 14–15. Additionally, the claims process has been
19 unusually successful—as of October 20, 122,467 claim forms have been submitted,
20 covering 22% of the estimated eligible Class vehicles. Third Keough Decl. ¶ 6. This
21 percentage rises to 24% when the Sport+ Class vehicles that have already received a
22 software update (thus guaranteeing their owners a \$250 payment without submission of a
23 claim form) are included. Id. This reaction strongly favors approval of the settlement.

24 Thus, the Court finds that the settlement is fair, reasonable, and adequate under the
25 23(e)(2) and Ninth Circuit factors.

26
27 ⁷ An additional factor applies if a government participant is present. Hanlon, 150 F.3d at 1026.
28 While there is no government participant here, Class Counsel does point out that EPA and CARB
“reviewed the fuel economy calculations underpinning the Settlement’s compensation formula for
Fuel Economy recovery.” Preliminary Approval Mot. at 21.

VII. NOTICE

1 The Court finds that the form, content, and methods of disseminating notice to the
2 Class Members previously approved and directed by the Court have been implemented by
3 the Parties, and: (1) comply with Rule 23(c)(2) of the Federal Rules of Civil Procedure as
4 they are the best practicable notice under the circumstances and are reasonably calculated,
5 under all the circumstances, to apprise the Class Members of the pendency of this Action,
6 the terms of the Settlement, and their right to object to the Settlement; (2) comply with
7 Rule 23(e) as they are reasonably calculated, under the circumstances, to apprise the Class
8 Members of the pendency of the Action, the terms of the proposed settlement, and their
9 rights under the proposed settlement, including, but not limited to, their right to object to,
10 or opt out of, the proposed Settlement and other rights under the terms of the Settlement
11 Agreement; (3) comply with Rule 23(h) as they are reasonably calculated, under the
12 circumstances, to apprise the Class Members of any motion by Class Counsel for
13 reasonable attorney's fees and costs, and their right to object to any such motion; (4)
14 constitute due, adequate, and sufficient notice to all Class Members and other persons
15 entitled to receive notice; and (5) meet all applicable requirements of law, including, but
16 not limited to, 28 U.S.C. § 1715, Fed. R. Civ. P. 23(c), (e), and (h), and the Due Process
17 Clause of the United States Constitution.

VIII. MOTION FOR ATTORNEYS' FEES AND EXPENSES

18 Plaintiffs move for attorneys' fees, litigation expenses, and service awards. Final
19 Approval Mot. at 23–34. They seek the following: (1) attorneys' fees amounting to 30
20 percent of the \$80 million gross Settlement Fund (\$24 million); (2) \$710,733.89 in
21 litigation expenses, and (C) Service Awards of \$250 each for 33 Class Representatives. Id.
22 The Court has carefully considered the filings in connection with this motion, as well as
23 the record in this matter, and it grants the motion, modifying the fee award to apply Class
24 Counsel's requested 30 percent fee to the net Settlement Fund (after subtracting litigation
25 expenses and service awards), rather than the gross.
26
27
28

A. Attorneys' Fees

1 The Court may award reasonable attorneys' fees and costs at the conclusion of a
2 class action. Fed. R. Civ. P. 23(h). The Court's role is to determine whether the attorneys'
3 fees awarded are "fundamentally fair, adequate, and reasonable." Staton v. Boeing Co.,
4 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)). It is customary to use
5 the percentage-of-recovery method and cross-check the final number with a lodestar
6 calculation. See Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1050–51 (9th Cir. 2002).
7 The benchmark for attorneys' fees in the Ninth Circuit is twenty-five percent, with 20-30%
8 as the typical range. See Powers v. Eichen, 229 F.3d 1249, 1256 (9th Cir. 2000);
9 Vizcaino, 290 F.3d at 1047. However, in some cases, the twenty-five percent benchmark
10 may be "inappropriate." See Vizcaino, 290 F.3d at 1048. Courts must not arbitrarily
11 apply a percentage, but instead must show why that percentage and the award is
12 appropriate based on the facts of the case. Id. Courts typically consider the following
13 factors: (1) the results achieved for the class; (2) the risks of the litigation; (3) whether
14 there are benefits to the class beyond the immediate generation of a cash fund; (4) whether
15 the percentage rate is above or below the market rate; (5) the contingent nature of the
16 representation and the opportunity cost of bringing the suit; (6) reactions from the class;
17 and (7) a lodestar cross-check. In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., &
18 Prod. Liab. Litig., 15-md-2672, 2017 WL 1047834, at *1 (N.D. Cal. Mar. 17, 2017) (citing
19 Vizcaino, 290 F.3d at 1048–52) ("Volkswagen 2L Fee Order").

20 Although, applying the factors below, the Court finds that Class Counsel's request
21 of 30 percent reasonable, the Court parts ways with Class Counsel in one respect: The
22 Court does not calculate the 30 percent fee award based on the gross settlement fund of
23 \$80 million, but the net fund, after subtracting the litigation expenses and service awards.
24

25 It is not an abuse of discretion to calculate fees based on the gross fund. See
26 Powers, 229 F.3d at 1258 ("[T]he choice of whether to base an attorneys' fee award on
27 either net or gross recovery should not make a difference so long as the end result is
28 reasonable."). But the Court is not required to use the gross and has a longstanding

1 preference for using the net. See, e.g., In re Google LLC St. View Elec. Commc’ns Litig.,
 2 10-md-2184, 2020 WL 1288377, at *7 (N.D. Cal. Mar. 18, 2020), aff’d, 21 F.4th 1102 (9th
 3 Cir. 2021). Class Counsel’s requested fee of thirty percent of the net settlement fund is
 4 reasonable, as discussed below.

5 **1. Results Achieved for the Class**

6 This is a strong settlement for class members. Particularly for Fuel Economy Class
 7 Members, who are likely to receive close to all of the damages they might expect to
 8 receive at trial, it is an excellent result. Final Approval Mot. at 24; see also In re
 9 Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig., 895 F.3d 597 (9th
 10 Cir. 2018) (describing another settlement in this MDL as “highly unusual” where the class
 11 members received “as much as, perhaps more than, they could expect to receive in a
 12 successful suit litigated to judgment”). And for Other Class Vehicle Class Members or
 13 Sport+ Class Members—whose claims are likely weaker, and for whom the ability to
 14 collect at trial is not guaranteed—it is a strong and immediate result when the alternative is
 15 uncertain and delayed.⁸ And because the fund is non-reversionary, with excess funds
 16 either re-distributed to class members or to environmental remediation efforts with Court
 17 approval, it is thus possible that participating Class Members may collect even more than
 18 the current estimates predict. Settlement Agreement ¶ 4.4. This factor thus supports the
 19 requested fee.

20 **2. The Risks of Litigation**

21 The litigation was indeed complex, involving a technical and intricate alleged
 22 scheme involving multiple corporate defendants. The investigation of the fraud was
 23 likewise difficult and complicated, requiring rigorous vehicle testing, review of
 24 contemporaneous documentation, and engagement of technical experts to uncover how
 25

26 ⁸ The Settlement also provides a non-monetary benefit to Sport+ Class Members, who are
 27 encouraged to bring their vehicles in for a software update. Settlement Agreement ¶ 4.3;
 28 Volkswagen 2L Fee Order, 2017 WL 1047834, at *3 (discussing non-monetary relief afforded
 class members, including a “fix[] to comply with emissions standards,” as a factor supporting the
 request for attorneys’ fees).

1 hundreds of Porsche vehicles were affected by the fraud over the course of fifteen years of
2 manufacturing.

3 And, as discussed above, the litigation remained risky until settlement. The parties
4 engaged in extensive Rule 12 motion practice that did not end in a decision; the prospect of
5 a dismissal still looms. And even if the case survived a motion to dismiss, the prospect of
6 continuing on to trial held additional risks. See supra Section VI.C.1. This factor thus also
7 supports the requested fee.

8 3. Reasonableness of Percentage

9 Class Counsel’s requested fee of 30 percent represents an upward departure from
10 the Ninth Circuit benchmark of 25 percent. Powers, 229 F.3d at 1256. Nevertheless,
11 courts in this Circuit often award fees at or exceeding 30 percent, and such awards are
12 routinely upheld. See Hernandez v. Dutton Ranch Corp., No. 19-cv-817, 2021 WL
13 5053476, at *6 (N.D. Cal. Sept. 10, 2021) (collecting cases). However, the question is
14 ultimately “not whether the district court should have applied some other percentage, but
15 whether in arriving at its percentage it considered all the circumstances of the case and
16 reached a reasonable percentage.” Vizcaino, 290 F.3d at 1048. Class Counsel contends
17 that a 30 percent fee is reasonable in this case because of the “unusually strong” recovery
18 for Class Members and the “thorough, focused, and technical work that Counsel undertook
19 to obtain it.” Final Approval Mot. at 27–28.

20 The Court agrees. As discussed in prior sections, the Settlement provides at or near
21 full recovery to Fuel Economy Class Members—the class members with the strongest
22 claims—and significant recovery to Sport+ Class Members and Other Class Vehicle Class
23 Members, for whom recovery at trial is not guaranteed. Courts regularly award upwards of
24 30 percent fees to counsel achieving lesser results. See, e.g., Andrews v. Plains All Am.
25 Pipeline L.P., 15-cv-4113, 2022 WL 4453864, at *2 (C.D. Cal. Sept. 20, 2022) (awarding
26 32 percent fee to counsel who settled for between 25 percent and 65 percent of maximum
27 possible compensatory damages); Carlin v. DairyAmerica, Inc., 380 F. Supp. 3d 998,
28 1019–20, 1022 (E.D. Cal. 2019) (awarding 33.3 percent fee to counsel who settled for 48

1 percent of possible damages). And as discussed in prior sections, this recovery is “in the
2 face of complex and hotly disputed issues” of fact and law that required technical
3 expertise. Andrews, 2022 WL 4453864, at *2. As a result, while the requested fee is a
4 modest upward departure from the benchmark, it is reasonable under the circumstances.

5 **4. Opportunity Cost of the Suit**

6 Class Counsel brought this claim on a purely contingent basis, agreeing to advance
7 all necessary expenses, knowing that they would receive a fee only if there was a recovery.
8 It is an established practice to reward attorneys who assume representation on a contingent
9 basis with an enhanced fee to compensate them for the risk that they might be paid nothing
10 at all. See In re Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1299 (9th Cir.
11 1994). Such a practice encourages the legal profession to assume such a risk and promotes
12 competent representation for plaintiffs who could not otherwise hire an attorney. Id.
13 Moreover, Class Counsel had to turn down opportunities to work on other cases to devote
14 the appropriate amount of time, resources, and energy necessary to handle this complex
15 case. See Final Approval Mot. at 28; Stellings Decl. ¶¶ 23–35. This factor supports the
16 requested fee percentage.

17 **5. Reaction of the Class**

18 As discussed above, see Section VI.E.2, the reaction of the class is overwhelmingly
19 positive, which weighs in favor of settlement as well as Class Counsel’s requested
20 attorneys’ fees. Only one objector, Lochridge, raised a concern about the fee award, which
21 has already been overruled. See supra Section VI.C.3.

22 **6. Lodestar Cross-Check**

23 A lodestar cross-check also supports the approval of the requested fee percentage.
24 Class Counsel spent a reasonable 27,888.80 hours litigating and settling this case until
25 August 26, 2022, and reports that it will need approximately 1,500 additional hours to
26 “finalize, protect, and implement the Settlement.” Stellings Decl. ¶¶ 23–25. Using Class
27 Counsel’s historical, “then-present” billing rates (between \$485–\$1,325 for partners,
28 \$350–\$690 for associates, \$350–\$450 for non-partner-track attorneys, and \$220–\$485 for

1 support staff) and accounting for those additional hours, the total lodestar comes out to
 2 \$12,921,292.35.⁹ Id. ¶¶ 25–26, 29. This yields a multiplier of 1.84.¹⁰ That multiplier is
 3 well within the acceptable range in the Circuit. See Vizcaino, 290 F.3d at 1051 & n.6
 4 (approving a 3.65 multiplier and citing appendix of cases showing that most approved
 5 multipliers are between 1.0 and 4.0). It is also below the multipliers approved in the other
 6 settlements in this MDL. Volkswagen 2L Fee Order, 15-md-2672, 2017 WL 1047834, at
 7 *5 (N.D. Cal. Mar. 17, 2017) (approving multiplier of 2.63 in 2.0-liter settlement); In re
 8 Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig., 15-md-2672, 2017
 9 WL 3175924, at *4 (N.D. Cal. July 21, 2017) (approving multiplier of 2.02 in 3.0-liter
 10 settlement); In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.,
 11 15-md-2672, 2017 WL 2178787, at *3 (N.D. Cal. May 17, 2017) (approving multiplier of
 12 2.32 in Bosch settlement); Audi CO₂ Final Approval Order at 5 (approving multiplier of
 13 2.06 in Audi CO₂ settlement).

14 For the reasons discussed above, the Court concludes that the requested fee is
 15 reasonable.

16 **B. Litigation Costs**

17 Class Counsel are entitled to the reimbursement of reasonable litigation expenses.
 18 See, e.g., Wakefield v. Wells Fargo & Co., 13-cv-5053, 2015 WL 3430240, at *6 (N.D.
 19 Cal. May 28, 2015). These are expenses that are reasonable, necessary, directly related to
 20 the litigation, and normally charged to a fee-paying client. See, e.g., Willner v. Manpower
 21 Inc., 11-cv-02846, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015).

22 Plaintiffs seek reimbursement of \$710,733.89 in litigation expenses, representing
 23

24 ⁹ In Lochridge’s already-overruled objection to the percentage of attorneys’ fees requested, see
 25 supra Section VI.C.3, he also argues that Class Counsel’s lodestar should be adjusted to exclude
 26 the hours spent working on claims of the Other Class Vehicle Class Members, as he argues that
 27 those Class Members do not have standing. Lochridge Obj. at 13. Because the Court finds that
 those class members do have standing and are properly included in the class, see supra Section
 Sections II, IV.A.4, this aspect of Lochridge’s objection is also overruled.

28 ¹⁰ This multiplier takes into account the Court’s preference for using the net Settlement Fund to
 calculate attorneys’ fees, rather than the gross. As a result, it is slightly smaller than the multiplier
 calculated by Class Counsel. Stellings Decl. ¶ 25.

1 \$560,733.89 in costs already incurred and \$150,000 in projected costs to cover expenses
2 “associated with the on-the-ground enforcement and assistance efforts this Settlement will
3 require.” Stellings Decl. ¶ 31. The most significant expense was the acquisition of four
4 vehicles for testing (\$337,950.67), though Class Counsel has subtracted a projected resale
5 value of \$200,000. *Id.* ¶¶ 32–33. Other significant expenses include expert fees
6 (\$169,227.47); travel expenses, including air travel (\$92,405.87), hotels (\$33,292.19),
7 ground transportation (\$10,353.56), and meals (\$5,398.23); and technological and
8 administrative expenses, including e-discovery fees (\$65,907.98), investigation fees
9 (\$10,353.56) and legal research costs (\$11,760.09). *Id.* ¶ 32.

10 Given the technical nature of this litigation—both the testing required and the
11 experts employed to make sense of it—both the vehicle costs and the expert fees, while
12 significant, are reasonable. *Id.* ¶ 33. Further, because the litigation necessitated travel to
13 Germany for vehicle testing and discovery meetings, as well as settlement negotiations in
14 New York, the travel expenses are likewise reasonable. *Id.* ¶ 36. Finally, the e-discovery
15 and administrative expenses were also necessary, given the “millions of pages of
16 documents” shared in discovery. *Id.* ¶ 35.

17 The Court finds that the expenses incurred in this litigation were reasonable,
18 necessary to the effective representation of the class, and would normally be charged to a
19 fee-paying client. The Court therefore grants Plaintiffs’ motion for litigation expenses in
20 the amount of \$710,733.89.

21 C. Awards to Class Representatives

22 The Court finds that the requested service awards of \$250 for each of the 33 Class
23 Representatives are reasonable and appropriate. Settlement Agreement ¶ 16.2. Such
24 awards are “intended to compensate class representatives for work done on behalf of the
25 class [and] make up for financial or reputational risk undertaken in bringing the action.”
26 Rodriguez v. W. Publ’g Corp., 563 F.3d 948, 958 (9th Cir. 2009). The Ninth Circuit has
27 held that as high as \$5,000 is a reasonable amount for an individual service award,
28 particularly where, as here, the amount of the settlement fund reserved for service awards

1 represents a fraction of a percentage of the overall recovery. In re Online DVD-Rental
2 Antitrust Litig., 779 F.3d 934, 947 (9th Cir. 2015) (finding \$5,000 reasonable for each of
3 nine class representatives, where the incentive awards made up only 0.17% of the total
4 settlement fund of \$27 million).

5 The Court finds that the total amount of \$8250 requested for service awards, as a
6 mere 0.01% of the overall Settlement Fund, is reasonable, and grants the requested service
7 awards.

8 **IX. CONSUMMATION OF THE SETTLEMENT**

9 Accordingly, the Court directs the Parties to consummate the Settlement according
10 to its terms, as follows:

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

15 Only Class Members filing valid and timely Claim Forms shall be entitled to
16 participate in the Settlement and receive a distribution from the Settlement Fund for Fuel
17 Economy Class Vehicles and Other Class Vehicles. Class Members with Sport+ Class
18 Vehicles shall be entitled to participate in the Settlement and receive a distribution from
19 the Settlement Fund upon timely completion of an Emissions Compliant Repair (“ECR”)
20 for their Class Vehicle and without filing a Claim Form. All Class Members shall, as of
21 the Effective Date (as defined in the Settlement Agreement ¶ 2.19), be bound by the
22 releases set forth herein whether or not they submit a valid and timely Claim Form.

23 The Parties and Class Members are bound by the terms and conditions of the
24 Settlement. As of the Effective Date, Releasing Parties shall be deemed to have fully,
25 finally, and forever released and discharged Released Parties from the Released Claims, as
26 those terms are defined in the Settlement Agreement. The full terms of the release
27 described in this paragraph are set forth in Section 10 of the Agreement. The Court
28 expressly adopts and incorporates by reference Section 10 of the Agreement.

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

4 The parties are to bear their own costs, except as awarded by this Court in this
5 Order.

6 The benefits described above are the only consideration Defendants shall be
7 obligated to give to the Class Members, with the exception of the service awards to be paid
8 to the Class Representatives as directed by the Court.

9 The Court reserves the exclusive and continuing jurisdiction over the Action, the
10 Class Representatives, the Class Members, and the Parties for the purposes of supervising
11 the implementation, enforcement, construction, administration and consummation of the
12 Settlement Agreement and this Judgment.

13 **X. FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE**

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

15 The Court hereby CERTIFIES the Settlement Class and GRANTS the Motion for
16 Final Approval of the Settlement. The Court fully and finally approves the Settlement in
17 the form contemplated by the Settlement Agreement and finds its terms to be fair,
18 reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23.

19 The Court DISMISSES the Action and all claims contained therein.

20 The Court CONFIRMS the appointment of Lead Counsel as Settlement Class
21 Counsel.

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

24 The Court CONFIRMS the appointment of JND as Claims and Notice
25 Administrator.

26 The Court GRANTS Class Counsel's request for attorneys' fees and costs as
27 modified in this Order, and AWARDS Class Counsel \$24,495,038.72 in attorneys' fees
28 and costs, to be allocated by Lead Counsel among the PSC firms that performed common

1 benefit work in the Porsche Gasoline Cases pursuant to the terms of Pretrial Order No. 11.

2 The Court AWARDS the Settlement Class Representatives service awards of \$250
3 each, to be paid in addition to the compensation they may receive as Settlement Class
4 Members through the claims program.

5 Under Rule 54(b) of the Federal Rules of Civil Procedure, no just reason exists for
6 delay in entering final judgment. The Court accordingly directs the Clerk to enter final
7 judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

8 **IT IS SO ORDERED.**

9 Dated: November 9, 2022



CHARLES R. BREYER
United States District Judge

United States District Court
Northern District of California

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