UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DANA POTVIN, LISA BULTMAN, MICHAEL MCKARRY, DAVID WABAKKEN, MOHAMED HASSAN, CHRISTINA MERRILL, ERIC LEVINE, PATRICK DONAHUEs, DEBBI BROWN, CAROL RADICE, TERRENCE BERRY, AMANDA GREEN, DAVID WILDHAGEN, KATY DOYLE, TASHIA CLENDANIEL, HOGAN POPKESS, KORY WHEELER, HARRY O'BOYLE, JOE RAMAGLI, ERIC KOVALIK, CHARLES HILLIER, LABRANDA SHELTON, ADAM MOORE, TINA GROVE, KEECH ARNSTEN, SCOTT CARTER, MIKE SHERROD, CHRISTI JOHNSON, MARY KOELZER AND MARK STEVENS, Individually And On Behalf Of All Others Similarly Situated,
Plaintiffs,

vs.

VOLKSWAGEN AKTIENGESELLSCHAFT, VOLKSWAGEN GROUP OF AMERICA, INC., and VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC,
Defendants.

Case No.: 2:22-cv-01537 (EP) (JSA)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND PLAINTIFFS' SERVICE AWARDS

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INTRODUCTION

This case is about an alleged defect in the front door wiring harness of the Settlement Class Vehicles.[1] The defect can potentially impact the vehicles' electrical system and manifest in several significant ways. For example, the defect may cause the Vehicles' airbags to fail to deploy.

On July 8, 2024,[2] this Court entered an Order: (i) preliminarily approving the Settlement between Plaintiffs,[3] on behalf of themselves and all others similarly situated class members, and Defendant Volkswagen Group of America, Inc. ("VWGoA" or "Defendant"), and (ii) conditionally certifying the following class for settlement purposes:

> All present and former U.S. owners and lessees of Settlement Class Vehicles, defined as certain model year 2019-2023 Atlas and Atlas Cross Sport vehicles, distributed by Defendant Volkswagen Group of America, Inc. for sale or lease in the United States and Puerto Rico, which are the subject of Recall 97GF and specifically identified by

[1] All capitalized terms used throughout this brief shall have the meanings ascribed to them in the Settlement Agreement. ECF No. 98-2.

[2] Order Granting Preliminary Approval of Class Action Settlement, ECF No. 109.

[3] Dana Potvin, Lisa Bultman, Michael McKarry, David Wabakken, Mohammed Hassan, Christina Merrill, Eric Levine, Patrick Donahue, Debbi Brown, Carol Radice, Terrence Berry, Amanda Green, David Wildhagen, Katy Doyle Tashia Clendaniel, Hogan Popkess, Kory Wheeler, Harry O'Boyle, Joe Ramagli, Eric Kovalik, Charles Hillier, Labranda Shelton, Adam Moore, Tina Grove, Keech Arnsten, Scott Carter, Mike Sherrod, Christi Johnson, Mary Koelzer, and Mark Stevens (collectively, "Plaintiffs").

Vehicle Identification Number ("VIN") in Exhibit 5 to the Settlement Agreement.

Plaintiffs now seek approval of an award of attorneys' fees and reimbursement of expenses totaling $1,950,000 to be paid directly by VWGoA, and class representative service awards in the amount of $2,500 each.[4]

I. FACTUAL BACKGROUND

A. History of the Action.

This case, initially captioned *Sherrod, et al. v. Volkswagen Group of America, Inc.*, was filed on March 18, 2022. ECF No. 1. Shortly thereafter, on March 25, 2022, a related complaint against Volkswagen was filed by Plaintiff Price McMahon. *See* Case No. 2:22-cv-1704, ECF No. 1. McMahon filed an Amended Complaint on May 12, 2022. *Id.*, ECF No. 8. After the parties submitted a stipulated letter motion for consolidation, on July 19, 2022, the Court issued an order consolidating the actions under the *Sherrod* civil action number. Case No. 2:22-cv-01537, ECF No. 16.

On August 5, 2022, Plaintiffs in the consolidated action collectively filed a Consolidated Class Action Complaint against VWGoA, Volkswagen Aktiengesellschaft ("VWAG") and Volkswagen Group of America Chattanooga Operations, LLC ("VWCOL"). Consolidated Class Action Complaint, ECF No. 26.

[4] Reference herein to Exhibits are to the documents attached to the Declaration of James E. Cecchi ("Cecchi Decl.") in Support of Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Plaintiffs' Service Awards, filed contemporaneously with this Brief.

VWGoA, VWAG, and VWCOL then filed motions to dismiss. ECF Nos. 43, 53, 58. After extensive briefing, the Court granted in part and denied in part the motions on June 16, 2023. ECF No. 69.

On July 17, 2023, Plaintiffs filed their First Amended Consolidated Class Action Complaint ("FAC"), which is the operative complaint. ECF No. 70. Prior to filing the FAC and the initial complaints discussed above, Plaintiffs' counsel conducted a thorough investigation into the claims and allegations. Plaintiffs alleged that, prior to the sale of the Settlement Class Vehicles, VWGoA and its affiliates (collectively, "Defendants") knew that the front door wiring harnesses installed in the Settlement Class Vehicles were defective and likely to fail and cause the Vehicles' systems to malfunction. *See, e.g.*, FAC, ¶¶ 294-95. Plaintiffs alleged that the defect posed a significant safety risk, and that Defendants concealed this information and represented that the Settlement Class Vehicles were safe, reliable, and fully protected by an extensive warranty, should there be any defects. *Id.*, ¶¶ 3-4, 332-42. Plaintiffs sought a recovery for alleged economic loss under claims sounding in breach of express and implied warranties, violation of various state consumer protection statutes, and common law fraud. *Id.*, ¶¶ 359-1081.

On September 13, 2023, VWGoA and VWAG filed a motion to dismiss the FAC. ECF No. 77.[5] The next day, the parties filed the [Proposed] Joint Discovery

[5] VWCOL was dismissed by stipulated order. ECF No. 76.

Plan, outlining their respective positions. ECF No. 78. On September 20, 2023, the Court issued its Pretrial Scheduling Order setting a September 29, 2023, deadline for initial disclosures and a fact discovery cutoff of February 28, 2025. ECF No. 79. Plaintiffs then filed their opposition to the motion to dismiss on October 27, 2023. ECF No. 84.

While the briefing was ongoing, Plaintiffs reviewed documents relating to class size, state of the Recall,[6] fixes implemented for the alleged defect, the effectiveness of the fixes, and reach of the Recall program. ECF No. 98 at 6; Cecchi Decl., ¶ 9.

B. Mediation efforts and preliminary approval of the Settlement.

After the Parties had an opportunity to thoroughly consider the Court's rulings on the Motions to Dismiss, and while the Parties were engaging in discovery, counsel for the Parties began discussing the potential for settlement. Within the context of these settlement discussions, Plaintiffs' Counsel reviewed information regarding the Settlement Class Vehicles and the composition of the putative

[6] VWGoA initiated Recall 97GF, stating the front-door wiring harnesses in Settlement Class Vehicles were potentially affected by "excessive micromovement leading to fretting corrosion of the door wiring harness terminal contacts." ECF No. 98 at 4. To address the issue, the Recall indicated that Volkswagen dealers will check for specific fault codes that are specific to the affected wiring harness, and, if present, the wiring harness would be replaced and secured. *Id.* If fault codes are not present, the existing wiring harness will be secured but not replaced. *Id.*

Settlement Class. This information enabled the Parties to meaningfully engage in comprehensive settlement negotiations.

The Parties held multiple negotiation sessions, including with the assistance of experienced JAMS mediator Bradley Winters, which involved communications via telephone, email, and videoconference, both before and after the formal mediation session with Mr. Winters on February 13, 2024. Over the course of the ensuing months, Settlement terms were negotiated. Ultimately, after vigorous arm's length negotiations, the Parties agreed upon the terms and conditions set forth in the Settlement Agreement. In addition, the Parties did not discuss the issues of Plaintiffs' counsel's reasonable attorney fees and class representative service awards until after the Parties reached an agreement on the Settlement relief to the class. Settlement Agreement, ECF No. 98-2, at § IX(C).

On May 23, 2024, Plaintiffs filed a motion for preliminary approval of the Settlement, which the Court granted on July 2, 2024. ECF No. 109.

C. The Settlement relief to the Class.

The Settlement Agreement provides substantial monetary and non-monetary relief to eligible Settlement Class Members. Under the Settlement's Warranty Extension, VWGoA will cover 100% of the cost of repair or replacement, by an authorized Volkswagen dealer, of a failed front door wiring harness in a Settlement Class Vehicle that was modified and/or installed in the Settlement Class Vehicle

pursuant to the Recall, for a period of up to 5 years or 60,000 miles (whichever occurs first) from the date that the Recall repair was performed on said vehicle. *See* Settlement Agreement, ECF No. 98-2, at § II(A). The Warranty Extension applies to all wiring harness-related repairs performed pursuant to the Recall, whether or not involving the replacement of the wiring harness itself and will include any other necessary repairs or adjustments to address any warning lights or fault codes that are the result of a wiring harness failure. *Id*.

The Settlement Agreement also allows Settlement Class Members to make a claim for reimbursement of past expenses paid out-of-pocket. *Id.* at §II(B). The monetary reimbursement includes 100% reimbursement of the past paid cost (parts and labor) of repair or replacement of a failed door wiring harness (and any associated diagnostic costs charged and paid for in connection with that repair), performed prior to the Notice Date and within 7 years or 100,000 miles (whichever occurred first) from the vehicle's In-Service Date. *Id.* And if the repair was performed at a facility that is not an authorized Volkswagen dealer, the maximum amount of any such reimbursement will be $490.62 for repair of one front door wiring harness or $672.16 for repair of both front door wiring harnesses. *Id.*

II. THE REQUESTED ATTORNEYS' FEES AND EXPENSES SHOULD BE AWARDED

The Federal Rules of Civil Procedure expressly authorize that "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or

by the parties' agreement." Fed. R. Civ. P. 23(h). The award of attorneys' fees in a class action settlement is within the Court's discretion. *Rossi v. Procter & Gamble Co.*, 2013 WL 5523098, at *9 (D.N.J. Oct. 3, 2013).

Class Counsel seek a combined total of $1,950,000 in attorneys' fees, costs, and expenses. Class Counsel also seek a $2,500 service award for each of the named Settlement Class Representatives. In total, this amounts to $2,025,000. The attorneys' fees and cost award is entirely separate from, and does not diminish in any way, the class relief or Settlement Class Representative service awards. For the reasons set forth below, this award of attorneys' fees, expenses, and service awards is reasonable and should be approved by the Court.

A. The requested award is presumptively fair and reasonable because it was negotiated at arm's length and will not diminish the Settlement Fund.

Federal courts at all levels encourage litigants to resolve fee issues by agreement whenever possible. As the United States Supreme Court explained, "[a] request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." *Hensley v. Eckhart*, 461 U.S. 424, 437 (1983); *see also Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 720 (5th Cir. 1974) ("In cases of this kind, we encourage counsel on both sides to utilize their best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorney's fees."); *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 829 (D. Mass. 1987) ("Whether a defendant is required by

statute or agrees as part of the settlement of a class action to pay the plaintiffs' attorneys' fees, ideally the parties will settle the amount of the fee between themselves.").

The Supreme Court has recognized a preference of allowing litigants to resolve fee issues through agreement. *Hensley*, 461 U.S. at 437. In this District, courts routinely approve agreed-upon attorneys' fees when the amount is independent of the class recovery and does not diminish the benefit to the class. *See, e.g.*, *Khona v. Subaru of America, Inc*., 2021 WL 4894929, at *1 (D.N.J. October 20, 2021); *Granillo v. FCA US LLC*, 2019 WL 4052432, at *2 (D.N.J. Aug. 27, 2019); *Mirakay v. Dakota Growers Pasta Co.*, 2014 WL 5358987, at *11 (D.N.J. Oct. 20, 2014); *Rossi*, 2013 WL 5523098, at *9; *Pro v. Hertz Equip. Rental Corp.*, 2013 WL 3167736, at *6 (D.N.J. June 20, 2013); *In re LG/Zenith Rear Projection Television Class Action Litig.*, 2009 WL 455513, at *8-9 (D.N.J. Feb. 18, 2009); *In re Ins. Brokerage Antitrust Litig*., 2007 WL 1652303, at *4 (D.N.J. June 5, 2007), *aff'd*, 579 F.3d 241 (3d Cir. 2009)); *In re Prudential Ins. Co. of Am. Sales Prac. Litig*., 106 F. Supp. 2d 721, 732 (D.N.J. 2000) (finding it significant that attorneys' fees would not diminish the settlement fund); *see also McBean v. City of N.Y.*, 233 F.R.D. 377, 392 (S.D.N.Y. 2006) (granting class counsel full amount of fees agreed to by defendant where attorneys' fees were separate from class settlement and did not diminish class settlement).

Where the attorneys' fees are paid independent of the award to the class, the Court's fiduciary role in overseeing the award is greatly reduced because there is no potential conflict between the attorneys and class members. *Oliver v. BMW of N. Am., LLC*, 2021 WL 870662, at *10 (D.N.J. Mar. 8, 2021); *Khona*, 2021 WL 4894929, at *1; *Mirakay*, 2014 WL 5358987, at *11; *Rossi*, 2013 WL 5523098, at *9 (citing *McBean*, 233 F.R.D. at 392). "While the Court is not bound by the agreement between the parties, the fact that the award was the product of arm's-length negotiations weighs strongly in favor of approval." *Rossi*, 2013 WL 5523098, at *10. "[T]he benefit of a fee negotiated by the parties at arm's length is that it is essentially a market-set price—[Defendant] has an interest in minimizing the fee and Class Counsel have an interest in maximizing the fee to compensate themselves for their work and assumption of risk." *Id.*

These standards counsel in favor of approving the requested fee. The award sought is completely separate and apart from the relief available to the Class, and thus will not reduce the relief to the Class in any manner. Furthermore, attorneys' fees and costs were not negotiated or discussed until after the agreement was reached between the parties on all other terms of the Settlement. Settlement Agreement, ECF No. 98-2, at § IX(C); Cecchi Decl., ¶ 11.

The fee arrangement was thus negotiated under the best of market conditions—an arm's-length negotiation with the help of a mediator—a process that

the courts have encouraged. *Rossi*, 2013 WL 5523098, at *10. The virtue of a fee negotiated by the parties at arm's-length is that it is, essentially, a market-set price. Defendants have an interest in minimizing the fee; Class Counsel have an interest in maximizing the fee to compensate themselves (as the case law encourages) for their risk, innovation, and creativity; and the negotiations are informed by the parties' knowledge of the work done and result achieved, and their views on what the Court may award if the attorneys' fees award were litigated. *See Oliver*, 2021 WL 870662, at *10. Because experienced counsel negotiated the fee arrangement in this case at arm's-length, judicial deference to the parties' fee agreement is warranted. *See In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *18 (D.N.J. Mar. 26, 2010) ("[W]ith regard to attorneys' fees[,] . . . the presence of an arms' length negotiated agreement among the parties weighs strongly in favor of approval,' even if it is 'not binding on the court.'") (quoting *Weber v. Gov't. Emps. Ins. Co.*, 262 F.R.D. 431, 451 (D.N.J. 2009)).

B. Other factors governing approval of attorneys' fees and expenses support the requested amount.

The reasonableness of attorneys' fee awards in class action cases is traditionally viewed under the factors enunciated in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000); *see In re AT&T Corp.*, 455 F.3d 160, 166 (3d Cir. 2006). Those factors include: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections

to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases. *See Gunter*, 223 F.3d at 195 n.1.[7] "Attorneys' fees are awardable even though the benefit conferred is purely nonpecuniary in nature." *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *15 (quoting *Merola v. Atl. Richfield Co.*, 515 F.2d 165, 169-70 (3d Cir. 1975)).

1. Class Counsel obtained a substantial benefit for the Settlement Class.

The first *Gunter* factor, as relevant here (*i.e.*, the number of persons benefitted), plainly weighs in favor of approving the requested attorneys' fees and expenses. *See Beneli v. BCA Fin. Servs., Inc.*, 324 F.R.D. 89, 108 (D.N.J. 2018) ("The first *Gunter* factor 'consider[s] the fee request in comparison to . . . the number of class members to be benefitted.'") (quoting *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106, at *18 (D.N.J. Aug. 26, 2011)). As further detailed above, and in the proposed Settlement Agreement, ECF No. 98-2, at 10-13, the Settlement

[7] Two of these factors—the size of the fund created and the presence or absence of objectors—are irrelevant at this juncture. There is no common fund involved in this settlement and the deadline for filing objections is not until November 25, 2024—21 days after the deadline for filing the instant motion. As such, Plaintiffs will respond separately to any objections and/or opt-outs with supplemental memoranda filed pursuant to the deadlines set in the Preliminary Approval Order (*i.e.*, by December 9, 2024).

covers 222,892 Settlement Class Vehicles and provides a substantial benefit to the Class. Class Members with a Settlement Class Vehicle that was modified pursuant to the Recall will receive an extension of warranties for their Class Vehicle. The warranty extension period will be 5 years or 60,000 miles (whichever occurs first) from the date the Recall repair was performed on the vehicle. Class Members who incurred certain out-of-pocket expenses in connection with a failed wiring harness are eligible for up to a 100% reimbursement for repairs performed by an authorized Volkswagen dealer, and up to $672.16 for repairs not performed by an authorized Volkswagen dealer. The 100% reimbursement for repairs performed by an authorized Volkswagen dealer will be available for seven years or 100,000 miles (whichever occurs first) from the vehicle's In-Service Date.

Class Counsel negotiated a meaningful Settlement and conferred an immediate and real benefit on the Settlement Class. "Despite the difficulties they pose to measurement, nonpecuniary benefits . . . may support a settlement." *Bell Atl. Corp.*, 2 F.3d at 1311. Given the inherent litigation risks in this putative nationwide class action, the benefit is highly significant as it provides tangible benefits without the risks and delays of continued litigation. This factor, therefore, favors settlement.

2. The absence of substantial objections.

Further, although the second *Gunter* factor—the presence or absence of substantial objections to the settlement terms and/or fees requested by counsel—will be addressed in a subsequent brief, to date, no objections have been submitted pursuant to the terms of the Settlement Agreement and Preliminary Approval Order, although the objection deadline is not until November 25, 2024. Low numbers indicate a highly positive response to the proposed Settlement, which favors settlement. *See Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 321 (3d Cir. 2011) ("minimal number of objections and requests for exclusion are consistent with class settlements we have previously approved" and "favor settlement"); *Demmick v. Cellco P'ship*, 2015 WL 13643682, at *7 (D.N.J. May 1, 2015). And silence from the overwhelming majority of class members is presumed to indicate agreement with the Settlement terms. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir. 1995). Class Counsel will provide a final tally of the exclusions and will respond fully to the substance of any objections in a separate brief.

3. The skill and efficiency of counsel: Class Counsel brought this matter to an efficient conclusion.

Class Counsel's success in bringing this litigation to a successful conclusion is perhaps the best indicator of the experience and ability of the attorneys involved. *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 132 (D.N.J. 2002) ("The single

clearest factor reflecting the quality of the class counsels' services to the class are the results obtained."). The quality of the work that has been presented to the Court, the undersigned believe, speaks for itself. Facing the risk of further litigation, as discussed above, Class Counsel delivered a significant benefit to the Settlement Class in the face of numerous potentially fatal obstacles.

The fact that a case settles as opposed to proceeding to trial "in and of itself, is never a factor that the district court should rely upon to reduce a fee award. To utilize such a factor would penalize efficient counsel, encourage costly litigation, and potentially discourage able lawyers from taking such cases." *Gunter*, 223 F.3d at 198. Further, Class Counsel invested significant time and worked for several years to achieve the Settlement. *See* Cecchi Decl., ¶¶ 4-11.

In addition, Class Counsel has substantial experience litigating large-scale class actions and multidistrict litigations,[8] and the Settlement Agreement is an extremely favorable resolution for the Settlement Class Members given the attendant risks of continued litigation. Both sides litigated this case aggressively and professionally.

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Class Counsel. *See, e.g.*, *In re Ikon Office Sol.,*

[8] Class Counsels' firm resumes were submitted in connection with the Motion for Preliminary Approval at ECF 98-2; *see also* ECF 109 at ¶ 10.

Inc. Sec. Litig., 194 F.R.D. 166, 194 (E.D. Pa. 2000); *In re Warner Comm'ns Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 970 (E.D. Tex. 2000). Defendants were ably represented by counsel from Shook, Hardy & Bacon, LLP, who are highly experienced and seasoned attorneys known for success in civil litigation matters, specifically including automobile-related litigation.

Class Counsel's ability to obtain the Settlement for the Class in the face of a formidable opponent further confirms the high quality of Class Counsel's representation. Accordingly, Class Counsel respectfully submits that the third *Gunter* factor, the skill and efficiency of the attorneys involved, strongly supports their application.

4. The complexity and duration of the litigation.

The fourth *Gunter* factor is intended to capture "the probable costs, in both time and money, of continued litigation." *In re Gen. Motors*, 55 F.3d at 812 (quoting *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 801 (3d Cir. 1974)). Plaintiffs here faced considerable legal and factual hurdles absent settlement. "[E]ven [though] Plaintiffs' Complaint survived Defendants' motion to dismiss, their case would have faced additional legal and factual hurdles on summary judgment, at trial, and potentially on appeal." *In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *28

(D.N.J. Nov. 15, 2016) (citation omitted). Continued litigation likely would have been very costly for both parties. Even if Plaintiffs would have recovered a large judgment at trial on behalf of the Settlement Class Members, their actual recovery would likely be postponed for years. There is also the possibility that Plaintiffs would recover nothing. The Settlement Agreement secures a recovery for the Settlement Class now, rather than the "speculative promise of a larger payment years from now." *In re Viropharma Inc. Sec. Litig*., 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016). Thus, the fourth *Gunter* factor weighs in favor of approval.

5. Class Counsel undertook the risk of non-payment.

Class Counsel undertook this action on an entirely contingent fee basis, assuming a substantial risk that the litigation would yield no, or very little, recovery and leave them uncompensated for their time as well as for their substantial out-of-pocket expenses. Courts across the country have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See, e.g.*, *Warner Comm'ns*, 618 F. Supp. at 747-49 (citing cases). As one court stated:

> Counsel's contingent fee risk is an important factor in determining the fee award. Success is never guaranteed and counsel faced serious risks since both trial and judicial review are unpredictable. Counsel advanced all of the costs of litigation, a not insubstantial amount, and bore the additional risk of unsuccessful prosecution.

In re Prudential-Bache Energy Income P'ships Sec. Litig., 1994 WL 202394, at *6 (E.D. La. May 18, 1994); *see also In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *28 ("Courts across the country have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees.") (citation omitted); *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *7 (D.N.J. 2012) ("Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval.") (citations omitted). Class Counsel have litigated this case for more than two years without pay and have shouldered the risk that the litigation would yield little to no recovery. Despite the litigation risks, Class Counsel were able to forge a resolution that provides significant relief to the Class. Thus, there is little doubt that Class Counsel undertook a significant risk here and the fee award, respectfully, should reflect that risk. Accordingly, the fifth *Gunter* factor weighs in favor of approving the attorneys' fees request.

6. Class Counsel devoted significant time to this case.

The sixth *Gunter* factor looks at counsel's time devoted to the litigation. *Gunter*, 223 F.3d at 199. Since the inception of this case, over 2,449 hours of attorney and other professional or paraprofessional time were expended on this case. Cecchi Decl., ¶¶ 12-15. This includes, *inter alia*: the time spent in the initial factual investigation of the case and interviewing clients about their experiences;

researching complex issues of law; preparing and filing the initial, amended, and First Amended Consolidated Complaints; responding to Defendants' comprehensive Motions to Dismiss; drafting discovery requests; negotiating discovery; collecting documents for Plaintiffs and preparing responses to witten discovery; hard-fought settlement negotiations; documenting the Settlement; researching and briefing issues relating to the preliminary approval of the Settlement; working with the Settlement Administrator to effectuate Notice; and responding to Class Member inquiries. *See id*. These hours are reasonable for a complex class case like this one. Further, Class Counsel's submission today does not include time to be spent going forward—both in preparing and presenting arguments on final approval, defending the Settlement from any appellate or other attacks that may result, and assisting Class Members with further inquiries and the claims process. Thus, the sixth *Gunter* factor also weighs in favor of approving the attorneys' fees request.

7. Awards in similar cases.

With regard to the seventh *Gunter* factor, the $1,950,000 attorneys' fee award and reimbursement of costs sought by Plaintiffs is well below awards approved in similar cases. *See, e.g*, *In re Volkswagen Timing Chain Prod. Liab. Litig.*, 2018 WL 11413299 (D.N.J. Dec. 14, 2018) (awarding $8,650,000 in fees and expenses related to similar litigation involving certain 2009-2012 model year Volkswagen and Audi vehicles with defective timing chain systems); *In re Volkswagen & Audi Warranty*

Extension Litig., 692 F.3d 4, 22 (1st Cir. 2012) (in engine defect case, circuit court directed lower court on remand to use "the base lodestar figure of $7,734,000" for calculating fees for class counsel where settlement offered, among other benefits, payment for engine repair or replacement costs and warranty extension for vehicles); *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 166-71 (D. Mass. 2015) (on remand, granting enhanced fees of $15,468,000, using base lodestar of $7,734,000, where settlement resolved claims of improprieties in automobile manufacturer's warranty extension and reimbursement program, and involved allegations of engine defects); *Dewey v. Volkswagen of Am*., 909 F. Supp. 2d 373, 390-94, 400 (D.N.J. 2012) (granting attorney fees of $9,207,248.19 where settlement involved Volkswagen and Audi automobiles with allegedly defectively designed sunroofs that leaked and primary claim was for breach of express warranty), *aff'd*, 558 F. App'x 191 (3d Cir. 2014); *Vaughn v. Am. Honda Motor Co*., 627 F. Supp. 2d 738, 750-51 (E.D. Tex. 2007) (granting adjusted lodestar of $9,500,000 where proposed settlement provides class members with lease and warranty extensions based on defective odometer claim).

C. The lodestar cross-check supports the fairness and reasonableness of the requested fees and expense reimbursement.

Even though the fact that a fee is negotiated weighs in favor of approval, the Court may also perform a lodestar cross-check to determine the reasonableness of the fee. *Rossi*, 2013 WL 5523098, at *10; *LG/Zenith Rear Projection*, 2009 WL

455513, at *8. In determining the lodestar for cross-check purposes, the Court need not engage in a "full-blown lodestar inquiry." *In re AT&T Corp.*, 455 F.3d at 169 n.6 (citation omitted). Indeed, where there have been no objections to the lodestar calculations, "a full-blown lodestar analysis is an unnecessary and inefficient use of judicial resources." *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 592 (D.N.J. 2010). To calculate the lodestar amount, counsel's reasonable hours expended on the litigation are multiplied by counsel's reasonable rates. *See Pa. v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986).

Class Counsel and their staff, and additional counsel, have expended over 2,449 hours on this case. Cecchi Decl., ¶ 14. The hours recorded were incurred on matters for the benefit of the litigation and representation of their clients as detailed *supra* regarding the sixth *Gunter* factor. Given the effort expended and the complexity of the legal and factual issues involved, the hours incurred are entirely reasonable.

Moreover, the hourly rates vary appropriately between attorneys and paralegals, depending on the position, experience level, and locale of the particular attorney. The rates for each attorney and paralegal are set forth in Class Counsel's individual Declarations, Exhibits A-E to the Cecchi Declaration, and the charts and exhibits to those individual Declarations. The lodestar rates are based on a reasonable hourly billing rate for such services given the geographical area, the

nature of the services provided, and the experience of the lawyer. *Gunter*, 223 F.3d at 195; *see also e.g.*, *Opheim v. Volkswagen Aktiengesellschaft*, 20-cv-2483-AME (D.N.J.), ECF 185 (Aug. 14, 2024) (approving requested fees based upon hourly rates of $420 to $1,250 for attorneys with a number of attorneys above $900 per hour and $225 to $405 for paralegals).

Considering the several factors discussed above, including the economic benefits of the Settlement, the complexity and risk of the litigation, and the skill and experience of counsel, Class Counsel's rates are reasonable in this case. Altogether, this yields a collective lodestar of $1,859,313.00 in professional time, and $13,376.59 in expenses. *See* Cecchi Decl., ¶¶ 14, 17. Thus, Plaintiffs here request a modest 1.04 multiplier, where the range of multipliers awarded in this Circuit is between 1 and 4. *See McLennan v. LG Elecs. USA, Inc*., 2012 WL 686020, at *10 (D.N.J. Mar. 2, 2012) (awarding multiplier of 2.93 and citing cases noting that the range of multipliers).

D. The Settlement Class Representative service awards should be approved.

Service awards for class representatives promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits. The efforts of the Settlement Class Representatives were instrumental in achieving the Settlement on behalf of the Settlement Class and justify the awards requested here. The Settlement Class Representatives came forward to prosecute this litigation

for the benefit of the class as a whole. They sought successfully to remedy a widespread wrong and have conferred valuable benefits upon their fellow Class Members. The Settlement Class Representatives provided a valuable service to the class by: (i) providing information and input in connection with the drafting of the Complaints; (ii) overseeing the prosecution of the litigation; and (iii) working with Class Counsel to prepare responses to formal discovery and (iv) consulting with counsel during the litigation. Cecchi Decl., ¶ 18. A $2,500 service award for each of the Settlement Class Representatives in recognition of their services to the Settlement Class is modest under the circumstances, and well in line with awards approved by federal courts in New Jersey and elsewhere. *In re Volkswagen Timing Chain Prod. Liab. Litig.*, 2018 WL 11413299 (awarding class representatives $2,500 service awards under similar circumstances to the present matter); *Bernhard v. TD Bank, N.A.*, 2009 WL 3233541, at *2 (D.N.J. 2009) ("Courts routinely approve incentive awards to compensate named plaintiffs for services they provided and the risks they incurred during the course of the class action litigation.") (quoting *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000)); *McGee v. Cont'l Tire N. Am., Inc.*, 2009 WL 539893, at *18 (D.N.J. Mar. 4, 2009) (quoting *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002)) ("Incentive awards are 'not uncommon in class action litigation and particularly where . . . a common fund has been created for the benefit of the entire class.'"); *In*

re Am. Invs. Life Ins. Co. Annuity Mktg. & Sales Pracs. Litig., 263 F.R.D. 226, 245 (E.D. Pa. 2009) (awarding representative plaintiffs incentive payments in the amounts of $10,500 and $5,000, for a total of $115,000, finding those amounts to be "reasonable compensation considering the extent of the named plaintiffs' involvement and the sacrifice of their anonymity"); *Bezio v. Gen. Elec. Co.*, 655 F. Supp. 2d 162, 168 (N.D.N.Y. 2009) (incentive awards in the amount of $5,000 each are "within the range of awards found acceptable for class representatives"). Plaintiffs and Class Counsel respectfully request that the service awards provided for in Section IX(C) of the Settlement Agreement be approved.

E. Class Counsels' expenses are reasonable and should be approved.

In addition to being entitled to reasonable attorneys' fees, it is well-settled that prevailing Plaintiffs' attorneys are "entitled to reimbursement of reasonable litigation expenses." *See, e.g.*, *Carroll v. Stettler*, 2011 U.S. Dist. LEXIS 121185, at *26 (E.D. Pa. Oct. 19, 2011) (citing *In re Gen. Motors*, 55 F.3d at 820 n.39); *see also In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) ("Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.") (citing *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995)).

Class Counsel's out-of-pocket expenses incurred in this litigation currently total $13,376.59. Cecchi Decl., ¶ 17. The expenses are of the type typically billed by attorneys to paying clients in the marketplace and include such costs as copying fees, computerized research, travel in connection with this litigation, and discovery expenses. All of the expenses were reasonable and necessary for the successful prosecution of this case and should be approved. In addition, Class Counsel will incur additional expenses on this case going forward, including working with JND Legal Administration (the Claims Administrator), communicating with Settlement Class Members, and attending the Final Approval Hearing. Class Counsel respectfully requests that the Court approve reimbursement of the $13,376.59 in expenses.

CONCLUSION

Because the award of attorneys' fees, reimbursement of expenses, and Plaintiffs' service awards are reasonable and justified, Plaintiffs respectfully request that they be approved by the Court.

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Respectfully submitted,

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