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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

ALI ASGHARI, DANIEL TRAN, YUNG KIM, ARA DERSARKISSIAN, and KATRINA NOBLE individually, and on behalf of a class of similarly situated individuals,

Plaintiffs,

vs.

VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, AND AUDI AG,

Defendants.

Case No.: CV13-02529-MMM-(JEMx)

CLASS ACTION

Hon. Margaret M. Morrow

PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: October 20, 2014
Time: 10:00 a.m.
Place: Courtroom 780

Complaint Filed: May 1, 2012
Date of Transfer: April 10, 2013
Trial Date: None set

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**
2 **PLEASE TAKE NOTICE** that on October 20, 2014, at 10:00 a.m., in
3 Courtroom 840 of the above-captioned Court, located at 255 East Temple Street Los
4 Angeles, California 90012, the Honorable Margaret M. Morrow presiding, Plaintiffs
5 Ali Asghari, Daniel Tran, Yung Kim, Ara Dersarkissian, and Katrina Noble, on
6 behalf of themselves and all others similarly situated, will, and hereby do, move this
7 Court to:
8 1. Preliminarily approve the settlement described in the Settlement
9 Agreement, attached as Exhibit A to the Declaration of Payam Shahian;
10 2. Conditionally certify the Settlement Class;
11 3. Approve distribution of the proposed Notice of Class Action Settlement
12 and Claim Form to the Settlement Class;
13 4. Appoint Plaintiffs Ali Asghari, Daniel Tran, Yung Kim, Ara
14 Dersarkissian, and Katrina Noble as the Class representatives;
15 5. Appoint Strategic Legal Practices APC and Capstone Law APC as Lead
16 Class Counsel and EcoTech Law Group, P.C., Diversity Law Group, Law Offices of
17 Choi & Associates, and Law Offices of Hovanes Margarian as Class Counsel;
18 6. Appoint Rust Consulting, Inc., as the Claim Administrator; and
19 7. Set a hearing date and briefing schedule for final settlement approval
20 and Plaintiffs' fee and expense application.
21 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the
22 Memorandum of Points and Authorities in Support of Motion for Preliminary
23 Approval of Class Action Settlement; (3) the Declarations of Payam Shahian, Jordan
24 L. Lurie, Larry Lee, Edward W. Choi, Hovanes Margarian, and Dara Tabesh; (4) the
25 Settlement Agreement and attached exhibits thereto; (5) the [Proposed] Order
26 Granting Preliminary Approval of Class Action Settlement; (6) the records,
27 pleadings, and papers filed in this action; and (7) such other documentary and oral
28

1 evidence or argument as may be presented to the Court at or prior to the hearing of
2 this Motion.
3
4 Dated: September 22, 2014 Respectfully submitted,
5
6 By: s/ Jordan L. Lurie

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1 I. INTRODUCTION

2 Plaintiffs Ali Asghari, Daniel Tran, Yung Kim, Ara Dersarkissian, and Katrina
3 Noble are pleased to report that after three years of litigation, they have reached a
4 settlement with Defendants Volkswagen Group of America, Inc. ("VWGoA"),
5 Volkswagen AG, and Audi AG (collectively, "Defendants") that confers substantial
6 relief to all Class Members. This Settlement resolves Plaintiffs' claims that
7 Defendants designed, manufactured, distributed, marketed, sold, and warranted
8 approximately 126,000 2.0 liter turbocharged engines installed in certain Audi-
9 branded models bearing the engine code CAEB ("CAEB engine") that contained an
10 alleged defect that caused them to consume excessive amounts of oil ("oil
11 consumption defect").

12 Plaintiffs now move for preliminary approval of the Settlement Agreement
13 that secures significant benefits for the Class without the delay and risks associated
14 with trial and potential appeals. The Settlement Agreement provides, among other
15 items, the following:

16 **Service Adjustment for Current Owners or Lessees:** Subject to proof, all
17 Class Members who are current owners or lessees of Settlement Class Vehicles[1] and
18 who did not previously receive a Service Adjustment (defined below) will be entitled
19 to: (1) a replacement of the crankcase pressure regulating valve, front crankshaft seal
20 and front crankshaft bolt, and (2) updating of the Engine Control Module software to
21 match the new part(s) (this service will be called a "Service Adjustment"). This
22 Service Adjustment is designed to reduce Class Members' excessive oil consumption
23 issues and will be performed on their Settlement Class Vehicles, free of charge, by an
24

25 [1] Settlement Class Vehicle of Class Vehicle refers to any 2009 model year
26 Audi A4 vehicle, 2010 model year Audi A4 and A5 vehicle, or 2011 model year
Audi A4, Audi A5, and Audi Q5, originally equipped with a factory-installed 2.0 liter
27 TFSI longitudinal engine bearing Audi internal engine code CAEB, imported and
distributed by Defendant Volkswagen Group of America, Inc., for sale or lease in the
28 United States of America or Puerto Rico. (Settlement Agreement § 1.G.)

1 authorized Audi dealer, so long as an appointment is scheduled within eighteen
2 months of the Class Notice date.
3 **Reimbursement For Service Adjustment Prior To Notice Date:** For Class
4 Members who paid for an authorized Audi dealer to perform a Service Adjustment,
5 in part or in whole, prior to the Class Notice date, Defendants have agreed to
6 reimburse 100% of the Service Adjustment costs (parts and labor), subject to proof
7 and conditions.
8 **A Consumer-Friendly Claims Process**: Class Members will be able to obtain
9 reimbursement for Service Adjustment costs by completing and submitting a simple
10 claim form to the administrator, along with basic documentary proof necessary to
11 establish out-of-pocket expenses. Under the Settlement, Class Members will be
12 promptly reimbursed after a fully documented claim has been submitted and
13 approved.
14 **Warranty Extension for Current Owners or Lessees:** In addition to the
15 Service Adjustment, VWGoA will also extend the applicable New Vehicle Limited
16 Warranties for Settlement Class Vehicles from 4 years/50,000 miles to 8
17 years/80,000 miles (whichever occurs first) to cover any repair needed to correct
18 excessive engine oil consumption in the Settlement Class Vehicles that is performed
19 by an authorized Audi dealer. Subject to proof, the warranty will apply for 8 years or
20 80,000 miles (whichever occurs first) from the In-Service Date of the Settlement
21 Class Vehicle, or 1 year/12,000 miles from the date the Service Adjustment
22 (whichever is later). The warranty extension will also cover any oil consumption test
23 performed by Audi dealers in connection therewith. This remedy will be
24 automatically available to Settlement Class Members as soon as the Class Notices are
25 sent.
26 **Class Member Notification**: Defendants will retain and pay a claims
27 administrator to notify Class Members of the Settlement by first-class mail and
28 publication notice and will maintain a website that will provide information

concerning the Settlement and claims process.

Attorneys' Fees and Service Awards. Under the Settlement, Defendants agree not to oppose Plaintiffs' request for attorneys' fees up to a combined sum of $2,300,000 and expenses of up to a combined sum of $100,000 to Plaintiffs' counsel, which will be paid separate and apart from the benefits to the Class. In addition, Defendants have agreed not to oppose Plaintiffs' request for $2,500 in service payments each to Plaintiffs Asghari, Tran, Kim, Dersarkissian, and Noble, for their efforts on behalf of Class Members.

This proposed settlement is fair, reasonable, and adequate. Accordingly, the parties respectfully request that the Court enter an order (a) granting preliminary approval of the Settlement; (b) certifying the proposed Settlement Class; (c) appointing Plaintiffs as Class Representatives; (d) appointing Strategic Legal Practices APC ("SLP") and Capstone Law APC ("Capstone") as Lead Class Counsel and Diversity Law Group, P.C. ("Diversity"), Law Office of Choi & Associates (the "Choi Firm"), EcoTech Law Group P.C. ("EcoTech"), and the Law Office of Hovanes Margarian (the "Margarian Firm") as Class Counsel; (e) approving the parties' proposed form and method of giving Class Members notice of the action and the proposed Settlement; (f) directing that notice be given to Class Members in the proposed form and manner; and (g) setting a hearing date and briefing schedule for final settlement approval and Plaintiffs' fee and expense application.

II. FACTS AND PROCEDURE

A. Overview Of The Litigation

On May 1, 2012, Plaintiff Ali Aghari brought this putative class action in the Northern District of California against Defendants. (Dck. No. 1.) In the First Amended Complaint, Plaintiff joined additional plaintiffs and sought relief on behalf of a nationwide class of owners or lessees of certain Volkswagen and Audi vehicles. Specifically, Plaintiffs alleged that the subject vehicles contained one or more alleged engine defects that cause them to burn off and/or consume abnormally high amounts

of oil. (Dck. No. 17.)

This case began with several rounds of motion practice. (Shahian Decl. ¶ 12.) On October 3, 2012, Defendants filed a motion to transfer the *Asghari* action to the Central District of California, which the *Asghari* Plaintiffs opposed. (Dck. Nos. 23 & 33.) After full briefing, on March 16, 2013, the court transferred the *Asghari* action to the Central District of California. (Dck. No. 62.) Also transferred from the Northern District of California was a related action, *Kim v. Volkswagen Group of America, Inc., et al.*, 2:13-CV-02527-MMVBKx, which was filed in California state court on February 7, 2012, and removed to the Northern District of California on March 8, 2012, alleging some of the same claims as alleged in the *Asghari* action. (*Id.*)

In addition to the motions to transfer, Defendants moved separately to dismiss the *Asghari* and *Kim* actions.[2] Although Defendants' motion to dismiss the *Asghari* complaint was only partially granted on November 4, 2013 (*Asghari* Dck. No. 121),[3] VWGoA's motion to dismiss the claims in *Kim* was granted in its entirety on July 30, 2013 (*Kim* Dck. No. 71).

However, prior to entering final orders in the *Asghari* and *Kim* actions, the Court, at the July 29, 2013 hearing on the motion to dismiss, directed the *Asghari* Plaintiffs to confer with counsel for *Kim* and recommended adding Plaintiff Kim to the *Asghari* action. (Shahian Decl. ¶ 14; Declaration of Larry Lee ["Lee Decl.], ¶ 4;Dck. No. 110.) After meeting and conferring on the matter and following the

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[2] Defendants VWGOA moved to dismiss Asghari's First Amended Complaint on March 1, 2013 (Dck. No. 25), which Plaintiffs opposed (Dck. No. 35). Volkswagen AG and Audi AG jointly filed a motion to dismiss Asghari's First Amended Complaint on May 16, 2013 (Dck. No. 80), which Plaintiffs opposed. (Dck. 102.) VWGOA was the only named defendant in the *Kim* action and filed only one motion (*Kim* Dck. No. 14), which Kim opposed. (*Kim* Dkt No. 23).

[3] The Court tentatively denied in part and granted in part the motion to dismiss in *Asghari* at the hearing on July 29, 2013, but did not issue its final order until November 4, 2013.

1 Court's motion to dismiss order, on November 25, 2013, Plaintiffs in the *Asghari*
2 action filed their Second Amended Complaint by joining Yung Kim as a plaintiff to
3 the *Asghari* matter, revising their class definition, among other things. (Dck. No.
4 123).
5 On September 30, 2013, plaintiffs in the Ara Dersarkissian action filed a
6 separate complaint against Defendant VWGoA in the Superior Court of California,
7 Los Angeles County, Case No. BC522967. Following Defendant's removal of the
8 action and filing of a notice of related case relating the *Dersarkissian* action to
9 *Asghari,* the *Dersarkissian* plaintiffs, after meeting and conferring with counsel for
10 Plaintiffs in the *Asghari* action, dismissed their case, and Dersarkissian was added to
11 the *Asghari* action through a Third Amended Complaint. (*See Dersarkissian* Dck.
12 Nos. 14 & 15.)
13 Following the agreement to settle this matter as described further below, for
14 the purposes of settlement, the Parties stipulated to filing a Fourth Amended
15 Complaint, which this Court granted on July 17, 2014. (*Asghari* Dck. No. 144.)[4]
16 **B. Plaintiffs' Considerable Investigation And Discovery**
17 Both prior to and after the filing of these actions, Plaintiffs thoroughly
18 investigated and litigated this case. (*See*, *e.g*., Shahian Decl. ¶¶ 17-20; Declaration of
19 Jordan L. Lurie ["Lurie Decl."], ¶¶ 2-5; Declaration of Edward W. Choi ["Choi
20 Decl."], ¶ 2; see also generally, Lee Decl., Declaration of Hovanes Margarian
21 ["Margarian Decl."].) Among other things, Plaintiffs fielded inquiries from
22 prospective Class Members; consulted and retained automotive experts; researched
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[4] The Settlement Agreement designates Asghari Plaintiffs' counsel, SLP and Capstone, to be "Lead Class Counsel." (Settlement Agreement § I.F.) All counsel for Plaintiffs, consisting of SLP, Capstone, Diversity, the Choi Firm, EcoTech, and the Margarian Firm, are designated to be Class Counsel under the Settlement. (*Id.* § I.Q.) These terms reflect the Parties' recognition that SLP and Capstone assumed a leadership role in the action by being primarily responsible for developing the theory of the case, directing the investigation, retaining experts, propounding and reviewing discovery, and negotiating the settlement on behalf of the Plaintiffs and all prospective Settlement Class Members.

publicly available materials and information provided by the National Highway Traffic Safety Administration ("NHTSA") concerning consumer complaints about excessive oil consumption; reviewed and researched consumer complaints and discussions of excessive oil consumption in articles and forums online; reviewed various manuals and technical service bulletins discussing the alleged defect; conducted research into the various causes of actions; drafted three oppositions to motions to dismiss; and two oppositions to motions to transfer.. (*Id.*)

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

In addition to reviewing Defendant's documents, Plaintiffs also conducted their own testing, which included, among other things, hiring of experts, purchasing of an exemplar Class Vehicle for expert analysis, and conducting extensive testing regarding the alleged oil consumption defect, which allowed Plaintiffs' counsel to evaluate Defendants' representations concerning the alleged excessive oil consumption issue and repair solutions. (Shahian Decl. ¶ 19; Lurie Decl. ¶¶ 3-4.) Finally, Plaintiffs prepared for and took the deposition of Defendants' Rule 30(b)(6) corporate representative in New York, further confirming that the Settlement is fair and reasonable. (*Id.*)

C. The Parties' Protracted Arm's-Length Settlement Negotiations

The proposed Settlement was the culmination of protracted discussions between the Parties, extensive consultation with their experts, discovery, and thorough analysis of the pertinent facts and law at issue. (Shahian Decl. ¶ 20; Lurie Decl. ¶¶ 6-8.)

The Parties initially discussed the potential resolution of this matter when they

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

Accordingly, on March 27, 2014, the Parties attended a mediation in San Diego with the Honorable Howard B. Wiener. (*Id.* ¶ 23.) In advance of the mediation, the Parties submitted mediation briefs setting forth their positions. (*Id.*) At mediation, the Parties were able to reach an agreement on all material terms of the proposed relief to the Class. (*Id.*) Only after the Parties had reached this agreement did they negotiate attorneys' fees, costs, and incentive awards. (*Id.*) Ultimately, the Parties reached an agreement on these terms as well.

Subsequent to the mediation, *inter alia*, the Parties formalized the Settlement Agreement, including drafting and finalizing the notice to the class and claim form. (*Id.* ¶ 24.)

D. Material Terms Of The Proposed Class Action Settlement

1. The Proposed Settlement Class

The Settlement Class consists of all persons and entities[5] who purchased or

[5] The Settlement excludes from the Settlement Class a number of special purchasers, including, *inter alia*, those who purchased the Settlement Class Vehicle for the purposes of resale, and anyone claiming personal injury, property damage, and/or subrogation. (*See* Settlement Agreement § I.E.)

leased a Settlement Class Vehicle, defined as any 2009 model year Audi A4 vehicle, 2010 model year Audi A4 and Audi A5 vehicle, and 2011 model-year Audi A4, Audi A5, and Audi Q5 vehicle, originally equipped with a factory-installed 2.0 liter TFSI longitudinal engine bearing Audi internal engine code CAEB ("CAEB Engine"), imported and distributed by Defendant Volkswagen Group of America, Inc., for sale or lease in the United States of America or Puerto Rico. (Settlement Agreement §§ 1.E & 1.G.)

2. The Service Adjustment Program

VWGoA will provide a "Service Adjustment"—*i.e.*, a repair performed by an authorized Audi dealer that is designed to reduce excessive oil consumption issues in the Settlement Class Vehicles—free of charge to Class Members who are current owners or lessees and who have not previously receive a Service Adjustment to their vehicles. (Settlement Agreement § II.B.) All such Class Members will be entitled to the complementary Service Adjustment upon documentary proof of compliance with the oil and oil filter maintenance requirements and schedule (with allowance for a 10% variance) set forth in the Settlement Class Vehicle's Warranty and Maintenance Booklet and Owner's Manual. (*Id.*) All appointments for a Service Adjustment must be made within 18 months from the date of the Class Action Notice. (*Id.*) Appointments for the Service Adjustment which may exceed the eighteen (18) months must be performed within ninety (90) days, as long as the appointment is made within eighteen (18) months after the Notice Date. (*Id.*) A Service Adjustment performed under this section during the Notice period precludes Settlement Class Members from opting out of the Settlement Class. (*Id.*)

3. Reimbursement Program for Past Repairs

Class Members who paid for a Service Adjustment—in part or in whole—prior to the Notice date will be entitled to a 100% reimbursement of those costs. (Settlement Agreement § II.A.) The reimbursement is subject to the following reasonable conditions: (a) the Service Adjustment was performed by an authorized

1 Audi dealer; (b) the Class Member was not previously reimbursed for the Service
2 Adjustment by VWGoA or a third party; (c) the service documentation indicates that
3 the Service Adjustment was related to oil consumption issues; (d) the service
4 documentation does not connect the Service Adjustment to lack of or insufficient
5 engine maintenance or failure to comply with the oil and oil filter maintenance
6 requirements and schedule; and (e) Class Members complete and submit the claim
7 form within 150 days of the Class Notice, along with sufficient documentary proof of
8 the repair expense. (*Id.*)

9 The required documentation for reimbursement consists of a legible copy of a
10 receipt, invoice, or other record that identifies the date of repair, the date and make
11 and model of the vehicle, the vehicle identification number, the mileage of the
12 vehicle at the time of repair, the facility that performed the repair, a description of the
13 repair performed (including a breakdown of parts and labor costs), and proof of the
14 sum of money paid by (or on behalf of) the Settlement Class Member. (*Id.* § I.M.)

15 **4. Warranty Extension Program**

16 In addition to the Service Adjustment, VWGoA will also extend the applicable
17 New Vehicle Limited Warranties for the Settlement Class Vehicles from 4
18 years/50,000 miles to 8 years/80,000 miles (whichever occurs first) to cover any
19 engine repair needed to correct any excessive oil consumption by an authorized Audi
20 dealer ("Extended Warranty"). (Settlement Agreement § C.) Under the Settlement
21 Agreement, the Extended Warranty will cover a period of either (i) eight years or
22 80,000 miles (whichever occurs first) from the In-Service Date[6] of the Settlement
23 Class Vehicle, or (ii) one year or 12,000 miles (whichever occurs first) from the date
24 that the Service Adjustment was performed, whichever date occurs later. (*Id.*) The
25 Extended Warranty is subject to proof of compliance with the scheduled oil

26 [6] This refers to the date on which a Settlement Class Vehicle was delivered to
27 either the original purchaser or the original lessee; or if the vehicle was first placed in
service as a "demonstrator" or "company" car, the date such vehicle was first placed
28 in service.

1 maintenance (with a permissible variance of 10% of each required oil and filter
2 maintenance mileage interval), and will also include as part of the extended warranty
3 coverage any oil consumption test performed by Audi dealers in connection with the
4 Limited Warranty. (*Id.*) Repairs performed under the Extended Warranty preclude
5 Settlement Class Members from opting out. (*Id.*) The Extended Warranty is subject
6 to the same terms and conditions as the New Vehicle Limited Warranty. (*Id.*)

7 **5. A Consumer-Friendly Claims Process**

8 The claims process has been designed to minimize the burden on Class
9 Members while ensuring that only valid claims are paid. To obtain reimbursement
10 for a Service Adjustment performed prior to the Class Notice, a Settlement Class
11 Member must supply documentary proof necessary to substantiate claims and out-of-
12 pocket expenses. (Settlement Agreement § B.) Aside from filling out the simple
13 Claim Form, Class Members are only required to provide a receipt or invoice
14 containing information standard in automotive repair invoices, *e.g.*, repair date,
15 description of the vehicle and the dealer where the work was performed, a
16 breakdown of parts and labor, etc., in order to be eligible for reimbursement. (*Id.* §
17 I.M.)

18 Defendants will pay a Claim Administrator to expeditiously process these
19 claims, including review of all claims. (*Id.* § II.D.) Class Members who are entitled
20 to 100% of their unreimbursed expenses will be paid by the Claims Administrator
21 within 75 days of receipt of the Claim, or within 60 days of the Effective Date,[7]
22 whichever is later. (*Id.* § III.A.)

23 The Settlement Agreement also provides two levels of protection to ensure that

24

25 [7] The "Effective Date" is defined as the first date after (1) the Court enters a Final Order and Judgment approving the Settlement Agreement, substantially in the
26 form attached to the Settlement Agreement as Exhibit 2, and (2) all appellate rights with respect to said Final Order and Judgment, other than those related solely to any
27 award of attorneys' fees, costs or incentive payments, have expired or been exhausted in such a manner as to affirm the Final Order and Judgment. (Settlement Agreement
28 § I.H.)

the claims of Class Members were fairly and adequately processed and administered. For claims that were partly or fully rejected, the Claim Administrator must first provide a Claim Decision that includes the reasons why the claim was denied, and identifying additional documentation that may cure the deficiency. (*Id.* § III.A.2.)

Any Settlement Class Member whose claim is denied—either upon the initial claim or a denial after an attempt to cure—will have the option to seek a Second Review of his or her reimbursement claim. (*Id.* §§ III.A.2(d) & III.A.3(b).) That Second Review must be conducted independently from the initial determination by another (senior-level) employee of the Claim Administrator. (*Id.* §§ III.B.3 & III.B.4.) The Second Reviewer has full authority to award up to the full reimbursement if the documentation supports that amount (*id.* §§ III.B.4), but the determination is not reviewable (*id.* § III.B.5). Moreover, Lead Class Counsel will have the right to monitor the claims administration process to ensure compliance with the Settlement Agreement. (*Id.* § III.B.6.)

6. The Proposed Notice to the Settlement Class

Defendants will prepare, pay for, and the Claim Administrator will send the Class Notice in the form approved by the Court, within 100 days of the Court's entry of the Preliminary Approval Order. (Settlement Agreement § IV.2(a).) The Notice will be disseminated through direct mail and through a one-time publication of summary notice to appear in the first section of the National Edition of USA Today. In addition, the Class Notice will be published on a website maintained by the Claim Administrator, which will also contain instructions on how to submit a Claim Form, opt-out, or object. (*Id.* § IV.2(a), (f), (g).)

7. Proposed Attorneys' Fees, Litigation Expenses, and Service Awards

The Parties have agreed that an award of attorneys' fees, expenses, or service awards will not in any way reduce the Settlement Class benefits. (*See* Settlement Agreement § VIII.C.) Subject to Court approval, Defendants have agreed to pay

Class Counsel's attorneys' fees of up to a combined sum of $2,300,000 and litigation expenses up to a combined sum of $100,000 on behalf of all Plaintiffs' Counsel. (*Id.*) Subject to Court approval, Defendants have also agreed to pay service awards to the named Class Representatives for their efforts to secure relief on behalf of the Settlement Class, in the sum of $2,500 each, which will be paid by Defendants separate from the benefits to the Settlement Class. (*Id.* § VIII.C.)

III. ARGUMENT

A. The Court Should Grant Preliminary Approval of the Class Settlement

1. The Standard for Preliminary Approval Has Been Met

Class action settlements must be approved by the court, and notice of the settlement must be provided to the class before the action can be dismissed. Fed. R. Civ. P. 23(e)(1)(A). Court approval occurs in three steps: (1) preliminary approval of the proposed settlement, including (if the class has not already been certified) conditional certification of the class for settlement purposes; (2) notice to the class providing them an opportunity to object or exclude themselves from the settlement; and (3) a final fairness hearing concerning the fairness, adequacy, and reasonableness of the settlement. *See* Fed. R. Civ. P. 23(e)(2); Manual for Complex Litigation § 21.632 (4th ed. 2004).

In reviewing class action settlements, the court should give "proper deference to the private consensual decision of the parties." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). This reflects the longstanding policy in favor of encouraging settlement of class action suits, as "[l]itigation settlements offer parties and their counsel relief from the burdens and uncertainties inherent in trial. . . . The economics of litigation are such that pre-trial settlement may be more advantageous for both sides than expending the time and resources inevitably consumed in the trial process." *Franklin v. Kaypro*, 884 F.2d 1222, 1225 (9th Cir. 1989).

In the preliminary approval stage, the Court first determines whether a class

exists. *Stanton v. Boeing Company*, 327 F.3d 938, 952 (9th Cir. 2003). Then, the Court evaluates "whether the settlement is within the range of possible approval, such that there 'is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.'" *In re M.L. Stern Overtime Litig*., No. 07-0118-BTM, 2009 U.S. Dist. LEXIS 31650, at *10 (S.D. Cal. Apr. 13, 2009) (quoting *Armstrong v. Board of School Directors*, 616 F.2d 305, 314 (7th Cir. 1980)); *see also, Acosta v. Trans Union*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) ("To determine whether preliminary approval is appropriate, the settlement need only be *potentially* fair, as the Court will make a final determination of its adequacy at the hearing on Final Approval, after such time as any party has had a chance to object and/or opt out.") (emphasis in original). In other words, the Court makes only a preliminary determination of the settlement's fairness, reasonableness, and adequacy, granting preliminary approval unless the settlement terms are so unacceptable that a formal fairness hearing would be a waste of time. *See* Manual for Complex Litigation § 21.632.

At the outset, the fairness and reasonableness of a settlement agreement is presumed "where that agreement was the product of non-collusive, arms' length negotiations conducted by capable and experienced counsel." *In re Netflix Privacy Litig*., No. 5:11-CV-00379-EJD, 2013 U.S. Dist. LEXIS 37286, at *11 (N.D. Cal. Mar. 18, 2013). This Settlement is the product of arms'-length negotiations conducted over many months, with both sides agreeing to the final terms after mediating with the Honorable Howard B. Wiener, a distinguished retired California appellate judge and mediator respected by California courts.[8] "The assistance of an

[8] *See, e.g.*, *Johansson-Dohrmann v. CBR Sys*., No. 12-1115-MMA, 2013 U.S. Dist. LEXIS 103863, at **12-22 (S.D. Cal. July 24, 2013) (crediting Judge Wiener's efforts and approving a class action settlement); *see also Grant v. Capital Mgmt. Servs., L.P.*, No. 10-2471-WQH, 2014 U.S. Dist. LEXIS 29836 (S.D. Cal. Mar. 5, 2014) (finding that Judge Wiener's involvement as a mediator "is a factor weighing in favor of a finding of non-collusiveness").

experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell v. Fed. Express Corp*., 2007 U.S. Dist. LEXIS 99066, at *17 (N.D. Cal. 2007). Thus, this non-collusive Settlement is entitled to "a presumption of fairness." *Gribble v. Cool Transps., Inc*., 2008 U.S. Dist. LEXIS 115560, at *26 (C.D. Cal. 2008).

In addition, the Court may consider some or all of the following factors in evaluating the reasonableness of a settlement: the extent of discovery completed and the stage of proceedings; the strength of the plaintiff's case and the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout trial; the amount offered in settlement; and the experience and views of counsel. *See Churchill Village v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). "Under certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval." *Nat'l Rural Telecom. Coop. v. DIRECTV, Inc*., 221 F.R.D. 523, 525-526 (C.D. Cal. 2004) (citing *Torrisi v. Tuscson Elec.*, 8 F.3d 1370, 1376 (9th Cir. 1993)).

2. The Proposed Settlement Is Well Within the Range of Reasonableness As The Class Relief Is Substantial And Justified In Light of The Risks of Continued Litigation

The proposed Settlement is well within the range of reasonableness. First, in addition to an extended warranty and reimbursement program, the Settlement provides a Service Adjustment that will address Class Members' alleged excessive oil consumption issues. Second, an objective evaluation confirms that the relief offered for the Class is well within the range of reasonableness, particularly when compared to the likely outcome of prosecuting the action. As the Ninth Circuit has instructed, in assessing the probability and likelihood of success, "the district court's determination is nothing more than an amalgam of delicate balancing, gross approximations, and rough justice." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982) (internal quotation omitted). There is "no single

formula" to be applied, but the court may presume that the parties' counsel and the mediator arrived at a reasonable range of settlement by considering Plaintiff's likelihood of recovery. *Rodriguez v. West Pub. Corp*., 463 F.3d 948, 965 (9th Cir. 2009).

While Plaintiffs believe that their case is strong on the merits, Defendants have raised a number of substantive defenses, including, among other things, a defense that no such oil consumption defect exists (because, for example, the need to add supplemental oil between oil changes is a shared characteristic of all internal combustion engines and is not unique to the Class Vehicles); Plaintiffs would be unable to show that the alleged defect constitutes a safety concern (e.g. because the engine warning light alerts drivers in advance of the need to add oil); because oil consumption is a maintenance issue, Plaintiffs cannot establish an actionable defect; and any actual oil consumption issues have been disclosed in the vehicles' Owner's Manuals. (*See*, *e.g*., Dck. No. 80 at 5-6.) Defendants are also expected to argue that individual issues as to liability and damages will prevail over common issues.

While the existence of the oil consumption defect is a question of fact, the existence of a defect may not lead to legal liability under federal or state statutes. *See*, *e.g*., *Smith v. Ford Motor Co*., 749 F. Supp. 2d 980, 991-92 (N.D. Cal. 2010) (granting defendant's motion for summary judgment and finding alleged ignition-lock defect not a safety risk), *aff'd*, 462 F. App'x 660 (9th Cir. 2011). Accordingly, Plaintiffs must meet a high burden to establish violations of state and federal consumer protection and warranty statutes.

Moreover, Plaintiffs may well be unable to maintain class status through trial, as plaintiffs bringing automotive defect actions are frequently denied class certification due to lack of common proof. *See*, *e.g*., *Grodzitsky v. Am. Honda Motor Co*., No. 2-01142-SVW, 2014 U.S. Dist. LEXIS 24599 (C.D. Cal. Feb. 19, 2014); *Edwards v. Ford Motor Co*., No. 11-1058-MMA, 2012 U.S. Dist. LEXIS 81330, *21-22 (S.D. Cal. June 12, 2012); *Cholakyan v. Mercedes-Benz USA, LLC*, 281

F.R.D. 534, 553 (C.D. Cal. 2012).

In addition, any class action case against a major automotive manufacturer alleging a defect in approximately126,000 vehicles will take up significant amount of court and party resources. Moreover, if the case were to proceed, Plaintiffs would likely need to supply testimony and analysis from multiple experts, including one concerning consumers' expectations about oil consumption, a damages expert, and an expert on whether the oil consumption defect presents a safety concern—each resulting in significant additional expenses.

As explained herein, Plaintiffs' Counsel believes that this case is appropriate for class certification in the litigation context. However, Plaintiffs' counsel appreciates that there is some risk that manageability issues could prevent class certification or require modification or decertification of the Class before trial. *See, e.g., Marcus v. BMW of North America*, 687 F.3d 583 (3rd Cir. 2011) (Third Circuit reversing certification of consumer class action case involving BMW vehicles equipped with allegedly defective run flat tires).

In light of the substantial risks of continued litigation, the strong relief secured for the Class by the proposed Settlement should be viewed as a fair, reasonable, and adequate compromise of the issues in dispute.

3. The Settlement Was Finalized After a Thorough Investigation

Courts may also consider the extent of discovery and the current stage of the litigation to evaluate whether parties have sufficient information to make an informed decision to settle the action. *See Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1239 (9th Cir. 1998). A settlement negotiated at an earlier stage in litigation will not be denied so long as sufficient investigation has been conducted. *Eisen v. Porsche Cars North American, Inc.*, Case No. 11-09405, 2014 U.S. Dist. LEXIS 14301, 2014 WL 439006, at *13 (C.D. Cal. Jan. 30, 2014)(finding that counsel had "ample information and opportunity to assess the strengths and weaknesses of their

1 claims" despite "discovery [being] limited because the parties decided to pursue
2 settlement discussions early on.").
3 As described in Section II.B, *supra*, Plaintiffs engaged in extensive
4 investigation and discovery, including reviewing thousands of documents, retaining
5 experts and conducting their own testing, and taking a deposition of Defendants'
6 corporate representative in New York. (*See* Shahian Decl. ¶¶ 18-19; Lurie Decl ¶¶ 3-
7 5.)
8 Based on this discovery and on their independent investigation and evaluation,
9 Class Counsel is of the opinion that this Settlement for the consideration and on the
10 terms set forth in the Settlement Agreement is fair, reasonable, and adequate, and is
11 in the best interest of the Settlement Class in light of all known facts and
12 circumstances, including the risk of significant delay and uncertainty associated with
13 litigation of this type, as well as the various defenses asserted by Defendants. (*See*,
14 *e.g.*, Shahian Decl. ¶ 25; Lurie Decl ¶ 9; Lee Decl. ¶ 6; Choi Decl. ¶ 6; Margarian
15 Decl. ¶ 8; Declaration of Dara Tabesh ["Tabesh Decl.], ¶ 6.)
16 **4. The Views of Experienced Counsel Should Be Accorded**
17 **Substantial Weight**
18 The fact that sophisticated parties with experienced counsel have agreed to
19 settle their dispute should be given considerable weight by courts, since "parties
20 represented by competent counsel are better positioned than courts to produce a
21 settlement that fairly reflects each party's expected outcome in the litigation." *In re*
22 *Pac. Enters. Sec. Litig*., 47 F.3d 373, 378 (9th Cir. 1995).
23 Here, the Parties achieved a settlement after a thorough review of relevant
24 documents and testimony, as well as a rigorous analysis of the Parties' claims and
25 defenses. The expectations of all Parties are embodied by the Settlement, which, as
26 set forth above, is non-collusive, being the product of arms'-length negotiations and
27 finalized with the assistance of an experienced mediator.
28 The Parties were represented by experienced class action counsel possessing

1 significant experience in automotive defect and class action matters. (*See, e.g.*,
2 Shahian Decl. ¶¶ 6-9; Lurie Decl. ¶ 11-13; Lee Decl. ¶¶ 8-9; Choi Decl. ¶ 8;
3 Margarian Decl. ¶¶ 2-3; Tabesh Decl. ¶¶ 3-5.) Likewise, Defendants' counsel,
4 Herzfeld & Rubin, P.C., is a renowned defense firm based in New York. Thus, the
5 Parties' recommendation to approve this Settlement should "be given great weight."
6 *Eisen v. Porsche*, 2014 WL 439006, at *5 (crediting the experience and views of
7 counsel and the involvement of a mediator in approving a settlement resolving
8 automotive defect allegations).

9 **B. Conditional Class Certification Is Appropriate for Settlement**
10 **Purposes**

11 **1. The Proposed Class Meets the Requirements of Rule 23**

12 Before granting preliminary approval of the Settlement, the Court should
13 determine that the proposed settlement class meets the requirements of Rule 23. *See*
14 *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); Manual for Complex
15 Litigation, § 21.632. An analysis of the requirements of Rule 23(a) and (b)(3),
16 commonly referred to as numerosity, commonality, typicality, adequacy,
17 predominance, and superiority, shows that certification of this proposed Settlement
18 Class is appropriate.

19 **2. The Proposed Class Is Sufficiently Numerous and**
20 **Ascertainable**

21 The numerosity requirement is met where "the class is so numerous that
22 joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Generally, courts
23 will find a class sufficiently numerous if it consists of 40 or more members. *Vasquez*
24 *v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1121 (E.D. Cal. 2009)
25 (numerosity is presumed at a level of 40 members). Here, the proposed Settlement
26 Class, which consists of current and former owners of approximately 126,000
27 vehicles, easily satisfies the numerosity requirement.
28

3. There are Questions of Law and Fact that Are Common to the Class

The second Rule 23(a) requirement is commonality, which is satisfied "if there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The operative criterion for commonality is "the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). The "commonality requirement has been 'construed permissively,' and its requirements deemed minimal." *Estrella v. Freedom Fin'l Network*, No. C-09-03156-SI, 2010 U.S. Dist. LEXIS 61236, at *25 (N.D. Cal. June 2, 2010) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019-1020 (9th Cir. 1998)).

Here, each Class Member purchased an Audi vehicle equipped with the CAEB-coded engine that suffered from an alleged oil consumption defect that Defendants failed to disclose to its customers. Defendants contend that these engines are not defective and perform appropriately under normal driving conditions. Given that the issues in dispute—*e.g.*, whether the CAEB-coded engines have a defect that causes excessive oil consumption, and, if so, whether and when Defendants knew about the defect; whether Defendants had a legal obligation to disclose the defect pursuant to consumer protection statues (*e.g.*, the UCL or CLRA); and whether Defendants had the legal obligation repair the defect under warranty—all reflect common questions of fact and law, the resolution of those issues are apt to drive resolution of this litigation.

The need to determine whether an inherent defect exists not only satisfies Rule 23's commonality requirement, it raises the very type of overarching common question that has resulted in class treatment in other automotive defect cases. *See, e.g.*, *Hanlon*, 150 F.3d at 1020 (allegedly defective rear liftgate latches); *Browne v. American Honda Motor Co., Inc.*, Case No. 09-cv-06750, 2010 WL 9499072, at *1 (C.D. Cal. 2010) (allegedly defective braking system); *Parkinson v. Hyundai Motor*

Am., 258 F.R.D. 580, 595-97 (C.D. Cal. 2008) (allegedly defective flywheels); *Chamberlan v. Ford Motor Co.*, 223 F.R.D. 524, 526 (N.D. Cal. 2004) (allegedly defective engine intake manifolds); *Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006) (allegedly defective throttle body assembly); *see also*, *Wolin v. Jaguar Land Rover N. Am.*, 617 F.3d 1168, 1172 (9th Cir. 2010) (holding that, *inter alia*, whether the LR3's alignment geometry was defective, whether Land Rover was aware of the defect, whether Land Rover concealed the nature of the defect in violations of consumer protection statutes, and whether Land Rover was obligated to pay for or repair the alleged defect pursuant to the express or implied terms of its warranties are all common issues of law or fact that satisfy the commonality requirement).

4. Plaintiffs' Claims Are Typical of the Proposed Settlement Class

"Like the commonality requirement, the typicality requirement is 'permissive' and requires only that the representative's claims are 'reasonably co-extensive with those of absent class members; they need not be substantially identical.'" *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon*, 150 F. 3d at 1020)). "In determining whether typicality is met, the focus should be on the defendants' conduct and plaintiff's legal theory, not the injury caused to the plaintiff." *Lozano v. AT&T Wireless Services, Inc.*, 504 F.3d 718, 734 (9th Cir. 2007). Thus, typicality is "satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (quoting *Marisol v. Giuliani*, 126 F.3d 372, 376 (2nd Cir. 1997)).

Here, Plaintiffs assert that Class Members' claims arising from the oil consumption defect are reasonably coextensive with the legal claims asserted by the named Plaintiffs. Each Settlement Class Member's claims arise from the same alleged underlying conduct—namely, Defendants' failure to disclose an inherent

1 defect in its CAEB-coded engines to its customers or breach of the express or implied
2 warranties. Plaintiffs' claims are thus typical of the Class, as "they are reasonably
3 coextensive with those of absent class members."

4 **5. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent**
5 **the Interests of the Proposed Settlement Class**

6 Adequacy is satisfied because "the representative parties will fairly and
7 adequately protect the interests of the class," Fed. R. Civ. P. 23(a)(4); specifically:
8 (1) the proposed representative Plaintiffs do not have conflicts of interest with the
9 proposed class, and (2) Plaintiffs are represented by qualified and competent counsel.
10 *Hanlon*, 150 F.3d at 1020. Here, Plaintiffs are adequate class representatives, as they
11 have no conflict of interest with the proposed Class. In fact, Plaintiffs share a
12 common interest in holding Defendants accountable for selling vehicles with an
13 alleged oil consumption defect that they did not disclose to their customers. In
14 addition, Plaintiffs are represented by competent counsel well-versed in prosecuting
15 automotive litigation and/or class action matters. (*See, e.g.*, Shahian Decl. ¶¶ 6-9;
16 Lurie Decl. ¶ 11-13; Lee Decl. ¶¶ 8-9; Choi Decl. ¶ 8; Margarian Decl. ¶¶ 2-3;
17 Tabesh Decl. ¶¶ 3-5.)

18 **6. Common Issues Predominate Over Individual Issues**

19 "In addition to meeting the conditions imposed by Rule 23(a), the parties
20 seeking class certification must also show that the action is maintainable under Fed.
21 R. Civ. P. 23(b)(1), (2) or (3)." *Hanlon*, 150 F.3d at 1022. Here, the proposed Class
22 is maintainable under Rule 23(b)(3), as common questions predominate over any
23 question affecting only individual members, and class resolution is superior to other
24 available methods for a fair resolution of the controversy. *Id.* (citing Fed. R. Civ. P.
25 23(b)(3)).

26 The Class Members' claims depend primarily on whether the Settlement Class
27 Vehicles suffer from an inherent engine defect and whether Defendants had a legal
28 obligation to disclose the defect to its customers or a legal obligation to repair the

defect under warranty. *See Wolin*, 617 F.3d at 1173 ("Common issues predominate such as whether Land Rover was aware of the existence of the alleged defect, whether Land Rover had a duty to disclose its knowledge and whether it violated consumer protection laws when it failed to [disclose the defect]"); *id.* at 1174 (finding common issues predominate regarding manufacturer's obligations under limited warranty where warranty provides for repair or replacement regarding defect, and proposed class members all allege same defect); *see also*, *Hanlon*, 150 F.3d at 1022–23 ("[G]iven the limited focus of the action, the shared factual predicate and the reasonably inconsequential differences in state law remedies, the proposed class was sufficiently cohesive to survive Rule 23(b)(3) scrutiny."); *Browne v. American Honda Motor Co., Inc.*, Case No. 09-cv-06750, 2010 WL 9499073, at *11 (C.D. Cal. Oct. 5, 2010) (certifying CLRA and UCL failure to disclose claims in the context of nationwide settlement involving defective braking system); *Parkinson v. Hyundai Motor Am.*, 258 F.R.D. 580, 599 (C.D. Cal. 2008) (same)).

Finally, to the extent that choice-of-law issues would have presented manageability concerns in the litigation context, the proposed Settlement renders those concerns irrelevant. As the Supreme Court has observed, manageability at trial is not a concern in the class action settlement context, "for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620. Indeed, relying heavily on *Amchem*, an *en banc* panel of the Third Circuit, reviewing a nationwide class certification of consumer claims in the settlement context, held that Rule 23's predominance requirement did not preclude nationwide settlement-only class certification of claims brought under the consumer protection laws of all 50 states. *See Sullivan v. DB Investments, Inc.*, 667 F.3d 273 (3d Cir. 2011) (*en banc*) (observing that nationwide classes are appropriate in the settlement context to facilitate all parties' interest in "achieving a global peace").

Under the same guiding principles, the Ninth Circuit has similarly upheld settlement-only class certification in nationwide settlements. *See*, *e.g.*, *Hanlon*, 150

1 F.3d at 1022 (finding predominance met for purpose of certifying nationwide vehicle
2 defect settlement class applying each individual state's consumer protection laws
3 because they are a "generally homogenous collection of causes [of action]'").
4 Here, for purposes of settlement, the predominance test is satisfied, as the
5 proposed Settlement makes relief available for all Class Members based solely on
6 easily ascertainable criteria, bypassing whatever individual evidentiary and factual
7 issues that could arise in litigation in determining liability or damages. Consequently,
8 common questions predominate over individual issues that might have arisen had this
9 action continued to be litigated.

10 **7. Class Settlement Is Superior to Other Available Means of**
11 **Resolution**

12 Similarly, there can be little doubt that resolving all Class Members' claims
13 through a single class action is superior to a series of individual lawsuits. "From
14 either a judicial or litigant viewpoint, there is no advantage in individual members
15 controlling the prosecution of separate actions. There would be less litigation or
16 settlement leverage, significantly reduced resources and no greater prospect for
17 recovery." *Hanlon*, 150 F.3d at 1023. Indeed, the terms of the Settlement negotiated
18 on behalf of the Class demonstrate the advantages of a collective bargaining and
19 resolution process.
20 Additionally, although the benefits of the Settlement negotiated on behalf of
21 the Class are significant, the alleged excessive oil consumption issue and the amount
22 in controversy are not nearly enough to incentivize individual class members into
23 action. *See Wolin*, 617 F.3d at 1175 ("Where recovery on an individual basis would
24 be dwarfed by the cost of litigating on an individual basis, this [superiority] factor
25 weighs in favor of class certification."); *Amchem*, 521 U.S. at 617 ("The policy at the
26 very core of the class action mechanism is to overcome the problem that small
27 recoveries do not provide the incentive for any individual to bring a solo action
28 prosecuting his or her rights. A class action solves this problem by aggregating the

relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor."). Here, the efforts and funds required to marshal the type of evidence, including expert testimony, to establish liability against well-financed corporate defendants would also discourage Class Members from pursuing litigation.

The superiority of proceeding through the class action mechanism, however, is demonstrable. Through the class action device, Class Counsel was able to negotiate a global Settlement with Defendants that, if approved, will provide Class Members not only with reimbursements for their repair costs, but also a complementary Service Adjustment and an extended warranty.

As the class action device provides the superior means to effectively and efficiently resolve this controversy, and as the other requirements of Rule 23 are satisfied, certification of the proposed Settlement Class proposed is appropriate.

C. The Proposed Class Notice Adequately Informs Class Members About the Case and Proposed Settlement

Upon certifying a Rule 23(b)(3) class, Rule 23(c)(2)(B) requires the Court to "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." In addition, Rule 23(e)(1) requires that before a proposed settlement may be approved, the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal."

The Parties have agreed on a notice plan that satisfies the requirements of Rule 23. (Settlement Agreement § IV.) Under this plan, Defendants will pay a claims administrator to mail notice of class certification and the proposed Settlement to all current and former owners and lessees of Settlement Class Vehicles who can be reasonably identified; to publish summary notice in the first section of the National Edition of USA Today; and to publish notice on a website maintained by the Claims Administrator. *See Browne*, 2010 WL 9499072, at *7 (finding notice by mail sufficient after Honda employed a consultant similar to the one proposed here to find

addresses of potential class members); *Redman v. RadioShack Corp.*, No. 11 C 6741, 2014 WL 497438, at *2 (N.D. Ill. Feb. 7, 2014) (approving notice plan that involved providing notice through U.S. Mail, publication, and a website). The form of the notice to be mailed, attached to the Settlement Agreement as Exhibit 5,[9] includes all the content required by Rule 23(c)(2)(B), such as a description of the action and Class claims, as well as the Class Members' right to opt out of, object to, or comment on the proposed Settlement, including any application for attorneys' fees, costs, and service awards.

IV. CONCLUSION

The Parties have negotiated a fair and reasonable settlement. Accordingly, Plaintiffs move the Court to preliminarily approve the Settlement Agreement; direct the dissemination of notice to the class as proposed; and set a hearing date and briefing schedule for final Settlement approval and Plaintiffs' fee and expense application.

///

[9] The Parties are still preparing the USA Today publication notice and will submit it to the Court in advance of the hearing.

1 Dated: September 22, 2014 Respectfully submitted,
2
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