UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ARTEM V. GELIS, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT AND BMW OF NORTH AMERICA, LLC., Defendants.	Civil Action No. 17-cv-7386 WHW-CLW

PLAINTIFFS' BRIEF IN SUPPORT OF AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND AWARD OF CLASS REPRESENTATIVE SERVICE PAYMENTS

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STATEMENT OF FACTS

This consumer automotive products liability class action case against BMW of North America, LLC (hereinafter "BMW NA") was vigorously litigated for three years by Plaintiffs[1] prior to Interim Class Counsel (hereinafter "Class Counsel") achieving a resolution that provides significant valuable benefits to the Class. The Order Granting Preliminary Approval of Class Action Settlement (hereinafter "Preliminary Approval Order")[2] was entered on September 9, 2020 (Dkt. No. 75).

Pursuant to the schedule set forth in the Preliminary Approval Order, this brief is submitted in support of Plaintiffs' contested motion for attorneys' fees and expenses.[3] Although the Parties have not agreed on the amount of attorneys' fees, they established a high/low formula under which Class Counsel will not apply for a fee award greater than $3.7 million and defense counsel have agreed not to contest any fee below $1.5 million. As detailed below, Class Counsel very

[1] Plaintiffs are Artem V. Gelis, Bhawar Patel, Robert McDonald, James V. Olson, Gregory Heyman, Susan Heyman, Debra P. Ward, Darrian Stovall, Alex Martinez, Amanda Gorey, Chris Williams, Ashok Patel, Kenneth Gagnon, Michael Cerny, Maria Meza, Andre Malske, Nicole Guy, David Richardson, Stacey Turner and Eric T. Zinn (hereinafter collectively "Plaintiffs").

[2] Unless otherwise defined herein, all capitalized terms have the meaning ascribed to them in the Agreement.

[3] Class Counsel have just received concurrently with this filing the Court ordered documents needed to have the valuation expert complete his analysis. After he has accomplished that, Class Counsel intend to supplement our motion papers rather than extending the deadline for this motion and delaying relief to the Class.

conservatively estimate that the value of the Settlement to the Class is well over $27 million. In seeking the upper-end of the fee agreement, Class Counsel are requesting a mere 13.7% of the common fund. Using the lodestar analysis, Class counsel is seeking a multiplier that is well within the multipliers applied in other auto defect cases in this District, and indeed consistent with fee awards and multipliers awarded to Sobran and Graifman in other Class Action Settlements. See e.g. *Coffeng v. Volkswagen Group of America, Inc.* and *In re Volkswagen Timing Chain Product Liability Litigation*, discussed below.

This brief also addresses the uncontested Class Representative Service Payments in the amount of $1,000.00 for each Settlement Class Representative ($20,000.00 in the aggregate) that will paid from Attorneys' Fees and Costs awarded under Section VIII C of the Settlement Agreement and Release (hereinafter "Settlement").

PROCEDURAL HISTORY

On September 9, 2017, after months of pre-suit investigation ascertaining the nature of class vehicle N20/N26 engine defects, Plaintiffs Artem V. Gelis and Bhawar Patel filed the initial class action complaint against BMW NA and Bayerische Motoren Werke Aktiengesellschaft (hereinafter "BMW AG")[4] in the

[4] Plaintiffs voluntarily dismissed BMW AG without prejudice on September 24, 2018 in exchange for their cooperation in discovery including production of design drawing and technical information.

U.S. District Court for the District of New Jersey. In November 2017, a second related class action was filed in New Jersey that was later consolidated with this case on January 24, 2018.[5]

A Consolidated Amended Complaint was filed in March of 2018. BMW NA moved to dismiss the complaint, raising unique issues as to statutes of limitations, the scope of the class claims alleged, application of the economic loss doctrine, failure to plead with the requisite particularity under Rule 9(b), failure to plead the elements of the state consumer claims with the requisite plausibility, failure to demonstrate fraudulent concealment, assertion of the discovery rule and equitable tolling, *inter alia*. The parties fully briefed the motion to dismiss. (Dkt. Nos. 26, 34 and 36). Judge Walls entered an opinion and order on the motion to dismiss on October 30, 2018 that allowed the majority of Plaintiffs' claims to proceed. (Dkt. Nos. 42-43). The decision is reported at *Gelis, et al. v. BMW of N. Am., LLC*, 2018 WL 6804506 (D.N.J. Oct. 30, 2018). Plaintiffs filed a Consolidated Second Amended Class Action Complaint (hereinafter "Complaint") on February 4, 2019. (Dkt. No. 47). BMW NA filed its answer to the Complaint on March 8, 2019.

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[5] Nagel Rice, LLP, Kantrowitz, Goldhamer & Graifman, P.C. and Thomas P. Sobran, P.C. were appointed as Interim Class Counsel pursuant to Rule 23(g) in February 2018. (Dkt. No. 20).

The operative Complaint is robust in its factual pleading and incorporates claims for a proposed nationwide class, and in the alternative, state classes representing New Jersey, Illinois, Florida, New York, Utah, Colorado, Texas, Alabama, Oklahoma, Massachusetts, California, Wisconsin, Oregon, and North Carolina vehicle owners/lessees. The Complaint includes counts for Breach of Express Warranty; Breach of Implied Warranty of Merchantability; Violation of Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(1)(A); violation of the consumer fraud/deceptive trade practices statutes of the states with named Class Representatives; Unjust Enrichment; and, a request for Injunctive and Declaratory Relief.

The Parties participated in several case management conferences and exchanged formal discovery in the form of interrogatories, requests for production of documents and requests for admissions. BMW NA provided a rolling production of voluminous documents and produced materials provided by BMW AG. After months of further litigation and formal discovery exchanges, the parties then decided to attempt an amicable resolution and exchanged additional informal discovery in furtherance of settlement discussions. That was followed by two full-day mediations with retired United States District Judge Stephen Orlofsky. The first mediation session occurred on July 31, 2019. Post-session discussions continued and a term sheet outlining the substantive settlement terms was executed

on November 12, 2019. A second mediation was held with Judge Orlofsky on November 18, 2019 to address the open issue of legal fees. Additionally, Magistrate Judge Cathy L. Waldor conducted an in-person settlement conference on February 14, 2020.

As noted above, the issue of legal fees was not agreed upon between the Parties but the issue was narrowed to a high-low agreement when the parties made a good faith attempt to resolve the issue. Having agreed to the high-low, the formal Settlement Agreement was drafted, revised and finalized and then executed on August 21, 2020. The Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement was filed on August 26, 2020 (Dkt. No. 72) (hereinafter "Preliminary Approval Motion").

THE ALLEGED CLASS VEHICLE N20/N26 ENGINE DEFECTS

There are approximately [redacted] Class Vehicles in the United States impacted by BMW NA's sale of passenger motor vehicles utilizing series N20/N26 engines that incorporated timing and oil pump drive chain assemblies that prematurely failed. Manifestation of either chain failure usually results in an unanticipated loss of power and/or stalling and a limited ability to accelerate or maintain vehicle speed. Almost always, failure of either engine chain assembly causes sudden and catastrophic engine self-destruction. BMW AG designed and constructed the N20/N26 engine with chain assemblies that prematurely fail

shortly after expiration of the 4 year/50,000-mile limited powertrain warranty. BMW NA extended the engine warranty for the chain assembly components to 7 years/70,000 miles in late 2017 shortly after the initial complaint in this action was filed.[6] Chain assembly replacement involves considerable expense in those few instances where engine destruction does not result. Replacement of both chain assemblies (primary timing chain, tensioner and rails/guides together with the oil pump/counter-balance shaft chain and sprockets) costs approximately $3,500.00-$4,500.00 if there is no other engine damage. Plaintiffs and putative class members received estimates upwards of $12,000.00 for engine replacement with a BMW remanufactured engine where chain assembly failure caused unrepairable engine destruction.

SETTLEMENT BENEFITS TO THE CLASS

Under the Settlement, the Settlement Class is defined as:

> All current (as of the Effective Date) and former owners and lessees in the United States, including the District of Columbia and Puerto Rico, of certain of the following U.S.-specification BMW vehicles distributed for sale, registered, and operated in the United States, including the District of Columbia and Puerto Rico:

[6] BMW NA asserted it was in the process of developing that initial extended warranty when the initial *Gelis* action was filed. However, that extension covered the same components described as defective in *Gelis* and involved the same models and model year vehicles. It is, therefore, clear that the timing of publicly issuing the initial extension after *Gelis* was filed was more than mere coincidence. Class Vehicle owners were notified of the engine chain assemblies warranty extension some 3 months after *Gelis* was filed.

These vehicles are:

Model Description	Model Years
X1 SAV	2012 - 2015
X3 SAV	2013 - 2015
X4 SAV	2015
Z4	2012 - 2015
228i Coupe, Convertible	2014 - 2015
320i Sedan	2012 - 2015
328i Sedan, Sports Wagon, Gran Turismo	2012 - 2015
428i Coupe, Convertible, Gran Coupe	2014 - 2015
428i xDrive	2014 - 2015
528i Sedan	2012 - 2015

**Model Years are not fully indicative of actual Class Vehicles, which will depend on production ranges.*

The relief obtained by Class Counsel is multi-faceted. BMW will continue to honor the previously extended 7 year/70,000 mile engine chain assembly warranty extension. As previously noted, this warranty extension was implemented in late 2017, shortly after this class action was initially filed. It extended the warranty for the class engine timing chain assembly and oil pump drive chain assembly from the original New Passenger Vehicle Limited Warranty of 4 years/50,000 miles. In addition, under the Settlement, there is a reimbursement program for otherwise unreimbursed past chain assembly repairs and out-of-pocket expenses incurred before the earlier of 8 years/100,000 miles

prior to the Effective Date and an extended warranty for 8 years/100,000 miles subsequent to the Effective Date.

For Class Vehicles with less than 7 years/70,000 miles whose owners paid to have the chain assembly and related engine repairs completed prior to the extension of the warranty, BMW will reimburse 100% of invoice for work performed at an authorized BMW Center, and for work performed at an independent service center up to $3,000.00 for the timing chain assembly/oil pump drive chain assembly and up to $7,500.00 for engine failure.

For vehicles over the 7 years/70,000 mile period but with less than 8 years/100,000 miles, if the repair is performed at an authorized BMW Center, the following reimbursement schedule applies:

- Up to 80,000 miles: 75% BMW pay/25% customer contribution;
- 80,001 to 90,000 miles: 55 % BMW pay/45% customer contribution;
- 90,001 to 100,000 miles: 40% BMW pay/60% customer contribution;
- 100,001 miles and above: 0% BMW pay/100% customer contribution.

If the repair or replacement of the covered chain assembly components is performed at an independent service center, the same reimbursement schedule applies, but the reimbursement is subject to (i) a cap of $3,000.00 in the reimbursement amount for the timing chain assembly, oil pump drive chain assembly repairs and (ii) a cap of $7,500.00 for the engine failure repairs.

There is also a prospective repair program that requires chain assembly or engine replacement be performed by an authorized BMW Center. Repair or replacement of affected parts (timing chain assembly, oil pump drive chain assembly, engine) in Class Vehicles up to 8 years/100,000 miles (whichever occurs first) is subject to the following contribution schedule:

- More than 7 years/70,000 miles but less than 8 years/100,000 miles:100%
- Up to 80,000 miles: 75% BMW pay/25% customer contribution;
- 80,001 to 90,000 miles: 55 % BMW pay/45% customer contribution;
- 90,001 to 100,000 miles: 40% BMW pay/60% customer contribution.

As an additional benefit negotiated by Plaintiffs' Counsel, for one (1) year from the Effective Date of the Settlement, ANY Class Vehicle with less than 100,000 miles, regardless of Class Vehicle age, that experiences timing chain assembly failure, oil pump drive chain assembly failure, or engine damage/failure due to timing chain assembly or oil pump drive chain assembly failure may receive repairs at an authorized BMW Center, subject to the same Partial Reimbursement Schedule set forth above.

One repair per Owner of a Class Vehicle is permitted and the relief is subject to evidence of adherence to regularly scheduled oil changes. The parties have also agreed to an appeal process to resolve disputes over claims approval. *See* Agreement III.A., III.B., III.C. and III.D.

Benefits to the Class also include the cost of the Claims Administrator and all administration expenses (Agreement IV) which includes effectuating the notice plan and administration of the Settlement.

Finally, BMW NA agreed it will be responsible to pay such amount awarded by the Court for Class Counsel's Attorneys' Fees and Costs, which will be paid separately from the amount available to Class Members, as well as named Plaintiff service payments which will be paid out of the total attorney's fees and costs awarded. *See* Agreement at VIII.

THE VALUE OF CLASS BENEFITS

As the Court is aware, Plaintiffs retained an expert witness in the subject matter of warranty valuation to opine as to the value of the prospective warranty benefits to the Class. This Court recently ordered BMW provide certain additional information needed by the expert to render his opinion.[7] This material was only provided by BMW NA on December 8, 2020, the same date this motion is due to be filed. Therefore, Plaintiffs' expert has not been able to complete his analysis to submit his warranty valuation as part of these motion papers. Rather than delay filing this motion, which might delay final approval and providing Settlement Class Members with the relief they are entitled, Class Counsel are filing this motion prior to receipt of the expert report but intend to provide the report to

[7] *See* Text Order entered November 23, 2020. (Dkt. No. 83).

BMW and the Court upon receipt and address it in a further supplemental court submission.

Nonetheless, estimates based on discovery produced by BMW NA indicate approximately [redacted] of the Class Vehicles experienced chain assembly failure at an average mileage of [redacted] miles that were repaired under warranty.

The Class encompasses vehicles manufactured over a four (4) year period (2012 through 2015 model years) utilizing the N20/N26 engine. The original power train warranty was 4 years/50,000 miles. During a three (3) year period of that warranty span, BMW repaired approximately [redacted] Class Vehicles under the warranty.[8] This equals approximately [redacted] Class Vehicles per year.

The warranty extension afforded to owners and lessees as a result of the Settlement is from four (4) years to eight (8) years (and up to nine (9) years for 2012 model year vehicles), thus adding an additional five (5) years to the warranty.[9] If the warranty incident rate previously experienced holds constant,

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[8] According to the Excel spreadsheet produced by BMW NA, there were [redacted] repairs under warranty or covered by manufacturer goodwill through 2018. However, the warranty for model year 2015 Class Vehicles would have run through 2019 and, as such, a full year of data for the 2019 warranty period is missing. The [redacted] vehicles repaired under warranty or goodwill only represents three (3) years of the four (4) year warranty period. Dividing [redacted] by three (3) years would be an average of [redacted] vehicles per year. The average per year used herein, [redacted], actually gives BMW the benefit of the doubt and is a more conservative number.

[9] Although the extension under the Settlement is for eight (8) years (or 100,000

then during the additional five (5) years of warranty coverage this Settlement provides, there will be approximately [redacted] claims from that period [redacted]

If the average repair of the timing chain assembly is conservatively calculated at $3,500.00 per repair, that would result in a claims valuation of $25,235,000.00. This computation does not account for repair costs where engine replacement is required because chain assembly failure caused loss of oil lubrication and complete engine destruction. This valuation calculation is imminently conservative since Class Vehicle engine replacement costs upwards of $12,000.00, which is not included in this lower estimate.

Class Vehicle out-of-warranty failure rates would likely be substantially higher as chain failure manifests more frequently at higher mileages and is likely in the 3-4% failure range. BMW NA represented it sold [redacted] Class Vehicles nationally. If a failure rate of 3% is used, that yields a national incident rate of [redacted] vehicles. At an average repair cost of **$3,500.00-$4,500.00,**[10] the potential

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miles, whichever occurs first), as noted previously, an additional term negotiated allows an owner to get the failure repaired for one (1) year after the Effective Date regardless of years in service, provided the Class Vehicles has less than 100,000 miles, thus effectively bringing the extension here to nine (9) years, or five (5) more than the initial warranty of four (4) years.

[10] This is a conservative range given the costs where complete engine destruction manifests from chain failure which is an estimated 95% of the time based on hundreds of telephone conferences with Class Vehicle owners.

valuation of the repair/reimbursement component would be [redacted] on the low end and [redacted] on the high end. If the higher and more realistic out-of-warranty estimate of 4% is used with the higher estimate of vehicles with chain assembly failure, that would mean there are, or will be, approximately [redacted] vehicles with the timing chain assembly failure. At an average cost of **$3,500.00 to $4,500.00** per repair, the value of the repair/reimbursement component of the Settlement would be approximately [redacted] on the low end and [redacted] [redacted] on the high end. Considering chain assembly replacement/repair costs and other required engine repairs resulting from chain failure, estimated values would likely be much greater in actuality.

Courts have recognized there is a valuable and measurable benefit conferred for an extension of a product's warranty. Here, the second warranty extension goes from 70,000 miles to 100,000 miles or an additional two years, which can be valued at approximately **$2,107.44** to **$2,534.40** per vehicle for the extension's value (as opposed to the value of the actual repairs made under the Settlement's extended warranty), or approximately **$115,935,568.00** to $**139,430,816.00** given the [redacted] Class Vehicles. *See Saini v. BMW of North America, LLC*, 2015 WL2448846 (D.N.J. May 21, 2015) (valuing 3 month BMW extended warranty for

all class members at approximately **$263.43** to **$316.80** per vehicle, computed based on the retail price of comparable aftermarket extended warranty coverage).[11]

Additionally, as part of the Settlement, BMW NA has assumed responsibility for the costs associated with Class Notice and Claims Administration. These costs are estimated to total between $500,000.00 to $1 million and should be added to the total benefits available to the Class as part of the Court's analysis.

LEGAL ARGUMENT

I. THE COURT SHOULD AWARD ATTORNEYS' FEES AT THE UPPER END OF THE HIGH-LOW RANGE AS PROVIDED FOR IN THE SETTLEMENT AGREEMENT.

A. Rule 23(h) Authorizes Agreements on Attorneys' Fees in Settlements

Rule 23(h) of the Federal Rules of Civil Procedure explicitly provides, with respect to class action settlements, 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). Awarding of legal fees is within the court's discretion so long as the proper legal standard is employed, proper procedures are followed and the court makes findings of fact that are not clearly erroneous. *In re Cendant Corp.*

[11] As noted, with respect to the warranty extension's value, Plaintiffs' intend to submit to the Court the opinion of their expert upon review of the additional discovery received today by their expert.

PRIDES Litig., 243 F.3d 722, 727 (3d Cir. 2001) *cert. den. sub nom*. 534 U.S. 889 (2001); *McCoy v. Health Net, Inc*., 569 F. Supp.2d 448, 475 (D.N.J. 2008).

In accordance with Rule 23(h) and the Parties' high-low fee agreement set out in the Settlement at VIII(B)(C), Plaintiffs request a total fee and expense award of $3,700,000.00. Class Counsel submitted as part of their fee application detailed charts setting out each firms' attorneys' time, activities and hourly rates for work performed for each of the three law firms representing Plaintiffs. Class Counsel spent a total of 2,182.2 hours working on the case and have a collective lodestar of $1,690,492.00. Their cumulative litigation expenses are $25,470.32, for a total of $1,715,843.32. (Jt. Decl., at ¶24 and 34). These lodestar computations includes actual time spent through October 31, 2020 and a conservative estimate of the additional time spent preparing this motion, Final Approval Motion papers, fielding questions from class members which will intensify as class members seek to prepare their claims submissions, dealing with objectors, the final approval hearing, and post final approval issues, including assisting Settlement Class Members whose claims are denied to pursue the appeals process. Class Counsel conservatively anticipate that an additional 260 hours will be spent on these tasks. *See* Joint Declaration of Counsel in Support of the within motion ("Jt. Decl., ¶ 32). *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1029-30 (9th Cir.1998) recognizes that class counsel should be entitled to payment for future work required of them.

("Class counsel presented affidavits to the district court justifying their fees on the basis of their work on the individual state class actions. The fee award also includes all future services that class counsel must provide through the life of the latch replacement program. They must remain available to enforce the contractual elements of the settlement agreement and represent any class members who encounter difficulties. The factual record provides a sufficient evidentiary basis for the district court's approval of the fee request.").

Class Counsel submit that the request for attorneys' fees and expenses is reasonable given the substantial work performed and results achieved. Class Counsel achieved this Settlement by conducting a thorough pre-litigation investigation, engaging in hard fought discovery and fully participating in adversarial litigation in a complex case involving unique issues of fact and law. The fees and costs (as well as the Class Representative Service Payments) will be paid separately from, and in addition to, the other benefits which are available to the Settlement Class. Accordingly, the requested attorneys' fees should be approved.

B. The Requested Fee Award is Reasonable

The two primary methods for assessing attorneys' fees in class action settlements are the percentage of recovery method and the lodestar method. *In re*

Cendant PRIDES Litigation, 243 F.3d at 732. Utilizing either method, awarding the upper-end of the high-low fee agreement is completely justified.

To determine the attorney's lodestar, the court multiplies "the number of hours he or she reasonably worked on a client's case by 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 v. Ridgewood Energy Corp*., 223 F.3d 190, 195 n.1 (3d Cir. 2000). The lodestar method is "designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that a percentage of recovery method would provide inadequate compensation." It may also be applied in cases where the nature of the recovery does not allow the determination of the settlement's value necessary for application of the percentage-of-recovery method. *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998).

The percentage of recovery method, which is favored in common fund cases, is calculated by applying "a certain percentage to the settlement fund." *Milliron v. T-Mobile United States*, 423 Fed. Appx. 131, 135 (3d Cir. 2011).

Which method is utilized to calculate fees rests within the district court's sound discretion. *Charles v. Goodyear Tire & Rubber Co.*, 976 F. Supp. 321, 324 (D.N.J. 1997). As noted in *Doherty v. Hertz Corp.*, 2014 WL 2916494, at *6

(D.N.J. June 25, 2014), "[w]hichever method is chosen, 'we have noted previously that "it is sensible for a court to use a second method of fee approval to cross check" its initial fee calculation.'" Citing *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 176-77 (3d Cir. 2013). *See also In re Philips/Magnavox Television Litig.*, No. CIV.A. 09-3072 CCC, 2012 WL 1677244, at *16 (D.N.J. May 14, 2012) (holding that "[a]lthough this case does not involve a fee shifting statute, the combination of cash awards and vouchers 'evades the precise evaluation needed for the percentage of recovery method.' *See In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litig.*, 55 F.3d 768, 822 (3d Cir. 1994) (hereinafter "*In re General Motors Corp.*"). The Court will perform a percentage-of-recovery analysis to crosscheck the lodestar analysis and ensure the reasonableness of the fee.").

Under either analysis, an award of attorney fees in the amount of $3,700,000.00 is fully justified and adequately supported.

C. Application of the Lodestar Method

The first step in calculating the lodestar is to determine the appropriate hourly rate based on the attorneys "usual billing rate." The Court can also consider the "prevailing market rates" in the relevant community. *In re Schering-Plough/Merck Merger Litigation*, 2010 WL 1257722, at *18 (D.N.J. 2010). The attorney rates in this litigation have been "consistent with the market rates for

complex class actions." *Loughner v. Univ. of Pittsburg*, 260 F.3d 173, 180 (3d. Cir. 2001). When attorneys' fees are awarded, the rate at the time of the fee petition should be used. *Lanni v. New Jersey*, 259 F.3d. 146, 149 (3d. Cir. 2001).

The second step is to determine whether billable time was reasonably expended. *Schering-Plough*, at *17. Time expended is considered 'reasonable' if the work performed was "'useful and of a type ordinarily necessary' to secure the final result obtained from the litigation." *Public Interest Research Group of N.J., Inc. v. Windall*, 51 F.3d 1179, 1188 (3d Cir. 1985), quoting *Pennsylvania v. Delaware Valley Citizens' Council*, 478 U.S. 546 (1986). The lodestar amount will be deemed "presumptively reasonable" where it arises from a reasonable hourly rate and a reasonable number of hours. *Planned Parenthood of Central New Jersey v. Attorney General of the State of New Jersey*, 297 F.3d 253, 265 n.5 (3d Cir. 2002).

The time/lodestar charts and case expense disbursement information for each of the three law firms that worked on this matter are set forth in each firm declaration submitted as attachments to the joint declaration of Class Counsel in support of this motion. A review of the time/lodestar charts shows that partner rates were between $650.00 and $900.00 per hour and associate rates were between $330 and $625 per hour depending on expertise and level of experience. (*See* Declarations of Gary S. Graifman, Thomas P. Sobran and Bruce H. Nagel in

support of each firm's application herein at Exhibits "2," "3" and "4" to the Jt. Decl.).

All Plaintiff counsel billed at their current billing rates previously approved by courts, including federal courts in this district, for complex commercial litigation and/or class action litigation. These rates are consistent with hourly rates routinely charged in complex class action litigation in the district.

The hourly rates vary appropriately between attorneys and paralegals, depending on the position and experience level of the firm. The rates for each individual attorney and paralegal are set forth in Class Counsel's declarations and in the charts and exhibits to the declarations. *See* Joint Declaration of Gary S. Graifman, Thomas P. Sobran and Bruce H. Nagel in Support of Approval of Class Action Settlement and Award of Attorneys' Fees and Reimbursement of Expenses, (hereinafter "Jt. Decl.") at ¶ 24 and n. 13; Graifman Decl., ¶¶ 2-6 and Exh. 1; Sobran Decl., ¶¶ 6-7 and Exh. 1; Nagel Decl., ¶ 3-5 and Exh. 1.

For example, with respect to Nagel Rice, LLP: *see Edwards v. Horizon Blue Cross Blue Shield of New Jersey*, District of New Jersey, Civil Action No. 2:08-cv-06160-KM-MAH (Dkt. No. 320) (Bruce H. Nagel appointed co-lead counsel, approving fees and expenses of $9,000,000.00 and approving hourly rate of $850.00 for senior partners); *Donnenfeld v. Petro Inc. d/b/a Petro Home Services*, Eastern District of New York, Civil Action No. 17-02310 (Nagel Rice LLP

appointed lead counsel, approving fees and expenses of $975,000.00 and approving hourly rates of between $550.00 and $900.00 for senior partners); *Filannino-Restifo, et al. v. TD Bank, NA*, Civil Action No. 1:16-cv-02395-JBS-JS (D.N.J) (Dkt. No. 38) (Nagel Rice appointed class co-counsel, approving fees and expenses of approximately $2,000,000.00 and approving partner rates between $550.00 and $800.00); *Kuzian v. Electrolux Home Prod., Inc.*, Civil Action No. 12-3341 NLH/AMD (D.N.J. Feb. 10, 2016) (Dkt. No. 189) (order appointing Nagel Rice LLP co-lead counsel, approving fees and expenses of $2,750,000.00 and approving hourly rates of partners between $500.00 and $800.00 and hourly rates of associates between $300.00 and $500.00); *McDonough v. Horizon Healthcare Servs., Inc.*, No. CIV.A. 09-571 SRC, 2014 WL 3396097, at *11 (D.N.J. July 9, 2014) *aff'd sub nom. McDonough v. Horizon Blue Cross Blue Shield of New Jersey*, No. 14-3558, 2015 WL 5573821 (3d Cir. Sept. 23, 2015) (appointing Nagel Rice LLP as class counsel and finding "the requested fee award is warranted. Plaintiffs have demonstrated a lodestar of $3.4 million based on billing rates consistent with the market rate for complex class actions." Court approved partner rates were between $525.00 and $750.00.)

As to KGG and Sobran, a recent attorney fee request was approved in *Coffeng v. Volkswagen Group of America*, Inc., Civil Action No. 2:17-cv-01825-JD (N.D.Cal.) where Mr. Sobran and Mr. Graifman were co-lead counsel. Mr.

Graifman hourly rate of $895.00 was approved in awarding fees $2.4 million in (Dkt. No. 106), representing a lodestar multiple of 2.09. Mr. Sobran's rate of $750.00 per hour was similarly approved in the *Coffeng* fee award. Mr. Graifman's then-current hourly rate of $850.00 per hour was approved by Judge Linares in *In re Volkswagen Timing Chain Product Liability Litigation,* Civil Action No. 16-2765-JLL (D.N.J.) ("*In re Volkswagen Timing Chain"*). In that action (also involving a defective timing chain assembly), the Court awarded attorneys' fees of $8.6 million, representing a lodestar multiple of 1.8. See Final Approval Order annexed to Jt. Decl. as Exhibit "5." In *In re Volkswagen Timing Chain* Mr. Sobran's rate of $750.00 per hour was also approved. Mr. Graifman was co-lead counsel in that matter and Mr. Sobran was an executive committee member.

In addition, Mr. Graifman's hourly rate of $895.00 per hour was approved in the class action settlement in the matter *Duncan, et al. v. Nissan N.A., Inc*., Civ. Action 1:16-cv-12120-DJC (D. Mass.), in which the Court approved the attorneys fee of $3.25 million (s*ee* Final Approval Order entered August 25, 2020, Dkt. No. 152). *Duncan* also involved a defective timing chain assembly for Nissan passenger vehicles. Mr. Graifman was co-lead counsel in the *Duncan* matter.

The lodestar rates requested here are based on approved reasonable hourly billing rates for such services given the geographical area, the nature of the services provided and the experience of the attorneys. *Gunter*, 223 F.3d at 195.

The following represents Plaintiffs' Counsel's fees and costs in this matter:[12]

The law firm Nagel Rice, LLP, billed 758.2 hours at a total lodestar of $612,895.00. The firm's total expenses are $7,852.60. *See* Nagel Decl., ¶6,8 and Exhibits 1 - 3 for time and disbursement records and the firm resume.

The law firm of Kantrowitz, Goldhamer & Graifman, P.C, billed 534.1 hours at a total lodestar $410,172.00. The firm's total expenses are $8,217.45. *See*, Graifman Decl., ¶ 8 and Exhibits 1-3 for time and disbursement records and the firm resume.

The law firm of Thomas P. Sobran, P.C billed 889.9 hours at a total lodestar of $667,425.00. The firm's total expenses are $9,400.27. *See* Sobran Decl., ¶¶ 6, 8 and Exhibits 1-3; for time and disbursement records and the firm resume.

[12] These sums include the conservative estimate of Class Counsel's future time in this matter which will continue to accrue with the preparation of the Final Approval Motion and Final Approval Hearing, responding to any objections, and claims administration which will result in continued communications and assistance to Settlement Class Members, including potentially appeals of adverse claims determinations and attorney review of administrative appeals from denial of claims, answering class members' questions about obtaining warranty work, the parameters of qualifying claims and similar work.

The combined total lodestar is $1,690,492.00. The firms have collectively billed (or in the case of anticipated hours discussed in greater detail in the Joint Declaration at ¶ 24, will bill), over 2,182 contingency fee hours on this case.

Once the lodestar amount is calculated, the court "may increase or decrease that amount by applying a lodestar multiplier" which "attempts to account for the contingent nature or risk involved in a particular case and the quality of the attorney's work." *In re Diet Drugs Prod. Liab. Litig.*, 582 F3d 524, 540 (3d Cir. 2009). The lodestar multiplier is obtained by dividing the proposed fee award by the lodestar amount. *In re Brokerage Antitrust Litig.*, 579 F.3d 241, 280 (3d Cir. 2009). Based upon the figures above, the requested fee amount ($3.7 million) represents a lodestar multiplier of 2.18 given Plaintiffs' counsel's base lodestar of $1,690,492.00. When the expenses are added into the equation, the lodestar multiplier is reduced to 2.17.[13]

Because the estimate of the additional legal work required between now and the time the Action is concluded and all claims are resolved is undoubtedly an under-estimate, any additional legal fees will reduce the requested lodestar multiplier.

Courts routinely find in complex class actions that a multiplier between one and four of counsel's lodestar is fair and reasonable. *Doherty, at* *7 (D.N.J. June

[13] $3,700,000.00 minus expenses of $25,470.00 equals a net fee request of $3,674,530.00. The net fee request represents a multiplier of 2.17.

25, 2014) (court awarded fees of $3,026,100.00 after concluding that "a lodestar crosscheck similarly supports approval of the agreed upon fee which reflects a lodestar multiplier of 1.95, particularly in light of the fact that the Third Circuit and District Courts within this Circuit routinely approve of lodestar multipliers ranging from 1 to 4"); *In re Prudential*, 148 F.3d 283, 341 (3d Cir. 1998) (quoting 3 Herbert, Newberg & Alba Conte, Newberg on Class Actions, Section 14.03 at 14-5 (3d ed. 1992)). Multipliers of 3 are deemed appropriate in the Third Circuit. *In re Cendant*, 243 F.3d at 742; *Milliron v. T-Mobile USA, Inc.*, No. C.A. 08-4149 (JLL), 2009 WL 3345762, at *13 (D.N.J. Sept. 10, 2009), *as amended* (Sept. 14, 2009), *aff'd*, 423 F. App'x 131 (3d Cir. 2011) (court approved fees with lodestar multiplier of 2.21); *see also Remeron*, 2005 WL 3008808, at *17 (analyzing "recently approved multipliers" and stating that multiplier of 1.8 "is on the low end of the spectrum"); *Varacallo v. Mas. Mut. Life Ins. Co.*, 226 F.R.D. 207, 256 (D.N.J. 2005) (approving a 2.83 multiplier); *Nicholas v. SmithKline Beechman Corp.*, 2005 WL 950616, at *24 (E.D. Pa. Apr. 22, 2005) (approving multiplier of 3.15); *In re Lucent Tech Inc. Sec. Litig.*, 327 F.Supp. 2d 426, 443 (D.N.J. 2004) (approving a 2.13 multiplier); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *16 (E.D. Pa. June 2, 2004) (approving a 2.66 multiplier); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (approving a 4.3 multiplier); *In re Safety Components, Inc. Sec. Litig.*, 166 F.Supp. 2d 72, 103 (D.N.J. 2001)

(approving a 2.81 multiplier); *Weiss v. Mercedes-Benz of No. Am., Inc.*, 899 F.Supp. 1297, 1304 (D.N.J. 1995), *aff'd*, 66 F.3d. 314 (3d. Cir. 1995) (approving a 9.3 multiplier).

D. The Common Fund Approach Warrants an Award at the Higher End of the Hi-Low Fee Agreement Range

Under the common fund method of fee analysis, an award of $3.7 million requested by Class Counsel is fully warranted. Even as a cross-check, a percentage of common fund should also be considered.[14] *In re Cendant*, 243 F.3d at 736-742; *In re Rite Aid Corp. Sec. Litig*, 396 F.3d 294, 306-07 (3d. Cir. 2005) (percentage of common fund is proper approach to awarding counsel fees); *In re Prudential*, 148 F.3d 283, 333 (3d. Cir. 1998).

In undertaking a common fund analysis, the court must first value the settlement and then decide what percentage of the settlement should be awarded as attorneys' fees. *In re General Motors Corp. at* 822; *accord Varacallo*, 226 F.R.D. at 249. In conducting this analysis Class Counsel is only required to provide a "reasonable estimate" of the value of the settlement rather than a "precise

[14] In *Cendan*t, 243 F.3d at 734, the Third Circuit approved the use of the common fund method as appropriate despite the fact that it was not a traditional common fund case, since the unclaimed portion of the fund would return to Cendant. *See also*, *In re Ins. Brokerage Antitrust Litigation*, 579 F.3d 241, 253 (3d Cir. 2009) (trial court properly applied percentage of fund method to evaluate reasonable of fee award although "separate fee agreement" provides that fees "would not be subtracted from the Settlement Class fund."

calculation". *See Weiss v. Mercedes-Benz of North America*, 899 F. Supp. 1297, 1304 (D.N.J. 1995); *In re General Motors Corp*. at 822; *Saini*, at *17 ("The Court notes that the present Settlement Agreement does not create a class fund, and therefore only an approximation of the total compensation that will be provided to Class Members can be calculated. However, it appears that the Settlement Agreement in this case provides substantial relief to the Class Members.").

The valuation should be based on the "value of the settlement to the class" as a whole and is not reduced even if some class members may choose not to take advantage of the benefits of the settlement. *Weiss*, 899 F. Supp. at 1304. *See also Boeing Co. v. Van Gemert*, 444 U.S. 472, 480, 100 S.Ct. 745, 62 L.Ed.2d 676 (1980) (the right of class members "to share the harvest of the lawsuit upon proof of their identity ... is a benefit in the fund created by the efforts of the class representative and their counsel").

In this case, the total value of the Settlement is estimated at over $25,235,000.00 (*see* discussion at pp. 10-12). In addition, there are approximately [redacted] Class Vehicles and Class Members are eligible for repairs at an average of $3,500.00 to $4,500.00 (or a minimum of $3,000.00 for chain repairs performed at a non-BMW dealership repair facility) and a maximum of the cost of a new replacement engine, upon submission of the claim form.[15] If the costs of notice and

[15] As the claims deadline is set for 30 days after the current final approval hearing

claims administration and the attorneys' fees and Class Representative Service Payments are added to the $25,235,000.00 estimate, the total benefits to the class are in excess of $27 million. Consequently, the total requested fee award is approximately a mere 13.70% of the common fund.

E. Application of Gunter Factors Confirms the Fee Request is Reasonable

The Third Circuit in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 (3d. Cir. 2000), set forth several factors to be considered by the court when setting a fee award in a common fund case:

> (1) the size of the fund created and the number of persons benefited; (2) the presence or absence of substantial objections by members of the class 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.

In *In re Prudential*, 148 F.3d at 336-40, the court detailed three additional facts that may be relevant in certain cases: "(1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as governmental agencies conducting investigations; (2) the

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it cannot be determined what the "take rate" will be for the class, and thus the amount actually claimed by Class Members out of the maximum value of settlement. The caselaw supports an award of attorney's fees based upon the monies potentially available to be claimed rather than the amount ultimately claimed. *Doherty*, at *7; *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 177 (3d Cir. 2013).

percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained; and (3) any innovative terms of settlement."

Each of these factors weigh heavily in favor of granting the requested fees and case expenses:

1. Size of Fund and Persons Benefited

This Settlement provides significant monetary relief to more than 575,303 owners/lessees of Class Vehicles. Additionally, the availability of prospective repairs, which is essentially an extended warranty is another important benefit to Class Members. As previously discussed, *supra*, this Settlement has a value to the class well in excess of $25 to 27 million.

2. Presence or Absence of Substantial Objections

The deadline for disseminating Class Notice is December 8, 2020 and the deadline for objections to the Settlement is January 19, 2020. (Dkt. No. 75). While this fee application is being submitted before the expiration of the objection period, as of the date of this filing, only one objection has been submitted to the Court. *See* Dkt. No. 82. This sole objection does not refer to or take issue with the requested award for attorneys' fees, case expense reimbursement or the class representative participation payment.[16] The lack of objections is a significant

[16] Plaintiffs will address the substance of all objections in papers submitted

factor and supports the reasonableness of the fee request. *McCoy*, 569 F.Supp. 2d. at 476; *Gunter*, 223 F.3d at 195 n.1.

3. Skill and Efficiency of Class Counsel

As demonstrated in the firm resumes provided in support of the Preliminary Approval Motion and the Declarations accompanying this motion, all three law firms serving as Class Counsel and each of the attorneys having primary responsibility for this case are nationally recognized as class action litigators and have extensive experience in handling class actions, including automotive class actions. As specifically pointed out in *McCoy*, the quality of class counsel's representation is "measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *McCoy*, 569 F.Supp. 2d. at 476, quoting *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 465 (E.D. Pa. 2008); *Granillo v. FCA US LLC*, No 16-153 (FLW) 2019 WL 4052432, at *10 (D.N.J. August 27, 2019); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. at 132 (the "single clearest factor reflecting the quality of class counsel's services to the class are the results obtained"). The results in this case are in large measure based upon the tenacity with which Class Counsel handled this litigation.

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supporting final approval and at the February 16, 2021 Final Approval Hearing.

The significant benefits available to Settlement Class Members flow directly from Class Counsel's aggressive pursuit of the litigation and vigorous negotiations. Class Counsel skillfully negotiated a large monetary settlement, and did so without facing the enormous risks of trial, let alone the risks of certifying a national class. This Court was able to observe Class Counsel and to see their "skills and effectiveness in preparing, litigating, strategizing, and ultimately resolving the case with a fair settlement." *In re Elec. Carbon Products Antitrust Lit.*, 447 F.Supp. 2d 389, 407 (D.N.J. 2006). The quality of opposing counsel is also important in evaluating the quality of Plaintiffs' counsels' work. *Granillo*, at *10. In this case, BMW NA is represented by Buchanan Ingersoll & Rooney PC, a large, well-respected law firm with extensive experience in automotive products liability class actions.

4. Complexity and Duration of the Litigation

This complex class action required more than three years to bring to resolution. Class Counsel engaged in extensive work through pre-litigation investigation, discovery, motion practice and mediation in order to bring the case to a successful conclusion. The complexity of the action and the highly efficient work performed provides ample basis for this court to approve the requested fee award. *See In re Rite Aid*, 396 F.3d at 305 (district court did not abuse its

discretion in concluding that, given legal issues, duration of the case, discovery and necessity of resorting to mediation to reach settlement, the matter was complex).

5. Risk of Non-Payment

Remeron recognized "[a] determination of a fair fee must include consideration of the sometimes undesirable characteristics of a contingent [class] action, including the uncertain nature of the fee, the wholly contingent outlay of large out-of-pocket sums by plaintiffs, and the fact that the risk of failure and nonpayment in a [class action] are extremely high." *Remeron*, 2005 WL 3008808, at *14 (citations omitted). Indeed, courts recognize the risk of non-payment as a major factor in considering an award of attorney fees. *In re Ins. Brokerage Antitrust Litig*., 282 F.R.D. 92, 122 (D.N.J. 2012).

Here, Class Counsel undertook this litigation more than three years ago solely on a contingent fee basis. Not only did Class Counsel expend a large amount of time representing the class, but they also paid over $25,470.32 in expenses for experts, subpoenas, settlement mediation and other litigation costs. Class Counsel undertook this litigation while incurring a substantial risk of no recovery or inability to certify a class. This substantial risk resulted in the Settlement that produced enormous benefits to the class that should be adequately rewarded.

At the time the case settled, there were several formidable hurdles yet to be overcome. For example, additional discovery sought against BMW AG would entail a deposition overseas, as well as depositions, expert reports and the typical battle of the experts. The issue of whether a national class could be certified for the consumer fraud claims in light of variations in state law presented another set of risks. *See Szczubelek v. Cendant Mortgage Corp.*, 215 F.R.D. 107, 122 (D.N.J. 2002); *Payne v. FujiFilm U.S.A., Inc.*, No. CIV. A. 07-385 GEB, 2010 WL 2342388, at *9 (D.N.J. May 28, 2010); *Chin v Chrysler Corp.*, 182 F.R.D. 448, 453 (D.N.J. 1998). All of these risks incurred by bringing this litigation on a contingency basis weigh heavily in favor of granting the fee request.

6. Amount of Time Devoted by Plaintiffs' Counsel

Class Counsel spent over 2,182 hours through October 31, 2020 on this action in pre-litigation investigation, analysis of state and federal law claims, drafting documents, strategy, discovery, expert analysis, motion practice and intricate settlement negotiations. The enormous effort resulted in this extraordinary Settlement which was reached long prior to trial.

7. Awards in Similar Cases

In *Milliron*, 2009 WL 3345762, at *13, it was noted that this factor requires that the court (1) compare the award requested with other awards in comparable settlements; and (2) ensure that the award is consistent with what the attorney

would have received had the fee been negotiated on the open market. After conducting the analysis, in *Milliron*, Judge Linares approved a fee of 33 1/3 % finding that this "is a standard figure for recovery in a consumer class action of the contingent-fee variety."[17]

In *Doherty*, the court awarded fees of $3,026,100.00 representing approximately 20% of the value of the aggregated class recoveries, in a case where the Common Fund was found to total $11,004,000.00.

See also In re General Motors Corp., 55 F.3d at 822 ("[F]ee awards have ranged from nineteen percent to forty-five percent of the settlement fund."); *In re Ins. Brokerage Antitrust Litig*., 297 F.R.D. 136 (D.N.J. 2013) (court approved fee award in amount of $3.465 million, or 33% of settlement fund); *In re Automotive Refinishing Paint Antitrust Litig.*, 2008 WL 63269, at *5-6 (E.D. Pa. Jan. 3, 2008) ("We have previously noted that it is not unusual in antitrust class actions for the attorneys to receive awards for fees in the 30% range." (citations omitted; collecting cases); *In re Lucent Tech. Ins. Sec. Litig.*, 327 F.Supp. at 439-41 ("more than twenty relatively recent class action decisions in the Third Circuit reflect fee awards between 33 1/3% and 22.5%; citing cases); *In re Safety Components Int'l.,*

[17] As previously discussed, in the *In re Volkswagen Timing Chain* matter recently litigated and settled in this District, Judge Linares awarded $8.6 million as an attorneys fee and expense award. A copy of the Final Approval Order is annexed to the Jt. Decl. as Exhibit "5."

Inc. Sec. Litig., at 101-02 (citing ten common funds cases with awards between 27.5% and 33.8% with nine awards constituting 30% or more of settlement fund).

8. The Prudential Factors also Favor the Award

Each of the fee analysis factors discussed in *In re Prudential*, 148 F.3d at 336-40, also favor granting the requested fee award. All of the benefits accruing to Settlement Class Members are attributable to Class Counsel's efforts. There was no National Highway Traffic Safety Administration investigation, recall or other governmental action that triggered this litigation or Settlement. The percentage fee requested of $3.7 million is 13.70% of the conservatively projected value of the benefit conferred and, as such, is less than a private contingent fee that plaintiffs' counsel would have charged at the time of retention if this was not a class action.

The additional benefit negotiated in the Settlement provides an additional minimum one (1) year period from the Effective Date for any class vehicle with less than 100,000 miles to seek repairs regardless of the age of the vehicle. This provision is an innovative benefit of the Settlement providing a measure of protection for owners of Class Vehicles who may have otherwise timed out of the Settlement benefits.

Class Counsel are requesting an award that represents 13.70% of the estimated present value of the Settlement. This request is indisputably within the range of fees awarded in similar cases by courts in this District and the Third

Circuit. Application of the lodestar method, with a percentage of common fund crosscheck, demonstrates the requested fee is fair and reasonable and should be granted.

II. THE COURT SHOULD GRANT FINAL APPROVAL OF PLAINTIFFS' COUNSELS' CASE EXPENSES

As the Court held in *In re Ins. Brokerage Antitrust Litig*., 297 F.R.D. 136, 157-58 (D.N.J. 2013), "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." *In re Safety Components Inc.*, 166 F.Supp.2d 72, 108 (D.N.J.2001) (citing *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir.1995)).

In this case Class Counsel have incurred $25,470.32 in properly documented case expenses that were for the common benefit of Class Members. These expenses will be paid out of the $3.7 million fee and expense request. These expenses include, but are not limited to, expert witness fees, exemplar N20/N26 engines, legal research, document subpoenas, mediation, and travel and related expenses, as well as court fees. *See*, Exhibit 2 to each of the firm declarations (firm declarations are Exhibits "2," "3," and "4" of the Jt. Decl.

The payment of these expenses should be approved.

III. THE REQUEST FOR CLASS REPRESENTATIVE SERVICE PAYMENTS SHOULD BE APPROVED

Class Representative Service Payments are designed "to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation and to reward the public service of contributing to the enforcement of mandatory laws." *See Granillo v. FCA US LLC*, at *11 (citing *Sullivan v. DB Investments, Inc*., 667 F.3d 273, 333 n.65 (3d Cir. 2011)). It has been long recognized by numerous courts that the time, risk, and benefits to the class should not go unrecognized. *In re Remeron End-Payor Antitrust Litigation*, 2005 WL 2230314, at *32 (D.N.J. 2005); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa 2000).

In this case, there are 20 named plaintiffs who participated in and assisted with the proceeding. They provided information regarding the problems with their vehicles, engaged in discovery, and produced relevant purchase and service records for their cars. The Service Payment amount requested is $1,000.00 for each Class Representative, well within amounts approved in a variety of class actions. *See In re Remeron Direct Purchase Antitrust Litigation*, 2005 WL 3008808 (D.N.J. Nov. 9, 2005) and cases cited therein. The Class Representative Service Payments will be paid out of the attorneys' fee award, which is paid separately from the other consideration in the Settlement and will not reduce the recovery available to any Class Member. Consequently, the Court should approve

these Class Representative Service Payments which total $20,000.00. Settlement Agreement, VIII (D).

CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court grant Plaintiffs' motion for approval of attorneys' fees, litigation expenses and class representative service payments in the total combined amount of $3,700,00.00.

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Dated: December 8, 2020