UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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, ERHAN ARAT, ANDRE MALSKE, CRAIG LASH, NICOLE GUY, DAVID RICHARDSON, KAREN HENDERSON and ERIC T. ZINN, 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 SDW-CLW

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, REIMBURSEMENT OF EXPENSES AND AWARD OF CLASS REPRESENTATIVE SERVICE PAYMENTS

GARY S. GRAIFMAN, THOMAS P. SOBRAN and **BRUCE H. NAGEL** declare pursuant to 28 U.S.C. § 1746 under the penalties of perjury as follows:

1. Gary S. Graifman is a shareholder of the law firm Kantrowitz, Goldhamer & Graifman, P.C. (hereinafter "KGG"); Thomas P. Sobran is the sole proprietor of Thomas P. Sobran, P.C. (hereinafter "TPS") and Bruce H. Nagel is a partner in the firm of Nagel Rice, LLP (hereinafter "NR"). Each firm was appointed Interim Class Counsel by Judge Walls on February 27, 2018 and Settlement Counsel pursuant to the Order Granting Preliminary Approval of Class

Action Settlement (hereinafter "Preliminary Approval Order") entered September 9, 2020 (Dkt. No. 75).[1] In the Preliminary Approval Order, the Court also preliminarily approved the class action settlement, conditionally certified the class, as defined below, and approved the notice to be sent to settlement class members (hereinafter "Settlement Class" or "Settlement Class Member(s)").

2. Co-Lead Counsel were directly involved in, responsible for, and have personal knowledge regarding all aspects of this class action (hereinafter "Action"). Counsel submit this declaration in support of the motion for an award of attorneys' fees and reimbursement of expenses and approval of payment of service awards of $1,000.00 each to the Settlement Class Representatives.[2] The date for filing the motion for final approval of the settlement (hereinafter "Settlement Agreement") and final certification of the Settlement Class pursuant to the Preliminary Approval Order is February 1, 2021.

INTRODUCTION AND OVERVIEW

3. The Settlement Agreement resolving this Action provides substantial benefits to the Settlement Class (as described *infra*) and is the culmination of extensive arm's length negotiations of a vigorously contested case represented by experienced attorneys. This Action and Settlement Agreement involve present and former owners/lessees of certain 2012 through 2015 model BMW passenger vehicles equipped with N20/N26 engines (hereinafter "Class Vehicles"). Class Vehicles are specifically identified in the Settlement Class notice sent to the Settlement Class Members[3] The complaint alleges Class Vehicles have a defect in the engine

[1] These three firms hereinafter are referred to as "Co-Lead Counsel" or "Class Counsel."

[2] Unless otherwise defined herein, capitalized terms have the same meaning as set forth in the Settlement Agreement which has been previously filed with the Court and is annexed hereto as Exhibit "1."

[3] Settlement Class Vehicles incorporating the subject timing chain and oil pump drive modules are the following (subject to VIN confirmation):

Model Description	Model Years
X1 SAV	2012 - 2015
X3 SAV	2013 - 2015
X4 SAV	2015

timing chain and oil pump drive chain assemblies (hereinafter "Chain Assembly(ies)")[4] that cause premature N20/N26 engine failure. The Chain Assemblies are responsible for synchronizing the rotation of the engine camshafts/crankshaft and driving the oil pump that lubricates and cools the engine, particularly the internal contact surfaces. Plaintiffs alleged that BMW of North America, LLC (hereinafter "BMW NA") concealed the information about the Chain Assembly defect and represented that the Class Vehicles were reliable and that the Chain Assemblies were fully covered by the vehicles' original written New Vehicle Limited Warranty (hereinafter "NVLW") should there be any failure.

4. Extensive discovery confirmed, among other things, that failed Chain Assemblies involve considerable repair expense. Replacement of both engine chain assemblies costs approximately $3,500-$4,500.00 in the rare instances where there is no resulting engine damage. Much more commonly, Plaintiffs and putative class members received estimates upwards of $12,000.00 or more for engine replacement with a BMW remanufactured engine where Chain Assembly failure resulted in total engine destruction.

5. BMW NA maintains that the Chain Assemblies in Class Vehicles are not defective, that no state consumer statutes or express/implied warranties were violated, that the claims asserted by Plaintiffs and the putative class are barred by statutes of limitations and other defenses, and that Plaintiffs and the putative class do not have valid claims for liability or damages.

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.*

[4] The timing chain assembly consists of the primary timing chain, tensioner, chain sprockets and rails/guides. The oil pump drive assembly consists of the oil pump/counter-balance shaft chain and sprockets.

6. Plaintiffs in this Action are owners of Class Vehicles subject to Chain Assembly failure. Informal confirmatory discovery (and the subsequent notice process) disclosed that there were approximately 575,303 Settlement Class Vehicles nationwide. The Court-appointed settlement administrator, Rust Consulting, confirmed that 1.3 million Settlement Class Member Notices are being sent out on or about December 8, 2020.

7. This Action was filed on September 22, 2017 (Dkt. No. 1) and asserted counts on behalf of a nationwide class and state subclasses. Prior to filing the initial complaint Class Counsel undertook an extensive and though investigation of the N20/N26 engine. This investigation included analysis of Chain Assemblies functionality and an understanding of the reasons for the alleged failures. Other activities included multiple exemplar N20/N26 engine tear-downs, measurement and analysis of failed Chain Assemblies and a review of the replacement component part design and manufacturing changes. Other materials reviewed include but are not limited to BMW workshop manuals, engine parts manuals and technical service bulletins. In addition, Class Counsel regularly reviewed the NHTSA-ODI[5] website, including complaints and comments to NHTSA by BMW owners and also spoke with hundreds of Class Vehicle owners who experienced Chain Assembly failure. A related class action was filed in November 2017 and the two cases were consolidated in January 2018.

8. In March of 2018, BMW NA moved to dismiss the consolidated complaint, raising unique issues as to statutes of limitations, failure to demonstrate fraudulent concealment, application of the economic loss doctrine, limitations on the scope of the alleged class including opposition the pleading of a nationwide class, challenges under 9(b) as to the particularity of the pleadings, challenges to each state consumer law claim, implication 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). Plaintiffs filed the Second Amended Complaint in February 4, 2019. (Dkt. No. 47). Plaintiffs and BMW NA then

[5]National Highway Safety Administration Office of Defect Investigation.

engaged in extensive discovery practice that resulted in the production of thousands of technical documents, Class Vehicle service records and related materials.

SETTLEMENT NEGOTIATIONS AND SETTLEMENT TERMS

9. The Action was subsequently referred to retired United States District Judge Stephen Orlofsky for mediation. A mediation session was held on July 21, 2019. In addition to counsel for Plaintiffs and BMW NA, BMW NA's in-house counsel attended. Subsequent to the mediation session, a settlement was reached on the substantive claim in the Action and a term sheet was prepared and executed on July 23, 2019. No discussions concerning attorney fees occurred prior to execution of the term sheet.

10. Counsel subsequently discussed the fee issue and although the parties made progress, the fee issue was not resolved. A second mediation was held with Judge Orlofsky on November 18, 2019 to address the open issue of legal fees. This mediation failed to resolve the issue. Magistrate Judge Cathy L. Waldor convened an in-person settlement conference on February 14, 2020 that also failed to resolve the fee issue.

11. Eventually, continued discussions led to a partial resolution of the attorney fee issue in which BMW NA and Class Counsel agreed to the following fee, case expense reimbursement and class representatives participation payments subject to court review and approval: Plaintiffs could request attorneys' fees, reimbursement of expenses and class representative participation payments with a guaranteed floor of $1.5 million and a cap of $3.7 million. This attorney fee application, request for reimbursement of case expenses and participation payments is so limited by the confines of those caps.

12. A formal settlement agreement was negotiated and drafted, as well as a notice plan and exhibits to the Settlement Agreement. The Settlement Agreement was executed on

August 21, 2020. The Court granted preliminary approval of the Settlement Agreement, together with the Notice Plan and Class Notices on September 9, 2020 (Dkt. No. 75). The Notice Plan is being implemented in accordance with the Preliminary Approval Order.

13. These in-person case settlement negotiations, conducted at arms'-length, were intensive, and at times, contentious. As discussed, BMW NA vigorously disputed Plaintiffs' claims and maintained there was no defect in the engine Chain Assemblies or any non-disclosure or consumer statute violation that would entitle Plaintiffs to any damages in this action. BMW NA also contended, and would no doubt continue to contend, that failures of the Chain Assemblies are the result of normal and expected wear and tear that passenger vehicle engines experience over time and/or are the result of improper maintenance. BMW NA would likely continue to argue the durational limits of the existing NVLW are not procedurally or substantively unconscionable.

14. On August 26, 2020, Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement was filed. (Dkt. No. 72). After approximately two and a half years of contentious litigation and settlement negotiations, and with the aid of significant input from a well-respected mediator and this Court, Class Counsel achieved an exceptional result for Settlement Class Members in extending the warranty for engine Chain Assemblies. The Settlement not only benefits members whose vehicles have, prior to the notice date and within 8 years or 100,000 miles (whichever occurred first) from the vehicle's in-service date, paid out-of-pocket expense to repair or replace a Chain Assembly failure, but also benefits Settlement Class Members in the event their vehicles experience a Chain Assembly failure after the notice date

and within that 8 year or 100,000 mile period.[6] (Settlement Agreement ¶ III (A)). The Settlement Agreement provides significant monetary relief that, depending on miles and years-in-service, reimburses class members anywhere from 100% to 40% in total costs for a one time replacement of failed Chain Assemblies (including replacement of both assemblies) and, if also damaged, one (1) engine.

15. Additionally, in order to ensure that certain earlier models of Class Vehicles that have not have suffered a Chain Assemblies failure to date receive the benefit of the extended warranty provided here, even though they may be beyond the eight (8) years, the Settlement Agreement includes a "safe harbor" provision of one (1) year from the Effective Date of the Settlement Agreement. This provision provides that even if the Class Vehicle is beyond the eight (8) years (*e.g.*, a 2012 model year vehicle) and requires a Chain Assemblies failure repair within that one (1) year, they will be included regardless of the in-service date so long as the vehicle is within the extended warranty's mileage requirement (*e.g.*, the failure occurred when the vehicles had less than 100,000 miles).[7]

16. The approximately 100-day claims period for Settlement Class Members to seek reimbursement under the Settlement Agreement terms (which runs until March 18, 2021) provides a more than reasonable period of time that has been preliminarily approved by this Court (Dkt. No. 75). The Settlement terms also provide a reasonable period within which

[6] The 7 year /7 0,000 mile warranty extension for the engine Chain Assemblies (up from the original 4 years/50,000 mile drive train warranty) that BMW NA implemented shortly after this case commenced remains in place. (Settlement Agreement ¶ III (A)).

[7] Of course, if the Settlement Class Vehicle is currently beyond the eight years (*e.g.*, is a model year 2012 vehicle) and has previously had the Chain Assemblies failure and repair within the eight years and 100,000 miles, then the Class Member still qualifies to file a claim under the reimbursement portion of the Settlement.

Settlement Class Members can cure any deficiencies in the proof submitted in support of their claims.

17. The nationwide settlement will resolve all claims before this Court. The Settlement Agreement consists of two distinct programs: A reimbursement program to reimburse Settlement Class Members for out-of-pocket payments made for past Chain Assembly repairs, within the time and mileage schedule described below and a warranty extension that enlarges the warranty for engine Chain Assemblies for a period of eight (8) years or 100,000 miles of the vehicle in-service date (whichever occurs first). Under the reimbursement portion of the Settlement Agreement, BMW NA agrees to reimburse the specified percentage (depending on the years-in-service and mileage tier) of the paid dealer invoice amount for the covered part(s) and labor for repair or replacement of the Chain Assemblies within 8 years or 100,000 miles (whichever occurs first) from the Settlement Class Vehicle's In-Service Date and prior to the Notice Date. *See* Settlement Agreement, Sec. III (A)(2).

18. In order to obtain monetary benefits, Settlement Class Members submit a simple claim form (Exhibit B to Settlement Agreement annexed hereto as "Exhibit 1," included in the notice packets with the Class Notice), with the required documentary proof (repair records and receipts) showing, *inter alia*, the amount paid for the repairs necessitated by a failed Chain Assembly and reasonable adherence to the vehicle's engine maintenance schedule (including use of oil recommended by BMW as applicable). The Settlement Agreement allows for reimbursement for one repair or replacement of the Chain Assemblies (or engine if damaged beyond repair) per Class Vehicle. Settlement Agreement, Sec. III (B)(4).

19. Settlement Class Members may also file a claim form online on the settlement website's claims portal at www.timingchainmodulesettlement.com. The settlement website has

links to relevant case documents including copies of the Preliminary Approval Order, Class Notice and claim form and the papers filed in connection with this motion for attorney's fees, expenses and class representative service awards.

Extended Warranty Benefits

20. The Settlement Agreement also provides another valuable benefit to eligible Settlement Class Members by extending the New Vehicle Limited Warranties (and the 7year/70,000 Chain Assembly warranty extension) to cover Settlement Class Vehicle Chain Assembly repairs by an authorized BMW dealer for a period of eight (8) years or one hundred thousand (100,000) miles (whichever occurs first) from the In-Service date of the Settlement Class Vehicle. The Warranty Extension includes full coverage of the Chain Assemblies, and all parts and labor necessary to effectuate the repair based on the same reimbursement schedule set forth above, with the Settlement Class Member to show reasonable adherence to the vehicle's engine maintenance schedule with reasonable variations.

21. As discussed earlier, there are approximately [redacted] Class Vehicles. Approximately 1.3 million Class Notices were sent advising Class Vehicle owners of the proposed Settlement. Because the notice packets are being mailed on December 8, 2020 (and the settlement website went live shortly before), Class Counsel do not yet have any indication as to the extent of objections and, if so, the number or nature thereof. Class Counsel expect to respond to any such objections, if any, in the subsequent filings scheduled for such responses.

22. Class Counsel estimate the value of the Settlement's benefit on a class wide basis to be a minimum of approximately $25 million, not including the costs of Class Notice and administration.

23. Class Counsel estimate the value of the Settlement Agreement's components based in part on documents provided by BMW NA including the incident rate during the warranty period based upon the data exchanged.[8]

24. Nonetheless, estimates based on discovery produced by BMW NA indicate approximately [redacted] of the Class Vehicles experienced chain assembly failures repaired under warranty at an average mileage of [redacted]. The Class encompasses vehicles from over a four (4) year period (2012 through 2015 model years) utilizing the N20/N26 engine. The original power train warranty was for 4 years/50,000 miles. During that four year period, BMW repaired approximately [redacted] Class Vehicles under the warranty.[9] That equals approximately [redacted] Class Vehicles per year.

25. 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.[10] If the warranty incident rate

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[8] Because the information is subject to a confidentiality agreement, it is redacted herein.

[9] According to the Excel spreadsheet produced by BMW, there were [redacted] repairs under warranty or good will through 2018. However, the warranty for the Class Vehicles model year 2015, would have run through 2019 and, as such, a full year of the warranty period (2019) is missing. Therefore, the [redacted] vehicles repaired under warranty only represents three (3) years of the warranty period, not the full four (4) years. Dividing the [redacted] by three (3) years would mean 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.

[10] Although the extension under the Settlement is for eight (8) years (or 100,000 miles, whichever occurs first), as noted previously, an additional provision negotiated allows an owner to have the failure repaired for one (1) year after the Effective Date regardless of years in service,

previously experienced holds constant, then during the additional five (5) years this Settlement provides, there will be approximately [redacted] claims from that period [redacted]

26. 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 mor more, which is not even included in this lower estimate.

27. 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, and an average repair cost of **$3,500.00-$4,500.00** (This is a conservative range given the costs where complete engine destruction manifests from chain failure. Based on hundreds of telephone conferences with Class Vehicle owners, engine destruction has been reported an estimated 95% of the time). The potential 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, approximately [redacted] vehicles, and 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] on the high end. Considering chain assembly

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provided the Class Vehicles has less than 100,000 miles, thus effectively bringing the extension here to nine (9) years, or five more than the initial warranty of four (4) years.

replacement/repair costs and other required engine repairs resulting from chain failure, estimated values would likely be much greater.

CLASS COUNSEL'S FEE AND EXPENSE APPLICATION IS FAIR, REASONABLE AND ADEQUATE.

28. Class Counsel undertook the prosecution of the Action entirely on a contingency fee basis and assumed significant risks in prosecuting these claims. Class Counsel understood that it was undertaking an expensive and complex litigation with no guarantee of receiving compensation for the enormous investment in time and money that the Action would require. The negotiations in this matter were intense and hard fought. The litigation was complex and the process of achieving settlement was unique in numerous ways. Class Counsel faced substantial issues in establishing the sufficiency of the claims so that they could move to the discovery phase of the case. In addition to briefing the motion to dismiss on behalf of a proposed nationwide class, Class Counsel pursued initial independent discovery and investigation and eventually, confirmatory discovery, including certain proprietary internal warranty information.

29. Plaintiffs would seek a nationwide litigation class if the matter was not settled. However, if that was not successful, Class Counsel would have been expected to establish the elements of each state law claim brought on behalf of Plaintiffs— subclasses including New Jersey, Illinois, Florida, New York, Utah, Colorado, Texas, Alabama, Oklahoma, Massachusetts, California, Wisconsin, Oregon, and North Carolina. Class Counsel also communicated with a multitude of other putative class members in other jurisdictions to mount a multi-state class if necessary. The efforts of Class Counsel were well organized and efficiently managed—indeed, counsel had no incentive to do otherwise as any compensation is entirely contingent.

30. As noted above, there was no "clear sailing" provision agreed to prior to reaching the settlement on the merits, as the parties could not agree on Class Counsel's legal fees until

much later in the process including multiple additional mediation sessions and, in fact, have still not agreed upon the fee. The benefits that Settlement Class Members will enjoy, including the past reimbursement and extended warranty, are benefits for which Settlement Class Members will pay no legal fees or incur any expenses. Under the Settlement Agreement (if approved by the Court), BMW NA agrees to pay the legal fees and expenses between $1.5 million and $3.7 million as determined by this Court[11], which will not reduce any of the benefits afforded Settlement Class Members.

31. During the course of this Action, Class Counsel in the aggregate expended, or in certain respects discussed hereinbelow expect to expend, a total of 2,182.2 hours. The lodestar schedules attached to Class Counsel's firm declarations annexed hereto as "Exhibit "2" (Graifman Decl. for KGG) Exhibit "3" (Sobran Decl. for TPS) and "Exhibit 4" (Nagel Decl. for NR) also include a category for "Future Anticipated Work Hours including Final Approval Process, Final Approval Motion and Objection Replies, Communications with Class Members through Conclusion" at Column 12. This category captures the additional time Class Counsel reasonably anticipate incurring between now and through the conclusion of this matter (which will continue even after the Effective Date of the Settlement, not including any appeals which may be filed, if any). In Class Counsel's experience with numerous consumer class action settlements involving automobile defects, Class Counsel anticipate that they will each spend another approximately 85-86 hours on this matter (for a description of the anticipated time *see*

[11] Class Counsel also submits with this Joint Declaration their Brief in Support of an Award of Attorneys' Fees, Reimbursement of Expenses and Award of Class Representative Service Payments.

Graifman Decl., ¶¶ 2-3; Sobran Decl., ¶¶ 4, 6; Nagel Decl., ¶¶ 2, 3).[12] The lodestar of each firm is set forth as follows[13]:

LAW FIRM LODESTARS

FIRM NAME	Hours	Lodestar
KGG	534.1	$410,172.00
TPS, PC	889.9	$667,425.00
NR	758.2	$612,895.00
TOTAL HOURS	**2,182.2**	TOTAL LODESTAR **$1,690,492.00**

32. In support of the hourly rates of Class Counsel, counsel submit that they are experienced attorneys with practices in the field of class action litigation who practice regularly in federal courts across the country. The hourly rates for experienced class action lawyers providing similar services are as high as or exceed Class Counsel rates.

33. Class Counsel have extensive experience litigating and settling nationwide consumer automotive class actions. Messrs. Graifman and Sobran were recently Lead Counsel

[12] *See Hanlon v. Chrysler Corp*. 150 F.3d 1011, 1029-30 (9th Cir.1998) recognizing 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.").

[13] The hourly rates, the hours incurred, and the lodestars are set forth in each of the Firm Declarations submitted herewith by the three firms comprising Class Counsel: Kantrowitz Goldhamer & Graifman, P.C., Thomas P. Sobran, P.C. and Nagel Rice, LLP. These materials are submitted here as "Exhibits 2," "Exhibit 3" and "Exhibit 4" (*see* Exhibits 1 annexed to each Firm Declaration for respective lodestar amounts). In addition, *see* Exhibit 2 to each firm's declaration for case expenses incurred. Each of the firm declarations annex their respective firm resumes as Exhibit 3 thereto.

and Executive Committee member, respectively, in the *In re Volkswagen Timing Chain Prod. Liab. Litig*., litigated in the District of New Jersey and settled on a nationwide basis.[14] The settlement in that matter involved the timing chain components for approximately 477,000 Volkswagen and Audi vehicles (less than the number involved herein). The settlement claims history there, to date, has resulted in approximately [redacted] That does not include the warranty extension program there which, like the program here, includes post-effective date repairs.

34. Two of the Class Counsel herein, Gary S. Graifman and Thomas P. Sobran, were recently co-lead counsel in another automotive products liability case also involving defective engine coolant pumps in approximately 874,781 Volkswagen and Audi class vehicles. The claims in that matter numbered in excess of [redacted] Final Approval was granted on June 10, 2020 and the attorneys fee approved by the court was $2.4 Million (Dkt. No. 106). [15]

35. Class Counsel further opine that, being familiar with the hourly rates regularly charged by firms practicing in this field before the federal and state courts of New Jersey, the hourly rates sought by Class Counsel for the services rendered here are in line with the prevailing hourly rates currently charged by class action attorneys with comparable skill, experience, and reputation for the legal services rendered in class action litigation in the federal courts of this district.[16] As previously discussed, the fees requested here will be paid by BMW NA over and

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[14] *In re Volkswagen Timing Chain Prod. Liab. Litig*., 2:16-cv-02765-JLL (D.N.J.). A copy of the Order Granting Final Approval, Award of Attorneys' Fees and Reimbursement of Expenses is annexed hereto as Exhibit "5."

[15] *See Coffeng v. Volkswagen Group of America, Inc.*, Case No. 2:17-cv-01825-JD (N.D. Cal.).

[16] By way of example, in *In re: Volkswagen Timing Chain*, the court approved counsel's hourly rates of $850.00 per hour for Mr. Graifman and $750.00 per hour for Mr. Sobran. In *Coffeng*, the court approved attorneys' fees based on the hourly rate of $895.00 per hour for Mr. Graifman and $750.00 per hour for Mr. Sobran. The order approving the Settlement and counsel fees in *Coffeng* entered on June 10, 2020. As to Nagel Rice, LLP: *See Edwards v. Horizon Blue Cross Blue*

above the amount of payments to Settlement Class Members and/or the value of the extended warranty work done for Settlement Class Members now and in the future.

36. Class Counsel's work in the Action is only partially done. Substantial work in connection with facilitating the settlement process has only just commenced. The Settlement Class Notices are being disseminated concurrently with this filing. The necessary future work that will be incurred includes: interacting with Settlement Class Members seeking guidance and posing questions via phone and email as to the Settlement Agreement terms, the claims process, rights and remedies of Settlement Class Members going forward under the settlement and the status of submitted claims; assistance with curing deficient claims; the administrative appeal process and attorney review of claim denials; assisting Settlement Class Members requesting exclusion; addressing objections, if any, with respect to the Settlement Agreement; coordinating with defense counsel and the Claims Administrator, Rust Consulting, as to issues concerning claims and payments; reviewing and addressing miscellaneous administrative issues that are certain to occur; overseeing the final distributions and administration, including potential appeals

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Shield of New Jersey, District of New Jersey, Docket No. 2:08-cv-06160-KM-MAH (Dkt. No. 320)(order appointing Bruce H. Nagel co-lead and 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 and 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*, District of New Jersey No. 1:16-cv-02395-JBS-JS (Dkt. No. 38) (Bruce H. Nagel and 3 others appointed as class counsel and approving fees and expenses of approximately $2,000,000.00 with partner rates between $550.00 and $800.00); *Kuzian v. Electrolux Home Prod., Inc.*, No. CIV. 12-3341 NLH/AMD (D.N.J. Feb. 10, 2016) [Dkt. No. 189] (Nagel Rice, LLP appointed co-lead counsel and approving fees and expenses of $2,750,000.00 based on hourly rates of partners between $500.00and $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) (Nagel Rice LLP appointed 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." Case partner rates were between $525.00 and $750.00).

of claims denials; addressing any questions or issues raised by Settlement Class Members in relation to the warranty extension; researching, drafting, revising and finalizing the final approval motion papers; addressing any issues in connection with the Final Approval Motion and final approval reply papers; and, attending the Final Approval Hearing before the Court.[17]

37. Class Counsel each anticipate incurring an additional approximately 86 hours of work going forward to bring this Settlement to conclusion up to and after the effective date of the settlement and have estimated that additional time herein (Graifman Decl., ¶ 3; Sobran Decl. at ¶ 6; Nagel Decl. at ¶ 3). At the time Class Counsel file their Final Approval Motion or reply papers on the Final Approval Motion, they will provide up-to-date supplemental information as to the additional time incurred by counsel immediately prior to the final approval hearing. (s*ee* Graifman Decl. at ¶ 3).

38. The fee requested herein, based on the lodestar of Class Counsel will, it is respectfully submitted, result in a modest multiplier which, based upon the substantial benefits and the value of the Settlement, is justified. Alternatively, as set forth in Plaintiffs' Brief in Support of an Award of Attorneys' Fees, Reimbursement of Expenses and Award of Class Representative Service Payments, the valuation of the Settlement, discussed above, which will exceed approximately $25 million and may approach (with the Claims Administration and notice fees and expenses) $27 million. The requested fee is approximately 13.70% of the Settlement value herein; well below the standard benchmark of 25% in a common fund case.

[17] As a point of comparison, and to further demonstrate the necessity of investing substantial time shepherding a settlement through the administrative process, in *In re Resistors Antitrust Litigation*, 3:15-cv-03820-JD (N.D. Cal.) class counsel's time spent on the settlement aspects of the case was in the approximate amount of 900 hours as of October 2019, between the Hagens Berman firm and the Cohen Milstein firm, according to submissions made. *See* Decl. Of Steve W. Berman in Support of Revised Motion for Attorneys' Fees, at Dkt. No. 560-2 (Exhibits 1 & 3) and Decl. of Emmy L. Levens in Support of Revised Motion for Attorney's Fees, at Dkt. 560-2 (Exhibits 1 & 3).

39. During the course of the Action, Class Counsel incurred expenses of $25,470.32. The itemization of these expenses for each firm are set forth in Exhibit 2 in each of their respective Declarations, annexed hereto as "Exhibits "2," "3" and "4" respectively. In this Action, Class Counsel was extremely efficient in limiting the expenses of the case. Because one of lead counsel is a factory-trained Volvo, BMW and Mercedes-Benz mechanic (and has testified as an expert witness in automotive cases), Class Counsel did not need to retain multiple experts to inspect various Class Vehicles, N20/N26 engines and/or parts in developing their analysis and findings. The expenses incurred were reasonable and necessary for the prosecution of the Action, are the types of expenses that plaintiffs' counsel typically incur in complex litigation, and for which plaintiffs' counsel are typically reimbursed when the Action gives rise to a settlement and final approval. These expenses will be paid separately from, and in addition to, the benefits made available to the Class. The attorneys fee requested does not diminish Class relief in any respect. The breakdown of these expenses by firm are as follows:

LAW FIRM EXPENSES

FIRM NAME	Expenses
KGG	$8,217.45
TPS, PC	$9,400.27
NR	$7,852.60
TOTAL EXPENSES	$25,470.32

40. In addition, Class Counsel seeks an incentive award of $1,000 each for named Settlement Class Representatives that will be paid out of the attorney fee award. Each class representative fully participated in the litigation process on behalf of Settlement Class Members in their respective jurisdictions and cooperated in every respect with Class Counsel. These representatives provided documentation to Class Counsel as evidence for their claims and the

claims of the putative class; reviewed and approved of the pleadings and motions and communicated with counsel about settlement discussions. The Settlement Class Representatives played a key role in assuring there would be a recovery for the Class. These individuals placed their names in public as the parties who litigated this case.

41. Accordingly, Plaintiffs and Class Counsel respectfully request that the fee and expense application for $3,700,000, inclusive of fees and expenses be granted.

Under the penalties as provided by law, the undersigned declare that the statements as set forth in this declaration are true and correct to the best of their knowledge.

Dated: December 8, 2020

Gary S. Graifman

Thomas P. Sobran (admitted *pro hac vice*)

Bruce H. Nagel

41. Accordingly, Plaintiffs and Class Counsel respectfully request that the fee and expense application for $3,700,000, inclusive of fees and expenses be granted.

Under the penalties as provided by law, the undersigned declare that the statements as set forth in this declaration are true and correct to the best of their knowledge.

Dated: December 8, 2020

Gary S. Graifman

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