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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 IN RE CHRYSLER-DODGE-JEEP
12 ECODIESEL® MARKETING, SALES
PRACTICES, AND PRODUCTS
13 LIABILITY LITIGATION

14 This Document Relates to:
15 ALL ACTIONS

Case No. 3:17-md-02777-EMC

**PLAINTIFFS' REPLY MEMORANDUM
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ATTORNEYS'
FEES AND COSTS UNDER FED. R. CIV.
P. 23(e), 23(h), AND PRETRIAL ORDER
NOS. 3 AND 4**

Hearing: May 3, 2019
Time: 10:00 a.m.
Courtroom: 5, 17th Floor

The Honorable Edward M. Chen

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

INTRODUCTION 1

ARGUMENT 2

I. The Settlement is Fair, Adequate, and Reasonable..... 2

 A. The Class’ positive response to the Settlement strongly supports final approval..... 3

 B. The Settlement fairly compensates class members..... 4

 C. Extensive, years-long testing confirms that the AEM will not affect the vehicles’ “key vehicle attributes” or “average fuel economy.” 7

II. The Uncontested Fee, Costs, and Service Award Requests are Fair, Reasonable, and Appropriate..... 8

III. The Settlement Class Should Be Certified..... 9

CONCLUSION 9

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Cases

Chun-Hoon v. McKee Foods Corp.,
716 F. Supp. 2d 848 (N.D. Cal. 2010) 4

Churchill Vill., L.L.C. v. Gen. Elec.,
361 F.3d 566 (9th Cir. 2004)..... 4

Cruz v. Sky Chefs, Inc.,
No. C-12-02705 DMR, 2014 WL 7247065 (N.D. Cal. Dec. 19, 2014)..... 4

Ebarle v. Lifelock, Inc.,
No. 15-CV-00258-HSG, 2016 WL 5076203 (N.D. Cal. Sept. 20, 2016) 7

Hanlon v. Chrysler Corp.,
150 F.3d 1011 (9th Cir. 1998)..... 2

In re Bluetooth Headset Prods. Liab. Litig.,
654 F.3d 935 (9th Cir. 2011)..... 2

In re Mego Fin. Corp. Sec. Litig.,
213 F.3d 454 (9th Cir. 2000)..... 7

In re Omnivision Techs., Inc.,
559 F. Supp. 2d 1036 (N.D. Cal. 2008) 8

In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.,
No. MDL 2672 CRB (JSC), 2017 WL 2178787 (N.D. Cal. May 17, 2017) 9

In re: Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.,
No. MDL 2672 CRB (JSC), 2016 WL 6248426, (N.D. Cal. Oct. 25, 2016),
aff'd, 895 F.3d 597 (9th Cir. 2018) 4, 5, 6, 7

Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,
221 F.R.D. 523 (C.D. Cal. 2004) 4

Staton v. Boeing Co.,
327 F.3d 938 (9th Cir. 2003)..... 8

Van Lith v. iHeartMedia + Entm't, Inc.,
No. 1:16-CV-00066-SKO, 2017 WL 4340337 (E.D. Cal. Sept. 29, 2017) 7

Villanueva v. Morpho Detection, Inc.,
No. 13-cv-05390-HSG, 2016 WL 1070523 (N.D. Cal. March 18, 2016) 7

INTRODUCTION

1
2 The proposed Class Action Settlement secures significant and immediate relief for the
3 Class and the environment. Class Members will receive “substantial cash payment[s]” (Dkt. No.
4 526 at 14) that “exceed [the] economic harm suffered” under Plaintiffs’ damages theory “in
5 nearly all cases” (Dkt. No. 491-3 ¶ 46). If all Class Members participate, these payments will
6 total \$307,460,800 in compensation to the Class. In addition, the Settlement, along with the US-
7 CA Consent Decree,¹ provides free vehicle repairs designed to ensure the Class Vehicles’
8 compliance with emissions regulations, as well as a robust extended warranty valued at \$239.5
9 million that protects all parts and systems implicated in the litigation and potentially affected by
10 the repairs. As an added benefit to the Class, Defendants will also pay all costs of notice and
11 administration and Class Counsel’s reasonable attorneys’ fees and costs as approved by the Court.
12 See Dkt. No. 508 ¶¶ 5.6, 8.4, 11.1. To begin the emissions repair and compensation programs
13 promptly, the Claims Portal will go live immediately upon the Court’s approval of the Class
14 Settlement and the Consent Decree; that is, as early as May 3, 2019, if approvals are given that
15 day.

16 By all accounts, this is an exceptional outcome in the resolution of difficult and fiercely
17 contested claims, and one reached after extensive arm’s-length negotiations. The Class
18 overwhelmingly agrees. The robust, Court-approved notice program has been fully implemented
19 and has delivered individual notice to more than 100,000 Class Members. Nearly 34,000 of them
20 have already registered their interest on the Settlement website even though the claims portal has
21 yet to open and will remain open for two years after final approval, if granted. In contrast, only
22 three Class Members have objected to any aspect of the Settlement, and, as shown below, the
23 three objectors (though well meaning) raise no issues undercutting the fairness, reasonableness, or
24 adequacy of the proposed Settlement. This high level of engagement and remarkably low level of
25 opposition is a strong endorsement of the Settlement terms.

26
27 ¹ All capitalized terms have the meaning ascribed in the Settlement and Plaintiffs’ Motion for
28 Final Approval of Class Action Settlement and Attorneys’ Fees and Costs under Fed. R. Civ. P.
23(e), 23(h), and Pretrial Order Nos. 3 and 4 (Dkt. No. 538; the “Motion”), unless otherwise
indicated.

1 This significant result was not easily won. Plaintiffs' claims were hotly contested and
2 vigorously litigated for nearly two years. For that work, and the results achieved, Class Counsel
3 seek \$66 million in attorneys' fees and costs. As set forth in Plaintiffs' Motion, this request
4 satisfies all criteria of Rule 23 and the Ninth Circuit jurisprudence and is well within the range of
5 reasonableness. Not a single class member argues otherwise.

6 Thus, for all the reasons in Plaintiffs' Motion and as set forth further below, Plaintiffs
7 respectfully request that the Court grant final approval of the proposed Settlement and approve
8 Class Counsel's reasonable request for attorneys' fees and costs, and modest service awards for
9 the Settlement Class Representatives.

10 ARGUMENT

11 **I. The Settlement is Fair, Adequate, and Reasonable.**

12 At the final approval stage, the primary inquiry is "whether a proposed settlement is
13 fundamentally fair, adequate, and reasonable." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026
14 (9th Cir. 1998) (citation omitted). In making this determination, the question the court must
15 answer "is not whether the final product could be prettier, smarter or snazzier, but whether it is
16 fair, adequate and free from collusion." *Id.* at 1027.

17 Under recently-revised Rule 23(e) and this District's *Procedural Guidance for Class*
18 *Action Settlements*, searching scrutiny of proposed class settlements occurs up front, at the
19 preliminary stage; the court must find it will be likely to approve the settlement and certify the
20 class for settlement purposes before class notice is sent. Fed. R. Civ. P. 23(e)(2).

21 Here, the Court has made both such findings. It analyzed all Rule 23(e), 23(a)(1)-(4), and
22 23(b)(3) settlement and certification factors, found that settlement approval and certification
23 would likely be granted, and concluded in its preliminary Rule 23(e) Order that the "proposed
24 settlement between the parties is sufficiently fair, adequate, and reasonable." Dkt. No. 526 at 15.
25 As Plaintiffs demonstrated in their Motion, this remains true, and the Settlement easily satisfies
26 all relevant factors under the Federal Rules and *In re Bluetooth Headset Prods. Liab. Litig.*, 654
27 F.3d 935, 942 (9th Cir. 2011). *See, e.g.*, Dkt. No. 538 at 11-17; *see also* Declaration of Professor
28 Robert Klonoff Relating to Class Action Settlement Fairness ("Klonoff Decl.") (Exhibit A). The

1 overwhelming majority of the Class agrees, and the few who do not raise no concerns that
2 counsel against final approval.

3 **A. The Class' positive response to the Settlement strongly supports final**
4 **approval.**

5 In its preliminary Rule 23(e) Order, the Court observed that the Settlement's substantial
6 benefits were "likely to gain [Class Members'] attention." Dkt. No. 526 at 13. This prediction
7 proved prescient. Virtually all of the Class received direct, individualized notice through the
8 Court-approved noticed program (*see* Supplemental Declaration of Steven Weisbrot ("Weisbrot
9 Decl.") (Exhibit B) ¶¶ 6-10, 33),² and many Class Members are already actively engaged. As of
10 April 25, 2019, there have been 80,989 unique visits to the Settlement website, and 33,804 Class
11 Members have registered to receive updates about the Settlement. *Id.* ¶¶ 25-26. This is
12 impressive, since this sizable engagement has occurred before the Claims Portal was open, or the
13 two year claims period has even begun.

14 In contrast, approximately 3,461 individuals—less than 3% of all potential Class
15 Members—sought to exclude themselves from the Settlement Class.³ It is worth noting,
16 however, that the *vast* majority of these opt-out requests resulted from vigorous marketing and
17 solicitation campaigns by a handful of attorneys and are not necessarily reflective of Class
18 Members' dissatisfaction with the Settlement.⁴ Indeed, of the 3,461 exclusion requests, 3,061
19 (88%) were submitted *en masse* by only two law firms,⁵ and only 14 (<1%) were submitted by
20 individual Class Members. Weisbrot Decl. ¶ 31. Furthermore, many of the opt outs, upon further

21 _____
22 ² Angeion, the court-appointed Notice Administrator, successfully sent 135,536 direct notices via
23 mail and 115,824 direct notices via email to potential Class Members. Weisbrot Decl. ¶¶ 6-10.

24 ³ This conservative figure includes all timely, non-duplicative opt-out requests received. The
25 Parties' review of these requests remains ongoing, but as of now, the claims administrator has
26 determined that 415 of the requests are incomplete or appear to have been submitted by non-Class
27 Members. Weisbrot Decl. ¶ 29. The claims administrator has contacted deficient opt-outs and
28 provided a deadline by which to rectify deficiencies. *Id.* ¶ 30. Thus, the actual number of valid
Class Member opt outs may ultimately fall below the current count. The Parties will report a
final count of valid opt outs at the final approval hearing on May 3, 2019.

⁴ *See, e.g.*, <http://www.yourlegaljustice.com/ecodiesel-fraud-compensation-mass-tort-lawsuit-lawyers/>.

⁵ Those two law firms are Stern Law PLLC and Heygood Orr & Pearson, who submitted 1,841
and 1,220 requests, respectively. Weisbrot Decl. ¶ 31.

1 reflection, may ultimately determine that they want to participate in the Settlement at some point
2 during the claim period, as was the case for many class members in the *Volkswagen* “Clean
3 Diesel” settlements. *See In re: Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod.*
4 *Liab. Litig.*, No. MDL 2672 CRB (JSC), 2016 WL 6248426, at *16 (N.D. Cal. Oct. 25, 2016),
5 *aff’d*, 895 F.3d 597 (9th Cir. 2018). Regardless, even at face value, this relatively small number
6 of opt-outs favors final approval. *See, e.g., id.* (collecting cases); *Chun-Hoon v. McKee Foods*
7 *Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (holding that the absence of negative reaction
8 strongly supports settlement and approving a settlement with an opt-out rate of 4.86%); Klonoff
9 Decl. ¶ 49.

10 Even more remarkably, only *three* class members voiced any opposition to the Class
11 Settlement. By way of comparison, the 2.0-liter *Volkswagen* settlement received 462 objections.
12 *In re: Volkswagen*, 2016 WL 6248426, at *16. Under any circumstances, this extremely low
13 objection rate would strongly favor final approval, and it does so with particular force here given
14 the well-publicized nature of this litigation and the significant sums at stake. *See, e.g., Churchill*
15 *Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004); *Cruz v. Sky Chefs, Inc.*, No. C-12-
16 02705 DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (“A court may appropriately
17 infer that a class action settlement is fair, adequate, and reasonable when few class members
18 object to it.”); *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal.
19 2004) (“It is established that the absence of a large number of objections to a proposed class
20 action settlement raises a strong presumption that the terms of a proposed class action settlement
21 are favorable to the class members.”); *see also* Klonoff Decl. ¶¶ 45-48.

22 Equally as important, and as detailed further below, none of the three objections
23 undermine the Settlement’s fairness or otherwise counsel against final approval.

24 **B. The Settlement fairly compensates class members.**

25 No matter the strengths of a settlement, “[s]ome class members will inevitably wish they
26 could recover more.” *In re: Volkswagen*, 2016 WL 6248426, at *18. Objectors Andrew Cindric
27 Jr. and Laura Tuschhoff fall into this camp. *See* Dkt. Nos. 547, 550.

1 Cindric, for example, believes that current, original owners should receive the full MSRP
2 value of the EcoDiesel premium (in his case, \$4,500), and not the \$3,075 to which they are
3 entitled under the Settlement. *See* Dkt. No. 550. This objection misunderstands the nature of the
4 alleged overpayment damages. *See* Klonoff Decl. ¶¶ 58-59. To begin, as economist Ted
5 Stockton noted, “consumers generally received some discount off of the list prices,” and a 10%
6 discount of the MSRP cost for the EcoDiesel option is “conventional” and “conservative” based
7 on the transaction-level data in this case. Dkt. No. 491-3 ¶ 29. In Cindric’s case, therefore, the
8 starting place for the alleged overpayment is \$4,050, not \$4,500. *Id.* But even more importantly,
9 the value of the EcoDiesel premium is experienced—and must be amortized—over the entire
10 lifespan of the vehicle, which Stockton pegged conservatively at eight years based on industry
11 sources. *Id.* ¶ 33. Critically, here, the Settlement provides a repair that delivers to Class
12 Members the vehicles they thought they were purchasing originally. Thus, Class Members’
13 overpayment damages correlate not to the entire EcoDiesel premium, but to the portion of it that
14 was unrealized before the fix was available. Cidric, who was one of the earliest purchasers of a
15 Class Vehicle, will have owned his vehicle for approximately 5.5 years by the time the fix
16 becomes available (assuming final approval is granted). At most, then, his *full* overpayment
17 damages are \$2,784.38 ($\$4,050 \times (5.5 \text{ years owned} / 8 \text{ year lifespan})$), which is significantly less
18 than what he stands to receive under Settlement. *See id.* ¶¶ 35-37. For this reason, Stockton
19 opined that, even setting aside all the other Settlement benefits, the cash compensation alone
20 “exceed[s] the economic harm suffered” in “nearly all cases.” *Id.* ¶ 46; *see also* Klonoff Decl.
21 ¶ 59.

22 Tuschhoff, the other objector addressing Settlement compensation, believes that the \$990
23 compensation for former owners is insufficient, based primarily on her frustration with
24 maintenance issues she experienced with the exhaust gas recirculation system in her Class
25 Vehicle. *See* Dkt. No. 547. These issues, she claims, ultimately convinced her to trade in her
26 vehicle for an “[un]fair price” at some point after July 2017 (after this litigation had been
27 consolidated and leadership appointed). *Id.* Now, knowing that the Settlement provides an
28

1 emissions repair and extended warranty, she wishes she had not sold her vehicle and would like
2 more compensation. This objection is off base for a number of reasons.

3 First, the Settlement compensation is appropriately designed to compensate Class
4 Members for overpayment damages incurred in purchasing or leasing a Class Vehicle with an
5 undisclosed emissions cheating system. Routine maintenance and repairs that did not arise from
6 Defendants' undisclosed emissions manipulation are part and parcel of vehicle ownership
7 generally and unrelated to the issues in this case. *See In re: Volkswagen*, 2016 WL 6248426, at
8 *20-21; Klonoff Decl. ¶ 54. It is worth noting, moreover, that all of Tuschhoff's repairs appear to
9 have been covered under warranty, and as she notes, had she kept the vehicle, she would have
10 been entitled to a robust extended warranty covering all emissions-related parts and systems (that
11 warranty will be available for whoever currently owns the vehicle). Her regrets about her
12 personal decision not to await the resolution of this litigation do not undermine the fairness of the
13 Settlement or its compensation structure.

14 Second, Tuschhoff provides no information for the Court to assess whether she did in fact
15 receive an unfair price for her vehicle. Even if she had, Plaintiffs did not pursue a "diminished
16 value" damages theory because there was no evidence that the emissions cheating scheme at issue
17 in this litigation depressed the Vehicles' market value (and no other member of the Class has
18 claimed otherwise). *See Klonoff Decl. ¶ 54*. In any case, if Tuschhoff believed that the Class
19 Settlement did not account for her own individualized experiences with her Class Vehicle, she
20 could have opted out of the Settlement and pursued her claim individually. *See Klonoff Decl.*
21 ¶ 56. Instead, and more constructively, there is every reason to believe that all three objectors
22 will participate, claim, and receive their owner and former owner settlement benefits.

23 In sum, no submission has demonstrated that the Settlement provides anything less than
24 the full economic harm Class Members suffered as a result of their overpayment for vehicles with
25 undisclosed emissions cheating software. But even if they had, "[i]t is well-settled law that a cash
26 settlement amounting to only a fraction of the potential recovery does not per se render the
27 settlement inadequate or unfair." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.
28 2000) (citation omitted); *see also, e.g., Nat'l Rural Telecomms.*, 221 F.R.D. at 527 ("[I]t is well-

1 settled law that a proposed settlement may be acceptable even though it amounts to only a
 2 fraction of the potential recovery that might be available to the class members at trial.”); *Van Lith*
 3 *v. iHeartMedia + Entm’t, Inc.*, No. 1:16-CV-00066-SKO, 2017 WL 4340337, at *12 (E.D. Cal.
 4 Sept. 29, 2017); *Villanueva v. Morpho Detection, Inc.*, No. 13-cv-05390-HSG, 2016 WL 1070523
 5 at *4 (N.D. Cal. March 18, 2016); *Ebarle v. Lifelock, Inc.*, No. 15-CV-00258-HSG, 2016 WL
 6 5076203, at *5 (N.D. Cal. Sept. 20, 2016). The compensation offered here is substantial and—in
 7 combination with the other benefits secured by the Settlement—reflects a fair, reasonable, and
 8 adequate compromise of heavily-contested claims.

9 **C. Extensive, years-long testing confirms that the AEM will not affect the**
 10 **vehicles’ “key vehicle attributes” or “average fuel economy.”**

11 The third objector, Gary Henning, is concerned that the AEM will “substantially affect[]”
 12 the Vehicles’ “MPG and performance” based on his perception that the modified vehicles in the
 13 2.0-liter *Volkswagen* settlement experienced similar issues. *See* Dkt. No. 551. This concern is
 14 misguided. For starters, the comparison to *Volkswagen* is, in this context, apples-to-oranges. *See*
 15 Klonoff Decl. ¶ 57. The repair in *Volkswagen* involved significant hardware and software
 16 modifications, whereas here, the AEM requires only a software reflash. *Compare* Notice of
 17 Lodging of Partial Settlement Decree, *In Re: Volkswagen “Clean Diesel” Marketing, Sales*
 18 *Practices, and Products Liability Litigation*, 3:15-md-02672, Dkt. No. 1605-1, Appendix B at 15-
 19 23 (explaining certain necessary hardware modifications as part of the vehicle fix in that case)
 20 *with* Dkt. No. 542 at 3 (explaining the fix this in this case is a “software fix for the Subject
 21 Vehicles”). Moreover, in this case, the EPA and CARB—which hold the regulatory authority
 22 governing the AEM—have already performed extensive, years-long testing on the fix and have
 23 concluded that the AEM will not change the Vehicles’ “reliability, durability, vehicle
 24 performance,” “average fuel economy,” or “other driving characteristics.” Dkt. No. 545-1,
 25 Appendix D. The extensive regulatory testing, and the Plaintiffs’ experts’ involvement in vetting
 26 and evaluating the results, provides strong assurance of the effectiveness of the AEM. And even
 27 if the AEM were to cause minor variations in certain characteristics in a particular vehicle, such
 28 variations are more than covered by the generous compensation offered to all Class Members

1 who still own their vehicles. Finally, if for some reason the modification causes an irreparable
2 failure in the vehicle, the AEM Extended Warranty includes a buyback protection. Dkt. No. 508
3 ¶ 4.3.2(d).

4 **II. The Uncontested Fee, Costs, and Service Award Requests are Fair, Reasonable, and**
5 **Appropriate.**

6 As with approving a class action settlement, the Court's role in evaluating Class Counsel's
7 fee request is to determine whether the amount requested is “fundamentally fair, adequate, and
8 reasonable.” *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P.
9 23(e)). Class Counsel's requested fees and costs—all of which will be paid *in addition to* the
10 benefits available to the Class—easily meet this standard for all the reasons set forth in Plaintiffs'
11 Motion. Even under the most conservative valuations of the Settlement, Class Counsel's
12 requested fee percentage remains well below the 25% benchmark for attorney's fees in common
13 fund cases in this Circuit, as well as the mean and median percentages in similar cases across the
14 country. *See, e.g.*, Dkt. No. 538-2 ¶¶ 23-26 (discussing several empirical studies calculating
15 mean and median percentages); *see also* Klonoff Decl. ¶ 31. The multiplier resulting from a
16 lodestar cross-check is also significantly below the average for comparable cases. *See* Dkt. No.
17 538-2 ¶¶ 34-35.

18 This is more than justified given the intensity of the litigation, the quality of the work, and
19 most importantly, the results achieved. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,
20 1046 (N.D. Cal. 2008) (the relief obtained for the class is the single most important factor in
21 evaluating the reasonableness of a requested fee). Again, the Class agrees, and the fact that not a
22 single class member objected to Class Counsel's request provides “strong, positive” evidence
23 “supporting class counsel's requested fees.” *See In re Volkswagen “Clean Diesel” Mktg., Sales*
24 *Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 2178787, at *3 (N.D. Cal.
25 May 17, 2017). The modest service awards request for the Settlement Class Representatives—to
26 be paid by Defendants in addition to the Class compensation—is likewise reasonable and
27 unopposed.
28

1 **III. The Settlement Class Should Be Certified.**

2 For all the reasons set forth in the Preliminary Rule 23(e) Order and Plaintiffs’ Motion,
3 the proposed Settlement Class satisfies all requirements of Rule 23, and should be certified. Dkt.
4 Nos. 527 ¶ 6; 538 at 7-11. No objector argues otherwise.

5 **CONCLUSION**

6 Settlement Class Representatives and Settlement Class Counsel respectfully request that
7 the Court certify the Settlement Class and confirm the appointment of Settlement Class Counsel
8 and the Settlement Class Representatives; grant final approval of the Settlement; award \$59
9 million in attorneys’ fees and \$7 million in costs to be allocated by Lead Counsel among the PSC
10 firms and additional counsel performing work under Pretrial Order Nos. 3 and 4; and approve
11 service awards of \$5,000 to each Settlement Class Representative.

12 Dated: April 25, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on April 25, 2019, service of this document was accomplished pursuant to the Court’s electronic filing procedures by filing this document through the ECF system.

/s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CHRYSLER-DODGE-JEEP
ECODIESEL® MARKETING, SALES
PRACTICES, AND PRODUCTS LIABILITY
LITIGATION

Case No. 3:17-md-02777-EMC

**DECLARATION OF PROFESSOR
ROBERT H. KLONOFF RELATING
TO CLASS ACTION SETTLEMENT
FAIRNESS**

The Honorable Edward M. Chen

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	QUALIFICATIONS	1
III.	BASIS FOR TESTIMONY	4
IV.	BACKGROUND	4
V.	OPINIONS ON FAIRNESS	6
VI.	CONCLUSION	22
	APPENDIX A	24
	APPENDIX B	39

ROBERT H. KLONOFF declares as follows:

I. INTRODUCTION

1. I am the Jordan D. Schnitzer Professor of Law at Lewis & Clark Law School. I have been asked by plaintiffs' counsel to opine on the fairness of the class action settlement in the instant case. I recognize, of course, that my role is limited and that the Court will make the ultimate decision.

II. QUALIFICATIONS

2. I have served as an expert in numerous class action settlements. I am currently the Jordan D. Schnitzer Professor of Law at Lewis & Clark Law School and have held that position since June 1, 2014. From 2007 to 2014, I served as the Dean of Lewis & Clark Law School. Prior to assuming the deanship at Lewis & Clark, I served for four years as the Douglas Stripp/Missouri Professor of Law at the University of Missouri-Kansas City School of Law (UMKC). Before joining the academy, I served for more than a dozen years as a partner in the Washington, D.C. office of Jones Day. While working at Jones Day, I also served as an adjunct professor at Georgetown University Law Center. Before joining Jones Day, I served as an Assistant United States Attorney and as an Assistant to the Solicitor General of the United States. Immediately after graduating from law school, I clerked for Chief Judge John R. Brown of the U.S. Court of Appeals for the Fifth Circuit. I received my law degree from Yale Law School.

3. In my various academic positions, I have taught (among other subjects) complex litigation, class actions, civil procedure, federal courts, and federal appellate procedure.

4. In September 2011, Chief Justice John G. Roberts, Jr., appointed me to serve a three-year term as the academic voting member of the Federal Civil Rules Advisory Committee. The Advisory Committee recommends amendments to the Federal Rules of Civil Procedure. Only one civil procedure professor in the country is selected by the Chief Justice to serve in that role during any three-year term. In May 2014, the Chief Justice reappointed me to serve a second three-year term on the Advisory Committee. I completed that service in May 2017. (The maximum period of service on the Advisory Committee is six years.) I also served on the Advisory Committee's Class Action Subcommittee, which took the lead on amendments to the

federal class action rule, Federal Rule of Civil Procedure 23. Those amendments became effective on December 1, 2018.

5. I served for five years as an Associate Reporter for the American Law Institute's class action (and other multi-party litigation) project, *Principles of the Law of Aggregate Litigation*. I was the principal author of Chapter 3, which addresses class action settlements and attorneys' fees. The ALI project was unanimously approved by the ALI's membership in May 2009, and was published in May 2010. It has been frequently cited by courts and commentators.

6. I have close to 40 years of experience as a practicing lawyer. I have had eight oral arguments before the U.S. Supreme Court, and numerous oral arguments in other federal and state appellate courts, including oral arguments in eight federal circuits. As an attorney at Jones Day, I personally handled more than 100 class action cases.

7. I have lectured on class actions and other litigation topics throughout the United States and in more than a dozen foreign countries.¹

8. I co-authored the first casebook on class actions, and I am now the sole author of that book: *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 4th ed. 2017). I am also the sole author of the Nutshell on class actions: Robert H. Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 5th ed. 2017). In addition, I have authored or co-authored numerous scholarly articles on class actions. I also serve on the advisory board of Bloomberg's Class Action Litigation Report.

9. In October 2014, I was elected to membership in the International Association of Procedural Law (IAPL), an organization of preeminent civil procedure scholars from around the world.

10. I have testified as an expert in numerous class action cases. *See* Appendix B.

11. Courts reviewing class settlements have relied extensively on my testimony. For example, in the *Volkswagen Clean Diesel* litigation, Judge Charles Breyer repeatedly cited and quoted my two Declarations in his three opinions—relating to the 2.0-liter VW class settlement,

¹ Examples of those courses and speaking engagements are contained in my attached curriculum vitae (Appendix A).

the 3.0-liter VW class settlement, and the class settlement with VW's co-defendant, Bosch.² In the *Deepwater Horizon* case, Judge Carl Barbier cited and quoted my Declarations (relating to a proposed settlement with British Petroleum) more than 60 times in his two opinions analyzing class certification and fairness.³ In a later order in that MDL, Judge Barbier repeatedly cited my Declaration (which I filed in connection with a class settlement involving Transocean and Halliburton).⁴ In the *AT&T Mobility* litigation, Judge Amy St. Eve (now a Judge on the Seventh Circuit) cited and quoted my Declarations more than 20 times in approving a class settlement and awarding attorneys' fees.⁵ In the *Wells Fargo Unauthorized Accounts* litigation, Judge Vince Chhabria cited my Declaration in ordering that objectors to the class settlement post an appeal bond.⁶ And in the *Syngenta GMO Corn* litigation, Judge John Lungstrum cited my two Declarations (on attorneys' fees issues) numerous times in his two opinions.⁷

12. I am being compensated for my work at my standard 2019 rate of \$835 per hour. Payment is not contingent on the substance of my opinions.

13. Additional information regarding my qualifications and experience—including a list of my publications—can be found in my curriculum vitae, attached hereto as Appendix A.

² See *In re Volkswagen "Clean Diesel" Marketing, Sales Practices & Prods Liab. Litig.*, No. 3:15-md-02672-CRB, 2016 WL 6248426, at *18, *19, *20 (N.D. Cal. Oct. 25, 2016), *aff'd*, 895 F.3d 597 (9th Cir. 2018); Order Granting Final Approval of the Consumer and Reseller Dealership 3.0-Liter Class Action Settlement, Case No. 3:15-md-02672-CRB (Dkt. No. 3229) (filed 05/17/17), at 34, 35, 38; Order Granting Final Approval of the Bosch Class Action Settlement, Case No. 3:15-md-02672-CRB (Dkt. No. 3230) (filed 05/17/17), at 18.

³ See *In re Deepwater Horizon*, 910 F. Supp. 2d 891, 903, 914–16, 918–21, 923–24, 926, 929–33, 938, 941, 947, 953, 955, 960, 962 (E.D. La. 2012) (approving economic and property damages settlement), *aff'd*, 739 F.3d 790 (5th Cir. 2014); *In re Deepwater Horizon*, 295 F.R.D. 112, 133–34, 136, 138–41, 144–45, 147 (E.D. La. 2013) (approving medical benefits settlement).

⁴ See Order and Reasons, Case No. 2:10-md-02179-CJB-JCW (Dkt. No. 22252) (E.D. La. 02/15/17); available at <http://www.laed.uscourts.gov/sites/default/files/OilSpill/2152017OrderAndReasons%28HESI%26TOsettlement%29.pdf> (last visited Jan. 5, 2019).

⁵ See *In re AT&T Mobility Wireless Data Svcs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 956–59, 961, 963–65 (N.D. Ill. 2011) (approving class settlement); *In re AT&T Mobility Wireless Data Svcs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1032 n.3, 1034–35, 1037, 1040, 1042 (N.D. Ill. 2011) (awarding attorneys' fees).

⁶ See *Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC (Dkt. No. 271), at 14 (N.D. Cal. June 14, 2018), available at <https://www.courthousenews.com/wp-content/uploads/2018/06/Wells-Fargo-settlement.pdf> (last visited Jan. 5, 2019).

⁷ See *In re Syngenta AG MIR 162 Corn Litig.*, No. 2:14-md-02591-JWL-JPO, slip op. at 26, 32 & n.11, 34 n.13 (D. Kan. Dec. 12, 2018) (Dkt. No. 3849) (granting final approval of class settlement and awarding total attorneys' fees); *In re Syngenta AG MIR 162 Corn Litig.*, No. 2:14-md-02591-JWL-JPO, slip op. at 9–11 & n.6 (D. Kan. Dec. 31, 2018) (Dkt. No. 3882) (allocating attorneys' fees among common benefit counsel and individually retained private attorneys).

III. BASIS FOR TESTIMONY

14. I have reviewed the briefing and related papers in connection with the preliminary and final settlement approval. I have also reviewed the three class member objections to the settlement.

IV. BACKGROUND⁸

15. The Court is well aware of the background of this litigation and the terms of the settlement. In brief, plaintiffs allege that about 100,000 2014–2016 EcoDiesel® Jeep Grand Cherokees and Ram 1500 trucks had a software design that enabled the vehicles to cheat on emission tests, rendering the vehicles' actual emission levels excessive during ordinary, real world driving. Because of the defect, class members did not get the full benefit of the EcoDiesel option they paid for. It is estimated that about 100,000 vehicles suffer from this defect. Although the precise number of class members is not known (because some cars have both a current and a former owner or lessee), it is reasonable to assume a class size of at least 100,000.

16. Under the settlement, class members will be entitled to several categories of benefits from defendants.⁹

17. First, current owners and current lessees of the vehicles at issue will be entitled to have their vehicles (approximately 100,000 vehicles) repaired with an Approved Emissions Modification ("AEM") to ensure compliance with government emissions standards to which they were originally certified.

18. Second, all vehicles that receive the AEM will also be entitled to an extended warranty lasting for the greater of (1) 10 years from the date of initial sale or 120,000 actual miles on the vehicle's odometer, whichever occurs first; or (2) 4 years or 48,000 miles from the date and mileage of installing the AEM, whichever comes first. The extended warranty covers all parts and systems relating to the AEM and is estimated by plaintiffs' expert, Kirk Kleckner, to be worth about \$239.5 million on a classwide basis.

⁸ My statement is based on the various filings in support of preliminary and final settlement approval.

⁹ Defendants include Fiat Chrysler Automobiles (FCA) and Bosch (Robert Bosch LLC and Robert Bosch GmbH).

19. Third, and most importantly, defendants will pay as much as \$307.5 million to the class to compensate for their economic loss. Specifically, eligible owners of such vehicles will be paid as follows: An eligible owner who acquired his or her vehicle on or before January 12, 2017 (the date the EPA and CARB issued notices of violation to defendants for the emissions at issue) and still owns the vehicle at the time of the AEM will receive \$3,075. An eligible owner who acquired his or her vehicle *after* January 12, 2017, and still owns the vehicle at the time of the AEM, will receive \$3,075 if no eligible former owner or former lessee submits a claim for the same vehicle, or \$2,460 if a former owner or lessee makes a claim on the same vehicle. Eligible former owners who owned their vehicle on January 12, 2017, and sold it on or before January 10, 2019 (the date of the settlement announcement) will receive \$990. Eligible lessees who either lease an eligible vehicle at the time of the AEM or purchased an eligible vehicle that was leased on January 10, 2019, and own the vehicle at the time of the AEM will receive \$990. Finally, eligible former lessees who leased an eligible vehicle on January 12, 2017, and surrendered the vehicle before the vehicle received the AEM will also be paid \$990. Plaintiffs' expert, Edward Stockton, opined that this cash compensation alone (without even considering the value of the extended warranty or the emissions repair to the class) exceeds the economic harm suffered by virtually all class members. *See* Dkt. No. 491-3, Declaration of Edward M. Stockton in Support of Plaintiffs' Motion for Preliminary Approval ("Stockton Decl.") ¶ 46. Importantly, class members will not pay any portion of their award for attorneys' fees or costs. Such fees and costs will be paid separately by defendants and not out of the class members' recoveries.

20. The claims process is a straightforward one. To participate, class members need only provide their name, contact information, vehicle information, and very basic documentation. They may choose to submit a claim either online or in hard copy.

21. Separate from the settlement benefits to class members, class counsel seeks attorneys' fees of between 10 and 18 percent of the settlement amount, depending on how the benefits are calculated. *See* Dkt. No. 538-2, Declaration of Brian Fitzpatrick in Support of Plaintiffs' Motion for Final Approval ("Fitzpatrick Decl.") ¶¶ 9, 17–20. Even at the high end (18 percent), that figure is well below the 25 percent benchmark established by the Ninth Circuit.

22. As explained by plaintiffs' notice expert, Steven Weisbrot, the settlement utilized a robust program to notify the class, including individual U.S. Postal Service direct mailings of

short form notices (directing readers to the settlement website, which contains a more detailed notice); individual email notice; and an extensive paid media campaign involving national newspapers and magazines, social media, a digital banner advertisement, a toll-free phone number, and a settlement website. Dkt. No. 538-3, Declaration of Steven Weisbrot in Support of Motion for Final Approval (“Weisbrot Decl.”) ¶¶ 5–21. *See also* concurrently-filed Supplemental Declaration of Steven Weisbrot in Support of Motion for Final Approval (“Supp. Weisbrot Decl.”) ¶¶ 5–23 (describing actual notice, including, *inter alia*, delivery of more than 115,000 notices and hundreds of thousands of digital and social media impressions).

23. This Court granted preliminary approval on February 11, 2019. Opt-outs and objections were due on April 15, 2019. Approximately 3,400 class members have opted out. Supp. Weisbrot Decl. ¶ 28.¹⁰ Only three class members—Laura Tuschhoff, Gary Henning, and Andrew Cindric Jr.—have filed objections.

V. OPINIONS ON FAIRNESS

24. In this section I offer my views on the fairness of the settlement.

A. The Recently Amended Rule 23(e)(2) Factors Support the Settlement

25. Under amended Rule 23(e)(2) (effective December 1, 2018), in considering whether a settlement is fair, reasonable, and adequate, the Court must consider whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm’s length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

¹⁰ In fact, some of the 3,400 opt-outs may not actually be class members. The settlement administrator is in the process of validating the opt-outs received, including some opt-outs received from individuals that do not appear to satisfy the temporal confines of the class definition. *See* Supp. Weisbrot Decl. ¶ 29.

(iii) the terms of any proposed award of attorney’s fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

26. In my opinion, the settlement is eminently fair based on these criteria.

1. Adequacy of representation (factor A)

27. The class was zealously represented. Class counsel were selected by the Court in a competitive process and are leading members of the plaintiffs’ bar. They litigated vigorously against defendants, who hotly contested both the merits and class certification. Likewise, the 60 class representatives have been actively involved in the litigation—producing documents, sitting for depositions, and consulting with class counsel at various stages. The class representatives were specifically consulted about the terms of the settlement and offered their approval. Each has committed to remain active and involved throughout the administration of the settlement.

2. Arms-length negotiations (factor B)

28. Settlement negotiations began in July 2017 after the Court appointed lead counsel and designated the settlement mediator (Ken Feinberg). Negotiations took place thereafter for about 18 months, and the settlement mediator communicated regularly with the parties, the U.S. Department of Justice, the U.S. Environmental Protection Agency, and the California Air Resources Board. Dozens of meetings and in person conferences were held, and there were also numerous communications via email and telephone. Settlement Master Feinberg testified that these negotiations were vigorous and conducted at arms’ length. *See* Dkt. No. 498, Declaration of Kenneth R. Feinberg In Support of Motion for Preliminary Approval (“Feinberg Decl.”) ¶¶ 13–14.

3. Adequacy of relief provided to the class (factor C)

29. **Benefits.** The benefits of this settlement are substantial. First, class members will receive sizable cash payments, and in virtually all cases those payments will be in excess of the

class members' economic losses. As explained by plaintiffs' expert, Edward Stockton, payments prescribed under the settlement "would exceed economic harm suffered . . . in nearly all cases" Stockton Decl. ¶ 46. Second, defendants will repair the vehicles so that the emissions system will perform as promised. Finally, class members will receive valuable extended warranties relating to the emissions repair. In short, the settlement is designed to make class members whole (and, as noted, virtually all class members will do even better than that). Added to these benefits is the fact that attorneys' fees and costs, as well as the costs of notice and settlement administration, will be paid separately by defendants and will not be taken out of class members' recoveries. Moreover, the claims process is simple and straightforward, ensuring that class members can easily take advantage of the settlement's benefits.

30. **Risks, Costs, and Delay.** Although class counsel believed that they had strong claims, litigation always entails risks. In addition to attacks on the claims, defendants raised significant jurisdiction, preemption, and damages arguments, and they also mounted a strong attack against class certification. This Court received voluminous briefs on these issues. *See* Dkt. No. 538-1, Declaration of Elizabeth J. Cabraser in Support of Motion for Final Approval ("Cabraser Decl.") ¶¶ 8–9. Moreover, had a settlement not occurred, the case could have gone on for years, resulting in enormous expense and delay. In short, the risks, costs, and potential delays in this case were substantial.

31. **Attorneys' Fees.** The attorneys' fees sought (between 10 and 18 percent of the classwide recovery) are very reasonable—well below the 25 percent benchmark established by the Ninth Circuit. As Professor Brian Fitzpatrick explains, those fees are also justified by a lodestar cross check. Based on the hours performed using reasonable hourly rates, the lodestar multiplier is a very modest 1.2, well below the mean and median multipliers in similar cases. Fitzpatrick Decl. ¶¶ 34–35. *See also, e.g., In re Nat'l Collegiate Athletic Ass'n Athletic Grant-In-Aid Cap Antitrust Litig.*, No. 18-15054 (9th Cir. Apr. 17, 2019) (unpublished), at 4 (slip op.) (upholding fee award of 20 percent and a 3.66 multiplier). And the attorneys' fees will be paid separately by defendants and thus will not be deducted from the class recovery.

32. **Side agreements.** I know of no side agreements (*see* Rule 23(e)(3)), let alone any that would cast doubt on the fairness of the settlement.

4. Equitable treatment of class members (factor D)

33. The settlement carefully allocates the cash awards based on whether a class member is a current owner, former owner, current lessee, or former lessee. All members of a particular group are treated the same, and the rationale for creating four groups is to provide nuanced damages based on the class member's particular situation. For example, it is undoubtedly the case that an owner of a defective vehicle has a greater injury than a lessee who is able to turn in the vehicle at the end of the lease period. Moreover, it is my understanding that the higher payments for current owners (a significant majority of the class)—which can only be obtained after getting the AEM offered by defendants—were designed in part to ensure that the owners make the effort to bring in the vehicles for the AEM, thereby fixing the pollution-causing defect.

B. The Ninth Circuit's *Churchill* Factors, Taken as a Whole, Support the Settlement

34. The recently adopted settlement criteria of Rule 23(e)(2) do not displace the various criteria adopted in the federal appellate courts. In the Ninth Circuit, courts evaluate the reasonableness of a proposed class settlement using the seven factors set forth in *Churchill Village, L.L.C. v. General Electric*.¹¹ These are:

(1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.¹²

35. Many of these factors overlap with the new Rule 23(e)(2) factors. In my opinion, the *Churchill* factors also strongly support the settlement.

1. Strength of the Plaintiffs' Case

36. See ¶ 30.

¹¹ 361 F.3d 566, 575 (9th Cir. 2004). As noted in ¶ 64, after addressing the *Churchill* factors, the Court must also consider the various factors set forth in *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 946 (9th Cir. 2011). I address those factors in ¶¶ 65–70.

¹² *Id.* at 575.

2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

37. *See* ¶ 30.

3. Risk of Maintaining Class Action Status Throughout Trial

38. Class certification was heavily contested and has not been resolved. The parties' submissions on class certification encompassed thousands of pages of briefs, exhibits, and expert reports on both sides, and defendants urged the Court to set aside several days for the class certification hearing. Cabraser Decl. ¶ 10. It was anything but certain that this Court would certify a litigation class, let alone maintain such a class throughout the trial. The Court directly acknowledged this uncertainty. Dkt. No. 526 at 13 (stating, in order preliminarily approving settlement, that class certification was "not guaranteed").

4. Amount Offered in Settlement

39. *See* ¶ 29.

5. Extent of Discovery and Stage of Proceedings

40. Substantial discovery had occurred by the time a settlement was reached, including almost 100 depositions, numerous document requests, interrogatories, requests for admission, and the production of more than 5 million pages of documents, many of which were highly technical. *See* Cabraser Decl. ¶¶ 5–7.

6. Experience and Views of Counsel

41. Class counsel strongly support the settlement. These attorneys were selected by this Court, in a competitive process, to lead the MDL. They are among the most prominent and well-respected plaintiff lawyers in the country.

7. Presence of Government Participants

42. Several federal and state agencies were involved in this litigation, including the U.S. Department of Justice, the U.S. Environmental Protection Agency, the California Attorney General, and the California Air Resources Board. These government entities negotiated separate government settlements and were also directly kept apprised of developments in the MDL. It is my understanding that these government entities all support the private class settlement. Moreover, a consortium of 49 state attorneys general also support the settlement.

8. Reaction of Class Members

43. In discussing the reaction of class members, I focus first on the significance of the number of objections and opt outs. I then address the specific objections lodged by class members.

(a). Number of Objections and Opt Outs

44. **Objections.** The deadline for objecting or opting out of the class was April 15, 2019. Class counsel have advised me that, despite a robust class notice program, only 3 class members—out of a class of at least 100,000—have filed objections. By contrast, even though the settlement has not yet been finally approved by this Court and the claims portal is not open, more than 33,000 class members have registered an interest on the settlement website. Supp. Weisbrot Decl. ¶ 26.

45. Courts in the Ninth Circuit and elsewhere have consistently confirmed that “the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of [the] proposed class settlement are favorable to the class members.”¹³

46. Using the estimate for the size of the class as 100,000, the number of objections (3) represents a very low percentage of the class (approximately 0.003 percent). These figures represent the lowest percentage of objections that I have seen as an expert or practitioner. To be sure, in some instances, low numbers such as these are not especially significant. For instance, in a case in which a settlement is not highly publicized, low numbers of objections may simply reflect class members’ lack of awareness. Alternatively, the amount in controversy for an individual claimant may be so inconsequential that class members do not deem it worth their time to object. But such circumstances do not exist here. The Fiat Chrysler emissions litigation has been the subject of numerous news articles, blog entries, television and radio reports,

¹³ *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). *Accord, e.g., In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir. 1995) (“In an effort to measure the class’s own reaction to the settlement’s terms directly, courts look to the number and vociferousness of the objectors.”); *Cruz v. Sky Chefs, Inc.*, No. C-12-02705 DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (“A court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it.”); *Barcia v. Contain-A-Way, Inc.*, No. 07-cv-938-IEG-JMA, 2009 WL 587844, at *4 (S.D. Cal. Mar. 6, 2009) (lack of objectors “strongly supports the fairness, reasonableness, and adequacy of the settlement”).

government reports, social media postings, and targeted, individual class notices.¹⁴ Moreover, although there is not enough at stake to warrant individual lawsuits, there are significant payouts under the settlement (along with a repair of the defect and an extended warranty) to compensate class members.

47. Several recent high-profile cases have relied heavily on the small number of objections in approving class settlements. For example, in the *Volkswagen Clean Diesel* litigation, in granting final approval of the 2.0-liter settlement, the court emphasized that the objection rate of 0.09 percent strongly favored final approval.¹⁵ Similarly, in granting final approval of the 3.0-liter settlement, the court noted that only 0.036 percent of class members had objected to the settlement, emphasizing that this low objection rate strongly indicated that the settlement was fair, reasonable, and adequate.¹⁶ And in granting final approval of the franchise dealer settlement, the court again emphasized the low objection rate of approximately 1 percent.¹⁷ Similarly, in the *NFL Concussion* case, the court emphasized—in approving a class settlement—that despite the “[s]ubstantial and sustained media coverage” of the settlement and successful notice to class members, “only approximately 1 [percent] of class members filed objections”¹⁸ Numerous other courts have emphasized the low number of objections in

¹⁴ See, e.g., Hiroko Tabuchi, *E.P.A. Accuses Fiat Chrysler of Secretly Violating Emissions Standards*, N.Y. Times, Jan. 12, 2017, <https://www.nytimes.com/2017/01/12/business/epa-emissions-cheating-diesel-fiat-chrysler-jeep-dodge.html>; Jack Ewing, *Fiat Chrysler to Modify 100,000 Vehicles After Accusations of Emissions Cheating*, N.Y. Times, May 19, 2017, <https://www.nytimes.com/2017/05/19/business/energy-environment/fiat-chrysler-diesel-emissions.html>; Neal E. Boudette, *U.S. Sues Fiat Chrysler, Accusing It of Using Software to Pass Emissions Tests*, N.Y. Times, May 23, 2017, <https://www.nytimes.com/2017/05/23/business/fiat-chrysler-diesel-emissions-lawsuit.html>; David Shepardson, *Judge orders new talks in Fiat Chrysler diesel emissions case*, Reuters, Nov. 28, 2018, <https://www.reuters.com/article/us-fiatchrysler-emissions/judge-orders-new-talks-in-fiat-chrysler-diesel-emissions-case-idUSKCN1NX2VV>; Eric D. Lawrence, *Diesel emissions accusations cost Fiat Chrysler \$800M, but Jeep and Ram deliver profits*, USA Today, Oct. 30, 2018, <https://www.usatoday.com/story/money/cars/2018/10/30/fiat-chrysler-earnings/1818021002/> (all articles last visited Apr. 20, 2019).

¹⁵ *In re Volkswagen “Clean Diesel” Mktg., Sales Practices & Prods. Liab. Litig.*, No. 3:15-md-02672-CRB, 2016 WL 6248426, at *16 (N.D. Cal. Oct. 25, 2016).

¹⁶ *In re Volkswagen “Clean Diesel” Mktg., Sales Practices & Prods. Liab. Litig.*, No. 3:15-md-02672-CRB, 2017 WL 2212873, at *17 (N.D. Cal. May 17, 2017).

¹⁷ *In re Volkswagen “Clean Diesel” Mktg., Sales Practices & Prods. Liab. Litig.*, 229 F. Supp. 3d 1052, 1067–68 (N.D. Cal. 2017) (fact that only eight of 651 class members objected weighed in favor of settlement approval).

¹⁸ *In re Nat’l Football League Players’ Concussion Injury Litig.*, 307 F.R.D. 351, 389 (E.D. Pa. 2015), *aff’d*, 821 F.3d 410 (3d Cir. 2016).

approving class settlements.¹⁹ The percentage here is extremely low under any conceivable benchmark.

48. The low number of objections is especially notable given the high-profile nature of this case and the widely publicized misconduct alleged by plaintiffs. In such a case, it is reasonable to expect that class members will be especially critical and vigilant if they do not like the settlement. That is particularly so where, as here, there has been a robust program to notify the class of the claims and the settlement. *See* ¶ 22. In my mind, the paucity of objections underscores that the settlement represents a commendable effort to recoup all of the class members’ actual economic injuries.

49. **Opt Outs.** As with objections, courts have noted that a low opt-out rate provides “strong circumstantial evidence supporting the fairness of [a] settlement.”²⁰ Here, approximately 3,400 class members have opted out. Supp. Weisbrot Decl. ¶ 28.²¹ Although that number is materially larger than the number of objectors, it still represents a small percentage of the class (around 3 percent). Courts have indicated that opt outs in the range of three percent support the conclusion that the settlement is fair, reasonable, and adequate.²² Moreover, the vast majority of these opt-

¹⁹ *See, e.g., Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (54 objections out of 376,301 class members—0.014 percent—supported fairness of settlement); *Churchill Village*, 361 F.3d at 577 (noting objection rate of 0.05 percent in upholding class settlement); *In re Prudential Ins. Co. Am. Sales Practices Litig.*, 148 F.3d 283, 318 (3d Cir. 1998) (district court correctly concluded that 0.004 percent objection rate “weighed in favor of approving the settlement”); *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118–19 (3d Cir. 1990) (where 10.3 percent of class members objected to the settlement, “the response of the class members . . . strongly favor[ed] [the] settlement”); *Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-cv-09405-CAS-FFMx, 2014 WL 439006, at *5 (C.D. Cal. Jan. 30, 2014) (fairness was found where only 53 of 235,152 class members filed objections); *Garner v. State Farm Mutual Auto Ins. Co.*, No. CV-08-1365 CW (EMC), 2010 WL 1687832, at *15 (N.D. Cal. Apr. 22, 2010) (0.004 percent objection rate provided “further indication of the fairness of the settlement”); *In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5159441, at *3 (N.D. Cal. Sept. 2, 2015) (0.017 percent objection rate considered “indicia of the approval of the class” and “support[ed] the Court’s final approval of the Settlement”) (citation and internal quotation marks omitted); *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at *11 (N.D. Cal. Apr. 1, 2011) (the fact that only 0.02 percent of the class objected to the settlement “strongly support[ed] approval of the settlement”).

²⁰ *Mangone v. First USA Bank*, 206 F.R.D. 222, 227 (S.D. Ill. 2001). *Accord, e.g., Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (“[T]he fact that the overwhelming majority of the class [members] . . . stayed in the class presents at least some objective positive commentary as to its fairness.”); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1343 (S.D. Fla. 2011) (same); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 783 (N.D. Ohio 2010) (same); *In re Deepwater Horizon*, 910 F. Supp. 2d 891, 936 (E.D. La. 2012) (same); *Eisen*, 2014 WL 439006, at *5 (approving settlement where only 243 of 235,152 class members opted out).

²¹ As noted in ¶ 23, n.10, some of these 3,400 may not be actual class members.

²² *See, e.g., Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (approving class settlement with opt-out rate of 4.86% (16 opt-outs out of 329 class members)); *Glass v. UBS Fin. Services, Inc.*, No.

out class members (88+%) are represented by one of two law firms that make it a practice to encourage and recruit opt outs. Supp. Weisbrot Decl. ¶ 31. Because of the likelihood that there was an organized campaign to line up opt outs, I am less convinced that the opt out number reflects a genuine, proactive concern by those class members regarding the adequacy of the settlement.²³ Of those not represented by one of these two law firms, only about 400 class members (.4 percent of the class or 12% of the opt outs) have chosen to opt out. This latter percentage is very low under the case law.²⁴

50. In sum, the paucity of objections strongly supports the assumption that class members have reacted favorably to the settlement. And, for the reasons stated above, the larger number of opt outs does not undermine that assumption.

(b) Specific Objections of Class Members

51. In this section, I discuss the three specific objections to the settlement lodged by class members.

i. Laura Tuschhoff Objection

52. Laura Tuschhoff has objected because she claims to have encountered three separate incidents of soot and sludge build up in the emission system of her vehicle. *See* Dtk. No. 547. After those experiences, she claims that she was “forced to sell a 2-year old vehicle that [she] truly loved....” According to Tuschhoff, she “had no choice but to sell the truck because [she] feared being stranded on the side of the road, along with the constant worry of financial burden due to repair costs when the truck ran out of warranty.” She said she “would not have sold [her] truck” had she known about the repair and extended warranty that would later be offered under

C-06-4068-MMC, 2007 WL 221862, at *5 (N.D. Cal. Jan. 26, 2007) (granting final approval to class settlement with opt-out rate of approximately 2% (280 of 13,176)).

²³ *Cf. In re Deepwater Horizon*, 910 F. Supp. 2d at 939 (“[T]he mass unsigned opt outs are highly indicative of a conclusion that such counsel did not spend very much time evaluating the merits of whether or not to opt-out in light of the individual circumstances of each of their clients and in consultation with them.”).

²⁴ *See, e.g., Churchill Village*, 361 F.3d at 577 (noting opt-out rate of 0.55 percent in upholding class settlement); *In re Prudential*, 148 F.3d at 318 (district court correctly concluded that 0.2 percent opt-out rate “weighed in favor of approving the settlement”); *In re High-Tech*, 2015 WL 5159441, at *3 (0.09 percent opt-out rate considered “indicia of the approval of the class” and “support[ed] the Court’s final approval of the Settlement”); *Garner*, 2010 WL 1687832, at *15 (0.4 percent opt-out rate provided “further indication of the fairness of the settlement”); *In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 249, 269 (E.D. Pa. 2012) (opt-out rate of 1.14 percent of class members was “virtually *di minimis*” and “weigh[ed] in favor of the proposed settlement’s fairness and adequacy”).

the settlement. She also complains about her recovery (\$990) as a former owner. In my opinion, Tuschhoff's objection is meritless for several reasons.

53. First, Tuschhoff's acknowledgment that she regretted selling her truck and would have preferred to receive the settlement's benefits as a current owner is itself an admission that she views the settlement as fair, reasonable, and adequate, at least with respect to the benefits afforded those who did not choose to sell their vehicles. She makes clear that the settlement provides exactly what injured consumers would want—a repair and an extended warranty. Indeed, she emphasizes the strength of those benefits without even mentioning the substantial monetary award (\$3075) she could have received were she still the owner of the vehicle.

54. Second, Tuschhoff claims that the \$990 she will receive as a former owner “does not compensate for the issue that [she] endured,” and that she “did not get a fair price when [she] traded [her truck] in for another vehicle.” Her statements, however, are entirely conclusory. She offers no explanation tying these past repairs and “issue[s]” to the emissions cheating alleged in this case, as separate from routine costs of vehicle ownership that are appropriately outside the bounds of settlement compensation. I understand from class counsel that there is no evidence that the vehicles at issue in this litigation have suffered a market depreciation in the way that the Volkswagen diesel vehicles did after the announcement of the cheat device by Volkswagen in September 2015. Tuschhoff alleges that she did not receive a fair trade-in price for her vehicle, but her objection says nothing about what she received and what amount, in her view, would have been fair (based on, for example, the NADA Blue Book or the Kelley Blue Book).

55. Third, Tuschhoff was not “forced” to sell her vehicle. According to class counsel, the vast majority of class members chose to hold on to their vehicles and thus now qualify as current owners. Obviously, those tens of thousands of class members did not feel compelled to sell their cars. Instead, they no doubt suspected that Court-appointed class counsel were seeking an aggregate recovery, and that a remedy would ultimately exist for them if they remained patient.

56. Finally, if Tuschhoff truly believed that the \$990 remedy was inadequate, she had the opportunity to opt out. She chose not to do so. As one court has noted: “Federal courts routinely hold that the opt-out remedy is sufficient to protect class members who are unhappy with the

negotiated class action settlement terms.”²⁵ Tuschhoff should not be allowed to unravel a settlement that only two other class members (out of 100,000) have objected to. Indeed, as of now, nearly 34,000 class members have already registered an interest on the settlement website, Supp. Weisbrot Decl. ¶ 26, even though the settlement has not yet received final approval. And it is worth repeating that, had Tuschhoff not traded in her truck, she herself (as she admitted) would be enthusiastically supporting the settlement.

ii. Gary Henning Objection

57. Gary Henning objects to the settlement because he claims he “was involved in a class action suit against VW on a 2012 Passat 2.0” and that the fix adopted for the vehicles in that litigation “substantially affected” those vehicles’ performance. *See* Dkt. No. 551. Henning, however, provides no information about why *the instant settlement* is objectionable. What allegedly happened to him in the Volkswagen case is irrelevant to whether *this* settlement—involving different defendants and different vehicles—is fair. Henning offers no proof that the fix in Volkswagen affected the performance of those Volkswagen vehicles; he simply alleges that to be the case. And even if there were some impact from the Volkswagen fix on those vehicles, that does not mean that the vehicles at issue here—which will be fixed through a government-approved repair by an entirely separate company—would be similarly impacted. Henning fails to note that the fix in Volkswagen involved both hardware and software remedies, whereas the fix in the instant case is much simpler and involves only software changes. *Compare* Notice of Lodging of Partial Settlement Decree, *In Re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, 3:15-md-02672, Dkt. No. 1605-1, Appendix B at 15–23 (explaining hardware modifications as part of the vehicle fix in the Volkswagen case) *with* Dkt. No. 542 at 3 (explaining the repair in this case is a “software fix for the Subject Vehicles”). Finally, as noted in connection with Tuschhoff, if Henning truly had concerns about the settlement, he could have opted out.

²⁵ *Eisen*, 2014 WL 439006, at *7. *Accord, e.g., In re Nat’l Football League*, 307 F.R.D. at 396 (class members’ “opportunity to opt out” weighed in favor of finding settlement fair and reasonable), *aff’d*, 821 F.3d 410 (3d Cir. 2016); *In re Deepwater Horizon*, 295 F.R.D. at 156 (“Those objectors who are unhappy with their anticipated settlement compensation could have opted out and pursued additional remedies through individual litigation.”); *In re Nissan Radiator/Transmission Cooler Litig.*, No. 10 CV 7493(VB), 2013 WL 4080946, at *12 (S.D.N.Y. May 30, 2013) (“Class members here have the ability to opt-out if they do not like the terms of the settlement.”); *Milligan v. Toyota Motor Sales, U.S.A., Inc.*, No. C 09-05418 RS, 2012 WL 10277179, at *7 (N.D. Cal. Jan. 6, 2012) (overruling objections to class settlement in part on the basis that “[o]bjectors who raised these concerns could have simply opted out of the settlement”).

iii. Andrew Cindric Jr. Objection

58. Andrew Cindric Jr. complains that the payment under the settlement—\$3075—is deficient. *See* Dkt. No. 550. He claims that because the EcoDiesel premium has an M.S.R.P. of \$4500, he should receive that full amount as compensation.²⁶ He ignores entirely the fact that he will also receive a fix and a valuable extended warranty. But even focusing just on the payment as if it were the sole remedy, Cindric’s argument is erroneous.

59. As plaintiffs’ expert, Edward Stockton, explained at length in his declaration in support of preliminary approval, the determination of economic injury requires a nuanced analysis and cannot simply be equated with the up-front cost of the EcoDiesel premium. Under the settlement, the defect will be fixed, and thus, from that point forward, the consumer will receive the full benefit of the EcoDiesel premium. The compensation, therefore, must take into account the reality of the fix and the precise length that the class member suffered from owning a car that was defective. Stockton concludes that, in virtually every case, that amount will be less than \$3075. For instance, he provides an example of a consumer who paid \$4000 for the diesel premium and suffered from the defect for three years of the vehicle’s life. According to Stockton’s economic model, such a consumer would have suffered economic harm of \$1500, but would still be awarded \$3075. Stockton noted that, even with a five-year period of defect, the \$3075 payment would be well above the actual economic loss (by about \$543). Stockton Decl. ¶¶ 35–37. Cindric does not even mention Stockton’s analysis, let alone attempt to refute it.

60. Mr. Cindric also complains that, because he was one of the first to purchase one of these EcoDiesel vehicles, he suffered “growing pains,” including certain repairs that required leaving his vehicle in the shop for periods of time. Cindric offers no details, let alone any explanation, of why those “growing pains” relate to the instant litigation. Indeed, he concedes that these repairs “may not be relevant to the case” In any event, as discussed in ¶ 19, it is almost certain that the benefits given to Cindric under the settlement exceed his actual economic losses, and thus it is fair to say that Cindric *did* receive, indirectly, added compensation for the alleged “growing

²⁶ Cindric claims that he paid \$4500 for the EcoDiesel premium, but attaches only the window sticker for the vehicle, not documentation of what he actually paid. As plaintiffs’ expert Edward Stockton noted, “consumers generally received some discount off the list prices of the vehicles [at issue] at the time of purchase.” Stockton Decl. (01/10/19), at ¶ 29. Stockton thus “assume[s] the relevant diesel premium to equal 90% of the M.S.R.P. of the entire EcoDiesel option cost associated with the Subject Vehicles [*i.e.*, \$4050].” Accordingly, Cindric’s use of \$4500 as the relevant cost of the EcoDiesel premium is flawed.

pains” that he suffered with his vehicle.

61. Finally, as noted above, if Cindric believed that the settlement was deficient, he had the chance to opt out, as approximately 3,400 others did.

* * *

62. In sum, I find no merit in any of the three objections to the settlement.

63. Based on all of the above, it is my view that the *Churchill* factors strongly support the approval of the settlement.

2. The Ninth Circuit’s *Bluetooth* Factors Support the Settlement

64. In addition to applying the *Churchill* factors, courts in the Ninth Circuit hold pre-certification class settlements (such as the one here) to “an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e)” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (citation omitted). As the Ninth Circuit has explained, in cases involving pre-certification settlements, courts “must be particularly vigilant not only for explicit collusion, but also for more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations.”²⁷ As set forth in *Bluetooth*, possible “warning signs” of subtle collusion—depending on the particular facts—include situations where:

(1) class counsel “receive a disproportionate distribution of the settlement, or . . . the class receives no monetary distribution”; (2) the parties “negotiate a ‘clear sailing’ agreement providing for the payment of attorneys’ fees separate and apart from class funds”; and (3) “the parties arrange for fees not awarded to revert to defendants rather than to be added to the class fund.”²⁸

In my opinion, the application of these *Bluetooth* factors does not undermine the fairness of this settlement. To the contrary, on the whole they only underscore the fairness of the settlement. I discuss each factor separately below.

a. Whether Class Counsel Are Receiving All or Most of the Settlement

65. This factor strongly *supports* the settlement and negates any argument of collusion. Here, as noted, (¶ 21), class counsel are requesting as fees between 10 percent and 18 percent,

²⁷ *Id.* at 947.

²⁸ *Id.* at 946–47 (citations omitted).

depending on the portion of settlement benefits included in calculating the value of the common fund. This percentage range is well under the Ninth Circuit’s benchmark of 25 percent. Moreover, attorneys’ fees and expenses are being paid separately by defendants, so class members will receive no reduction in their awards for any proportionate share of fees or costs. Importantly, as noted, (¶ 19), virtually all class members are receiving *greater than* full compensation for their economic losses. This is the polar opposite of a case where the lion’s share of the settlement goes to class counsel and the class receives little or nothing.

b. Whether There Is a “Clear Sailing” Agreement

66. A clear sailing agreement is one where “the defendant agrees not to oppose a fee award up to a certain amount.”²⁹ In certain situations, such an agreement can reflect a risk of collusion between the parties. However, many class settlements have been approved with clear sailing agreements where, as here, the record shows that the agreement was not the result of collusion.³⁰ Important considerations in finding that a clear sailing agreement did not undermine the fairness of a settlement include (1) the absence of any evidence of collusion³¹; (2) the presence of a mediator in the settlement negotiation process³²; (3) the paucity of objections to the settlement³³;

²⁹ *In re Sw. Airlines Voucher Litig.*, 799 F.3d 701, 705 (7th Cir. 2015).

³⁰ *See, e.g., Acosta v. Frito-Lay, Inc.*, No. 15-cv-02128-JSC, 2018 WL 2088278, at *10–11 (N.D. Cal. May 4, 2018); *Bell v. Consumer Cellular, Inc.*, No. 3:15-cv-941-SI, 2017 WL 2672073, at *8 (D. Or. June 21, 2017); *Garcia v. City of King City*, No. 14-cv-01126-BLF, 2017 WL 363257, at *8–9 (N.D. Cal. Jan. 25, 2017); *In re TracFone Unlimited Service Plan Litig.*, 112 F. Supp. 3d 993, 1007 (N.D. Cal. 2015); *Ruch v. AM Retail Grp., Inc.*, No. 14-cv-05352-MEJ, 2016 WL 5462451, at *8 (N.D. Cal. Sept. 28, 2016); *Tadepalli v. Uber Techs., Inc.*, No. 15-cv-4348, 2016 WL 1622881, at *9 (N.D. Cal. Apr. 25, 2016).

³¹ *See, e.g., Walsh v. CorePower Yoga LLC*, No. 16-cv-05610-MEJ, 2017 WL 4390168, at *8 (N.D. Cal. Oct. 3, 2017) (approving class settlement where the “clear sailing provision does not signal the possibility of collusion.”); *King City*, 2017 WL 363257, at *8–9 (“The parties’ fee agreement . . . represents a legitimate compromise and not a collusive agreement to pay Class Counsel more in exchange for paying the class less.”) (citation omitted); *Demmings v. KKW Trucking, Inc.*, No. 3:14-cv-0494-SI, 2018 WL 4495461, at *11 (D. Or. Sept. 19, 2018) (notwithstanding the clear sailing agreement, “the record contains no evidence of fraud or collusion.”); *Ruch*, 2016 WL 5462451, at *8 (same).

³² *See, e.g., Acosta*, 2018 WL 2088278, at *10–11 (“[T]he Court finds no evidence of explicit collusion here, where the parties exchanged several rounds of discovery, and engaged in settlement discussions overseen by two different neutral mediators on two occasions before agreeing on this settlement.”); *Bell*, 2017 WL 2672073, at *8 (finding no collusion despite a clear sailing agreement, because “[t]he parties reached the Amended Settlement only after working with a neutral mediator and conducting an additional five months of negotiation after the Court’s denial of the initial proposed settlement”); *Deaver v. Compass Bank*, No. 13-cv-00222-JSC, 2015 WL 8526982, at *9 (N.D. Cal. Dec. 11, 2015) (finding no evidence of collusion where “the parties engaged in settlement talks overseen by a neutral mediator before agreeing on this settlement”); *Demmings*, 2018 WL 4495461, at *11 (approving class settlement where “the parties engaged in settlement negotiations overseen by three different neutral mediators”).

and (4) the fact that the settlement satisfied all of the *Churchill* factors.³⁴

67. All four of those factors are present here. Defendants agreed not to oppose fees and costs of up to \$66 million. There is no evidence of collusion in connection with the settlement agreement (a point made by Settlement Master Feinberg (*see* Feinberg Decl. ¶ 13)); the settlement was negotiated under the auspices of an experienced mediator, Mr. Feinberg; there are virtually no objections to the settlement (3 out of 100,000 class members); and the settlement satisfies all of the *Churchill* factors (*see* ¶¶ 34–63). It is also significant that the parties’ discussions on attorneys’ fees—overseen by Mr. Feinberg—did not commence until after the parties reached agreement on the material terms of the class settlement. This sequencing strongly negates any possibility of collusion.³⁵

c. Whether Funds Revert to the Defendant

68. A reversionary settlement—one in which any unclaimed funds are returned to the defendant at the end of the claims period—sometimes raises red flags.³⁶ The concern is that, if a defendant is willing to pay only a certain total amount to settle a case, class counsel and the defendant may collude to settle for high attorneys’ fees (which seem reasonable as a percentage of the total settlement value), knowing that a significant part of the available recovery will not ultimately be paid out to the class. Thus, for example, a settlement with a generous attorneys’ fee agreement might create a substantial monetary fund, but because of onerous claim

³³ *See, e.g., Deaver*, 2015 WL 8526982, at *9 (finding no collusion despite a clear sailing agreement, as reflected by, *inter alia*, “the complete absence of objections to the settlement”); *Demmings*, 2018 WL 4495461, at *11 (same).

³⁴ *See, e.g., In re TracFone*, 112 F. Supp. 3d at 1007 (approving class settlement despite a clear sailing agreement, where “every single *Churchill Village* factor weighs in favor of final approval, and the most important factor—the amount received in settlement—is undoubtedly favorable”).

³⁵ *See, e.g., In re Deepwater Horizon*, 910 F. Supp. 2d 891, 918 (E.D. La. 2012) (class settlement approval supported by the fact that “there was no discussion of attorneys’ fees until all other terms of the agreement were negotiated, agreed upon, reduced to writing, and submitted to the Court, so Class Counsel could not have engaged in trading off the interests of class representatives or absent class members so as to maximize their fee recovery.”) (citations omitted); *In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1064 (S.D. Tex. 2012) (“[T]he parties negotiated and agreed to the proposed settlement before reaching the issue of attorneys’ fees. . . . This factor supports approval of the settlement.”); *Milligan*, 2012 WL 10277179, at *9 (awarding fees where “[t]he requested amount was negotiated in mediation, after the settlement agreement was consummated on behalf of the class, and payment of fees will not reduce the class’ recovery.”).

³⁶ *See, e.g., Robert H. Klonoff & Mark Herrmann, The Class Action Fairness Act: An Ill-Conceived Approach to Class Settlements*, 80 TUL. L. REV. 1695, 1713–15 (2006) (“Under a reversionary settlement, a potential fund is created and used to calculate fees, even though the amounts actually claimed are only a small fraction of the fund.”); *In re Bluetooth*, 654 F.3d at 947 (discussing possible collusion in the context of reversionary settlements).

requirements and poor class notice, few class members make claims. As one court cautioned, this type of settlement can present a “danger . . . that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment on fees.”³⁷ Thus, absent additional protections, under a reversionary settlement the defendant ends up paying very little to the class, while paying substantial attorneys’ fees. In such a situation, a reversionary settlement may reflect collusion.

69. Here, however, the concerns about a reversionary settlement simply do not apply, as the settlement structure itself promotes and incentivizes class participation. To begin with, as reflected in the declaration of plaintiffs’ notice expert, a state-of-the-art notice program was adopted in this case to ensure the widest possible notice to—and participation by—class members. Weisbrot Decl. ¶¶ 5–21. Moreover, as explained in ¶ 20, the claims process in this case is very simple and requires little information by class members. Most importantly, defendants have strong incentives to encourage high class member participation. Under the interrelated federal and state government consent decrees, defendants must perform emissions modifications on at least 85 percent of the vehicles at issue or they will incur substantial penalties (more than \$6000 per vehicle), thereby eliminating any savings accrued by not compensating class members. Thus, far from having an incentive for funds to revert to defendants because of low class member participation, defendants’ incentives are directly aligned with those of the class: to ensure high levels of participation in the settlement. Given the regulatory penalties at issue here, it is not even strictly accurate to call the settlement here a “reversionary settlement.” It bears none of the hallmarks of a traditional reversionary settlement.

* * *

70. In sum, in my opinion, the *Bluetooth* factors do not cast any doubt on the fairness of the settlement. In my view, nothing in the settlement negotiations or settlement terms suggests collusion.

³⁷ *Weinberger v. Great Northern Nekoosa Corp.*, 925 F.2d 518, 524 (1st Cir. 1991) (citations omitted).

VI. CONCLUSION

71. In my opinion, the settlement is fair, reasonable, and adequate. It satisfies the applicable fairness criteria, and its fairness is confirmed by the paucity of objections. Moreover, the specific objections lodged by three class members—out of a class of about 100,000 people—are meritless.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based on information known to me.

April 25, 2019


Robert H. Klonoff

APPENDIX A

CURRICULUM VITAE

ROBERT H. KLONOFF

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Date of Birth: March 15, 1955
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EDUCATION:

J.D., Yale University, 1979

A.B., University of California, Berkeley, 1976, Majored in Political Science/Economics
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WORK EXPERIENCE:

Current Position:

Jordan D. Schnitzer Professor of Law, Lewis & Clark Law School (since 2014)

Prior Positions:

Dean of the Law School, Lewis & Clark Law School (2007-2014)

Douglas Stripp/Missouri Endowed Professor of Law, University of Missouri-
Kansas City School of Law (2003-2007)

Jones Day, Washington, D.C. (Partner, 1991-July 2003; Of Counsel, 1989-1991,
2003- 2007)

Adjunct Professor of Law, Georgetown University Law Center (class action law
and practice) (1999-2003)

Visiting Professor of Law, University of San Diego School of Law (1988-1989)

Assistant to the Solicitor General of the United States (1986-1988)

Assistant United States Attorney (Criminal Division, District of Columbia) (1983-
1986)

Associate, Arnold & Porter, Washington, D.C. (1980-1983)

Law Clerk to the Honorable John R. Brown, Chief Judge, United States Court of Appeals for the Fifth Circuit (1979-1980)

Summer Associate, Baker & Botts, Houston, and Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C. (1978)

Summer Associate, Sidley & Austin, Washington, D.C. (1977)

SPECIAL HONORS AND ACHIEVEMENTS:

Recipient, 2018 Albert Nelson Marquis Lifetime Achievement Award (in the field of law) from *Who's Who in America*

Member, 2011-2017, United States Judicial Conference Advisory Committee on Civil Rules (appointed by Chief Justice John G. Roberts, Jr., in 2011 as the sole voting member from the law school academy; reappointed May 2014 for a second three-year term)

Elected Member, International Association of Procedural Law

Selected in November 2013 for the J. William Fulbright Specialist Roster

Recipient, Oregon Consular Corps Award for Individual Achievement in International Outreach, Portland, Oregon (May 2013)

Associate Reporter, American Law Institute's *Principles of the Law of Aggregate Litigation* (class action project; drafts presented at several annual meetings; final version approved by full ALI in May 2009 annual meeting and published in May 2010)

Fellow, American Academy of Appellate Lawyers

Fellow, American Bar Foundation

Academic Fellow, Pound Institute

Elected Member, American Law Institute

Recipient, 2007 Award for Outstanding UMKC Law Professor (based on vote of 3d year class)

2007 UMKC Law School Commencement Speaker (based on vote of 3d year class)

Recipient, 2006 UMKC Law School Elmer Pierson Teaching Award for Most Outstanding Teacher in the Law School (selected by the Dean)

Recipient, 2005 President's Award for Outstanding Service from the UMKC Law School Foundation

Reporter, 2005 National Conference on Appellate Justice (co-sponsored by the Federal Judicial Center, National Center for State Courts, and other organizations)

Co-Recipient, District of Columbia Bar's Frederick B. Abramson Award for Superior Service to the Community (June 1998)

Attorney General's Special Achievement Award for Outstanding Work as an Assistant to the Solicitor General of the United States (1986, 1987)

Attorney General's Special Achievement Award for Outstanding Work as an Assistant United States Attorney (1984, 1985)

The Benjamin N. Cardozo Prize for Best Moot Court Brief for Academic Year 1978-1979, Yale Law School

Semi-Finalist, Moot Court Oral Argument, Yale Law School (Fall, 1978)

Phi Beta Kappa

U.C. Berkeley's Most Outstanding Political Science Student (1976)

The Edward Kraft Award for Outstanding Work as a Freshman Student, U.C. Berkeley (1974)

MEMBERSHIPS:

U.S. Supreme Court Bar

Various Federal Circuit and District Courts

District of Columbia Bar

Missouri State Bar

Oregon State Bar

Multnomah County Bar

American Law Institute

American Bar Association

American Bar Association Committee on Class Actions & Derivative Suits (Section of Litigation)

PUBLICATIONS:

Books:

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 5th ed. 2017)

Castanias & Klonoff, *Federal Appellate Practice in a Nutshell* (West 2d ed. 2017)

Klonoff, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 4th ed. 2017) (with teacher's manual)

Klonoff, *Introduction to the Study of U.S. Law: Cases and Materials* (West 2016)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 4th ed.) (2012)

Klonoff, Bilich & Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 3d ed.) (2012) (with teacher's manual)

Klonoff (associate reporter), *Principles of the Law of Aggregate Litigation*, American Law Institute Publications (2010) (along with Samuel Issacharoff, reporter, and associate reporters Richard Nagareda and Charles Silver)

Castanias & Klonoff, *Federal Appellate Practice and Procedure in a Nutshell* (Thomson West) (2008)

Klonoff & Colby, *Winning Jury Trials: Trial Tactics and Sponsorship Strategies* (NITA 3d ed.) (2007)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 3d ed.) (2007)

Klonoff, Bilich & Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (Thomson West 2d ed.) (2006) (with teacher's manual)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 2d ed.) (2004)

Klonoff & Colby, *Winning Jury Trials: Trial Tactics and Sponsorship Strategies* (Lexis Nexis 2d ed.) (2002)

Klonoff & Bilich, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West Group 2000)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West Group 1999)

Klonoff & Colby, *Sponsorship Strategy: Evidentiary Tactics for Winning Jury Trials* (Michie Co. 1990)

Articles and Book Chapters:

Application of the New Discovery Rules in Class Actions: Much Ado About Nothing, 71 *Vanderbilt L. Rev.* 1949 (2018)

Class Actions in the U.S. and Israel: A Comparative Approach, 19 *Theoretical Inquiries in the Law* 151 (2018) (co-author)

Class Actions Part II: A Respite from the Decline, 92 *N.Y.U. L. Rev.* 971 (2017)

The Remedy For Election Fraud Is A New Election, *Law 360* (July 20, 2017) (www.law360.com/whitecollar/articles/946569/the-remedy-for-election-fraud-is-a-new-election)

Class Actions in the Year 2025: A Prognosis, 65 *Emory L.J.* 1569 (2016)

Why Most Nations Do Not Have U.S.-Style Class Actions, 16 *BNA Class Action Litigation Report*, Vol. 16, No. 10, at 586 (May 22, 2015) (selected for presentation at the May 2015 World Congress of the International Association of Procedural Law, Istanbul, Turkey)

Federal Rules Symposium: A Tribute to Judge Mark R. Kravitz -- Introduction to the Symposium, 18 *Lewis & Clark L. Rev.* 583 (2014) (co-author)

Class Actions for Monetary Relief Under Rule 23(b)(1)(A) and (b)(1)(B): Does Due Process Require Notice and Opt-Out Rights?, 82 *Geo. Wash. L. Rev.* 798 (2014)

The Decline of Class Actions, 90 *Wash. U. (St. Louis) L. Rev.* 729 (2013)

Reflections on the Future of Class Actions, 44 *Loy. U. Chi. L.J.* 533 (2013)

Richard Nagareda: In Memoriam, 80 *U. Cin. L. Rev.* 289 (2012)

Introduction and Memories of a Law Clerk, 47 *Houston L. Rev.* 529, 573 (2010)

ALI's Aggregate Litigation Project Has Global Impact, 33 *ALI Reporter* 7 (Fall 2010)

Book Review, *In the Public Interest*, 39 *Env. Law* 1225 (2009)

The Public Value of Settlement, 78 *Fordham L. Rev.* 1177 (2009)(co-author)

Making Class Actions Work: The Untapped Potential of the Internet, 69 *U. Pitt. L. Rev.* 727 (co-author)(2008), adapted and published in 13 *J. Internet Law* 1 (2009)

The Class Action Fairness Act: An Ill-Conceived Approach to Class Settlements, 80 Tul. L. Rev. 1695 (co-author) (2006)

The Twentieth Anniversary of Phillips Petroleum v. Shutts, Introduction to the Symposium, 74 UMKC L. Rev. 433 (2006)

The Adoption of a Class Action Rule: Some Issues for Mississippi to Consider, 24 Miss. C. L. Rev. 261 (2005)

Antitrust Class Actions: Chaos in the Courts, 11 Stan. J. L. Bus. & Fin. 1 (2005), reprinted in *Litigation Conspiracy: An Analysis of Competition Class Actions* (Stephen G.A. Pitel ed. Irwin Law 2006), and 3 *Canadian Class Action Review* 137 (2006)

The Judiciary's Flawed Application of Rule 23's "Adequacy of Representation" Requirement, 2004 Mich. St. L. Rev. 671 (2004)

Class Action Rules — Are They Driven by Substance?, 1 *Class Action Litigation Report* 504 (Nov. 10, 2000) (co-author)

Response to May 2000 Article on Sponsorship Strategy, 63 Tex. B.J. 754 (Sept. 2000) (co-author)

A Look at Interlocutory Appeals of Class Certification Decisions Under Rule 23(f), 1 *Class Action Litigation Report* 69 (May 12, 2000) (co-author)

The Mass Tort Class Action Gamble, 7 *Metro. Corp. Counsel* 1, 8 (Aug. 8, 1999) (co-author)

"Legal Approaches to Sex Discrimination" (co-author), in H. Landrine & E. Klonoff, *Discrimination Against Women: Prevalence, Consequences, Remedies* (Sage Pub. 1997)

Sponsorship Strategy: A Reply to Floyd Abrams and Professor Saks, 52 Md. L. Rev. 458 (1993) (co-author)

A Trial Lawyer's Roadmap for Handling Bad Facts: The Role of Credibility, 16 *Trial Diplomacy Journal* 139 (July/Aug. 1993) (co-author)

Opening Statement, 17 *Litigation* 1 (ABA Spring 1991) (co-author)

Contributing Editor, *Criminal Practice Institute Trial Manual*, Young Lawyers Section, Bar Ass'n of D.C. (1986)

The Congressman as Mediator Between Citizens and Government Agencies: Problems and Prospects, 15 *Harv. J. Legis.* 701 (1979)

A Dialogue on the Unauthorized Practice of Law, 25 Villanova L. Rev. 6 (1979)
(co-author)

The Problems of Nursing Homes: Connecticut's Non Response, 31 Admin. L.
Rev. 1 (1979)

SIGNIFICANT LEGAL EXPERIENCE:

Argued eight cases before the U.S. Supreme Court

Authored dozens of U.S. Supreme Court filings (certiorari petitions, certiorari oppositions, merits briefs, reply briefs)

Briefed and argued numerous cases before various U.S. circuit and district courts and state trial and appellate courts

Tried dozens of cases (primarily jury trials)

Handled more than 100 class action cases as counsel

Served as an expert witness in numerous federal and state class action cases, including the British Petroleum Deepwater Horizon Oil Spill case, the National Football League Concussion case, the Volkswagen "Clean Diesel" case, and the Wells Fargo Unauthorized Accounts case.

Worked extensively with testifying and consulting experts on class action issues, including economists, securities experts, medical and scientific experts, and leading academics

Presented more than 100 cases to the grand jury while serving as an Assistant U.S. Attorney

Handled hundreds of sentencing hearings, preliminary hearings, and probation revocation hearings

SIGNIFICANT TEACHING AND SPEAKING ENGAGEMENTS

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (December 2018)
(taught course on class actions)

Speaker on the National Football League Concussion case, National Taiwan University, Taipei, Taiwan (December 20, 2018)

Speaker on Class Actions, Live Webinar Broadcast, Rule 23 Will Be Amended in Four Days: Are You Ready, American Bar Association (Nov. 27, 2018)

Invited Speaker, American Bar Association's 22d Annual Institute on Class Actions, Chicago, Illinois (Oct. 18, 2018)

Invited Speaker, MDL at 50 –The 50th Anniversary of Multidistrict Litigation, New York University School of Law, New York, New York (Oct. 12, 2018)

Visiting Professor of Law, University of Bologna School of Law, Ravenna, Italy (July 2018) (faculty member for environmental law program; lectured on environmental class actions)

Speaker on Class Actions, Freie University Faculty of Law, Berlin, Germany (June 26, 2018)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (April 2018) (taught course on Introduction to United States Law)

Co-Chair, Moderator, and Panelist, Posner on Class Actions, Columbia Law School, New York, New York (March 2, 2018)

Panelist on Civil Discovery, Vanderbilt University School of Law, Nashville, Tennessee (October 13, 2017)

Panelist on the Civil Rules Committee Process, University of Arizona College of Law, Tucson, Arizona (October 7, 2017)

Visiting Professor of Law, University of Bologna School of Law, Ravenna, Italy (July 2017) (faculty member for environmental law program; lectured on environmental class actions)

Visiting Professor of Law, University of Trento School of Jurisprudence, Trento, Italy (May 2017) (taught course on Introduction to U.S. Law)

Panelist on Class Actions, Beard Group, Class Action Money and Ethics Conference, New York, New York (May 1, 2017)

Visiting Professor of Law, Tel Aviv University, Tel Aviv, Israel (January 2017) (taught course on class actions)

Panelist on Class Actions, Tel Aviv University, Fifty Years of Class Actions – A Global Perspective (January 4, 2017)

Panelist on Class Actions, New York University Law School Conference on Rule 23@50, New York, New York (December 2, 2016)

Panelist on Class Actions, Appellate Judges Education Institute, Philadelphia, Pennsylvania (November 11, 2016)

Speaker on Class Actions, National Legal Aid Defender Association National Farmworker Conference, Indianapolis, Indiana (November 10, 2016)

Panelist on Class Actions, American Bar Association Class Action Institute, Las Vegas, Nevada (October 20, 2016)

Panelist, Duke University Law School Conference on Class Action Settlements, San Diego, California (October 6, 2016)

Fulbright Scholar, Hong Kong University School of Law (August- September 2016) (taught course on class actions and delivered campus-wide lecture on criminal procedure)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (June 2016) (taught course on Introduction to United States Law)

Speaker on Class Actions, University of Zagreb Law School, Zagreb, Croatia (May 11, 2016)

Panelist on Civil Litigation, Association of American Law Schools Annual Meeting, New York, New York (January 8, 2016)

Visiting Professor of Law, Bahçeşehir University School of Law, Istanbul, Turkey (December 2015) (taught Introduction to United States Law)

Invited Participant, Conference on Civil Justice (Pound Institute) Emory University Law School, Atlanta, Georgia (October 15, 2015)

Invited Participant, Conference on Class Actions, Duke Law School, Arlington, Virginia (July 23-24, 2015)

Invited Participant, Conference on Class Actions, Defense Research Institute, Washington, D.C. (July 23-24, 2015)

Invited Participant, Civil Procedure Workshop, Seattle University Law School, Seattle, Washington (July 17, 2015)

Panelist on Class Actions, Annual Meeting, American Association for Justice, Montreal, Canada (July 12, 2015)

Speaker on Class Actions, International Association of Procedural Law, Istanbul, Turkey (May 28, 2015)

Panelist, Subcommittee on Class Actions of U.S. Judicial Conference Advisory Committee on Civil Rules, American Law Institute Annual Meeting, Washington, D.C. (May 17, 2015)

Moderator, Ethical Issues in Class Actions and Non-Class Aggregate Litigation, American Law Institute Annual Meeting, Washington, D.C., (May 17, 2015)

Visiting Professor of Law, University of Trento, Trento, Italy (March 2015) (taught U.S. Class Actions)

Speaker on Class Actions, European University Institute, Fiesole, Italy (February 23, 2015)

Visiting Professor of Law, University of Notre Dame, Fremantle Australia (January 2015) (taught course on U.S. Civil Rights and Civil Liberties)

Visiting Professor of Law, Universidad Sergio Arboleda, Bogota and Santa Marta, Colombia (December 2014) (taught course on Introduction to United States Law)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (November 2014) (taught course on Introduction to United States Law)

Panelist, American Bar Association, National Institute on Class Actions, Chicago, Illinois (October 23, 2014)

Visiting Professor of Law, East China University of Political Science and Law, Shanghai, China (October 2014) (taught U.S. Class Actions)

Visiting Professor of Law, Herzen State Pedagogical University of Russia, St. Petersburg, Russia (September 2014) (taught U.S. Class Actions)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (July 2014) (taught Introduction to United States Law)

Speaker on U.S. Legal Education, Universidad Sergio Arboleda School of Law, Bogota, Colombia (June 3 and 5, 2014)

Speaker on Class Actions, Superintendencia de Industria y Comercio, Bogota, Colombia (June 3, 2014)

Speaker on Class Actions and the Fukushima Nuclear Accident, Waseda University School of Law, Tokyo, Japan (January 24, 2014)

Speaker on Class Actions, Osaka Bar Association, Osaka, Japan (January 23, 2014)

Speaker on Class Actions, East China University of Political Science and Law, Shanghai, China (January 15, 2014)

Speaker on Class Actions, AmCham Shanghai, Shanghai, China (January 14, 2014)

Speaker on Development of Animal Law in the Legal Academy, 2013 Animal Law Conference, Stanford Law School, Palo Alto, California (November 25, 2013)

Speaker on U.S. Law and Legal Education, Royal University of Law and Economics, Phnom Penh, Cambodia (October 1, 2013)

Speaker on U.S. Law and Legal Education, Paññāsāstra University of Cambodia, Phnom Penh, Cambodia (October 1, 2013)

Speaker on U.S. Legal Education, International Association of Law Schools International Deans' Forum, National University of Singapore Law School, Singapore (September 26, 2013)

Speaker on Class Actions, Japan Federation of Bar Associations, Tokyo, Japan (September 19, 2013)

Speaker on Class Actions, Waseda University School of Law, Tokyo, Japan (September 19, 2013)

Speaker on Ethics of Aggregate Settlements, American Association for Justice Annual Meeting, San Francisco, California (July 22, 2013)

Speaker on the British Petroleum Class Action Settlement, International Water Law Conference, National Law University of Delhi, Delhi, India (May 31, 2013)

Speaker on U.S. Supreme Court Confirmation Process, Jewish Federation of Greater Portland's Food for Thought Festival, Portland, Oregon (April 21, 2013)

Speaker on Class Actions, Class Action Symposium, George Washington University Law School, Washington, D.C. (March 8, 2013)

Speaker on Class Actions, Impact Fund Class Action Conference, Oakland, California (March 1, 2013)

Speaker on Class Actions, Hong Kong University Department of Law (November 15, 2012)

Speaker on Class Actions, Fudan University Law School (Shanghai, China) (November 13, 2012)

Keynote Speaker, National Consumer Law Center Symposium, Seattle, Washington (October 28, 2012)

Speaker, American Bar Association, National Institute on Class Actions, Chicago, Illinois (October 25, 2012)

Speaker, Conference on Class Actions, Washington University St. Louis School of Law and the Institute for Law and Economic Policy (April 27, 2012)

Speaker, Conference on Class Actions, Loyola Chicago School of Law (April 13, 2012)

Panelist on leadership and world peace with Former South African President F.W. De Klerk, University of Portland (February 29, 2012)

Panelist on class actions before the Standing Committee on Rules of Practice and Procedure, Phoenix, Arizona (January 5, 2012)

Speaker on Class Actions Lawsuits in the U.S., University of the Philippines, College of Law, Quezon City, Philippines (August 2011)

Speaker on Environmental Class Actions, Kangwon University Law School, Chuncheon, South Korea (August 2011)

Speaker on Class Actions, Federal Judicial Center Conference on Class Actions, Duke University School of Law (May 20, 2011)

Speaker, Conference on Aggregate Litigation, University of Cincinnati College of Law (April 1, 2011)

Speaker on Class Actions, Seoul National University School of Law (May 18, 2010)

Keynote Speaker (addressing US Supreme Court confirmation process), Alaska Bar Annual Meeting (April 28, 2010)

Speaker, Conference on the Future of Animal Law, Harvard Law School (April 11, 2010)

Speaker, Conference on Aggregate Litigation: Critical Perspectives, George Washington University Law School (Mar. 12, 2010)

Speaker, U.S. Supreme Court Confirmation Process, Multnomah County Bar Association and City Club of Portland, (Sept. 30, 2009)

Speaker on Class Actions, American Legal Institutions, and American Legal Education at National Law Schools of India in Bangalore, Hyderabad, Calcutta, Jodhpur, and Delhi (August 2009)

Speaker, China/U.S. Conference on Tort and Class Action Law, Renmin University of China School of Law, Beijing, China (July 11-12, 2009)

Speaker on Class Actions, Southeastern Association of Law Schools annual meeting, Palm Beach, Florida (August 1, 2008)

Speaker on Class Actions, National Foundation for Judicial Excellence (meeting of 150 state appellate court judges), Chicago, Illinois (July 12, 2008)

Speaker on Class Actions, Practising Law Institute, New York, NY (July 10, 2008)

Speaker at Conference on Class Actions in Europe and North America, sponsored by New York University School of Law, the American Law Institute, and the European University Institute, Florence, Italy (June 13, 2008)

Speaker on Class Actions at the American Bar Association Tort and Insurance Section Meeting, Washington, D.C. (Oct. 26, 2007)

Speaker on Antitrust Class Actions at the American Bar Association's Annual Antitrust Meeting, Washington D.C. (April 18, 2007)

Chair, Organizer, and Moderator of Class Action Symposium at UMKC School of Law (April 7, 2006) (other speakers (26 in all) included, *e.g.*, Professors Arthur Miller, Edward Cooper, Sam Issacharoff, Geoffrey Miller, and Linda Mullenix, as well as several prominent federal judges and practicing lawyers)

Speaker on Class Actions, Missouri CLE (Nov. 18, 2005)

Speaker on Class Actions, Practising Law Institute (July 29, 2005)

Speaker on Class Actions, Kansas CLE (June 23, 2005)

Speaker on Class Actions at Bureau of National Affairs Seminar on the Class Action Fairness Act of 2005 (June 17, 2005)

Visiting Lecturer on Class Actions, Peking University (May 30-June 3, 2005)

Speaker on Oral Argument, American Bar Association 2005 Section of Litigation Annual Conference (April 22, 2005) (part of panel including Second Circuit Chief Judge Walker and several others)

Speaker on Class Actions, Federal Trade Commission/Organization for Economic Cooperation and Development, Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace (April 19, 2005)

Speaker at Antitrust Class Action Symposium, University of Western Ontario College of Law (April 1, 2005)

Speaker at Class Action Symposium, Mississippi College of Law (February 18, 2005)

Speaker on Class Actions, Practising Law Institute (July 30, 2004)

Visiting Lecturer on Class Actions, Peking University (June 2004)

Visiting Lecturer on Class Actions, Tsinghua University (June 2004)

Speaker at Class Action Symposium, Michigan State University (April 16-17, 2004)

Speaker on U.S. Supreme Court advocacy, David Prager Advanced Appellate Institute (Kansas City Metropolitan Bar Association) (Feb. 27, 2004)

Speaker on Class Actions, Institute of Continuing Legal Education in Georgia (Oct. 24, 2003)

Speaker on Class Actions, Practising Law Institute (July 31, 2003)

Speaker on Class Actions, Practising Law Institute (Aug. 5, 2002)

Speaker on Class Actions, Practising Law Institute (Aug. 16, 2001)

Speaker on many occasions throughout the country on “Sponsorship Strategy” (1990-present) and advocacy before the U.S. Supreme Court (1988-present)

OTHER PROFESSIONAL ACTIVITIES:

Member of American Bar Association Group Evaluating Qualifications of Merrick Garland to serve on the U.S. Supreme Court (reviewed Judge Garland’s civil procedure opinions)

Advisory Board Consulting Editor, *Class Action Litigation Report* (BNA)

Advisory Board, The Flawless Foundation (an organization that serves troubled children)

Member, Board of Directors, Citizens’ Crime Commission (Portland, Oregon) (2007-2011)

Served on numerous UMKC School of Law committees, including Programs (Chair), Promotion and Tenure, Appointments, and Smith Chair Appointment

Chair of pro bono program for all 27 offices of Jones Day (2000-2004); also previously Chair of Washington office pro bono program (1992-2003)

Member, Board of Directors, Bread for the City (a D.C. public interest organization providing medical, legal, and social services) (2001-2003)

Master, Edward Coke Appellate Practice Inn of Court in Washington, D.C. (other participants include Ted Olson, Seth Waxman, Ken Starr, Walter Dellinger, and several sitting appellate judges) (2001-2003)

Member, Board of Directors, Washington Lawyers’ Committee for Civil Rights and Urban Affairs (2000-2003); Advisory Board Member (2003-present)

Member, D.C. Court of Appeals Committee on Unauthorized Practice of Law (1997-2000)

Handled and supervised numerous pro bono matters (*e.g.*, death penalty and other criminal defense, civil rights, veterans’ rights)

Played a major role in establishing a walk-in free legal clinic in Washington, D.C.'s Shaw neighborhood

VOLUNTEER WORK:

Numerous guest speaker appearances at public schools and retirement homes; volunteer at local soup kitchen; volunteer judge for Classroom Law Project.

APPENDIX B

Expert Testimony By
Professor Robert Klonoff
from 2011 to the Present:

- *The Doan v. State Farm General Ins. Co.*, No. 1-08-CV-129264 (Sup. Ct., Clara County, Cal.) (submitted expert declaration on the fairness of a proposed class action settlement, reasonableness of attorneys' fees, and reasonableness of incentive payments on Jan. 16, 2019);
- *In re Syngenta AG MIR162 Corn Litigation*, No. 2:14-MD-02591-JWL-JPO (D. Kan.) (submitted expert declaration on attorneys' fees, costs, and incentive payments on 7/10/18; submitted supplemental declaration on 8/17/18);
- *In re Chinese-Manufactured Drywall Litigation*, MDL No. 2047 (E.D. La.) (submitted expert declarations on attorneys' fees issues) (dated 05/04/17 and 08/01/18);
- *Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC (N.D. Cal.) (submitted expert declaration on class certification, settlement fairness, attorneys' fees, costs, and incentive payments in unauthorized accounts litigation, dated 1/19/18; submitted supplemental declaration on 5/21/18);
- *Lynch v. Lynch*, No. F.D. 14-6239-006 (Pa. Ct. Comm. Pl., Allegheny Cnty.) (submitted expert declaration on the nature of class action law practice in the context of a divorce proceeding involving a class action attorney) (dated 9/05/17);
- *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (submitted expert declaration addressing objections by class members to proposed 3.0-liter and Bosch settlements) (dated 4/28/17);
- *State of Louisiana & Vermilion Parish School Board v. Louisiana Land and Exploration Co., et al.*, No. 82162 (15th Judicial Court, Parish of Vermilion) (submitted expert declaration on attorneys' fees issues (dated 3/9/17) and additional expert declaration on attorneys' fees (dated 9/21/18));
- *Thacker v. Farmers Insurance Exchange*, Case No. 2006CV342 (Dist. Ct. Boulder County, Colo.) (submitted expert declaration on class certification issues) (dated 1/24/17);
- *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (submitted expert declaration addressing objections by class members to proposed 2.0-liter settlement) (dated 9/30/16);

- *In the Matter of Gosselin Group*, No. 15/3925/B (Antwerp Court of First Instance, Belgium) (submitted expert declaration discussing the role of federal appellate courts in the factfinding process) (dated 9/27/16);
- *In re Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico on April 20, 2010*, Nos. 12-970, 15-4143, 15-4146, and 15-4645 (E.D. La.) (submitted expert declaration on class certification, settlement fairness, and attorneys’ fees relating to proposed Halliburton/Transocean class settlement) (filed 8/5/16);
- *Ben-Hamo v. Facebook, Inc. and Facebook Ireland Limited*, No. 46065-09-14 (Central District Court, Israel) (submitted expert declaration on Sept. 3, 2015, on behalf of Facebook, Inc. and Facebook Ireland Limited addressing various issues of U.S. civil procedure and class action law);
- *Skold v. Intel Corp.*, Case No. 1-05-CV-039231 (Cal. Super. Ct. Santa Clara Cnty.) (submitted expert declaration on class settlement approval, attorneys’ fees, and incentive payments to class representatives) (filed 12/30/14);
- *In re National Football League Players’ Concussion Injury Litigation*, No. 2:12-md-02323-AB (E.D. Pa.) (submitted expert declaration on class certification, class notice, and settlement fairness) (Dkt. No. 6423-9) (filed 11/12/14);
- *MBA Surety Agency, Inc. v. AT&T Mobility, LLC*, Case No. 1222-CC09746 (Mo. 22d Dist.) (submitted expert declaration on class certification and settlement fairness on Feb. 13, 2013; submitted supplemental expert declaration on Feb. 19, 2013; and testified in court on Feb. 20, 2013);
- *In re Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico on April 20, 2010*, No. 2:10-md-02179-CJB-SS (E.D. La.) (“Deepwater Horizon”) (submitted expert declarations on class settlements for economic and property damages and attorneys’ fees (Dkt. No. 7104-3), and personal injuries (Dkt. No. 7111-4) (both filed 08/13/12), and supplemental expert declarations for both class settlements (Dkt. No. 7727-4) (economic), (Dkt. No. 7728-2) (personal injuries) (both filed 10/22/12));
- *Robichaux v. State of Louisiana, et. al.* (No. 55,127) (18th Judicial Dist. Ct., Iberville Parish, La.) (submitted written report on attorneys’ fees on February 20, 2012, gave deposition testimony on March 7, 2012, and testified in court on April 11, 2012); and
- *In re AT&T Mobility Wireless Data Svcs. Sales Tex Litig.*, MDL No. 2147, Case No. 1:10-cv-02278 (N.D. Ill.) (submitted expert declarations on the fairness of a proposed class action settlement (Dkt. No. 163-3) and on attorneys’ fees and incentive payments (Dkt. 164-1) (both filed 03/08/11), and testified in court on March 10, 2011).

EXHIBIT B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CHRYSLER-DODGE-JEEP
ECODIESEL® MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

DORU BALI, *et al.*, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

FIAT CHRYSLER AUTOMOBILES N.V., FCA
US LLC, SERGIO MARCHIONNE, VM
MOTORI S.p.A., VM NORTH AMERICA,
INC., ROBERT BOSCH GmbH, and ROBERT
BOSCH LLC,

Defendants.

MDL 2777 EMC

**SUPPLEMENTAL DECLARATION OF
STEVEN WEISBROT OF ANGEION
GROUP, LLC IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

1 I, Steven Weisbrot, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746
2 that the following is true and correct:

3 1. I am a partner at the class action notice and settlement administration firm, Angeion
4 Group LLC (“Angeion”). I am fully familiar with the facts contained herein based upon my
5 personal knowledge.

6 2. My credentials have been previously reported to this Court in my initial declaration
7 which was filed with Plaintiffs’ Motion for Preliminary Approval of Class Settlement and
8 Direction of Notice Under Fed. R. Civ. P. 23(e) (Dkt. No. 491) (the “Original Declaration”).

9 3. The purpose of this declaration is to provide the Court with an updated summary of
10 the work performed related to the Notice Program as outlined in the Declaration of Steven Weisbrot
11 of Angeion Group, LLC in Support of Motion for Final Approval of Class Action Settlement (Dkt.
12 No. 538-3).

13 **I. CAFA NOTICE**

14 4. Angeion has been advised that on January 15, 2019, the FCA and Bosch Defendants
15 caused Notice of this Settlement and related materials to be sent to the Attorneys General of all
16 states, the Attorneys General of the District of Columbia, Guam and Puerto Rico, as well as the
17 Attorney General of the United States, pursuant to the requirements of 28 U.S.C. § 1715 (“CAFA
18 Notice”). The Defendants provided Angeion with a copy of the CAFA Notice that was sent, which
19 is attached hereto as Attachment “1.”

20 **II. DIRECT NOTICE**

21 **Class List**

22 5. Between February 5, 2019 and February 21, 2019, Angeion received email and
23 mailing address data of potential Class Members from FCA. Prior to disseminating Notice of the
24 Settlement (“Notice”), Angeion reviewed and processed the data files to remove exact duplicative
25 records and finalize the mailing list.

26 **Mailed Notice**

27 6. Between February 19, 2019 and February 23, 2019, Angeion caused 137,637
28 Notices to be mailed via the United States Postal Service (“USPS”) first-class mail, postage

1 prepaid. Prior to mailing, the mailing list was processed via the USPS National Change of Address
2 (“NCOA”) database to identify updated address information for individuals and businesses who
3 have moved in the last four years and who filed a change of address card with the USPS. The
4 mailed Notices were in the same form as Attachment “2” attached hereto.

5 7. As of April 25, 2019, the USPS has returned 5,007 of the Notices as undeliverable.
6 Notices returned as undeliverable by the USPS without a forwarding address were processed
7 through address verification searches and re-mailed to updated addresses located via this process.
8 Notices returned as undeliverable by the USPS with a forwarding address were re-mailed to that
9 forwarding address identified by the USPS. As a result of the above-described efforts, a total of
10 3,071 Notices have been re-mailed. Of the re-mailed Notices, only 165 were returned by the USPS
11 a second time. In summary, of the 137,637 Notices Angeion mailed to potential Class Members,
12 135,536 (98.47%) are presumed to have been successfully delivered. Angeion will continue to
13 receive, process, and re-mail undeliverable Notices in accordance with the above-described
14 processes.

15 **Email Notice**

16 8. Between February 19, 2019 and February 26, 2019, Angeion caused 123,128
17 Notices to be emailed. The email Notices were in the same form as Attachment “3” attached hereto.
18 The Notices were optimized for readability both on computer screens and mobile devices.

19 9. Prior to sending the Notices via email, the email addresses provided by FCA were
20 subjected to the “Hygiene and Verification” process and email append process as described in my
21 Supplemental Declaration (Dkt. No. 525-1) at paragraphs 20–23.

22 10. Any email Notices that were not delivered as a result of a soft bounce, were
23 re-attempted after an approximate 12 to 24-hour rest period, which allowed any temporary block at
24 the ISP level to expire. A soft bounce is a temporary delivery failure. Soft bounces can occur for a
25 number of reasons including when the recipient's mailbox is full; the receiving server is down or
26 swamped with messages; the message size is too large; the recipient’s settings do not allow for
27 email from the sender; suspicious content has been detected; or various other reasons. It does not
28

1 necessarily mean that the email address is invalid or no longer active, which are generally
2 categorized as “hard bounces.” In total, 115,824 email Notices were successfully delivered, which
3 represents a 94.07% deliverability percentage. This deliverability percentage is excellent
4 compared to comparable class action notice programs.

5 **III. MEDIA & PUBLICATION NOTICE**

6 **Targeted Facebook Campaign**

7 11. On February 13, 2019, Angeion caused the targeted Facebook campaign to
8 commence. The Facebook campaign displays targeted ads to potential Class Members’ Facebook
9 timelines based on email addresses provided by FCA and obtained via the email append work
10 referenced in paragraph 9 above. Angeion was able to target ads to Class Members based on the
11 vehicle they were associated with. For example, if a Class Member was likely to be a current or
12 former Jeep EcoDiesel owner or lessee, they received an ad targeted specifically to the Jeep brand.
13 Copies of the customized Facebook ads are attached hereto as Attachment “4.”

14 12. The Notice portion of the Facebook campaign initially ran for a total of 45-days,
15 from February 13, 2019 until March 29, 2019.

16 13. As a result of the first 45-day run, the targeted Facebook campaign served 625,214
17 impressions to the Ram audience and 190,476 impressions to the Jeep audience. The impressions
18 described herein have resulted in 26,909 click-throughs for the Ram audience and 8,981
19 click-throughs for the Jeep audience.

20 14. Given that the targeted Facebook campaign garnered exceptional click-through
21 rates that greatly exceed other similar campaigns, with the advice and consent of the Parties,
22 Angeion extended the targeted Facebook campaign beyond the first 45 days of the Notice Program
23 to further generate class member engagement.

24 15. The extended targeted Facebook campaign will continue until the beginning of the
25 Settlement Benefit Period, when the second 45-day Facebook campaign commences. *See* Dkt. No.
26 525-1 at ¶ 30. In other words, the highly successful Facebook campaign will have essentially run
27
28

1 from preliminary approval of the settlement through 45 days past the opening of the Settlement
2 Benefit Period.

3 16. As of April 25, 2019, an additional 139,531 impressions have been served to the
4 Ram audience and 40,851 additional impressions served to the Jeep audience through Facebook.
5 This has resulted in an additional 5,354 click-throughs for the Ram audience and 1,668
6 click-throughs for the Jeep audience. In total, Angeion has served 966,492 impressions, resulting in
7 42,912 total click-throughs thus far, and will continue to serve impressions targeting consumers
8 through the first 45 days of the Settlement Benefit Period.

9 **Internet Search Targeting Campaign**

10 17. On February 15, 2019, Angeion caused the internet banner ad campaign to
11 commence. Similar to the Facebook campaign, the internet banner ad campaign ran for a total of
12 45-days and concluded on March 29, 2019. A second 45-day campaign will commence at the
13 beginning of the Settlement Benefit Period.

14 18. As described in my Supplemental Declaration (Dkt. No. 525-1) at paragraphs 31-36,
15 the internet banner ad campaign is specifically designed to target the most appropriate audiences to
16 deliver Notice of this Settlement, utilizing both Ram-specific and Jeep-specific ads. Copies of the
17 banner ads are attached hereto as Attachment "5."

18 19. In total, the internet banner campaign caused 603,798 impressions to be served
19 utilizing the Ram-specific ad and 333,056 impressions served utilizing the Jeep-specific ad. The
20 impressions described herein have resulted in 1,866 click-throughs for the Ram audience and 1,425
21 click-throughs for the Jeep audience.

22 **Summary of Digital & Social Media Campaigns**

23 20. The level of engagement for the digital and social media advertising campaigns are
24 notably above average when compared to other consumer class action settlements. In particular, the
25 Facebook campaign's click-through rate is considerably more robust than industry averages and
26 will continue to drive potential Class Members to the dedicated case website to learn more about
27 the Settlement. It is my opinion that the Facebook ads in this case acted as an additional form of
28

1 direct notice (as opposed to publication notice) because the ads were targeted to actual known Class
2 Members, and the customized messaging was tailored to the Class Member's vehicle.

3 **Publication Notice**

4 21. Angeion caused Notice to be published in the March 4, 2019 edition of *Automotive*
5 *News* and in the April 7, 2019 edition of *Motor*. A copy of the publication Notice text used for
6 publication in the *Automotive News* and *Motor* is attached hereto as Attachment "6."

7 **IV. ADDITIONAL FORMS OF NOTICE**

8 22. Notice of the Settlement is also available to Class Members via the official
9 settlement website: www.ecodieselsettlement.com. The Settlement website contains a wealth of
10 information, including a detailed summary of the Settlement, an overview of the claims submission
11 process, a repository of the Settlement-related documents and court filings, a list of Frequently
12 Asked Questions, and an option for interested Class Members to register for Settlement updates via
13 email.

14 23. In addition, FCA has posted links to the official Settlement website on
15 www.jeep.com and www.ramtrucks.com, the official brand websites for the vehicle brands in this
16 case. Linking to the Settlement website on an official FCA webpage is highly beneficial for two
17 reasons. First, it helps diffuse news of the Settlement on a website where Class Members are likely
18 to visit. Second, the links create a credible network of "backlinks," which serve an important role in
19 search engine optimization ("SEO") for the Settlement website and can help boost the organic
20 ranking of a website in a search engine result. "Backlinks" are generally defined as a hyperlink that
21 links from an external webpage to the subject webpage—in this case the Settlement website.
22 Generally speaking, the better the quality of the backlinks, the greater the effect on SEO, which in
23 turn makes a website easier to find through a search engine such as Google or Bing. As such,
24 Angeion believes that the links on the official Jeep and Ram brand websites are helping to propel
25 additional traffic to the Settlement website.

1 **V. CLASS MEMBER RESPONSE**

2 24. Class Members have shown a strong, prolonged engagement rate in response to the
3 Notice Program that exceeds the response Angeion has seen in other consumer cases.

4 25. As of April 25, 2019, there have been 80,989 unique visitors to the Settlement
5 website.

6 26. As of April 25, 2019, a total of 33,804 unique email addresses have registered on the
7 Settlement website to receive email updates on the Settlement. This figure is a testament to the
8 wide-reaching success of the Notice Program and the Class's interest in the settlement.

9 27. In my opinion, this is a very high engagement rate for Class Members, especially
10 given that the Settlement Benefit Period has not yet begun and will remain open for two years after
11 commencement. The Notice Program has generated substantial interest in the Settlement and is
12 designed to continue to do so throughout the pendency of its administration.

13 **VI. OPT OUT REQUESTS**

14 28. As of April 25, 2019, Angeion has received a total of 3,461 non-duplicative opt out
15 requests. These opt out requests account for a total of 3,447 unique vehicle identification numbers
16 ("VIN"). The total number of compliant opt out requests is 3,046 (discussed in greater detail
17 below).

18 29. Of the 3,461 non-duplicative opt out requests, 415 requests are deficient. The 415
19 deficient opt out requests consist of (i) 171 requests submitted for individuals who claim to have
20 sold their vehicles before the January 12, 2017 Notice of Violation or after the January 10, 2019
21 Settlement date, and are therefore not members of the class, and (ii) 244 requests that are
22 incomplete and do not meet the opt out requirements set forth in Paragraph 6.1 of the Settlement
23 Agreement and Question 27 of the court-approved Long Form Notice. Finally, one of the submitted
24 opt out requests was subsequently revoked and has been omitted from the total opt out count.

25 30. Angeion has contacted the individuals and counsel who submitted the deficient opt
26 out requests to provide them with an opportunity to cure the deficiencies. Angeion will provide the
27
28

1 Parties with a final list of the valid and compliant opt outs prior to the May 3, 2019 Final Approval
2 Hearing.

3 31. Of the opt out requests Angeion has received, 3,447 are for individuals represented
4 by opt out counsel. Notably, 3,061 (88.4%) of the opt out requests were submitted through two law
5 firms, Stern Law PLLC and Heygood Orr & Pearson. Angeion has also received 14 opt out requests
6 for individuals who do not appear to be represented by opt out counsel, and Angeion is reaching out
7 to these individuals to confirm. The table below provides a breakdown of the total number of opt
8 outs submitted for individuals represented by opt out counsel (and the firm representing them) and
9 those submitted for individuals without opt out counsel.

LAW FIRM	OPT OUTS SUBMITTED
STERN LAW PLLC	1,841
HEYGOOD ORR & PEARSON	1,220
CONSUMER LEGAL REMEDIES APC	234
DUCK LAW FIRM, LLC	59
WISE PLLC	39
LAW OFFICE OF SAMUEL W. BEARMAN LC	10
KNIGHT LAW GROUP LLP	13
STRATEGIC LEGAL PRACTICE	11
ROMANO STANCROFF PC	8
LEMON LAW GROUP	8
GROSSMAN LAW OFFICES	1
LAW OFFICE OF ILONA GORIN	1
LAW OFFICES OF JIM O. WHITWORTH	1
YOUNG & YOUNG APC	1
TOTAL OPT OUT SUBMISSIONS WITH COUNSEL	3,447
INDIVIDUAL (NO OPT OUT COUNSEL)	14
TOTAL OPT OUT SUBMISSIONS	3,461

22 32. Further, the table below provides the breakdown of non-duplicative opts outs by
23 eligibility category.

ELIGIBILITY CATEGORY	NUMBER OF OPT OUTS
CURRENT OWNER	2,610
CURRENT LESSEE	53
FORMER OWNER	733
FORMER LESSEE	46
OPT OUT REQUEST DID NOT SPECIFY	19
TOTAL	3,461

1 **VII. CONCLUSION**

2 33. The Notice Program utilized and will continue to utilize every potential Class
3 Member mailing address and email address reasonably available to effectuate direct notice, which
4 has already reached the overwhelming majority of class members. When combined with the
5 aforementioned digital, social and traditional media publication, the overall notification efforts
6 greatly exceed the guidance of the Federal Judicial Center, comply with Due Process, this District's
7 Local Rules, and the amended Rule 23.

8 34. Given the high deliverability rates for both the mail and email notice, combined with
9 above average click through rates and initial registration participation rate, it is my opinion that the
10 Notice Program has been and continues to be an overwhelming success, and has demonstrated
11 meaningful, verifiable, Class Member participation and engagement in the Settlement. We expect
12 this to continue as the Notice Program progresses.

13 35. In my opinion, the Notice Program described herein meets the requirements of Rule
14 23 and due process requirements as the best notice practicable under the circumstances, and
15 incorporated contemporary media and best practices to alert and engage the participation of the
16 Class Members in the proposed Settlement.

17
18 I hereby declare under penalty of perjury that the foregoing is true and correct.

19
20 Dated: April 25, 2019

21 
22 STEVEN WEISBROT

Attachment 1

January 15, 2019

Via Certified Mail

To: All Addressees Identified in the Attached Exhibit A

Re: Notice of Proposed Class Action Settlement Pursuant to the Class Action Fairness Act (28 U.S.C. § 1715): *In re Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, and Products Liability Litigation*,
MDL No. 2777

Dear Sir or Madam:

On behalf of defendants Fiat Chrysler Automobiles N.V., FCA US LLC, VM Motori S.p.A., and VM North America, Inc. (collectively, "FCA") and Robert Bosch GmbH and Robert Bosch LLC (collectively, "Bosch") in the above-referenced putative class action (the "Class Action"), we write pursuant to 28 U.S.C. § 1715 ("CAFA") to notify you of a proposed settlement of the Class Action.

After extensive negotiations, including mediation by former Special Master of the September 11th Victim Compensation Fund, Kenneth Feinberg, the parties agreed to a resolution of the Class Action as set forth in a Consumer and Reseller Dealership Class Action Settlement Agreement and Release, dated January 10, 2019 (the "Proposed Settlement"). Under the terms of the Proposed Settlement, FCA and Bosch have agreed to compensate eligible class member owners, lessees, former owners, and former lessees, as set forth in the Proposed Settlement. On January 10, 2019, Plaintiffs filed a motion for preliminary approval of the Proposed Settlement.

The enclosed USB drive contains the documents required by 28 U.S.C. § 1715(b), including the following:

1. Consolidated Consumer Class Action Complaint, dated July 19, 2017; Amended Consolidated Consumer Class Action Complaint, dated September 29, 2017; and Second Amended Consolidated Consumer Class Action Complaint, dated May 16, 2018;
2. the Proposed Settlement and all attachments thereto, including proposed notifications to class members of the Proposed Settlement; and
3. the Court's January 15, 2019 Order relating to the proposed settlement and proposed notification to class members.

A hearing has been scheduled for January 23, 2019, at 10 a.m. PT to determine whether the Proposed Settlement should be preliminarily approved. The hearing to finally approve the Proposed Settlement is expected to occur in late April or May 2019.

CAFA also requires a defendant, “if feasible,” to provide “the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement,” or, if that is not feasible, to provide a “reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement.” 28 U.S.C. § 1715(b)(7)(A)-(B). The attached Exhibit B contains FCA’s estimate of the number of Eligible Vehicles, as that term is defined in the Proposed Settlement, registered in each State. FCA believes that these figures provide a reasonable estimate of the number of class members per State and the “estimated proportionate share of the claims of such class members to the entire settlement.” 28 U.S.C. § 1715(b)(7)(A)-(B). Ultimately, these figures provide only a reasonable estimate of the total number of class members per State, and the actual numbers may later be determined to be different.

The foregoing information is provided based on the status of the proceedings at the time of the submission of this notification and on the information currently available to FCA and Bosch.

Sincerely,



William B. Monahan
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10016

*Counsel for Defendants Fiat Chrysler
Automobiles N.V., FCA US LLC,
VM Motori S.p.A., and
VM North America, Inc.*

Sincerely,



Matthew D. Slater
Cleary Gottlieb Steen & Hamilton LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037

*Counsel for Defendants
Robert Bosch LLC and
Robert Bosch GmbH*

(Enclosure)

cc: Elizabeth J. Cabraser, Esq.
(Lief Cabraser Heimann & Bernstein LLP)
Plaintiffs' Lead Counsel

EXHIBIT A

U.S. Department of Justice
Office of the Attorney General of the
United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Office of the Attorney General of Alaska
P.O. Box 110300
Juneau, AK 99811-0300

Office of the Attorney General of Arkansas
323 Center Street, Suite 200
Little Rock, AR 72201-2610

Office of the Attorney General of Colorado
Ralph L. Carr Colorado Judicial Ctr.
1300 Broadway, 10th Floor
Denver, CO 80203

Office of the Attorney General of Delaware
Delaware Department of Justice
Carvel State Building
820 N. French St
Wilmington, DE 19801

Office of Attorney General of Florida
State of Florida
The Capitol PL-01
Tallahassee, FL 32399-1050

Office of the Attorney General of Guam
590 S. Marine Corps Dr., Ste. 901
Tamuning, GU 96913

Office of the Attorney General of Idaho
700 W. Jefferson Street, Suite 210
P.O. Box 83720
Boise, ID 83720-0010

Office of the Attorney General of Indiana
Indiana Government Center South
302 W. Washington St., 5th Floor
Indianapolis, IN 46204

Office of the Attorney General of Alabama
P.O. Box 300152
Montgomery, AL 36130-0152

Office of the Attorney General of Arizona
2005 N Central Ave
Phoenix, AZ 85004-2926

CAFA Coordinator
Office of the Attorney General of California
Consumer Law Section
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Office of the Attorney General of Connecticut
55 Elm Street
Hartford, CT 06106

Office of the Attorney General for the
District of Columbia
441 4th Street, NW
Ste. 1100S
Washington, DC 20001

Office of the Attorney General of Georgia
40 Capitol Square, SW
Atlanta, GA 30334

Department of the Attorney General of Hawaii
425 Queen Street
Honolulu, HI 96813

Office of the Attorney General of Illinois
James R. Thompson Ctr.
100 West Randolph Street
Chicago, IL 60601

Office of the Attorney General of Iowa
Hoover State Office Building
1305 E. Walnut Street
Des Moines, IA 50319

Office of the Attorney General Kansas
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612-1597

Office of Attorney General of Louisiana
P.O. Box 94005
Baton Rouge, LA 70804

Office of the Attorney General of Maryland
200 St. Paul Place
Baltimore, MD 21202-2202

Office of the Attorney General of Michigan
G. Mennen Williams Building, 7th Floor
525 W. Ottawa St.
P.O. Box 30212
Lansing, MI 48909

Office of the Attorney General of Mississippi
P.O. Box 220
Jackson, MS 39201

Office of the Attorney General of Montana
Justice Building
215 N. Sanders Street
P.O. Box 201401
Helena, MT 59620-1401

Office of the Attorney General of Nevada
100 North Carson St.
Carson City, NV 89701

Office of the Attorney General of New Jersey
RJ Hughes Justice Complex
25 Market St., Box 080
Trenton, NJ 08625-0080

CAFA Coordinator
Office of the Attorney General of New York
28 Liberty St., 15th FL
New York, NY 10005

Office of the Attorney General of Kentucky
700 Capitol Ave., Ste. 118
Frankfort, KY 40601

Office of the Attorney General of Maine
6 State House Station
Augusta, ME 04333

Office of the Attorney General of Massachusetts
ATTN: CAFA Coordinator/General Counsel's
Office
One Ashburton Place
Boston, MA 02108-1518

Office of the Attorney General of Minnesota
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131

Missouri Attorney General's Office of Missouri
Supreme Court Building
207 W. High St.
P.O. Box 899
Jefferson City, MO 65102

Office of the Attorney General of Nebraska
2115 State Capitol
P.O. Box 98920
Lincoln, NE 68509

Office of the Attorney General of
New Hampshire
33 Capitol Street
Concord, NH 03301

Office of the Attorney General of New Mexico
408 Galisteo Street
Villagra Building
Santa Fe, NM 87501

Office of the Attorney General North Carolina
9001 Mail Service Center
Raleigh, NC 27699-9001

Office of the Attorney General of North Dakota
State Capitol
600 E. Boulevard Ave. Dept. 125
Bismarck, ND 58505

Office of the Attorney General of Oklahoma
313 NE 21st Street
Oklahoma City, OK 73105

Office of the Attorney General of Pennsylvania
16th Floor, Strawberry Square
Harrisburg, PA 17120

Office of the Attorney General of Rhode Island
150 South Main Street
Providence, RI 02903

Office of the Attorney General of South Dakota
1302 E. Hwy 14, Suite 1
Pierre, SD 57501-8501

Office of the Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

Office of the Attorney General of Vermont
109 State Street
Montpelier, VT 05609-1001

Office of the Attorney General of Washington
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

Office of the Attorney General of Wisconsin
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Office of the Attorney General of Ohio
State Office Tower
30 E. Broad Street, 14th Fl.
Columbus, OH 43215

Office of the Attorney General of Oregon
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

Office of the Attorney General of Puerto Rico
Puerto Rico Department of Justice
PO Box 9020192
San Juan, PR 00902-0192

Office of the Attorney General of South Carolina
P.O. Box 11549
Columbia, SC 29211

Office of the Attorney General of Tennessee
P.O. Box 20207
Nashville, TN 37202-0207

Office of the Attorney General of Utah
P.O. Box 142320
Salt Lake City, UT 84114-2320

Office of the Attorney General of Virginia
202 North Ninth Street
Richmond, VA 23219

Office of the Attorney General of West Virginia
State Capital Complex Building 1
Room E-26
Charleston, WV 25305

Office of the Attorney General of Wyoming
Kendrick Building
2320 Capitol Avenue
Cheyenne, WY 82002

EXHIBIT B

Jurisdiction	Estimated Number of Eligible Vehicles Currently Registered*	Percentage of Total
Alabama	979	1.00%
Alaska	430	0.44%
Arizona	2,535	2.58%
Arkansas	1,047	1.06%
California	13,324	13.55%
Colorado	2,974	3.02%
Connecticut	588	0.60%
DC	32	0.03%
Delaware	212	0.22%
Florida	5,317	5.41%
Georgia	2,409	2.45%
Guam**	10	0.01%
Hawaii	178	0.18%
Idaho	1,443	1.47%
Illinois	2,750	2.80%
Indiana	1,489	1.51%
Iowa	1,387	1.41%
Kansas	1,108	1.13%
Kentucky	1,062	1.08%
Louisiana	1,607	1.63%
Maine	461	0.47%
Maryland	1,213	1.23%
Massachusetts	926	0.94%
Michigan	2,342	2.38%
Minnesota	1,697	1.73%
Mississippi	765	0.78%
Missouri	1,861	1.89%
Montana	1,251	1.27%
Nebraska	899	0.91%
Nevada	1,199	1.22%
New Hampshire	475	0.48%
New Jersey	1,229	1.25%
New Mexico	907	0.92%
New York	2,841	2.89%
North Carolina	2,408	2.45%
North Dakota	573	0.58%

Jurisdiction	Estimated Number of Eligible Vehicles Currently Registered*	Percentage of Total
Ohio	1,902	1.93%
Oklahoma	1,962	1.99%
Oregon	2,451	2.49%
Pennsylvania	2,383	2.42%
Puerto Rico	147	0.15%
Rhode Island	153	0.16%
South Carolina	1,193	1.21%
South Dakota	700	0.71%
Tennessee	1,426	1.45%
Texas	13,023	13.24%
Utah	1,967	2.00%
Vermont	258	0.26%
Virginia	1,790	1.82%
Washington	3,373	3.43%
West Virginia	524	0.53%
Wisconsin	2,444	2.48%
Wyoming	732	0.74%

*Based on available registration data as of October 1, 2018.

**Based on retail sales data.

Attachment 2

Official Court-Approved Legal Notice

Settlements with Ram and Jeep EcoDiesel Vehicle Owners/Lesseees, the Environmental Protection Agency, and the California Air Resources Board

You are receiving this notice as an **owner, former owner, lessee, or former lessee** of one of the Fiat Chrysler EcoDiesel vehicles listed below. You may be eligible for cash benefits under a class action settlement.

Ram 1500 EcoDiesel	Jeep Grand Cherokee EcoDiesel
Model Years 2014-2016	Model Years 2014-2016

Settlement Benefits**GET PAID CASH**

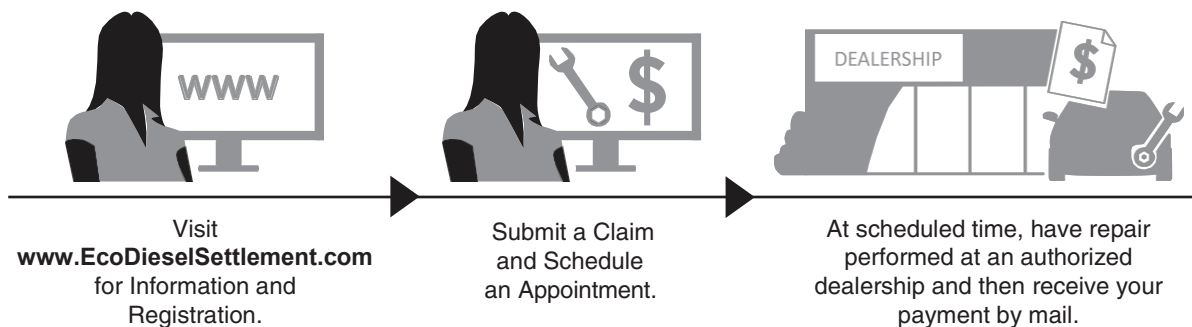
most owners get \$3,075; most lessees get \$990

+

GET YOUR VEHICLE FIXED

to comply with emissions standards

+

RECEIVE A COMPREHENSIVE EXTENDED WARRANTY**How It Works****Your Rights, Next Steps, & Important Dates**

The Settlements collectively provide cash compensation, a vehicle repair, and a comprehensive extended warranty. **If you are a current owner or current lessee, you must submit a claim and receive the repair to be eligible for compensation.** You can have your vehicle repaired and receive the extended warranty prior to or after making a claim, but you will not be eligible for compensation until you submit your claim.

The Court will hold a hearing on **May 3, 2019** and will decide whether to approve the Settlements on or after that date.

Fiat Chrysler will begin processing claims once the Court approves the Settlements. This notice is being sent to you prior to that date to give you time to decide whether to participate in the claims process. You will be notified again once you can start submitting claim forms and documentation. In the meantime, claim forms are available now at www.EcoDieselSettlement.com, and you can also sign up for e-mail updates at www.EcoDieselSettlement.com.

All current owners and current lessees must submit a valid claim within **21 months** of the Court's final approval of the Settlements to participate. If you are a Former Owner or Former Lessee, you must submit your valid claim within **90 days** of the Court's final approval of the Settlements. Please visit the settlement website below for additional information about important dates and deadlines.

You may object or exclude yourself from the Class Action Settlement by **April 15, 2019**. If you object, you will still be a member of the Class (if you are otherwise eligible) and must submit a claim to receive cash compensation. If you stay in the Class Action Settlement, you are eligible to receive benefits and cash and cannot sue Fiat Chrysler or Bosch for the claims being resolved by the Settlement.

Attorneys representing the Class will request Court approval for \$59 million in attorneys' fees and \$7 million in costs. Any such fees and costs awarded by the Court will be paid separately by Fiat Chrysler and Bosch and will not reduce your compensation.

Visit www.EcoDieselSettlement.com for more details on the Class Action Settlement, to register, and to review your rights and options.

www.EcoDieselSettlement.com 1-833-280-4748

Jeep Grand Cherokee and Ram 1500 EcoDiesel Emissions Settlements
c/o Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE PAID
BELLMAWR, NJ
PERMIT #247

Electronic Service
Requested

IMPORTANT LEGAL INFORMATION

Official Court-Approved Legal Notice



2014-2016
Jeep Grand Cherokee EcoDiesel
and Ram 1500 EcoDiesel Settlements

Attachment 3

Official Court-Approved Legal Notice

Settlements with Ram and Jeep EcoDiesel Vehicle Owners/Lesseees, the Environmental Protection Agency, and the California Air Resources Board

You are receiving this notice as an **owner, former owner, lessee, or former lessee** of one of the Fiat Chrysler EcoDiesel vehicles listed below. You may be eligible for cash benefits under a class action settlement.

Ram 1500
3.0L EcoDiesel

Model Years
2014-2016

Jeep Grand
Cherokee 3.0L EcoDiesel

Model Years
2014-2016

Settlement Benefits

GET PAID CASH

most owners get \$3,075; most lessees get \$990

+

GET YOUR VEHICLE FIXED

to comply with emissions standards

+

RECEIVE A COMPREHENSIVE EXTENDED WARRANTY

How It Works



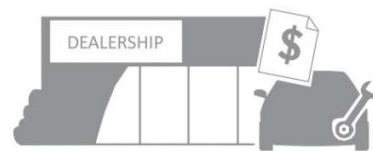
Step 1

Visit
www.EcoDieselSettlement.com
for Information and Registration.



Step 2

Submit a Claim and
Schedule an Appointment



Step 3

At scheduled time, have repair
performed at an authorized
dealership and then receive
your payment by mail.

Your Rights, Next Steps, & Important Dates

The Settlements collectively provide cash compensation, a vehicle repair, and a comprehensive extended warranty. **If you are a current owner or current lessee, you must submit a claim and receive the repair to be eligible for compensation.** You can have your vehicle repaired and receive the extended warranty prior to or after making a claim, but you will not be eligible for compensation until you submit your claim.

The Court will hold a hearing on **May 3, 2019** and will decide whether to approve the Settlements on or after that date.

Fiat Chrysler will begin processing claims once the Court approves the Settlements. This notice is being sent to you prior to that date to give you time to decide whether to participate in the claims process. You will be notified again once you can start submitting claim forms and documentation. In the meantime, claim forms are available now at www.EcoDieselSettlement.com, and you can also sign up for e-mail updates at www.EcoDieselSettlement.com.

All current owners and current lessees must submit a valid claim within **21 months** of the Court's final approval of the Settlements to participate. If you are a Former Owner or Former Lessee, you must submit your valid claim within **90 days** of the Court's final approval of the Settlements. Please visit the settlement website below for additional information about important dates and deadlines.

You may object or exclude yourself from the Class Action Settlement by **April 15, 2019**. If you object, you will still be a member of the Class (if you are otherwise eligible) and must submit a claim to receive cash compensation. If you stay in the Class Action Settlement, you are eligible to receive benefits and cash and cannot sue Fiat Chrysler or Bosch for the claims being resolved by the Settlement.

Attorneys representing the Class will request Court approval for \$59 million in attorneys' fees and \$7 million in costs. Any such fees and costs awarded by the Court will be paid separately by Fiat Chrysler and Bosch and will not reduce your compensation.


Visit www.EcoDieselSettlement.com for more details on the Class Action Settlement, to register, and to review your rights and options.

www.EcoDieselSettlement.com 1-833-280-4748


<<First Name>> <<Last Name>> Notice ID: <<NoticeID>>

[Unsubscribe](#)

Attachment 4

 **EcoDiesel Emissions Settlement ... Administrator**
Sponsored · 🌐


Learn more about new settlements announced for Ram 1500 EcoDiesels.




ECODIESELSETTLEMENT.COM
EcoDiesel Settlements
Visit the Settlement Website

[LEARN MORE](#)

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 **EcoDiesel Emissions Settlement ... Administrator**
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Learn more about new settlements announced for Jeep Grand Cherokee EcoDiesels.



ECODIESELSETTLEMENT.COM
EcoDiesel Settlements
Visit the Settlement Website

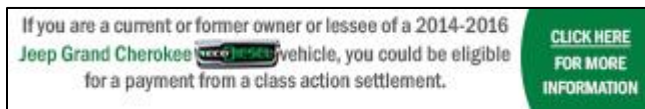
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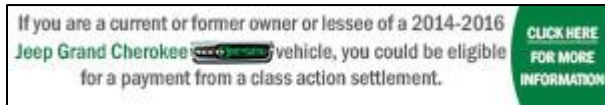
Attachment 5

Jeep Banner Ads – All Interactive Advertising Bureau (“IAB”) Sizes

1. 320x50



2. 300x50



3. 728x90



4. 300x250



5. 300x600

If you are a current or former owner or lessee of a 2014-2016 **Jeep Grand Cherokee**



vehicle, you could be eligible for a payment from a class action settlement.

[CLICK HERE](#)
FOR MORE INFORMATION

6. 160x600

If you are a
current or
former owner
or lessee of a
2014-2016
**Jeep Grand
Cherokee**

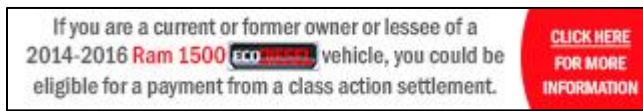


vehicle, you
could be
eligible for a
payment from
a class action
settlement.

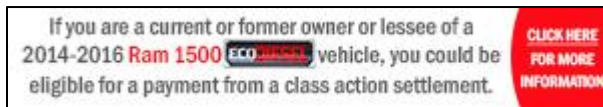
[CLICK HERE](#)
FOR MORE
INFORMATION

Ram 1500 Banner Ads – All Interactive Advertising Bureau (“IAB”) Sizes

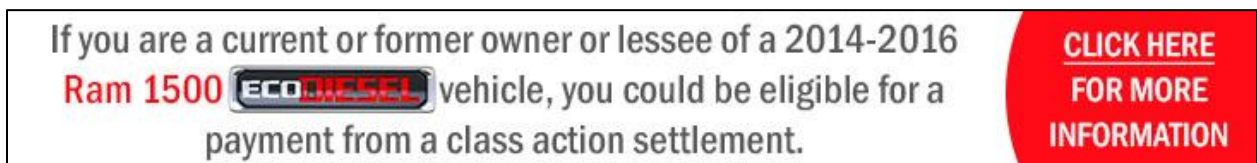
1. 320x50



2. 300x50



3. 728x90



4. 300x250



5. 300x600

If you are a current or
former owner or
lessee of a
2014-2016

Ram 1500



vehicle, you could
be eligible for a
payment from a class
action settlement.

[CLICK HERE](#)
FOR MORE INFORMATION

6. 160x600

If you are a
current or
former owner
or lessee of a
2014-2016

Ram 1500

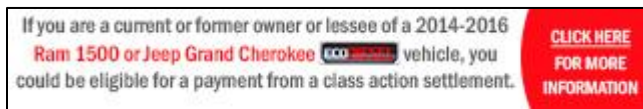


vehicle, you
could be
eligible for a
payment from
a class action
settlement.

**[CLICK HERE](#)
FOR MORE
INFORMATION**

Jeep & Ram 1500 Banner Ads – All Interactive Advertising Bureau (“IAB”) Sizes

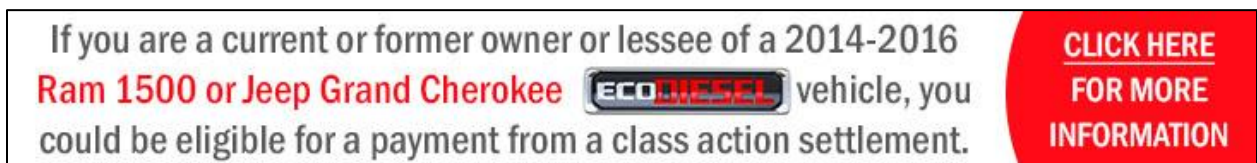
1. 320x50



2. 300x50



3. 728x90



4. 300x250



5. 300x600

If you are a current or
former owner or
lessee of a
2014-2016

**Ram 1500 or Jeep
Grand Cherokee**




vehicle, you could
be eligible for a
payment from a class
action settlement.

**[CLICK HERE](#)
FOR MORE INFORMATION**

6. 160x600

If you are a
current or former
owner or lessee
of a 2014-2016
**Ram 1500 or
Jeep Grand
Cherokee**



vehicle, you
could be eligible
for a payment
from a class
action
settlement.

**CLICK HERE
FOR MORE
INFORMATION**

Attachment 6

Settlements with Ram and Jeep EcoDiesel Vehicle Owners/Lesseees, the Environmental Protection Agency, and the California Air Resources Board

You are receiving this notice as an **owner, former owner, lessee, or former lessee** of one of the Fiat Chrysler EcoDiesel vehicles listed below. You may be eligible for cash benefits under a class action settlement.

Ram 1500 3.0L EcoDiesel	Jeep Grand Cherokee 3.0L EcoDiesel
Model Years 2014-2016	Model Years 2014-2016

Settlement Benefits

GET PAID CASH

most owners get \$3,075; most lessees get \$990

+

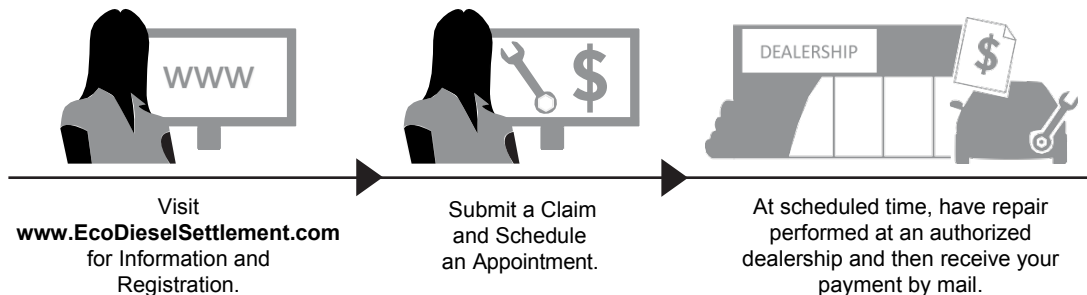
GET YOUR VEHICLE FIXED

to comply with emissions standards

+

RECEIVE A COMPREHENSIVE EXTENDED WARRANTY

How It Works



Your Rights, Next Steps, & Important Dates

The Settlements collectively provide cash compensation, a vehicle repair, and a comprehensive extended warranty. **If you are a current owner or current lessee, you must submit a claim and receive the repair to be eligible for compensation.** You can have your vehicle repaired and receive the extended warranty prior to or after making a claim, but you will not be eligible for compensation until you submit your claim.

The Court will hold a hearing on **May 3, 2019** and will decide whether to approve the Settlements on or after that date.

Fiat Chrysler will begin processing claims once the Court approves the Settlements. This notice is being sent to you prior to that date to give you time to decide whether to participate in the claims process. You will be notified again once you can start submitting claim forms and documentation. In the meantime, claim forms are available now at www.EcoDieselSettlement.com, and you can also sign up for e-mail updates at www.EcoDieselSettlement.com.

All current owners and current lessees must submit a valid claim within **21 months** of the Court's final approval of the Settlements to participate. If you are a Former Owner or Former Lessee, you must submit your valid claim within **90 days** of the Court's final approval of the Settlements. Please visit the settlement website below for additional information about important dates and deadlines.

You may object or exclude yourself from the Class Action Settlement by **April 15, 2019**. If you object, you will still be a member of the Class (if you are otherwise eligible) and must submit a claim to receive cash compensation. If you stay in the Class Action Settlement, you are eligible to receive benefits and cash and cannot sue Fiat Chrysler or Bosch for the claims being resolved by the Settlement.

Attorneys representing the Class will request Court approval for \$59 million in attorneys' fees and \$7 million in costs. Any such fees and costs awarded by the Court will be paid separately by Fiat Chrysler and Bosch and will not reduce your compensation.

Visit www.EcoDieselSettlement.com for more details on the Class Action Settlement, to register, and to review your rights and options.