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15
16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18

19 *In re ZF-TRW Airbag Control Units*
20 *Products Liability Litigation*

21 ALL ACTIONS AGAINST THE
22 MITSUBISHI DEFENDANTS

Case No. 2:19-ml-02905-JAK-MRW
MDL No. 2905

**MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND DIRECTION
OF NOTICE UNDER FED. R. CIV. P.
23(e)**

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NOTICE OF MOTION AND MOTION

TO ALL THE PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 30, 2024, at 8:30 a.m. or at such other date and time as the Court may set, in Courtroom 6 of the United States District Court for the Central District of California, Co-Lead Counsel and the Plaintiffs' Steering Committee, on behalf of a proposed Settlement Class of owners and lessees of certain Mitsubishi vehicles, will and hereby do move the Court for an order granting preliminary approval of a Class Action Settlement between the Mitsubishi Plaintiffs and Mitsubishi and directing notice to the Class under Fed. R. Civ. P. 23(e)(1); appointing Settlement Class Counsel and Settlement Class Representatives for purposes of the Settlement only; and scheduling a final approval hearing under Fed. R. Civ. P. 23(e)(2) for February 24, 2025.

1 **I. Introduction**

2 The Mitsubishi Plaintiffs¹ respectfully move for the Court’s preliminary
3 approval of a Settlement, and for approval of the proposed plan to notify the
4 Mitsubishi Settlement Class—purchasers and lessees of approximately 97,565
5 Mitsubishi Class Vehicles²—who will receive substantial cash compensation in
6 exchange for the proposed resolution of their claims against Mitsubishi.³

7 The Settlement⁴ includes a non-reversionary fund of \$8.5 million to
8 compensate the Mitsubishi Settlement Class. The Settlement also creates an
9 innovative ten-year-long Settlement Inspection Program, which mandates
10 procedures for the active investigation of field failures in Mitsubishi Class Vehicles
11 that may be caused by the ACU Defect. Furthermore, it provides for incident
12 reporting to NHTSA to further ensure a fulsome record in the regulatory
13 investigation that parallels Plaintiffs’ consumer protection claims. The proposed
14 Settlement structure thus addresses both the alleged economic injury suffered by the
15 Mitsubishi Settlement Class (overpayment for the Mitsubishi Class Vehicles, which
16 have not been recalled) and the safety issues that underlie their claims.

17 After almost two years of intensive negotiations between experienced
18 counsel for the Mitsubishi Plaintiffs and Mitsubishi—and under the guidance of
19 Court-appointed Settlement Special Master Juneau—Plaintiffs strongly recommend
20 the proposed Settlement for approval. At this time, Plaintiffs respectfully request
21

22 ¹ The “Mitsubishi Plaintiffs” are Gaylynn Darling (Sanchez), Michael Nearing, and
23 John Sancomb.

24 ² The “Mitsubishi Class Vehicles” are the following Mitsubishi-branded vehicles:
25 (1) 2013-2017 Mitsubishi Lancer; (2) 2013-2015 Mitsubishi Lancer Evolution;
(3) 2013-2015 Mitsubishi Lancer Ralliart; (4) 2013-2016 Mitsubishi Lancer
Sportsback; and 2013 Mitsubishi Outlander.

26 ³ “Mitsubishi” means Defendants Mitsubishi Motors Corporation and Mitsubishi
Motors North America, Inc.

27 ⁴ The Settlement Agreement is attached to the Declaration of Co-Lead Counsel
28 (“Co-Lead Decl.”) as Exhibit C. Capitalized terms not defined herein shall have the
same definitions and meanings used in the Settlement.

1 approval to give notice to the Mitsubishi Settlement Class about this positive
2 outcome and their related rights and ask that the Court set the matter for final
3 settlement approval on February 24, 2025. *See* Fed. R. Civ. P. 23(e).

4 **II. Background and Procedural History of Plaintiffs’ Claims**

5 **A. Factual background: Plaintiffs allege the Mitsubishi Class Vehicles**
6 **contain defective and dangerous DS84 ACUs.**

7 Plaintiffs allege in the Consolidated Amended Class Action Complaint (ECF
8 No. 573, the “ACAC” or “Complaint”) that Mitsubishi designed, manufactured, and
9 sold almost 100,000 Mitsubishi Class Vehicles with a serious hidden defect in their
10 ZF-TRW Airbag Control Unit (“ACU”). Specifically, these ACUs (“DS84 ACUs”)
11 and the STMicro DS84 ASICs they contain are defective because they are uniquely
12 vulnerable to failure from a foreseeable condition known as electrical overstress
13 (“EOS”). *Id.* ¶ 10. Failure of these components can prevent airbag deployment and
14 impede the functionality of other important passenger safety features. *Id.* ¶¶ 488-89.

15 The National Highway Traffic Safety Administration (“NHTSA”) began to
16 investigate the DS84 ACUs by the summer of 2015. *Id.* ¶ 1259. On April 19, 2019,
17 NHTSA upgraded its Preliminary Evaluation of the DS84 ACUs to an Engineering
18 Analysis (EA 19-001), which added to the open investigation all vehicle makes
19 with DS84 ACUs (including the Mitsubishi Class Vehicles). *See id.* ¶ 1125.

20 Plaintiffs allege that Mitsubishi knew about and concealed this safety defect
21 for years prior to NHTSA’s announcement, while Mitsubishi continued to make
22 misleading statements and omissions to the Mitsubishi Plaintiffs and Class
23 members about the safety of the Mitsubishi Class Vehicles. *Id.* § IV.D.7. As set
24 forth in the ACAC, this included “Monroney” labels for every Class Vehicle,
25 vehicle certification labels, brochures, and other marketing materials. *Id.* § IV.E.
26 The Mitsubishi Plaintiffs contend that Mitsubishi’s conduct deceived them,
27 proposed Class members, and regulators about the Mitsubishi Class Vehicles’
28 safety and reliability, and ultimately caused the Mitsubishi Plaintiffs to suffer

1 economic harm when they paid more for their Mitsubishi Class Vehicles than they
2 would have paid if armed with knowledge of the ACU Defect. *Id.* § IV.G.⁵

3 **B. Procedural background: Plaintiffs investigated their claims**
4 **through comprehensive discovery, as shown by the evidence-based**
5 **allegations in the 1,300+ page operative pleading.**

6 After consolidation of this MDL, Plaintiffs conducted an extensive
7 investigation into the ACU Defect, and the entities involved in the design,
8 manufacture, testing, approval, and sale of the DS84 ACUs and ASICs. Thereafter,
9 on May 26, 2020, Plaintiffs filed a detailed, 564-page Consolidated Complaint that
10 reflected their investigation. ECF No. 119. In that Consolidated Complaint,
11 Plaintiffs brought claims against Mitsubishi for violations of the Racketeer
12 Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c)-(d), common law
13 fraud and unjust enrichment, as well as claims on behalf of state subclasses for
14 breach of warranties and violations of consumer protection statutes.

15 On July 27, 2020, Mitsubishi filed a Rule 12(b)(2) and 12(b)(6) motion to
16 dismiss the Consolidated Complaint. ECF No. 212. Mitsubishi Motors North
17 America also joined the 50-page Joint Motion to Dismiss filed on behalf of
18 Defendants. ECF No. 208. Plaintiffs filed approximately 90 pages of extensive,
19 consolidated opposition briefs (ECF Nos. 281, 282, 288), Mitsubishi then replied
20 (ECF Nos. 294, 299), and this Court held a hearing on January 25, 2021. ECF No.
21 323. The Court issued its ruling on February 9, 2022, granted in part and denied in
22 part Mitsubishi's motion and the Joint Motion, and ordered Plaintiffs to file the
23 ACAC. ECF No. 396.

24 On May 26, 2022, Plaintiffs filed their three-volume, 1335-page ACAC that
25 reflected their in-depth investigation of the technology, design, mechanics, and
26 other issues regarding the ACU Defect, and Defendants' knowledge of the same.

27 ⁵ Mitsubishi has not issued a recall for the ACU Defect in the Mitsubishi Class
28 Vehicles, and Plaintiffs have thus not incurred expenses to complete a recall for
their Mitsubishi Class Vehicles.

1 See ECF No. 477. The lengthy and detailed allegations in both the ACAC and the
2 earlier Consolidated Complaint show the exacting process undertaken by proposed
3 Settlement Class Counsel and their experts to analyze the complex technologies and
4 default mechanisms at issue in this case, and to research, develop, and assert the
5 various claims and remedies available to those harmed by Mitsubishi and the other
6 Defendants' conduct. Mitsubishi then filed a Rule 12(b)(2) and 12(b)(6) motion to
7 dismiss the ACAC on May 25, 2023. See ECF No. 713.⁶

8 Alongside these thorough briefing efforts, the Parties also engaged in
9 discovery and information exchanges, which included detailed requests for
10 production to Mitsubishi Motors North America and jurisdictional discovery
11 requests to its Japanese parent company, Mitsubishi Motors Corporation. The
12 Parties met and conferred extensively about this discovery and a variety of other
13 topics, including Mitsubishi's ESI collection. Co-Lead Decl. ¶ 4. In response,
14 Mitsubishi produced, and Plaintiffs reviewed, approximately 11,325 pages of
15 relevant documents. *Id.* Plaintiffs have also engaged in extensive discovery with the
16 ZF-TRW Defendants and the ST Defendants to develop their understanding of the
17 ACU Defect in Mitsubishi Class Vehicles and relatedly, their case against
18 Mitsubishi. To date, the ZF-TRW Defendants have produced more than 2.8 million
19 pages of documents, and the ST Defendants have produced over 10,000 additional
20 pages, which provide important insights and technical details on the DS84 ACUs,
21 the DS84 ASICS, the alleged defect therein, and Mitsubishi and the other
22 Defendants' knowledge of the same. *Id.* ¶¶ 5-6.

23 **C. The Settlement process: The Parties engaged in a lengthy,**
24 **evidence-based negotiation.**

25 Following the Court's Order on Mitsubishi's and the remaining Defendants'
26 first motions to dismiss, and after Plaintiffs filed the operative ACAC in May 2022,

27 ⁶ The Parties agreed to stay further briefing due their productive and good-faith
28 participation in settlement discussions, and Plaintiffs did not file an opposition to
Mitsubishi's motion.

1 the Court appointed Patrick A. Juneau as Settlement Special Master pursuant to
2 Fed. R. Civ. P. Rule 53. ECF No. 473 (June 7, 2022 Order). Thereafter, Plaintiffs
3 and Mitsubishi commenced an extensive series of settlement discussions that began
4 in the summer of 2022. The Parties filed a status report to indicate their
5 advancement toward settlement in September 2022. ECF No. 561. Afterward, more
6 than a year and a half of negotiations between the Parties progressed through
7 numerous settlement meetings, in-person sessions, and dozens more telephonic and
8 video discussions (including the time needed to translate materials to facilitate
9 engagement on the terms with Mitsubishi Motors Corporation, the Japanese parent
10 company).

11 The Parties reached agreement on material terms for a settlement in late fall
12 of 2023 and spent the next several months drafting and finalizing the Settlement
13 Agreement (“SA”) and related exhibits now before the Court, including the
14 comprehensive class notice program detailed below. *Id.*

15 **III. The Settlement Terms and Relief Provided to the Class**

16 The Settlement provides substantial cash compensation to the Mitsubishi
17 Settlement Class through a streamlined, state-of-the-art claims process, among
18 other important and valuable benefits explained further below.

19 **A. The Class definition**

20 The Mitsubishi Settlement Class is defined as follows: “all persons or entities
21 who or which, on the date of the issuance of the Preliminary Approval Order,
22 own/lease or previously owned/leased Class Vehicles distributed for sale or lease in
23 the United States or any of its territories or possessions.” *See* SA ¶ II.A.7.⁷

24
25 ⁷ Those excluded from the Class are: (a) Mitsubishi, its officers, directors,
26 employees and outside counsel; its affiliates and affiliates’ officers, directors and
27 employees; its distributors and distributors’ officers and directors; and Mitsubishi’s
28 Dealers and their officers and directors; (b) Settlement Class Counsel, Plaintiffs’
counsel, and their employees; (c) judicial officers and their immediate family
members and associated court staff assigned to this case; and (d) persons or entities
who or which timely and properly exclude themselves from the Class. SA ¶ II.A.7.

1 The Mitsubishi Class Vehicles include approximately 97,565 Mitsubishi
2 vehicles that contain DS84 ACUs and were distributed for sale or lease in the
3 United States or any of its territories or possessions, as defined in the proposed
4 Settlement Agreement. *Id.* § II and Exhibit 2.

5 **B. Settlement benefits to Class members**

6 The Settlement provides meaningful cash compensation and a robust
7 Inspection Program for each Mitsubishi Class Vehicle. *See id.* ¶ III.A-D. Mitsubishi
8 Settlement Class members may claim up to \$250 per Class Vehicle from the non-
9 reversionary common fund. To calculate individual Class member payments, the
10 available Settlement funds will be divided evenly, on a per-capita basis, among the
11 Mitsubishi Class Vehicles for which timely and valid claims are submitted.⁸ *Id.* §
12 III.B.2. And because the \$8.5 million Settlement Amount is non-reversionary, each
13 Mitsubishi Settlement Class member who submits a valid and timely claim also
14 stands to receive a potential second distribution of up to \$750 from any unclaimed
15 funds that remain after the eligible claims are paid. *Id.* § III.B.4. If such additional
16 payments are not economically feasible to distribute, only then will any final
17 balance be directed *cy pres* subject to Court approval. *Id.* This ensures that all the
18 money secured by the Settlement will inure to the benefit of the Mitsubishi
19 Settlement Class, and that none of the funds will revert to Mitsubishi.

20 Finally, to protect all Mitsubishi Settlement Class members' interests in the
21 safety of the vehicles they drive every day, the Parties developed an innovative ten-
22 year-long Settlement Inspection Program to provide technical investigation and
23 follow-up for Mitsubishi Class Vehicles that experience potentially EOS-related
24 malfunctions in the field. *Id.* § III.E and Exhibit 3.

25 _____
26 ⁸ If more than one Class Member submits a valid Claim Form for the same Class
27 Vehicle, then the original owner who purchased that Class Vehicle new will receive
28 60% of the funds allocated to that Mitsubishi Class Vehicle, and the remaining 40%
will be distributed evenly to or among the remaining Class Member(s) that submit a
valid Claim Form on that Class Vehicle. SA ¶ III.B.2.

1 **C. Notice and claims administration**

2 The Parties selected JND Settlement Administration as the Settlement Notice
3 Administrator based on its extensive experience in administering large-scale notice
4 programs in complex class and automotive cases,⁹ and are confident in the robust,
5 multi-faceted Class Notice Program developed for the Class here. The fees and
6 costs of the Settlement Notice Administrator to develop and implement the Class
7 Notice Program and Claims process will be paid from the Settlement Fund. SA
8 § IV. Although the total cost of the notice and claims administration program will
9 ultimately depend on the final claims rate, JND projects that total costs will range
10 from approximately \$447,000 to \$712,000 based on settlement participation rates of
11 5-25%.¹⁰ Plaintiffs believe this range is reasonable and necessary given the size of
12 the Class associated with nearly 100,000 vehicles, and the proportional costs to
13 send notice and administer claims.

14 **D. Attorneys’ fees, expenses, and service awards**

15 Proposed Settlement Class Counsel will apply to the Court for an award of
16 reasonable attorneys’ fees and expenses not to exceed 30% of the Settlement
17 Amount. Settlement Class Counsel will also apply for service awards of up to
18 \$2,500 for each of the three Mitsubishi Plaintiffs to compensate them for their
19 efforts and commitment to prosecute this case on behalf of the Class. Any
20 attorneys’ fees, expenses, and service awards granted by the Court will be paid
21 from the Settlement Fund. SA § VIII.

22 **E. Creation of Qualified Settlement Fund**

23 The Parties will establish and create a Qualified Settlement Fund (“QSF”),
24

25 ⁹ See Declaration of Jennifer Keough (“Keough Decl.”) at ¶¶ 8-10.

26 ¹⁰ Cf. Fed. Trade Comm’n Staff Report, *Consumers and Class Actions: A*
27 *Retrospective and Analysis of Settlement Campaigns* (Sept. 2019), available at
28 (https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf). (FTC’s comprehensive study of class actions, identifying the mean and median claims rates of 5% and 10%, respectively).

1 pursuant to Internal Revenue Code § 468B and the Regulations issued thereto, with
2 the QSF to be held by the Escrow Agent. *See id.* § III.A. As provided in Section
3 III.A of the Settlement, Mitsubishi will deposit the appropriate funds into the QSF,
4 which will be a non-reversionary Settlement Fund. This fund will be used
5 consistent with the terms of the Agreement to: (1) Pay valid and approved claims
6 submitted by eligible Mitsubishi Settlement Class members; (2) Pay notice and
7 related costs; (3) Pay for settlement and claims administration; (4) Make residual
8 cash payments to Class members pursuant to Section III.A.4 of the Settlement
9 Agreement; (5) Pay Settlement Class Counsel’s fees and expenses as awarded by
10 the Court; (6) Make service award payments to the individual Mitsubishi Plaintiffs
11 as awarded by the Court; and (7) Pay applicable taxes. *See id.*

12 **IV. Legal Standard for Preliminary Approval and Decision to Give Notice**

13 Federal Rule of Civil Procedure 23(e) governs a district court’s analysis of a
14 proposed class action settlement and creates a two-step process for approval. *See In*
15 *re ZF-TRW Airbag Control Units Prods. Liab. Litig.*, No.19-ML-02905 JAK
16 MRW(x), 2023 WL 6194109, at *13 (C.D. Cal. July 31, 2023) (“*In re ZF-TRW*
17 *ACUs I*”).

18 *First*, a court must determine that it is “likely” to (i) approve the proposed
19 settlement as fair, reasonable, and adequate, after considering the factors outlined in
20 Rule 23(e)(2), and (ii) certify the settlement class after the final approval hearing.
21 *See Fed. R. Civ. P. 23(e)(1)(B); see also* 2018 Advisory Committee Notes to Rule
22 23. If so, the Court must then direct notice to the proposed class to give them an
23 opportunity to object or to opt out. *See Fed. R. Civ. P. 23(c)(2)(B); Fed. R. Civ. P.*
24 *23(e)(1), (5). Second*, after a hearing, the court may grant final approval of the
25 settlement on a finding that the settlement is fair, reasonable, and adequate, and
26 certify the settlement class. Fed. R. Civ. P. 23(e)(2).

27 A judicial policy preference in favor of settlement guides this process,
28 “particularly in the context of complex class action litigation.” *In re ZF-TRW ACUs*

1 I, 2023 WL 6194109, at *13 (citing *Officers for Justice v. Civil Serv. Comm’n*,
2 688 F.2d 615, 625 (9th Cir. 1982)); see also *In re Hyundai & Kia Fuel Econ.*
3 *Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (similar). Where, as here, “the parties
4 negotiate a settlement agreement before the class has been certified, settlement
5 approval requires a higher standard of fairness and a more probing inquiry than may
6 be normally required under Rule 23(e).” *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d
7 1035, 1048 (9th Cir. 2019); see also *In re ZF-TRW ACUs I*, 2023 WL 6194109, at
8 *9 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 952- 53 (9th Cir. 2003)).

9 **V. Argument**

10 **A. The Settlement is a strong and fair result for the Class and should**
11 **be approved.**

12 Under Rule 23(e), the Court must determine “whether a proposed settlement
13 is fundamentally fair, adequate, and reasonable.” *Hanlon v. Chrysler Corp.*, 150
14 F.3d 1011, 1026 (9th Cir. 1998). This assessment looks to “the fairness of a
15 settlement as a whole, rather than . . . its individual components.” *In re ZF-TRW*
16 *ACUs I*, 2023 WL 6194109, at *14 (quoting *Lane v. Facebook, Inc.*, 696 F.3d 811,
17 818-19 (9th Cir. 2012)). At the preliminary approval stage, the Court should assess
18 whether “the proposed settlement appears to be the product of serious, informed,
19 non-collusive negotiations, has no obvious deficiencies, does not improperly grant
20 preferential treatment to class representatives or segments of the class, and falls
21 within the range of possible approval.” *Markson v. CRST Int’l, Inc.*, No. 5:17-CV-
22 01261-SB-SP, 2022 WL 1585745, at *2 (C.D. Cal. Apr. 1, 2022).

23 Rule 23(e)(2) identifies these and several other criteria for the Court to use to
24 decide whether to grant preliminary approval of the Settlement and direct notice to
25 the proposed Class. All applicable factors support the proposed resolution here.

26 **1. Rule 23(e)(2)(A): Settlement Class Counsel and the**
27 **Settlement Class Representatives have and will continue to**
28 **zealously represent the Class.**

This consolidated litigation began in the summer of 2019. In the nearly five

1 years since, Settlement Class Counsel and the Settlement Class Representatives
2 have worked hard to advance and protect the interests of the Mitsubishi Class. *See*
3 Fed. R. Civ. P. 23(e)(2)(A). Their effective advocacy and unwavering commitment
4 find no better evidence than in the substantial compensation the Settlement secures
5 for all Mitsubishi Settlement Class members.

6 As detailed above, Settlement Class Counsel undertook significant efforts to
7 uncover the facts about the ACU Defect in the Mitsubishi Class Vehicles. This
8 included the retention of technical experts to pursue and assess discovery materials,
9 and the continued investigation and refinement of the proposed Class’s claims and
10 liability theories, the fruits of which are detailed in two lengthy consolidated
11 Complaints including the 1,300-page operative pleading. *See* § II.B, *supra*.
12 Moreover, Settlement Class Counsel stayed focused and committed to obtaining a
13 favorable result for the proposed Class and dedicated substantial time and resources
14 to Settlement negotiation processes that spanned nearly two years.

15 The Mitsubishi Settlement Class Representatives are also actively engaged.
16 Each preserved documents and information related to their claims, collected their
17 responsive information and provided it to counsel for production to Defendants, and
18 worked with counsel to prepare responses to sets of detailed Interrogatories (and
19 even more detailed amendments to those responses). The Mitsubishi Settlement
20 Class Representatives also actively monitored progress in the years-long litigation
21 and worked with counsel to review and evaluate the proposed Settlement
22 Agreement and have endorsed its terms. All have expressed their continued
23 willingness to protect the Mitsubishi Settlement Class until the Settlement is
24 approved and its administration completed. *See* Co-Lead Decl. ¶ 32.

25 **2. Rule 23(e)(2)(B): The Settlement is the product of good faith,**
26 **informed, and arm’s-length negotiations.**

27 “[A] class settlement reached in arm’s-length negotiations between
28 experienced capable counsel after meaningful discovery” weighs in favor of

1 approval. *In re Ring LLC*, No. CV 19-10899-MWF (RAOx), 2023 WL 9687346, at
2 *4 (C.D. Cal. Dec. 20, 2023); *Koeppe v. Carvana, LLC*, No. 21-CV-01951-TSH,
3 2024 WL 1974545, at *5 (N.D. Cal. May 3, 2024) (“An initial presumption of
4 fairness is usually involved if the settlement is recommended by class counsel after
5 arm’s-length bargaining.”)

6 The Parties undertook serious, informed, and arm’s-length negotiations over
7 nearly two years, which included multiple in-person negotiation sessions and still
8 further remote sessions via videoconference and telephone. *See* § II.C; *see also* Co-
9 Lead Decl. ¶ 7. These detailed, technical, and evidence-based discussions, under the
10 guidance of Court-appointed Settlement Master Patrick Juneau, culminated in the
11 proposed Settlement now before the Court. *See* Fed. R. Civ. P. 23(e)(2)(B).

12 **a. The Parties’ negotiations were appropriately informed**
13 **and non-collusive.**

14 An extensive exchange of information supports “that the parties have a good
15 understanding of the strengths and weaknesses of their respective cases and hence
16 that the settlement’s value is based upon such adequate information.” William B.
17 Rubenstein et al., 4 *Newberg on Class Actions* § 13:49 (5th ed. 2012) (“*Newberg*”);
18 *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 320 (N.D. Cal. 2018)
19 (concluding that the “extent of discovery” and factual investigation gave the parties
20 “a good sense of the strength and weaknesses of their respective cases in order to
21 ‘make an informed decision about settlement’” (quoting *In re Mego Fin. Corp. Sec.*
22 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000))); *Steinberg v. CoreLogic Credco, LLC*,
23 No. 3:22-CV-00498-H-SBC, 2024 WL 1546921, at *8 (S.D. Cal. Apr. 9, 2024) (“A
24 settlement following sufficient discovery and genuine arms-length negotiation is
25 presumed fair.”); *Wahl v. Yahoo! Inc.*, No. 17-cv-02745-BLF, 2018 WL 6002323,
26 at *4 (N.D. Cal. Nov. 15, 2018) (relevant inquiry is whether parties had “sufficient
27 information to evaluate the case’s strengths and weaknesses”).

28 Similarly, a meaningful exchange of documents and information also

1 evidences that the litigation was adversarial, and therefore serves as “an indirect
2 indicator that a settlement is not collusive but arms-length.” 4 *Newberg* § 13:49; *see*
3 *also In re Anthem*, 327 F.R.D. at 320 (“Extensive discovery is also indicative of a
4 lack of collusion . . .”); *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., &*
5 *Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019 WL 2077847, at *1 (N.D.
6 Cal. May 10, 2019) (“Lead Counsel vigorously litigated this action during motion
7 practice and discovery, and the record supports the continuation of that effort
8 during settlement negotiations.”).

9 The record here shows the Mitsubishi Settlement to be both well-informed
10 and reached by adversarial parties.¹¹ With negotiations ongoing, and as described
11 above (§ II.CB), Settlement Class Counsel analyzed documents and information
12 from Mitsubishi, its co-Defendants, the related NHTSA investigation, as well as
13 information they obtained from Plaintiffs and through their own investigative
14 efforts. All told, Defendants have produced nearly *four million* pages of documents
15 relevant to Plaintiffs’ claims and the ACU defect. Co-Lead Decl. ¶ 5. Importantly,
16 given the defect in DS84 ACUs installed in all Class Vehicles in this consolidated
17 litigation, Settlement Class Counsel gained informative evidence of the defect in
18 Mitsubishi Class Vehicles from documents produced by ZF, ST, and the other
19 Defendants, in addition to the responses to multiple sets of interrogatories and
20 requests for admission served on multiple Defendants, and other discovery.

21 This extensive record informed Plaintiffs’ understanding of the strengths and
22 weaknesses of their claims against Mitsubishi and facilitated their strategic efforts
23 to reach a favorable result.

24
25 ¹¹ *See Carvana*, 2024 WL 1974545, at *5 (granting approval where “Class counsel
26 reviewed a volume of documents and data obtained from Defendant, Plaintiff, and
27 other sources”); *Hernandez v. Arthur J. Gallagher Serv. Co.*, No. 22-CV-01910-H-
28 DEB, 2024 WL 1521422, at *7 (S.D. Cal. Apr. 8, 2024) (preliminary settlement
approval supported by “analysis of hundreds of pages of documents and other
information produced by Plaintiff and Defendant” and the “legal positions taken by
Defendant”).

1 **b. Oversight and guidance from the Special Master**
2 **further support the adversarial negotiation.**

3 In addition to the detailed factual record and extent of the investigation
4 described above, settlements like this one “reached with the help of a mediator are
5 likely non-collusive.” *Kabasele v. Ulta Salon, Cosms. & Fragrance, Inc.*, No. 2:21-
6 CV-1639 WBS KJN, 2024 WL 477221, at *4 (E.D. Cal. Feb. 7, 2024);¹² *Evans v.*
7 *Zions Bancorp., N.A.*, No. 2:17-CV-01123 WBS DB, 2022 WL 3030249, at *7
8 (E.D. Cal. Aug. 1, 2022) (similar); *Fernandez v. CoreLogic Credco, LLC*, No. 3:20-
9 CV-1262-JM-(SBC), 2024 WL 538585, at *10 (S.D. Cal. Feb. 9, 2024)
10 (involvement of “third-party mediators weighs against collusion and in favor of
11 preliminary approving the settlement”).¹³

12 Here, the Parties’ lengthy negotiations occurred with the oversight and
13 guidance of the highly respected and experienced Court-appointed Settlement
14 Special Master Juneau, which weighs heavily in favor of approval.

15 **c. The significant, non-reversionary results for the Class**
16 **support the lack of collusion.**

17 Finally, where Class members stand to receive substantial benefits from the
18 proposed resolution, as they do here, there is little room for argument that counsel
19 failed to protect the interests of the Settlement Class or otherwise engaged in
20 collusive behavior. Importantly, the benefits for the Mitsubishi Class members are
21 *non-reversionary*. And the Settlement Agreement lacks any clear sailing provision.
22 Both of these aspects of the Settlement demonstrate the lack of collusion in the
23 negotiation process, and weigh in favor of approval. *In re ZF-TRW ACUs I*, 2023
24 WL 6194109, at *16; *Charalambous v. Liberty Mut. Ins. Co.*, No. 22-CV-00216

25 ¹² Here and throughout, citations are omitted.

26 ¹³ See also *Schmitt v. Kaiser Found. Health Plan of Washington*, No. 2:17-CV-
27 1611-RSL, 2024 WL 1676754, at *3 (W.D. Wash. Apr. 18, 2024) (approving
28 settlement and finding no evidence of collusion where settlement was reached after
a “day-long mediation”); *Rosales v. El Rancho Farms*, No. 1:09-CV-00707-AWI,
2015 WL 4460635, at *16 (E.D. Cal. July 21, 2015), *report and recommendation*
adopted, 2015 WL 13659310 (E.D. Cal. Oct. 2, 2015) (“[T]he ‘presence of a
neutral mediator [is] a factor weighing in favor of a finding of non-collusiveness.’”).

1 EMC, 2024 WL 1586701, at *2 (N.D. Cal. Mar. 15, 2024) (“[T]he settlement is
2 non-reversionary, which also indicates a lack of collusion”).

3 **3. Rule 23(e)(2)(C): The Settlement provides substantial**
4 **compensation in exchange for the compromise of strong**
5 **claims.**

6 The Settlement provides substantial relief for the Mitsubishi Settlement
7 Class, especially considering (i) the costs, risks, and delay of trial and appeal;
8 (ii) the effectiveness of the proposed distribution plan and claims program; and
9 (iii) the fair terms of the requested award of attorneys’ fees. *See* Fed. R. Civ. P.
10 23(e)(2)(C).

11 As noted above, the Settlement secures a non-reversionary Settlement
12 Amount of \$8.5 million to compensate the Mitsubishi Settlement Class. It provides
13 important non-monetary benefits above and beyond those payments in the
14 innovative Settlement Inspection Program to ensure investigation of relevant
15 incidents for ten years ahead. The benefits for the proposed Settlement Class here
16 are comfortably in line with the compensation approved in auto defect cases in this
17 Circuit and others too. *See In re ZF-TRW Airbag Control Units Prods. Liab. Litig.*,
18 No.19-ML-02905 JAK MRW(x), 2023 WL 9227002 (C.D. Cal. Nov. 28, 2023) (*In*
19 *re ZF-TRW ACUs II*) (approving similar settlement structure that included cash
20 payments and an Inspection Protocol for the unrecalled Toyota Subject Vehicle
21 population comparable to the Mitsubishi Class Vehicles here); *Banh v. Am. Honda*
22 *Motor Co.*, No. 2:19-CV-05984-RGK-AS, 2021 WL 3468113, at *7 (C.D. Cal.
23 June 3, 2021) (“The settlement adequately and fairly compensates class members.
24 They will receive automatic benefits” like an “Infotainment System Online
25 Resource,” and “they will have the opportunity to file claims for added relief in a
26 streamlined process.”); *In re Takata Airbag Prods. Liab. Litig.*, No. 14-CV-24009,
27 2022 WL 1669038, at *1 (S.D. Fla. Apr. 4, 2022) (approving Volkswagen
28 settlement as the latest in several similar settlements in the *Takata* MDL).

Moreover, this recovery represents a material portion of the Mitsubishi

1 Plaintiffs’ potential damages attributable to Mitsubishi, while they continue to seek
2 damages from the ZF and ST Defendants. A precise calculation of the Mitsubishi
3 Plaintiffs’ damages (ACAC ¶ 1456) will involve expert testimony at a later stage of
4 this ongoing litigation. However, benchmarks of the general scope of damages from
5 variations in vehicle safety system functionality are available. For example, a 2011
6 Jeep Wrangler sold with front side airbags is \$500 more expensive than the same
7 model without them. *Id.* ¶ 1457. While not directly comparable to the risks of the
8 ACU Defect here, this data point shows that differences in the effectiveness of
9 vehicle safety systems lead to material differences in market price. The *Takata*
10 airbag litigation provides another example, where a conjoint analysis from the
11 plaintiffs’ expert found that the overpayment cost for vehicles with that dangerous
12 airbag defect was approximately ten percent of the vehicle purchase price. *Id.* ¶
13 1458. Again, the *Takata* defect is not identical to the ACU Defect here, but the
14 results provide yet another reference for the economic losses that result from
15 differences in vehicle safety.

16 Ultimately, the compensation and benefits available under the Settlement—
17 from just one of three Defendant groups from whom the Mitsubishi Plaintiffs seek
18 to recover damages—offer a material amount of either figure.¹⁴ This is a
19 remarkable result for the compromise of contested claims, the vast majority of
20 which have not yet survived a motion to dismiss.

21 **a. The Settlement mitigates the substantial risks,**
22 **expenses, and delays the Class would bear with**
23 **continued litigation through trial and appeal.**

24 The Settlement relief described is even stronger when considered against the
25 alternative of inherent uncertainties and continued litigation. Mitsubishi Settlement

26 ¹⁴Plaintiffs’ actual damages in this case may, at the appropriate juncture and with
27 expert opinion, differ materially from either or both of these figures. Treble
28 damages, which are available under RICO, do not traditionally factor into
settlement value assessment. *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 964 (9th
Cir. 2009).

1 Class members’ certain and timely receipt of Settlement compensation and benefits
2 is an unquestionably reasonable outcome when faced with the challenges ahead.
3 *See In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*,
4 No. MDL 2672 CRB (JSC), 2017 WL 2212780, at *8 (N.D. Cal. May 17, 2017),
5 *aff’d*, 746 F. App’x 655 (9th Cir. 2018) (“The substantial and immediate relief
6 provided to the Class under the Settlement weighs heavily in favor of its approval
7 compared to the inherent risk of continued litigation, trial, and appeal”);
8 *Nobles v. MBNA Corp.*, No. C 06-3723 CRB, 2009 WL 1854965, at *2 (N.D. Cal.
9 June 29, 2009) (“The risks and certainty of recovery in continued litigation are
10 factors for the Court to balance in determining whether the Settlement is fair.”).

11 This case, like those cited above, is not without risk. For example, while
12 Plaintiffs submit the operative ACAC states valid, cognizable claims, their federal
13 RICO claim did not survive Mitsubishi’s earlier pleading challenge. Indeed, to date
14 only two of the Mitsubishi Plaintiffs’ dozens of claims against Mitsubishi have
15 survived its pleading challenge: a Wisconsin breach of warranty claim, and a
16 California Song-Beverly Act claim. Looking ahead, the requirements for the
17 Mitsubishi Plaintiffs’ other state law claims could stand in the way of success on
18 the ACAC in some instances. *See, e.g., Bolton v. Ford Motor Co.*, No. CV 23-
19 00632-GBW, 2024 WL 3328522, at *13 (D. Del. July 8, 2024) (dismissing
20 Michigan Consumer Protection Act claim based on a conclusion that motor vehicle
21 sales are not covered by the statute); *Gant v. Ford Motor Co.*, 517 F. Supp. 3d 707,
22 719 (E.D. Mich. 2021) (similar).

23 Finally, while the Mitsubishi Plaintiffs have not moved to certify a litigation
24 class, that process would be expensive, lengthy, and, again, uncertain, and
25 following which the Mitsubishi Plaintiffs would face even further intensive and
26 expensive preparations for trial. And then even with success at trial, years of
27 appeals would undoubtedly follow. It is a principled compromise to the clear
28 benefit of the Mitsubishi Settlement Class to avoid years of additional, costly, and

1 risky litigation in exchange for the immediate and significant Settlement benefits
2 here.

3 **b. Class members will obtain relief through a**
4 **straightforward claims process.**

5 The Parties have ensured that the claims process will be straightforward and
6 efficient, based on recent experience with claims processes in other automotive
7 settlements (including with Toyota in this litigation).

8 To claim compensation, Mitsubishi Settlement Class members need only
9 submit a short claim form either online or by mail and may be asked to submit basic
10 documentation (*e.g.*, proof of ownership or lease) only where such information is
11 necessary to verify the claim. *See* Keough Decl., Ex. H (Claim form). The Parties
12 developed the streamlined claim form in consultation with the Settlement Notice
13 and Claims Administrator. The effort required, and safeguards incorporated in this
14 process are proportional to the compensation available, and are necessary, and
15 appropriate to preserve the integrity of the claims process.

16 Claim forms will be available to Mitsubishi Settlement Class members via
17 U.S. Mail, e-mail, internet, and social media. Likewise, Class members may choose
18 to submit their claim either online through a link on the Settlement website, or in
19 hard copy. In this way, Mitsubishi Settlement Class members can choose options
20 that best suit their preferences to participate in the claims program.

21 **c. Counsel will seek reasonable attorneys' fees and**
22 **expenses.**

23 Settlement Class Counsel will move for an award of reasonable attorneys'
24 fees and reimbursement of their litigation expenses for work performed and
25 expenses incurred in furtherance of this litigation and its successful result. Fed. R.
26 Civ. P. 23(e)(2)(C)(iii). Any attorneys' fees and expenses the Court awards will be
27 paid from the Settlement Fund.¹⁵ SA § VIII.

28 ¹⁵ There are no agreements between the Parties other than the Settlement. *See* Fed. R. Civ. P. 23(e)(3) ("The parties seeking approval must file a statement identifying

1 Under the proposed schedule, Co-Lead Counsel will file the motion for
2 attorneys’ fees, expenses, and service awards by December 16, 2024. That motion
3 will be filed at least four weeks before the proposed objection/opt-out deadline and
4 will be available on the Settlement Website after it is filed, such that Mitsubishi
5 Settlement Class members will have the opportunity to consider the request in their
6 overall evaluation of the proposed Settlement and its terms. At this juncture,
7 Settlement Class Counsel anticipates they will request up to 30% of the Settlement
8 Amount for reasonable attorneys’ fees and expenses, as detailed further below.

9 **Counsel will seek a reasonable percentage of the common fund.** Class
10 Counsel anticipates they will ask the Court to award up to 30% of the \$8.5 million
11 Settlement Amount in attorneys’ fees and expenses. As will be explained further in
12 their motion for attorneys’ fees, Counsel’s fee request will be well within the range
13 regularly approved in this Circuit. In fact, in this Circuit, “fee awards exceed[] the
14 [25%] benchmark” in “*most common fund cases*,” and awards of 30% or more are
15 common. *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-MD-
16 2541-CW, 2017 WL 6040065, at *2 (N.D. Cal. Dec. 6, 2017) (emphasis added); *see*
17 *also In re ZF-TRW ACUs I*, 2023 WL 6194109, at *21 (at preliminary approval,
18 finding the Toyota Plaintiffs’ anticipated request for attorneys’ fees of 33% of the
19 Settlement Amount was reasonable, and noting that “an attorney’s fees award
20 exceeding the [25%] benchmark . . . may be warranted in light of the results
21 achieved, the risks of litigation, non-monetary benefits conferred by the litigation,
22 customary fees in similar cases, the contingent nature of the fee, the burden carried
23 by counsel, or the reasonable expectations of counsel”).¹⁶

24 _____
25 any agreement made in connection with the proposal.”).

26 ¹⁶ *See also, e.g., Hernandez v. Dutton Ranch Corp.*, No. 19-CV-00817-EMC, 2021
27 WL 5053476, at *6 (N.D. Cal. Sept. 10, 2021) (collecting cases and finding that
28 “[d]istrict courts within this circuit . . . routinely award attorneys’ fees that are one-
third of the total settlement fund . . . [s]uch awards are routinely upheld by the
Ninth Circuit”); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. MDL 3:07-md-
1827 SI, 2011 WL 7575003, at *1 (N.D. Cal. Dec. 27, 2011) (awarding attorneys’
fees of 30% of \$405 million settlement fund); *In re: CRT Antitrust Litig.*, MDL No.

1 Among other factors here, the results obtained—substantial payments to
2 Mitsubishi Settlement Class Members and meaningful (but unquantified) benefits
3 from the Inspection Protocol¹⁷— the years-long duration of the case, and the
4 contingent nature of the fee will all support the reasonableness of the request.

5 **A lodestar cross-check will confirm the fee request is reasonable.** In
6 common fund cases, “the primary basis of the fee award remains the percentage
7 method.” *Gutierrez v. Amplify Energy Corp.*, No. 8:21-CV-01628 DOC JDE(x),
8 2023 WL 6370233, at *6 (C.D. Cal. Sept. 14, 2023) (quoting *Vizcaino v. Microsoft*
9 *Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002)). To further assess the reasonableness
10 of the requested fee, courts often use a lodestar analysis to “cross-check” the
11 request. *See, e.g., Vizcaino*, 290 F.3d at 1050 (“[W]hile the primary basis of the fee
12 award remains the percentage method, the lodestar may provide a useful
13 perspective on the reasonableness of a given percentage award.”).

14 Co-Lead Counsel receives and audits time for compliance with the Court-
15 approved Common Benefit Order (“CBO”). ECF 111 and Exhibit A. Co-Lead
16 Counsel and their staff continue to audit the time received to date in advance of
17 their forthcoming motion for attorneys’ fees and expenses. While that work is
18 underway, Co-Lead Counsel submit herewith summary charts of time incurred up

19 _____
20 1917, 2016 WL 4126533, at *5 (N.D. Cal. Aug. 3, 2016) (awarding 30% of
21 \$576,750,000 fund); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 463 (upholding
22 district court’s award of 33 1/3 percent of the fund); *Boyd v. Bank of Am. Corp.*,
23 No. SACV 13-0561-DOC (JPRx), 2014 WL 6473804, at *8 (C.D. Cal. Nov. 18,
24 2014) (awarding 33% of \$5,800,000 settlement); *Fernandez v. Victoria Secret*
Stores, LLC, No. CV 06-04149 MMM (SHx), 2008 WL 8150856, at *16 (C.D. Cal.
25 July 21, 2008) (awarding 34% of \$8.5 million fund); *Stuart v. Radioshack Corp.*,
26 No. C-07-4499 EMC, 2010 WL 3155645, at *6 (N.D. Cal. Aug. 9, 2010) (33% of
27 common fund); *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 450 (E.D.
28 Cal. 2013) (same).

17 *See, e.g., Pan v. Qualcomm Inc.*, No. 16-CV-01885-JLS-DHB, 2017 WL
3252212, at *12 (S.D. Cal. July 31, 2017) (concluding that “substantial” non-
monetary relief, even though it could not be accurately valued, supported fee award
of nearly 30%); *Boeing*, 327 F.3d at 974 (concluding that even where not
quantified, non-monetary relief is appropriately considered in assessing the value of
the relief obtained for the class in the Settlement); *Steiner v. Am. Broad. Co.*, 248 F.
App’x 780, 783 (9th Cir. 2007) (similar as to the defendant’s “change[] [in]
licensing practices” without a monetary value assigned).

1 through May 31, 2024, and the underlying time entries will be submitted *in camera*
2 in Excel format pursuant to the Court’s civil standing orders. *See* Civil Standing
3 Orders, Exhibit G.¹⁸ This data demonstrates the scope and scale of the lodestar
4 incurred, which will undoubtedly support the reasonableness of the anticipated
5 request here. To date, using the capped and reduced hourly rates set by the Court in
6 the CBO, the total adjusted lodestar is \$40,786,949.78.¹⁹ The total adjusted lodestar
7 with each timekeeper’s standard and routinely Court-approved hourly rates is
8 \$45,386,716.66, for a reduction of approximately 10% (\$4.6 million) from the
9 market-rate fees of participating counsel.²⁰ Settlement Class Counsel respectfully
10 submit that the Court-entered CBO provides strong support for the hourly rates to
11 be sought in their fee motion, as this Court recently affirmed in approving these
12 rates in connection with the attorneys’ fee motion for the Toyota Settlement in this
13 litigation. *See In re ZF-TRW ACUs I*, 2023 WL 6194109, at *22-23; *In re ZF-TRW*
14 *ACUs II*, 2023 WL 9227002, at *16.

15 In their professional judgment and based on their familiarity with the work
16 performed at their direction, Co-Lead Counsel estimate the work fairly and
17 reasonably attributed to efforts that benefited the proposed Mitsubishi Settlement

18 ¹⁸ This time reflects the time submitted to date; additional time may be reflected in
19 the finalized data submitted with Counsel’s attorneys’ fees motion. Co-Lead
20 Counsel expect that at the conclusion of the audit, the requested lodestar ultimately
21 submitted with their attorneys’ fees motion may be modified (for example in terms
of category codes, adjustment for error, additions of subsequent submitted and
audited time, etc.).

22 ¹⁹ This “adjusted lodestar” reflects the subtraction of the lodestar previously
23 allocated to the Toyota Settlement (\$11,520,547.22 with capped rates, and
24 \$12,800,004.84 with market rates) from the current total lodestar figures. For that
reason, the total case lodestar reflected in the Exhibits is higher than the adjusted
lodestar, because the lodestar data in the Exhibits is comprehensive and includes all
data, including the lodestar that was previously attributed to Toyota.

25 ²⁰ Pursuant to the CBO, Participating Counsel record and submit their monthly time
26 using their then-present (historical) hourly rates, but counsel may seek an award of
27 fees based on their current hourly rate at the time of settlement. CBO at 5. For that
reason, the preliminary data submitted with this filing reflects the historical rates as
28 submitted per the CBO, but Co-Lead Counsel anticipate adjusting the rates to the
current rates for each timekeeper once the auditing process is complete for the
forthcoming attorneys’ fees motion.

1 Class and the prosecution of their claims as follows: from the total, 70% of the
2 efforts are attributable to the six Vehicle Manufacturer Defendants, and the
3 remaining 30% of work is specific to the two supplier Defendants (ZF and ST
4 Micro), in that much of the work for the suppliers also advances the claims against
5 the Vehicle Manufacturers.²¹

6 Within the amount allotted to the Vehicle Manufacturer Defendants, Co-Lead
7 Counsel estimate approximately 4% of that work is reasonably associated with
8 Mitsubishi. This apportionment to Mitsubishi supported by (a) the size and scale of
9 the Mitsubishi Class, which cover approximately 100,000 of the 15 million Class
10 Vehicles at issue in this MDL; (b) efforts in responding to Mitsubishi and the other
11 Defendants' joint pleading challenges to the Consolidated Complaint; (c) the
12 discovery, investigative and expert work that developed and advanced the
13 Mitsubishi Plaintiffs' claims to this favorable resolution; and (d) the focused time
14 and efforts to negotiate the proposed Settlement terms with Mitsubishi over the
15 course of nearly two years.

16 Not yet reflected in the time records is the future work that will be necessary
17 to implement the Settlement. This includes work required to: (1) obtain final
18 approval of the Settlement; (2) protect the Settlement on appeal (if any appeals are
19 lodged); and (3) oversee and help implement the Settlement until the end of the
20 year-long Claims Period, which will include, among other things, responding to
21 inquiries from many of the more than 100,000 Class members. Co-Lead Counsel
22 Decl. ¶ 27. Co-Lead Counsel anticipate that Counsel will incur no less than

23
24 ²¹ As was true for the earlier Toyota Settlement, it is not practicable to disaggregate
25 the common benefit work across each individual defendant, because much of the
26 work performed benefits the entire MDL collectively, not just the specific case or
27 claim against any one Defendant. Co-Lead Decl. ¶ 24. Therefore, it is common in
28 cases like this for counsel to apportion a percentage of the total lodestar attributable
to a particular settling Defendant. This is the same approach Co-Lead Counsel
undertook (and the Court recognized, *see In re ZF-TRW ACUs I*, 2023 WL
6194109, at *22) for their request for attorneys' fees as part of the Toyota
Settlement, and that approach applies equally to the work that underlies the
Settlement with Mitsubishi here.

1 \$233,333 in lodestar for that work (approximately 350 hours). *Id.*²²

2 Based on the above, the estimated Mitsubishi lodestar at issue for the
3 attorneys' fee request, with the applicable rate caps, is approximately
4 \$1,142,034.59. Co-Lead Decl. ¶ 28. With the anticipated future work, the total
5 Mitsubishi lodestar is expected to be \$1,375,367.59. With respect to the maximum
6 fees request of up to \$2,550,000, assuming an expenses request of \$150,000, this
7 yields a reasonable multiplier of approximately 2.1 without future fees, and 1.75
8 with future fees included. Each is on the lower end of the presumptively acceptable
9 range in this Circuit. *See Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334
10 (N.D. Cal. 2014) (describing multipliers of 1.0 - 4.0 as the "presumptively
11 acceptable range" in this Circuit); *In re ZF-TRW ACUs II*, 2023 WL 9227002, at
12 *16 (approving multiplier of 2.35 in this litigation); *see also* ECF No. 815 at 42
13 (information on multipliers and related fee studies in Plaintiffs' final approval brief
14 for the Toyota settlement).

15 In sum, Settlement Class Counsel's fee application, in line with the above,
16 will be filed in advance of the Objection Deadline and it will be available on the
17 Settlement Website after it is filed. At present, the detailed information above
18 demonstrates that the fee request will be reasonable and support approval of the
19 Settlement.

20 **d. Settlement Class Counsel will seek reasonable service**
21 **awards for the Settlement Class Representatives.**

22 The proposed Mitsubishi Settlement Class representatives have served to
23 protect the interests of the proposed Mitsubishi Settlement Class by, among other
24 things: their commitment to investigate and prosecute this case on behalf of the
25 Class (now going on five years); providing extensive factual information to assist
26 counsel with drafting the complaints; regularly communicating with counsel to stay

27 ²² Counsel used an estimated blended average rate of \$650 for this calculation,
28 assuming a distribution of partner and associate work on the kinds of tasks to come
and will revise these numbers with updated data in their attorneys' fees motion.

1 abreast of developments in this litigation; searching for relevant and responsive
2 materials about their Class Vehicles, and providing those materials to counsel for
3 production in discovery; conferring with counsel to prepare and finalize detailed
4 responses to Interrogatories; working with counsel to review and evaluate the terms
5 of the proposed Settlement Agreement; and expressing their continued willingness
6 to protect the Class until the Settlement is approved and its administration
7 completed.

8 All in all, over the course of this litigation, Co-Lead Counsel estimate that,
9 conservatively, each of the individual Mitsubishi Plaintiffs spent approximately 25
10 hours on the litigation. *See* Co-Lead Decl. ¶ 34. For their longstanding commitment
11 and contributions to the case, counsel submit these individuals have earned the
12 modest service awards (\$2,500) to be requested in the forthcoming motion. *See In*
13 *re ZF-TRW ACUs I*, 2023 WL 6194109, at *18 (finding \$2,500 to be a “reasonable”
14 service award in this litigation); *In re ZF-TRW ACUs II*, 2023 WL 9227002, at *13
15 (same on final approval); *CRT*, 2016 WL 4126533, at *11 (recognizing \$5,000 is
16 the “presumptively reasonable” service award in this Circuit); *Cisneros v. Airport*
17 *Terminal Servs.*, No. 2:19-CV-02798-VAP-SPx, 2021 WL 3812163, at *9 (C.D.
18 Cal. Mar. 26, 2021) (“Courts have generally found that \$5,000 incentive payments
19 are reasonable.”).

20 **4. Rule 23(e)(2)(D): The Proposed Settlement treats all Class**
21 **members equitably relative to one another.**

22 The proposed Settlement fairly and reasonably allocates benefits to the
23 Mitsubishi Settlement Class and “treats class members equitably relative to each
24 other.” Fed. R. Civ. P. 23(e)(2). Each Class member is subject to the same release
25 and has an opportunity to submit a claim for cash compensation through a simple,
26 streamlined claim form. SA §§ III.C; VII. Payments will be allocated on a per-
27 capita basis to Mitsubishi Class Vehicles with valid claims. *Id.* § III.B. In other
28 words, after deducting fees and costs, the Settlement Amount will be divided

1 evenly among all Mitsubishi Class Vehicles for which a timely and valid claim is
2 submitted.

3 If more than one valid claim applies for the same Mitsubishi Class Vehicle,
4 the original owner who purchased new will receive 60% of the allocated funds, and
5 the 40% remainder will be distributed evenly to or among the other valid claimants.

6 *Id.* § III.B.2. This allocation reflects the economic reality that the Mitsubishi Class
7 Vehicles' value is highest when new, such that the damages incurred as a relative
8 percentage of vehicle value are also highest for new purchasers. As such, the
9 equitable weighting "compensates class members in a manner generally
10 proportionate to the harm they suffered on account of [the] alleged misconduct."
11 *Altamirano v. Shaw Indus., Inc.*, No. 13-CV-00939-HSG, 2015 WL 4512372, at *8
12 (N.D. Cal. July 24, 2015).²³ It also reflects the reality that new purchasers face
13 fewer legal hurdles and arguably present stronger claims for relief. *See, e.g., In re*
14 *Blue Cross Blue Shield Antitrust Litig. MDL 2406*, 85 F.4th 1070, 1093-94 (11th
15 Cir. 2023) (affirming approval of allocation formula that considered the
16 "comparative strengths of each class's . . . claims"); *In re Volkswagen "Clean*
17 *Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 15-MD-02672-CRB, 2022
18 WL 17730381, at *8 (N.D. Cal. Nov. 9, 2022) (concluding allocation formula was
19 equitable where differing payment amounts "roughly correspond[ed] to the strength
20 of [class members'] claims and the likelihood of damages at trial").

21 In sum, the allocation uses transparent and objective criteria to fairly
22 apportion Settlement Class member payments and ensures that claims
23 administration is feasible, cost effective, and streamlined for Settlement Class
24 members. *See Fed. R. Civ. P. 23(e)(2)(D)*.

25 Likewise, the Mitsubishi Settlement Class Representatives will not receive

26 _____
27 ²³ *See also Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328 (3d Cir. 2011) (holding that
28 "[c]ourts generally consider plans of allocation that reimburse class members based
on the type and extent of their injuries to be reasonable"); Joseph M. McLaughlin,
McLaughlin on Class Actions § 6:23 (20th ed.) (same).

1 preferential treatment or compensation disproportionate to their respective harm
2 and contribution to the case. They are permitted to make claims for compensation
3 like any other Mitsubishi Settlement Class Member. Moreover, Settlement Class
4 Counsel will seek \$2,500 to compensate their efforts and commitment to prosecute
5 this case on behalf of the Class, which is well in line with sums routinely approved
6 in other class cases in this district. *See supra* § V.A.3.d.

7 **B. The Court should appoint Settlement Class Counsel for Purposes**
8 **of Effectuating the Settlement and Notice Program.**

9 The Court is required to appoint class counsel to represent the Class. *See Fed.*
10 *R. Civ. P. 23(g)*. At the outset of the MDL, the Court chose Co-Lead Counsel and
11 the PSC due to their qualifications, experience, and commitment to the successful
12 prosecution of this litigation. *See ECF No. 106*. The criteria that the Court
13 considered to appoint Lead Counsel and the PSC align with the considerations set
14 forth in Rule 23(g). *See, e.g., Clemens v. Hair Club for Men, LLC*, No. C 15-01431
15 WHA, 2016 WL 1461944, at *2 (N.D. Cal. Apr. 14, 2016). The Court’s recent
16 appointment of Co-Lead Counsel and the PSC to be Settlement Class Counsel in
17 the Toyota Settlement further affirmed their effective advocacy for Plaintiffs and
18 their claims in this litigation. *In re ZF-TRW ACUs I*, 2023 WL 6194109, at *23
19 (concluding Settlement Class Counsel had been “adequate representatives” of the
20 Toyota Settlement Class in this litigation). As noted above and like the Toyota
21 Settlement, Co-Lead Counsel and the PSC firms have undertaken significant work,
22 effort, and expense in this MDL and to litigate Plaintiffs’ claims against Mitsubishi.
23 *See Co-Lead Decl. ¶ 3*.

24 Plaintiffs therefore submit that Co-Lead Counsel and the PSC should be
25 appointed as Settlement Class Counsel under Rule 23(g)(3) to conduct the
26 necessary steps in the Settlement approval process.

27 **C. The Court will be able to certify the proposed Class for settlement**
28 **purposes upon final approval.**

The first step in class certification is to determine whether the class satisfies

1 the requirements of Rule 23(a). *In re ZF-TRW ACUs I*, 2023 WL 6194109, at *10.
2 If the four prerequisites of Rule 23(a) are met, the Court must then find that the
3 proposed class meets one of the requirements of Rule 23(b)(1)-(3). *Id.*; *see also In*
4 *re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at 557 (en banc) (upholding district
5 court’s preliminary approval and certification of nationwide settlement class).²⁴

6 The proposed Settlement Class here readily satisfies all Rule 23(a)(1)-(4) and
7 (b)(3) certification requirements.

8 **1. The Class meets the requirements of Rule 23(a).**

9 **a. Rule 23(a)(1): The Class is sufficiently numerous.**

10 Rule 23(a)(1) requires that “the class is so numerous that joinder of all class
11 members is impracticable.” Fed. R. Civ. P. 23(a)(1). “Although there is no specific
12 numeric requirement, courts generally have found that a class of at least 40
13 members is sufficient.” *In re ZF-TRW ACUs I*, 2023 WL 6194109, at *10 (citing
14 *Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir. 2010); *In re Cooper Cos. Inc.*
15 *Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009)).

16 The Settlement Class is made up of current and former owners and lessees of
17 some 97,565 Mitsubishi Class Vehicles. *See* ACAC ¶ 542. Numerosity is easily
18 satisfied here.

19 **b. Rule 23(a)(2): The Class Claims present common**
20 **questions of law and fact.**

21 “Federal Rule of Civil Procedure 23(a)(2) conditions class certification on
22 demonstrating that members of the proposed class share common ‘questions of law
23 or fact.’” *Stockwell v. City & County of San Francisco*, 749 F.3d 1107, 1111 (9th
24 Cir. 2014). Commonality “does not turn on the number of common questions, but
25 on their relevance to the factual and legal issues at the core of the purported class’
26 claims.” *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014). A single

27 ²⁴ The Court has jurisdiction over the Action and the Parties pursuant to 28 U.S.C.
28 §§ 1331 and 1332 for purposes of settlement, and venue is proper in this district
pursuant to 28 U.S.C. § 1391(a).

1 question of law or fact common to class members will satisfy the commonality
2 requirement. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011). A common
3 question will, in turn, generate common answers apt to drive the resolution of the
4 litigation for the entire Settlement Class. *See id.* at 350. This is not a high threshold.
5 *Wolin v. Jaguar Land Rover N.A., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010).

6 Courts routinely find commonality where, as here, the class claims arise from
7 a defendant’s uniform course of fraudulent conduct. *See, e.g., In re ZF-TRW ACUs*
8 *I*, 2023 WL 6194109, at *11 (finding commonality satisfied for the Toyota
9 Settlement where “Plaintiffs have identified at least one common question as to
10 whether [Defendants’] alleged omissions and uniform misrepresentations to Class
11 Members were fraudulent.”); *see also In re Volkswagen “Clean Diesel” Mktg.*,
12 2022 WL 17730381, at *3 (“In cases like this one, where fraud claims [about
13 vehicle performance] arise out of a uniform course of conduct, commonality is
14 routinely found.”); *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs., &*
15 *Prods. Liab. Litig.*, No. 17-MD-02777-EMC, 2019 WL 536661, at *6 (N.D. Cal.
16 Feb. 11, 2019) (commonality satisfied where claims arose from the defendants’
17 “common course of conduct” in alleged vehicle emissions cheating scheme).

18 Here, the Mitsubishi Settlement Class claims all flow from Mitsubishi’s
19 common conduct of omitting material information about a safety defect in the
20 Mitsubishi Class Vehicles and misrepresenting the effectiveness and reliability of
21 these vehicles’ safety features. *See, e.g., ACAC § VI.D; see also Looper v. FCA US*
22 *LLC*, No. LACV 14-00700-VAP (DTBx), 2017 WL 11650429, at *4 (C.D. Cal.
23 Mar. 23, 2017) (similar common questions about defective steering linkages
24 satisfied commonality requirement).

25 Accordingly, commonality is satisfied.

26 **c. Rule 23(a)(3): The Settlement Class Representatives’**
27 **claims are typical of other Class members’ claims.**

28 Under Rule 23(a)(3), Plaintiffs’ claims are “typical” if they are “reasonably

1 coextensive with those of absent class members; they need not be substantially
2 identical.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014). “The test of
3 typicality is whether ‘other members have the same or similar injury, whether the
4 action is based on conduct which is not unique to the named plaintiffs, and whether
5 other class members have been injured by the same course of conduct.’” *In re ZF-*
6 *TRW ACUs I*, 2023 WL 6194109, at *11. Typicality “assure[s] that the interest of
7 the named representative aligns with the interests of the class.” *Wolin*, 617 F.3d at
8 1175 (quoting *Hanon v. Dataprods. Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).
9 Thus, where a plaintiff suffered a similar injury and other class members were
10 injured by the same course of conduct, typicality is satisfied. *See Parsons*, 754 F.3d
11 at 685; *see also Evon v. Law Offs. of Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir.
12 2012). Like commonality, courts construe typicality permissively. *Hanlon*, 150
13 F.3d at 1020.

14 Here, the same course of conduct injured the Mitsubishi Plaintiffs and the
15 other Class members in the same ways, because each paid for a Mitsubishi Class
16 Vehicle with an undisclosed defective DS84 ACU and relied on Mitsubishi’s
17 misrepresentations about reliable safety features when they decided to purchase or
18 lease their vehicles. As a result of Mitsubishi’s conduct, the Mitsubishi Plaintiffs
19 and the other Class members overpaid for their Mitsubishi Class Vehicles. The
20 typicality requirements are satisfied. *See In re ZF-TRW ACUs I*, 2023 WL 6194109,
21 at *11 (finding typicality satisfied where “[e]ach Class Member purchased or leased
22 a Class Vehicle with allegedly defective DS84 ACUs, and, as a result, Plaintiffs
23 contend that each Class Member paid more for their Class Vehicle than they should
24 have”).

25 **d. Rule 23(a)(4): The Settlement Class Representatives**
26 **and Settlement Class Counsel have and will protect**
the interests of the Class.

27 Rule 23(a)(4)’s adequacy requirement is met where, as here, “the
28 representative parties will fairly and adequately protect the interests of the class.”

1 Fed. R. Civ. P. 23(a)(4). Adequacy entails a two-prong inquiry: “(1) do the named
2 plaintiffs and their counsel have any conflicts of interest with other class members
3 and (2) will the named plaintiffs and their counsel prosecute the action vigorously
4 on behalf of the class?” *Evon*, 688 F.3d at 1031 (quoting *Hanlon*, 150 F.3d at
5 1020). “Adequate representation depends on, among other factors, an absence of
6 antagonism between representatives and absentees, and a sharing of interest
7 between representatives and absentees.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d
8 970, 985 (9th Cir. 2011). “Adequacy of representation also depends on the
9 qualifications of counsel.” *Sali v. Corona Reg’l Med. Ctr.*, 909 F.3d 996, 1007 (9th
10 Cir. 2018). Both prongs are readily satisfied here.

11 The Mitsubishi Plaintiffs have no “interests that are antagonistic to those of
12 other Class Members”, *In re ZF-TRW ACUs I*, 2023 WL 6194109, at *11, and will
13 continue to protect the Class in overseeing the Settlement administration and
14 through any appeals. *See Clemens*, 2016 WL 1461944, at *2-3. Indeed, the
15 Mitsubishi Plaintiffs “are entirely aligned [with the Class members] in their interest
16 in proving that [Defendants] misled them and share the common goal of obtaining
17 redress for their injuries.” *In re: Volkswagen “Clean Diesel” Mktg., Sales Pracs.,*
18 *& Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2016 WL 4010049, at *11 (N.D. Cal.
19 July 29, 2016). They understand and embrace their duties as representatives and
20 have reviewed and uniformly endorsed the Settlement’s terms. *See Co-Lead Decl.*
21 ¶ 32; *see also, e.g., Trosper v. Styker Corp.*, No. 13-CV-0607-LHK, 2014 WL
22 4145448, at *12 (N.D. Cal. Aug. 21, 2014) (“All that is necessary is a ‘rudimentary
23 understanding of the present action and . . . a demonstrated willingness to assist
24 counsel in the prosecution of the litigation.”). The Mitsubishi Plaintiffs, as proposed
25 class representatives, are more than adequate.

26 Similarly, Co-Lead Counsel and the PSC have undertaken an enormous
27 amount of work, effort, and expense throughout this MDL and in advancing the
28 Mitsubishi Plaintiffs’ claims. They have consistently devoted whatever resources

1 were necessary to reach a successful outcome throughout the nearly five years since
2 this consolidated litigation began. Furthermore, the proposed attorneys’ fees and
3 Plaintiffs’ service awards are consistent with levels awarded in the Ninth Circuit.
4 Like the Mitsubishi Plaintiffs, Counsel also satisfy Rule 23(a)(4). *See In re ZF-*
5 *TRW ACUs I*, 2023 WL 6194109, at *12 (finding adequacy satisfied).

6 **2. The Class meets the requirements of Rule 23(b)(3).**

7 Rule 23(b)(3)’s requirements are also satisfied because (i) “questions of law
8 or fact common to class members predominate over any questions affecting only
9 individual members”; and (ii) a class action is “superior to other available methods
10 for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

11 **a. Common issues of law and fact predominate.**

12 “The Rule 23(b)(3) predominance inquiry tests whether proposed classes are
13 sufficiently cohesive to warrant adjudication by representation.” *In re ZF-TRW*
14 *ACUs I*, 2023 WL 6194109, at *12 (quoting *Amchem Prods. Inc. v. Windsor*, 521
15 U.S. 591, 623 (1997)). The predominance inquiry “focuses on whether the
16 ‘common questions present a significant aspect of the case and they can be resolved
17 for all members of the class in a single adjudication.’” *In re Hyundai & Kia Fuel*
18 *Econ. Litig.*, 926 F.3d at 557. “When ‘one or more of the central issues in the action
19 are common to the class and can be said to predominate, the action may be
20 considered proper under Rule 23(b)(3) even though other important matters will
21 have to be tried separately, such as damages or some affirmative defenses peculiar
22 to some individual class members.’” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S.
23 442, 453 (2016).

24 “[M]ore important questions apt to drive the resolution of the litigation are
25 given more weight in the predominance analysis over individualized questions
26 which are of considerably less significance to the claims of the class.” *Torres v.*
27 *Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016). Accordingly, “even if
28 just one common question predominates, ‘the action may be considered proper

1 under Rule 23(b)(3) even though other important matters will have to be tried
2 separately.” *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at 557-58 (quoting
3 *Tyson Foods*, 577 U.S. at 453). Additionally, a class may be certifiable for
4 settlement where “the settlement obviates the need to litigate individualized issues
5 that would make a trial unmanageable.” *Id.* at 558.

6 The Ninth Circuit favors class treatment of fraud claims that stem from a
7 “common course of conduct.” *See In re First Alliance Mortg. Co.*, 471 F.3d 977,
8 990 (9th Cir. 2006); *Hanlon*, 150 F.3d at 1022-23. This includes for consumer
9 claims like those here. *See Amchem Prods.*, 521 U.S. at 625; *Wolin*, 617 F.3d at
10 1173, 1176 (consumer claims based on uniform omissions certifiable where
11 “susceptible to proof by generalized evidence,” even if individualized issues
12 remain); *Friedman v. 24 Hour Fitness USA, Inc.*, No. CV 06-6282 AHM (CTx),
13 2009 WL 2711956, at *8 (C.D. Cal. Aug. 25, 2009) (common issues predominate
14 where alleged injury is a result “of a single fraudulent scheme”).

15 Here, questions of law and fact common to the Mitsubishi Class members’
16 claims predominate over any questions that affect only individuals, because the
17 common issues “turn on a common course of conduct by the defendant . . . in [a]
18 nationwide class action[.]” *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at
19 559 (citing *Hanlon*, 150 F.3d at 1022-23). Indeed, “[i]n many consumer fraud
20 cases, the crux of each consumer’s claim is that a company’s mass marketing
21 efforts, common to all consumers, misrepresented the company’s product”—here,
22 the vehicles’ safety and inclusion of airbags and seatbelts without defects. *Id.*

23 Mitsubishi’s common course of conduct—manufacturing and selling
24 Mitsubishi Class Vehicles with defective ACUs, and without disclosing that defect
25 to consumers—is central to the claims in the ACAC. Common, unifying questions
26 include, for example, when Defendants first learned of the ACU Defect, and
27 whether Defendants’ representations about the Class Vehicles’ airbags and safety
28 systems were misleading to reasonable consumers. With these common questions,

1 predominance is easily satisfied. *See In re ZF-TRW ACUs I*, 2023 WL 6194109, at
2 *12 (predominance satisfied where “Plaintiffs’ claims arise from Defendants’
3 alleged course of conduct of manufacturing and selling vehicles containing
4 defective ACUs without disclosing the alleged defect to Class Members”).

5 **b. Class treatment is superior to other available methods**
6 **for the resolution of this case.**

7 Superiority “requires the court to determine whether maintenance of this
8 litigation as a class action is efficient and whether it is fair.” *Wolin*, 617 F.3d at
9 1175-76. Under Rule 23(b)(3), the Court evaluates whether a class action is a
10 superior method to adjudicate a plaintiff’s claims under four factors: “(A) the class
11 members’ interests in individually controlling the prosecution or defense of
12 separate actions; (B) the extent and nature of any litigation concerning the
13 controversy already begun by or against class members; (C) the desirability or
14 undesirability of concentrating the litigation of the claims in the particular forum;
15 and (D) the likely difficulties in managing a class action.” Fed. R. Civ. P. 23(b)(3).

16 Class treatment here is far superior to the litigation of over 100,000
17 individual consumer actions. *See ACAC* ¶ 542. “From either a judicial or litigant
18 viewpoint, there is no advantage in individual [Mitsubishi Class] members
19 controlling the prosecution of separate actions. There would be less litigation or
20 settlement leverage, significantly reduced resources and no greater prospect for
21 recovery.” *Hanlon*, 150 F.3d at 1023; *see also Wolin*, 617 F.3d at 1176 (“Forcing
22 individual vehicle owners to litigate their cases, particularly where common issues
23 predominate for the proposed class, is an inferior method of adjudication.”).

24 Additionally, the damages sought by each Mitsubishi Settlement Class Member
25 (while not insignificant to individual Class members), are exceedingly small in
26 comparison to the substantial cost of prosecuting individual claims, especially
27 given the complex technical and legal nature of the claims at issue. *See In re ZF-*
28 *TRW ACUs I*, 2023 WL 6194109, at *13; *see also Smith v. Cardinal Logistics*

1 *Mgmt. Corp.*, No. 07-2104 SC, 2008 WL 4156364, at *11 (N.D. Cal. Sept. 5, 2008)
2 (small interest in individual litigation where damages averaged \$25,000-\$30,000
3 per year).

4 Class resolution is also superior from an efficiency perspective. Here, “[i]n
5 light of the large number of Class Members and the cost of bringing an individual
6 claim relative to the potential recovery, it would be substantially less efficient for
7 Class Members to pursue their claims on an individual basis than on a classwide
8 basis. . . . Class Members may not have a strong incentive to pursue their claims
9 individually.” *In re ZF-TRW ACUs I*, 2023 WL 6194109, at *13. Additionally,
10 although “[n]othing suggests that the management of this action has been, or will
11 be, difficult[,] that the parties have reached a settlement would obviate any potential
12 management issues.” *Id.* Superiority is met, and Rule 23(e)(1)(B)(ii) is satisfied.

13 * * *

14 For all the reasons set forth above, the Mitsubishi Plaintiffs respectfully
15 submit that the Court will—after notice is issued and Class Member input
16 received—“likely be able to . . . certify the class for purposes of judgment on the
17 proposal.” *See* Fed. R. Civ. P. 23(e)(1)(B).

18 **D. The proposed Class Notice Program provides the best practicable**
19 **notice and should be approved.**

20 Rule 23(e)(1) requires that before a proposed settlement may be approved,
21 the Court “must direct notice in a reasonable manner to all class members who
22 would be bound by the proposal.” *Id.* “Notice is satisfactory if it ‘generally
23 describes the terms of the settlement in sufficient detail to alert those with adverse
24 viewpoints to investigate and come forward and be heard.’” *Churchill Vill., L.L.C.,*
25 *v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). For a Rule 23(b)(3) settlement
26 class, the Court must “direct to class members the best notice that is practicable
27 under the circumstances, including individual notice to all members who can be
28 identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The best

1 practicable notice is that which is “reasonably calculated, under all the
2 circumstances, to apprise interested parties of the pendency of the action and afford
3 them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank &
4 Tr. Co.*, 339 U.S. 306, 314 (1950).

5 The proposed Class Notice Program readily meets these standards. The
6 Parties created the notice program, its content, and distribution plan with JND, an
7 experienced firm specializing in notice in complex class action litigation. The
8 program includes a Long Form Notice, Publication Notice, and Direct Mailed
9 Notice, supplemental email notice, and a comprehensive Settlement website that are
10 each clear and complete, and that meet all the requirements of Rule 23. The Parties’
11 proposed notices are neutral, written in an easy-to-understand clear language, eye-
12 catching, and reflect the guidelines published by the Federal Judicial Center
13 (“FJC”).²⁵

14 The Long Form Notice is designed to explain Mitsubishi Settlement Class
15 members’ rights and obligations under the Settlement in clear terms and in a well-
16 organized and reader-friendly format. *See In re Hyundai & Kia Fuel Econ. Litig.*,
17 926 F.3d at 567 (“[S]ettlement notices must ‘present information about a proposed
18 settlement neutrally, simply, and understandably.’”); *see also* Keough Decl., Ex. G.
19 It includes an overview of the litigation; an explanation of the Settlement benefits;
20 contact information for Settlement Class Counsel; the address for a comprehensive
21 Settlement website that will house links to the notice, motions for approval,
22 attorneys’ fees, and other important documents; instructions on how to access the
23 case docket; and detailed instructions on how to participate in, object to, or opt out
24 of the Settlement. The Settlement website will also feature a user-friendly tool for
25 potential Class members to enter their VIN to confirm whether their Class Vehicle
26

27 ²⁵ *See* Fed. Jud. Ctr., *Judges’ Class Action Notice and Claims Process Checklist and*
28 *Plain Language Guide* 1, 3 (2010),
<https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>.

1 is eligible under the Settlement. Keough Decl., ¶¶ 42-44.

2 The principal method to reach Class members will be through direct,
3 individual notice, consisting of email notices where email contact information
4 validated by third-party data sources is available, and mailed notices by U.S. first
5 class mail to those Class members for whom externally validated email addresses
6 are not available. *Id.*; *see also id.*, Ex. B. The email notice conveys the structure of
7 the Settlement and is designed to capture Class members’ attention with concise,
8 plain language. The email notice program was designed (and will be implemented)
9 to avoid spam filters and to be easily readable across all formats, including mobile.
10 *Id.* ¶ 23. The Direct Mailed Notice is similarly structured and provides all basic
11 information about the Settlement and Class members’ rights thereunder. Both
12 Direct Mailed Notice, Publication Notice, and email notice direct readers to the
13 Settlement website, where the Long Form Notice is available, for more information.

14 The Class Notice Program will also include a robust internet notice plan with
15 social media advertising, digital banner advertisements, and digital search
16 campaign. *Id.* ¶¶ 37-39. Finally, Class members can find detailed information about
17 the Settlement through a toll-free information line. *Id.* ¶¶ 45-47.

18 Based on her considerable experience, Ms. Keough anticipates that “the
19 direct notice effort alone to reach virtually all Settlement Class Members” and the
20 “supplemental digital effort, internet search campaign, and distribution of a press
21 release to over 5,000 media outlets nationwide will further enhance that reach.” *Id.*
22 ¶ 48. This Notice Plan satisfies due process and Rule 23 and comports with all
23 accepted standards. *Id.* ¶ 49.

24 Finally, the Mitsubishi Defendants will serve notice in accordance with the
25 requirements of 28 U.S.C. § 1715(b) within 10 days of the filing of this motion. SA
26 § IV.H.1. The Settlement fully complies with all of CAFA’s substantive
27 requirements because it does not provide for a recovery of coupons (28 U.S.C.
28 § 1712), does not result in a net loss to any Class member (28 U.S.C. § 1713), and

1 does not provide for payment of greater sums to some Class members solely on the
2 basis of geographic proximity to the Court (28 U.S.C. § 1714).

3 **VI. Conclusion**

4 Plaintiffs respectfully request that the Court: (1) determine under Rule
5 23(e)(1) that it is likely to approve the Settlement and certify the Settlement Class;
6 (2) direct notice to the Class through the proposed notice program; (3) appoint Lead
7 Plaintiffs' Counsel as Settlement Class Counsel to conduct the necessary steps in
8 the Settlement approval process; (4) issue a preliminary injunction pending final
9 approval of the proposed settlement; and (5) schedule the final approval hearing
10 under Rule 23(e)(2) for February 24, 2025.

11 Dated: August 2, 2024

Respectfully submitted,

12 */s/ Roland Tellis*

13

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CERTIFICATE OF SERVICE

I hereby certify that, on August 2, 2024 service of this document was accomplished pursuant to the Court’s electronic filing procedures by filing this document through the ECF system.

/s/ David Fernandes
David Fernandes