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Co-Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In re ZF-TRW Airbag Control Units Products Liability Litigation

ALL CASES AGAINST MITSUBISHI

MDL No. 2905

Judge: John A. Kronstadt

MITSUBISHI PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT, AND AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS TO SETTLEMENT CLASS REPRESENTATIVES

Date: April 7, 2025
Time: 8:30 a.m.
Dept.: Courtroom 10B

NOTICE OF MOTION AND MOTION

TO ALL THE PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 7, 2025 at 8:30 a.m., or at such other date and time as the Court may set, in Courtroom 10B of the United States District Court for the Central District of California, Settlement Class Counsel, 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 and judgment granting final approval of the Class Action Settlement and the motion for attorneys' fees, costs, and service awards, and appointing Settlement Class Counsel and Settlement Class Representatives under Fed. R. Civ. P. 23(g)(1).

This Motion is based on:

1) this Notice of Motion and Motion;
2) the Memorandum of Points and Authorities below;
3) the Joint Declaration of Co-Lead Counsel and exhibits thereto, filed concurrently herewith;
4) the Declaration of Jennifer Keough, filed concurrently herewith;
5) the Declaration of Court-Appointed Settlement Special Master Patrick Juneau, previously filed in connection with Plaintiffs' Motion for Preliminary Approval (ECF 941-2);
6) the records, pleadings, and papers filed, and documents produced in, this litigation; and
7) such other documentary and oral evidence or argument as Settlement Class Counsel may present to the Court at the hearing of this Motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Mitsubishi Plaintiffs seek the Court's final approval of the proposed settlement of their claims against Mitsubishi, nearly six years after this case began. While Mitsubishi has never recalled its Class Vehicles due to the ACU Defect and manufactured just 97,565 of the approximately 15 million Class Vehicles, Settlement Class Counsel negotiated a significant and favorable outcome which provides compensation and closure for all Mitsubishi Class Members. Settlement Class Counsel achieved this despite the fact that most of Plaintiffs' claims against Mitsubishi have not yet survived a pleading challenge, underscoring the strength of the positive outcome as this stage.[1]

Although relatively smaller in size,[2] the Mitsubishi Settlement Class Members and their claims have occupied an important role in this multidistrict litigation from the start. The result obtained on their behalf reflects this. The proposed Settlement provides an $8,500,000 cash fund for the Mitsubishi Class, which consists of people who purchased or leased Mitsubishi Class Vehicles. This amount is non-reversionary, which means Mitsubishi must pay the full amount regardless of how many Mitsubishi Class Members file claims. Mitsubishi Class Members may claim individual payments of up to $250 per Class Vehicle, with any remaining balance to be distributed in a manner that is most efficient to benefit the Mitsubishi Class and their interests in this litigation. *See* Settlement Agreement ("SA"), ECF 941-1, § III.

The Settlement also provides significant, valuable benefits to the Mitsubishi Class in addition to cash payments. These include a ten-year-long Settlement

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[1] Capitalized terms not defined herein have the same definitions and meanings used in the Settlement Agreement.

[2] The Toyota settlement previously approved by this Court, in contrast, covered approximately 5.2 million Toyota vehicles.

Inspection Program designed to benefit all Mitsubishi Class Members by mandating procedures for the active investigation and documentation of airbag non-deployments in Class Vehicles that may be caused by the ACU Defect. SA § III.D. This package of benefits is an outstanding—and tailored—resolution for the Mitsubishi Class Members and their claims in this case.

Settlement Class Counsel worked thousands of hours and advanced significant expenses on a purely contingent basis to achieve this result. To compensate them for their investment of time, money, and risk, Class Counsel seeks $2.5 million in fees—calculated using the capped, discounted hourly rates set forth in the applicable Common Benefit Order—plus $50,000 in costs. As described in detail below, the requested fees are approximately 29.4% of the Settlement's cash value to the class, without accounting for the additional, unquantified value provided through the Inspection Program.

This requested award is squarely supported by precedent and practice in this Circuit. *See In re ZF-TRW Airbag Control Units Prods. Liab. Litig.*, No.19-ML-02905 JAK MRW(x), 2023 WL 9227002 (C.D. Cal. Nov. 28, 2023) (*In re ZF-TRW ACUs Toyota Final App.*) (holding "an award over the 25% benchmark [wa]s reasonably warranted" for fee request in Toyota settlement in this litigation); *Hernandez v. Dutton Ranch Corp.*, No. 19-CV-00817-EMC, 2021 WL 5053476, at *6 (N.D. Cal. Sept. 10, 2021) (collecting cases and finding that "[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"). [3] The reasonableness of the requested fees is further confirmed by a lodestar cross-check that yields a multiplier of 1.76, which falls on the low end of the "presumptively acceptable" range of 1.0-4.0 in the Ninth Circuit. *See* § IV.A.5.d.

Finally, the commitment and work performed by the Settlement Class Representatives made this Settlement possible. Settlement Class Counsel seek an

[3] Internal citations are omitted throughout unless otherwise indicated.

award of $2,500 for each Settlement Class Representative in recognition of their service in this litigation.

Plaintiffs respectfully ask the Court to certify the Mitsubishi Settlement Class and grant final approval of the Settlement. They also request approval of a total award of $2.55 million in attorneys' fees and costs to be allocated by Co-Lead Counsel among Participating Counsel, and the $2,500 service awards for the Settlement Class Representatives for their dedication to this important case.[4]

II. BACKGROUND

The Court is familiar with the history of this litigation, much of which is detailed in Plaintiffs' preliminary approval materials and in the Court's Preliminary Approval Order. *See* ECF 941 at 2-8; ECF 983 ("Prelim. Order") at 1-2, 16-17. In the interest of efficiency, Plaintiffs incorporate the preliminary approval briefing and Order by reference and provide the following summary of key points.

A. The Settlement provides substantial compensation to Mitsubishi Class Members.

As discussed above, the proposed Settlement provides substantial and valuable benefits to the Mitsubishi Class. This includes an $8.5 million, non-reversionary monetary fund from Mitsubishi. If any funds remain after all valid, complete, and timely claims are paid, the Settlement requires a distribution of the remaining funds to the Mitsubishi Class Members who filed claims. However, if an additional distribution is economically infeasible, any modest remaining amount will be directed to *cy pres* recipients, subject to Court approval. SA § III.B ¶ 4. This ensures that *all* the cash secured by the Settlement will inure to the benefit of the Class.

The innovative Settlement Inspection Program provides additional relief on top of the cash payments. Importantly, this Program benefits all Mitsubishi Class

[4] Participating Counsel is defined in the Court's March 18, 2020, Common Benefit Order. ECF 111 at 2.

Members by requiring Mitsubishi to actively investigate and document airbag non-deployments in Mitsubishi Class Vehicles that may be caused by electrical overstress for the next ten years. SA § III.D ¶ 1, Ex. 3.

B. The Case was complex, risky, and thoroughly investigated.

The favorable result for the Mitsubishi Settlement Class was not easily obtained, as evidenced in part by the *nearly six years* of work leading up to this motion for final settlement approval.

The case against Mitsubishi presented a unique set of facts and complex issues and challenges. The consolidated litigation traces back to 2019, when NHTSA expanded its investigation into ZF-TRW's DS84 ACUs to include Mitsubishi and other automobile manufacturers. Settlement Class Counsel and other attorneys filed 26 class action lawsuits alleging that Mitsubishi and other Defendants knowingly misrepresented and withheld information about the relevant ACU Defect from consumers who purchased and leased Mitsubishi Class Vehicles. Since then, Settlement Class Counsel have dedicated almost six years to the extensive investigation, litigation, and discovery of the complex science, technology, and legal issues in this case.

Litigating the Mitsubishi Plaintiffs' claims brought significant challenges and commensurate work to meet them. After the initial centralization into this MDL, the Court tasked Co-Lead Counsel with filing a consolidated complaint. *See* ECF 106. This initial consolidated pleading ultimately asserted claims against six vehicle manufacturer groups and three component supplier groups, a total of *twenty-nine* Defendants—including two Mitsubishi entities—based on Plaintiffs' investigation at the time. In the face of a remarkable aggregation of defendants, Plaintiffs thoroughly investigated and aggressively pursued their claims, as evidenced by the detailed factual allegations and legal claims in the 564-page Consolidated Consumer Class Action Complaint. *See* ECF 119.

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

Alongside these extensive briefing efforts, the Parties[5] also engaged in discovery and information exchanges, which included detailed requests for production to Mitsubishi Motors North America and jurisdictional discovery requests to its Japanese parent company, Mitsubishi Motors Corporation. The Parties met and conferred about this discovery and other topics in detail, including Mitsubishi's collection and sources of ESI. Co-Lead Decl. ¶ 3. In response, Mitsubishi produced, and Plaintiffs reviewed, approximately 11,325 pages of relevant documents. *Id.* ¶ 4.

Plaintiffs have also engaged in extensive discovery with the ZF-TRW Defendants and the ST Defendants to develop their understanding of the ACU Defect in Mitsubishi Class Vehicles. To date, the ZF-TRW Defendants have produced more than 3 million pages of documents. The ST Defendants have produced nearly 11,000 pages. These documents provide important insights and technical details on the DS84 ACUs, the DS84 ASICS, the alleged defect therein, and Mitsubishi's and the other Defendants' knowledge of the same. *Id.* ¶¶ 4-5.

[5] Reference to the "Parties" herein refers to the settling parties, the Mitsubishi Defendants and the Mitsubishi Plaintiffs; the Settlement does not create obligations for or release the remaining Defendants.

On May 26, 2022, Plaintiffs filed their three-volume, 1,335-page ACAC. The ACAC reflects their extensive investigation into the technology, components, electrical properties, and other issues related to the ACU Defect. It also includes evidence of Defendants' knowledge of the ACU Defect, which Plaintiffs gained through years of litigation, discovery, independent investigation and expert analysis. ECF 477.

After Plaintiffs filed the ACAC, the Court appointed Patrick A. Juneau as Settlement Special Master pursuant to Fed. R. Civ. P. Rule 53.[6] ECF 473. Thereafter, the Parties commenced a series of settlement discussions and related information exchanges that facilitated nearly two years of difficult and detailed negotiations, culminating in the Settlement now before the Court.

III. ARGUMENT

A. The Settlement is fair, reasonable, and adequate.

A "district court's task in reviewing a settlement is to make sure it is 'not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 895 F.3d 597, 617 (9th Cir. 2018) (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982)).

As detailed above, the Settlement provides significant, comprehensive benefits to the Settlement Class. This result, and each Rule 23(e)(2) factor, weigh strongly in favor of final approval. Indeed, the Court held in its Preliminary Approval Order that "a consideration of the applicable factors demonstrates that the

[6] Settlement Class Counsel are saddened by the recent passing (on December 31, 2024) of Settlement Special Master Juneau, and wish to honor his contributions to this litigation and to the legal profession as a whole in his decades-long, outstanding and inspirational career—in which this Settlement is but one of his countless achievements. Pat will be missed. Settlement Class Counsel will propose to the Court in the near future a new Settlement Special Master for the ongoing litigation.

Settlement Agreement is sufficiently fair, reasonable and adequate to warrant preliminary approval." Prelim. Order at 19. The same conclusions apply to support final approval now.

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

Settlement Class Counsel and the Settlement Class Representatives fought hard and remained dedicated to protecting the interests of the Class. *See* § II.B, *supra*. As the favorable outcome of those efforts reflects, Settlement Class Counsel showed dedication to investigating, prosecuting, and resolving this action over the course of almost six years. *See* Fed. R. Civ. P. 23(e)(2)(A); *In re ZF-TRW Airbag Control Units Prods. Liab. Litig.*, No. 19-ML-2905 JAK, 2023 WL 6194109, at *14 (C.D. Cal. July 31, 2023) (*In re ZF-TRW ACUs Toyota Prelim. App.*) ("Plaintiffs and their counsel have adequately represented the Class. Counsel have prosecuted this case zealously since the litigation began in 2019.").

As detailed above, Settlement Class Counsel undertook significant efforts to uncover the facts necessary to advance and refine the Class claims. This includes pursuing and analyzing discovery relevant to the Mitsubishi Plaintiffs' claims from Mitsubishi and other Defendants. Plaintiffs also bolstered these efforts through their own investigation and the retention of technical experts. Together, this research and investigation involved reviewing and synthesizing a vast corpus of documents and ESI, as reflected in the evidence-based details and extensive factual allegations contained in the 1,300+ page ACAC.

Settlement Class Counsel also fielded defensive pleading challenges from every angle—including researching, drafting, and filing approximately 90 pages of extensive opposition briefing in response to Rule 12 challenges, a process that fleshed out the strengths and vulnerabilities of the Mitsubishi Plaintiffs' claims. Settlement Class Counsel were therefore well-positioned to evaluate the case

against Mitsubishi and to negotiate a fair and reasonable Settlement. *See Ontiveros v. Zamora*, 303 F.R.D. 356, 371 (E.D. Cal. 2014). They have done so.

The Settlement Class Representatives are likewise actively engaged. Each has remained dedicated to this litigation through the course of many years. These Representatives universally support the proposed Settlement on behalf of the Class and remain willing to protect the Class and the Settlement through final approval and until Settlement administration is complete. Co-Lead Decl. ¶¶ 8-9. The Settlement Class was and remains well represented.

2. Rule 23(e)(2)(B): The Settlement is the product of good faith, evidence-backed, and arm's-length negotiations.

As the Court observed in granting preliminary approval, the Settlement arose out of intensive negotiations overseen by Court-appointed Settlement Special Master Juneau, and there is "no evidence of fraud, overreaching, or collusion between the parties." Prelim. Order at 17; s*ee also In re ZF-TRW ACUs Toyota Prelim. App.*, 2023 WL 6194109, at *15 (similar finding with respect to the settlement with Toyota in this litigation); Fed. R. Civ. P. 23(e)(2)(B).

The record shows that the Settlement was reached by adversarial parties well-informed in their respective positions and assessments of the case. Settlement negotiations endured for nearly two years. The lengthy timeframe reflects the detailed nature of the negotiations, and efforts to inform and support them through a parallel investigatory process and exchanges of documents and information. With negotiations ongoing, and as described above (§ II.B), Defendants in this litigation produced millions of pages of documents relevant to Plaintiffs' claims and the ACU Defect. Co-Lead Decl. ¶ 4. Mitsubishi itself produced approximately 11,325 pages of documents. Settlement Class Counsel have reviewed and analyzed these documents, as well as those produced by the other Defendants. *Id.* They also examined additional materials obtained through their own investigative efforts and those of their experts. In addition, Settlement Class Counsel reviewed responses to

multiple sets of interrogatories and requests for admission served on multiple Defendants. *Id.* ¶ 5.

This robust exchange of information and documents demonstrates that the Parties' negotiations were non-collusive. *See Wahl v. Yahoo! Inc.*, No. 17-CV-02745-BLF, 2018 WL 6002323, at *4 (N.D. Cal. Nov. 15, 2018) (granting final approval of class settlement where the parties had exchanged "sufficient information to evaluate the case's strengths and weaknesses"); *see also* William B. Rubenstein et al., 4 Newberg and Rubenstein on Class Actions § 13:49 (5th ed. 2012) (extensive exchange of information shows "the parties have a good understanding of the strengths and weaknesses of their respective cases and hence that the settlement's value is based upon such adequate information"); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 320 (N.D. Cal. 2018) (discovery gave the parties "a good sense of the strength and weaknesses of their respective cases" and was "indicative of a lack of collusion"); *Elder v. Hilton Worldwide Holdings, Inc.*, No. 16-CV-00278-JST, 2021 WL 4785936, at *7 (N.D. Cal. Feb. 4, 2021) ("[T]he extent of discovery completed supports approval of a proposed settlement" and shows "both plaintiffs and defendants ha[ve] a clear view of the strengths and weaknesses of their cases."); *Ontiveros*, 303 F.R.D. at 371 (granting final approval where class counsel had "conducted discovery and non-discovery investigation").

Likewise, Settlement Special Master Juneau's oversight and guidance demonstrates the fair and arm's length nature of the negotiations. ECF 941-2. "Settlements reached with the help of a mediator are likely non-collusive." *Kabasele v. Ulta Salon, Cosms. & Fragrance, Inc.*, No. 2:21-CV-1639 WBS KJN, 2024 WL 477221, at *4 (E.D. Cal. Feb. 7, 2024) (citation omitted); *Steinberg v. CoreLogic Credco, LLC*, No. 3:22-CV-00498-H-SBC, 2024 WL 1546921, at *8 (S.D. Cal. Apr. 9, 2024) (finding no collusion where "the proposed settlement agreement resulted from significant arm's length negotiation with the assistance of a private mediator"); *see also* Prelim. Order at 17 (noting Special Master Juneau's

opinion that "the outcome . . . is the result of a fair, thorough, and fully-informed arms-length process between highly capable, experienced and informed parties and counsel."); *In re ZF-TRW ACUs Toyota Prelim. App.*, 2023 WL 6194109, at *15.

Finally, the Settlement is non-reversionary, meaning that *none* of the value obtained for the Settlement Class will revert to Mitsubishi if unclaimed. This, too, shows a lack of collusion and supports approval. *See* Prelim. Order at 17; *In re ZF-TRW ACUs Toyota Prelim. App.*, 2023 WL 6194109, at *16.

3. Rule 23(e)(2)(C): The Settlement represents a fair compromise for substantial compensation.

"Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys "R" Us-Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). Avoiding years of additional, risky litigation in exchange for immediate and significant benefits is a principled compromise that works to the clear benefit of the Mitsubishi Settlement Class. *See* Fed. R. Civ. P. 23(e)(2)(C). In short, Class Members will receive significant value now, not years from now (if ever).

As noted above, the Agreement secures a non-reversionary Settlement Amount of $8.5 million to compensate the Class. Class Members also stand to benefit from the innovative Settlement Inspection Program for ten years to come.

The compensation available to Mitsubishi Class Members represents a material portion of Plaintiffs' economic damages attributable to Mitsubishi, while Plaintiffs continue to seek damages from the ZF and ST Defendants. Plaintiffs' damages will be measured by calculating the difference in value between the Class Vehicles as marketed and the defective Class Vehicles they received. ACAC ¶ 1456. A precise calculation of that difference will ultimately involve expert testimony at a later stage of this ongoing litigation. However, other forms of available data provide

some benchmarks of the general scope of the economic damages due to the ACU Defect.

Market evidence shows that there is a difference in price attributable to variations in vehicle safety system functionality. For example, a 2011 Jeep Wrangler sold with seat-mounted, front side airbags is $500 more expensive than the same model without them. ACAC ¶ 1457. Of course, the addition of side mounted airbags makes the vehicle safer, but the lack of side mounted airbags is not comparable to the risk of airbag failure and other malfunctions due to the ACU Defect. Regardless, this market data point goes to show that material economic differences do indeed result from differences in the effectiveness of vehicle safety systems. In another example, in the *Takata* airbag litigation, Plaintiffs' experts performed a conjoint analysis and found that the overpayment percentage for vehicles with the dangerous airbag defect at issue in that case (which results in shards of metal shooting through the passenger compartment) was approximately ten percent of the vehicle purchase price. ACAC ¶ 1458. Again, the Takata defect is not identical to the ACU Defect, so damages cannot be directly compared at this stage. However, the results in that case provide an additional reference point for the types of economic losses that can result from differences in vehicle safety.

Plaintiffs' actual damages in this case may, at the appropriate juncture and with expert opinion, differ materially from either or both of these figures.[7] In any event, the compensation and benefits available under the Settlement offer a material amount of either figure. Importantly, as noted above, the Settlement benefits here reflect just one of three defendant groups from whom the Mitsubishi Plaintiffs seek to recover their economic loss damages incurred from their purchase or lease of a Mitsubishi Class Vehicle. The Mitsubishi Plaintiffs will continue to pursue the portions of their damages attributable to the ZF and ST Defendants as well, which

[7] Treble damages, 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).

are significant. The recovery obtained from Mitsubishi is a notable result for the compromise of contested claims against one of several potentially liable defendant corporate families.

In addition to the potential damages in this case, the recovery here is also well in line with that recently approved in automotive defect cases in this Circuit and others. *See In re ZF-TRW ACUs Toyota Final App.*, 2023 WL 9227002 (approving similar settlement that included cash payments and an Inspection Protocol for the unrecalled Toyota Subject Vehicles comparable to the Mitsubishi Class Vehicles here); *Banh v. Am. Honda Motor Co., Inc*., No. 2:19-CV-05984-RGK-AS, 2021 WL 3468113, at *7 (C.D. Cal. June 3, 2021) ("The settlement adequately and fairly compensates class members. They will receive automatic [non-monetary] benefits . . . and they will have the opportunity to file claims for added relief in a streamlined process."); *Brightk Consulting Inc. v. BMW of N. Am., LLC*, No. SACV 21-02063-CJC (JDEx), 2023 WL 2347446, at *2 (C.D. Cal. Jan. 3, 2023) (extended warranty and out-of-pocket costs); *In re Takata Airbag Prods. Liab. Litig*., No. 14-CV-24009, 2022 WL 1669038, at *1 (S.D. Fla. Apr. 4, 2022) (approving Volkswagen settlement as the latest in several similar settlements in the *Takata* MDL).

The settlement reflects a fair, reasonable, and adequate compromise of Plaintiffs' claims, especially considering (i) the costs, risks, and delay of trial and appeal and (ii) the effectiveness of the proposed distribution plan. *See* Fed. R. Civ. P. 23(e)(2)(C). This Court recently found the same in its Preliminary Approval Order. Prelim. Order at 18-19.

a. <u>The Settlement mitigates the risks, expenses, and delays the Class would bear with continued litigation.</u>

The Settlement eliminates all potential future risk, cuts through payment delays, and provides the Class with "certain and timely" compensation. Prelim. Order at 18. This factor strongly favors final approval. *See In re ZF-TRW ACUs*

Toyota Prelim. App., 2023 WL 6194109, at *16 ("Litigation could continue for years, with large associated costs. By contrast, the Settlement provides Class Members with certain and timely relief"); *Nobles v. MBNA Corp.*, No. C 06-3723 CRB, 2009 WL 1854965, at *2 (N.D. Cal. June 29, 2009) ("The risks and certainty of recovery in continued litigation are factors for the Court to balance in determining whether the Settlement is fair") (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) *as amended* (June 19, 2000)); *Kim v. Space Pencil, Inc.*, No. C 11-03796 LB, 2012 WL 5948951, at *5 (N.D. Cal. Nov. 28, 2012) ("The substantial and immediate relief provided to the Class under the Settlement weighs heavily in favor of its approval compared to the inherent risk of continued litigation, trial, and appeal, as well as the financial wherewithal of the defendant"); *In re Toys "R" Us*, 295 F.R.D. at 453 (similar); Fed. R. Civ. P. 23(e)(2)(C)(i).

Plaintiffs strongly believe in the strength of their case and were prepared to take it all the way to trial. However, they recognize that significant hurdles remain. For example, while Plaintiffs submit that the ACAC states valid and cognizable claims, including under RICO, many of their claims did not survive Mitsubishi's earlier pleading challenge.[8] As demonstrated by the Court's ruling on Defendants' first round of motions to dismiss and the arguments raised in the pending second round of pleading challenges, individual and technical requirements for Plaintiffs' claims pose substantial obstacles to success in some instances.

Even if Plaintiffs could overcome these challenges, they would still face an expensive, lengthy, and uncertain process to certify a litigation class. Proving an intricate, multi-party fraud spanning several years would add further complexity at trial. And even if Plaintiffs prevailed at trial, they would then face years of

[8] The Court previously sustained only two of the Mitsubishi Plaintiffs' dozens of claims against Mitsubishi: a Wisconsin breach of warranty claim, and a California Song-Beverly Act claim. *See* ECF 396 at 128-131, 168-169.

inevitable appeals, forcing them to re-litigate many of the same issues.

The Settlement benefits described above are even more impressive considering these uncertainties and the substantial time required for continued litigation. Avoiding years of additional, costly, and risky litigation in exchange for the immediate and significant Settlement benefits represents a principled and practical compromise that clearly benefits the Class.

b. Mitsubishi Class Members can obtain relief through a straightforward claims process.

The Parties, in consultation with the Settlement Notice and Claims Administrator, designed a simple and efficient claims process to maximize Class member participation. Mitsubishi Class Members can claim compensation using a streamlined Claim Form that takes only a few minutes to complete. Class Members can submit the Claim Form either online through the Settlement website, or in hard copy. The Claim Form requests basic identifying information to confirm the Class Member's eligibility, and Class Members may be asked to provide supporting documentation (*e.g.*, proof of ownership or lease) only where such information is necessary to verify the claim.

The Settlement's method for processing claims and distributing relief is straightforward, fair, and reasonable, and "should be effective in distributing relief to the Class" (Prelim. Order at 21), weighing in further favor of final approval. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii).

c. Counsel seeks reasonable attorneys' fees and costs.

Settlement Class Counsel's reasonable fee request is detailed below (§ IV) but in this context it is worth reiterating that "terms of . . . [the] proposed award of attorneys' fees" are fair and reasonable, particularly in light of the substantial, non-reversionary recovery for the Class. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii); *see also* Prelim. Order at 24 ("The evidence submitted in connection with Plaintiffs' Motion for Preliminary Approval shows that, to date, the amount of attorney's fees

submitted by Plaintiffs' counsel are within a reasonable range.")

4. Rule 23(e)(2)(D): The Proposed Settlement treats all Mitsubishi Class Members equitably relative to one another.

In its order granting Preliminary Approval of the Settlement, the Court observed that the Settlement distributes relief among Mitsubishi Class Members in a "fair and reasonable" way. Prelim. Order at 19. This remains true. The Settlement benefits will be allocated per capita to all Mitsubishi Class Members with a timely and valid claim for compensation, with individual payments of up to $250, and thus treat Mitsubishi Class Members equitably relative to one another.

In other words, after deducting any Court-awarded fees and costs, the Settlement Amount will be divided evenly among all Mitsubishi Class Vehicles for which a timely and valid claim is submitted. If more than one valid claim applies for the same Mitsubishi Class Vehicle, the original owner who purchased new will receive 60% of the allocated funds, and the 40% remainder will be distributed evenly to or among the other valid claimants. This allocation reflects that the damages incurred as a relative percentage of vehicle value are highest for new purchasers, when the Mitsubishi Class Vehicles are typically highest in value.

This weighting "compensates class members in a manner generally proportionate to the harm they suffered on account of [the] alleged misconduct." *Altamirano v. Shaw Indus., Inc.*, No. 13-CV-00939-HSG, 2015 WL 4512372, at *8 (N.D. Cal. July 24, 2015).[9] It also reflects the reality that new purchasers face fewer legal hurdles and arguably present stronger claims for relief. *See*, *e.g.*, *In re Blue Cross Blue Shield Antitrust Litig. MDL 2406*, 85 F.4th 1070, 1093-94 (11th Cir. 2023) (affirming approval of allocation formula that considered the "comparative strengths of each class's . . . claims").

[9] *See also Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328 (3d Cir. 2011) (holding that "[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).

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

Likewise, the Settlement Class Representatives will not receive preferential treatment or different compensation disproportionate to their respective harm and contribution to the case. Settlement Class Counsel will seek $2,500 to compensate their efforts and commitment to prosecute this case on behalf of the Mitsubishi Class, which, as addressed further below (§ IV.C), is well in line with sums routinely approved in other class cases in this district and in this litigation.

5. The Settlement satisfies the Ninth Circuit's approval factors.

The Ninth Circuit has identified several additional factors for courts to consider when evaluating a class action settlement. *See In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d 935, 946 (9th Cir. 2011) ((1) the strength of the plaintiffs' 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).

Most of these (factors 1-5) overlap with the Rule 23(e)(2)(C) factors and are addressed above. The remaining relevant factors (6 and 8), addressed below, favor final approval as well.

a. Settlement Class Counsel endorses the Settlement.

Considering their direct knowledge in the litigation, Courts can give "considerable weight" to the opinions of experienced class counsel in weighing whether to grant final settlement approval. *Ontiveros*, 303 F.R.D. at 371 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)); *see also In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig*. No. MDL

2672 CRB (JSC), 2016 WL 6248426, at *14 (N.D. Cal. Oct. 25, 2016) ("Courts afford 'great weight to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.'") (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)).

Settlement Class Counsel here are well versed in litigating and resolving complex automotive defect class cases like this one. Based on their extensive experience and work in prosecuting this case for nearly six years, Settlement Class Counsel are confident in the result obtained for the Mitsubishi Class, and strongly recommend its approval. Co-Lead Decl. ¶ 35. *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019 WL 2077847, at *1 (N.D. Cal. May 10, 2019) (granting final settlement approval where "Lead Counsel ha[d] . . . a successful track record of representing [plaintiffs] in cases of this kind . . . [and] attest[ed] that both sides engaged in a series of intensive, arm's-length negotiations" and there was "no reason to doubt the veracity of Lead Counsel's representations"); Prelim. Order at 16 (noting that Settlement Class Counsel "prosecuted this case zealously since the litigation began in 2019" and "have adequately represented the Class").

b. <u>The Notice Program is proving a success, and the Class's initial response has been positive.</u>

Following preliminary approval, the Parties worked with respected class notice provider JND Settlement Administration to roll out the Court-approved Notice Program with great and ongoing success. JND reports that the Notice Program was designed to reach "virtually all" Mitsubishi Class Members. Declaration of Jennifer Keough ("Keough Decl.") ¶ 2. To date, JND has emailed 86,220 individual notices and has also mailed 10,988 direct notices to potential Mitsubishi Class Members. *Id.* ¶ 10. JND also engaged in a comprehensive supplemental publication and media notice campaign, with notices issued in widely circulated print publications, and an online and social media campaign that has

generated over 2,341,104 million impressions, 641,104 more than originally planned. *Id.* ¶ 23. With over 12 months remaining in the claims program, the Mitsubishi Class is already showing their support for the Settlement. Mitsubishi Class Members are visiting the Settlement Website at an impressive rate, with 17,654 page views registered from 14,772 unique visitors so far. *Id.* ¶ 31. As of January 27, 2025, moreover, JND had received 2,202 Settlement Claims, the vast majority of which were submitted through the streamlined submission portal available on the Settlement Website. *Id.* ¶ 36. In contrast, JND has not received a single request for exclusion and no Mitsubishi Class Member has objected to the Settlement. *Id.* ¶¶ 38-39.

Together, these are encouraging signs of the Mitsubishi Class's engagement, with the Notice Program ongoing and more than a year remaining in the Claims Period. This positive response from the Mitsubishi Class supports final approval, and Settlement Class Counsel have every reason to believe it will stay that way.

* * *

The Settlement is fair, reasonable, and adequate, and merits final approval.

B. The Settlement Class satisfies the applicable Rule 23 requirements and should be certified.

After considering the relevant Rule 23(a) and 23(b)(3) requirements at the preliminary approval phase, the Court concluded the necessary requirements were satisfied and "the Class should be conditionally certified for the purpose of settlement." Prelim. Order at 14. This remains true, and the Settlement Class should be finally certified for settlement purposes.

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

Rule 23(a)(1) is satisfied where, as here, "the class is so numerous that joinder of all class members is impracticable." Fed. R. Civ. P. 23(a)(1). The Class includes current and former owners and lessees of at least 97,565 Class Vehicles, which is "sufficient to satisfy the numerosity requirement." Prelim. Order at 10; *see*

also 5 *Moore's Federal Practice—Civil* § 23.22 (2016) (a "class of 41 or more is usually sufficiently numerous."). Numerosity remains satisfied.

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

"Federal Rule of Civil Procedure 23(a)(2) conditions class certification on demonstrating that members of the proposed class share common 'questions of law or fact.'" *Stockwell v. City & Cty. of San Francisco*, 749 F.3d 1107, 1111 (9th Cir. 2014). Commonality "does not turn on the number of common questions, but on their relevance to the factual and legal issues at the core of the purported class' claims." *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014). "Even a single question of law or fact common to the members of the class will satisfy the commonality requirement." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369 (2011).

Courts routinely find commonality where, as here, the class claims arise from an automaker's alleged uniform course of fraudulent conduct to misrepresent and conceal a defect in its vehicles. That includes this Court's holdings in this litigation. *See, e.g.*, *In re ZF-TRW ACUs Toyota Prelim. App.*, 2023 WL 6194109, at *11 (commonality satisfied for the Toyota Settlement where "Plaintiffs have identified at least one common question as to whether [Defendants'] alleged omissions and uniform misrepresentations to Class Members were fraudulent."); *see also, e.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 15-MD-02672-CRB, 2022 WL 17730381, at *3 (N.D. Cal. Nov. 9, 2022); *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 17-MD-02777-EMC, 2019 WL 536661, at *6 (N.D. Cal. Feb. 11, 2019); *In re Takata Airbag Prods. Liab. Litig.*, No. 14-24009-CV, 2017 WL 11680208, at *3 (S.D. Fla. Sept. 19, 2017); *Looper v. FCA US LLC*, No. LACV 14-00700-VAP (DTBx), 2017 WL 11650429, at *4 (C.D. Cal. Mar. 23, 2017) (similar common questions about defective steering linkages); *Guido v. L'Oreal, USA, Inc.*, 284

F.R.D. 468, 478 (C.D. Cal. 2012) (whether misrepresentations "are unlawful, deceptive, unfair, or misleading to reasonable consumers are the type of questions tailored to be answered in 'the capacity of a classwide proceeding'") (quoting *Dukes*, 564 U.S. at 350).

Like many cases, including the Toyota settlement before this Court, the Settlement Class's claims here are rooted in common questions about the Mitsubishi Defendants' omission of material information about a defect in the Class Vehicles. *See* Prelim. Order at 11 (describing common question of "whether Mitsubishi's alleged omissions and uniform misrepresentations to Class Members were fraudulent").

These common questions will, in turn, generate common answers "apt to drive the resolution of the litigation" for the Settlement Class as a whole. *See Dukes*, 564 U.S. at 350. Conversely, "[w]ithout class certification, individual Class members would be forced to separately litigate the same issues of law and fact which arise from" the Defendants' fraud. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2016 WL 4010049, at *10 (N.D. Cal. July 26, 2016). Commonality remains satisfied. *See* Prelim. Order at 11 (finding commonality).

3. Rule 23(a)(3): The Settlement Class Representatives' claims are typical of other Mitsubishi Class Members' claims.

Under Rule 23(a)(3), "'the claims or defenses of the representative parties'" must be "'typical of the claims or defenses of the class.'" *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (quoting Fed. R. Civ. P. 23(a)(3)). Representative claims are "'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Johnson v. City of Grants Pass*, 72 F.4th 868, 888 (9th Cir. 2023) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003)). Here, the same course of conduct injured the Settlement Class Representatives and the other Settlement Class Members in the same ways. Each

purchased or leased Mitsubishi Class Vehicles with a defective DS84 ACU. As a result, they paid more for their Class Vehicles than they reasonably should have. The typicality requirements are satisfied. *See also* Prelim. Order at 11 (finding typicality).

4. Rule 23(a)(4): The Settlement Class Representatives and Settlement Class Counsel have and will continue to adequately protect the interests of the Class.

Rule 23(a)(4)'s adequacy requirement is met where '"(1) . . . the named plaintiffs and their counsel have [no] conflicts of interest with other class members and (2) . . . the named plaintiffs and their counsel [have] prosecute[d] the action vigorously on behalf of the class.'" *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting *Hanlon*, 150 F.3d at 1020). Both are true here. *See* Prelim. Order at 12 (finding adequacy satisfied for both the Mitsubishi Plaintiffs and Class Counsel at preliminary approval).

Here, there is "nothing to suggest that the named [Mitsubishi] Plaintiffs have interests that are antagonistic to those of other Class Members." *In re ZF-TRW ACUs Toyota Prelim. App.*, 2023 WL 6194109, at *11. They are "entirely aligned [with the Settlement Class] in their interest in proving that [Defendants] misled them and share the common goal of obtaining redress for their injuries." *Volkswagen*, 2016 WL 4010049, at *11. They understand their duties, have agreed to consider the interests of absent Class Members, and have reviewed and uniformly endorsed the Settlement terms. *See* Co-Lead Decl. ¶ 8. The Settlement Class Representatives are more than adequate.

Furthermore, as discussed more fully in § IV below, Settlement Class Counsel have undertaken extensive amounts of work, effort, and expense in this MDL and specifically in litigating the Mitsubishi Plaintiffs' Claims. They have demonstrated their willingness to devote whatever resources were necessary to reach a successful outcome throughout the nearly six years of investigation, litigation, and parallel settlement negotiations. They, too, satisfy Rule 23(a)(4). *See*

In re ZF-TRW ACUs Toyota Prelim. App., 2023 WL 6194109, at *12 (finding adequacy satisfied).

5. Rule 23(b)(3)—Predominance: Common issues of law and fact predominate.

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *In re ZF-TRW ACUs Toyota Prelim. App.*, 2023 WL 6194109, at *12 (quoting *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). The predominance inquiry "focuses on whether the 'common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication.'" *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 557 (9th Cir. 2019) (quoting *Hanlon*, 150 F.3d at 1022). "When 'one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.'" *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016).

The Ninth Circuit favors class treatment of fraud claims stemming from a "'common course of conduct.'" *See In re First Alliance Mortg. Co.*, 471 F.3d 977, 990 (9th Cir. 2006); *Hanlon*, 150 F.3d at 1022-23. Predominance is readily met for consumer claims arising from the defendants' common course of conduct. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1173, 1175 (9th Cir. 2010) (consumer claims based on uniform omissions certifiable where "susceptible to proof by generalized evidence," even if individualized issues remain); *Friedman v. 24 Hour Fitness USA, Inc.*, No. CV 06-6282 AHM (CTx), 2009 WL 2711956, at *8 (C.D. Cal. Aug. 25, 2009) ("Common issues frequently predominate" in actions alleging "injury as a result of a single fraudulent scheme.").

Here, too, legal and factual questions common to the Mitsubishi Class Members' claims predominate over any questions affecting only individual Class Members because the common issues "turn on a common course of conduct by the defendant . . . in [a] nationwide class action." *In re Hyundai*, 926 F.3d at 559 (citing *Hanlon*, 150 F.3d at 1022-23). Indeed, "[i]n many consumer fraud cases, the crux of each consumer's claim is that a company's mass marketing efforts, common to all consumers, misrepresented the company's product"—here, the vehicles' inclusion of passenger safety features without defects. *See In re Hyundai*, 926 F.3d at 559. Plaintiffs allege Mitsubishi "perpetrated the same fraud in the same manner against all Class Members." *Volkswagen*, 2016 WL 4010049, at *12.

Defendants' common course of conduct—manufacturing and selling vehicles with defective ACUs without disclosing that alleged defect to Mitsubishi Class Members—is central to Plaintiffs' claims. *See In re ZF-TRW ACUs Toyota Prelim. App.*, 2023 WL 6194109, at *12 (predominance satisfied where "Plaintiffs' claims arise from [Defendants'] alleged course of conduct of manufacturing and selling vehicles containing defective ACUs without disclosing the alleged defect to Class Members"); *see also* Prelim. Order at 13 ("Whether Mitsubishi's actions were fraudulent is a question that is central to Plaintiffs' claims, and which is suitable for resolution on a classwide basis"). Common, unifying questions include, for example: when Mitsubishi first learned of the ACU Defect, whether representations about the Class Vehicle's airbags and safety systems were misleading to reasonable consumers, and whether Mitsubishi's actions were fraudulent. Predominance remains satisfied. *See* Prelim. Order at 13 (finding predominance satisfied based on these questions).

6. Rule 23(b)(3)—Superiority: Class treatment is superior to other available methods for the resolution of this case.

The superiority inquiry asks, "whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023.

In other words, it "requires the court to determine whether maintenance of this litigation as a class action is efficient and whether it is fair." *Wolin*, 617 F.3d at 1175-76. Under Rule 23(b)(3),

> the Court evaluates whether a class action is a superior method of adjudicating plaintiff's claims by evaluating four factors: "(1) the interest of each class member in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against the class; (3) the desirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action."

Trosper v. Styker Corp., No. 13-CV-0607-LHK, 2014 WL 4145448, at *17 (N.D. Cal. Aug. 21, 2014).

Class treatment here is far superior to litigating hundreds of thousands of individual consumer actions. "From either a judicial or litigant viewpoint, there is no advantage in individual members controlling the prosecution of separate actions. There would be less litigation or settlement leverage, significantly reduced resources and no greater prospect for recovery." *Hanlon*, 150 F.3d at 1023; *see also Wolin*, 617 F.3d at 1176 ("Forcing individual vehicle owners to litigate their cases, particularly where common issues predominate for the proposed class, is an inferior method of adjudication."). The maximum damages sought by each Class Member, while significant at the individual level, are relatively small in comparison to the substantial cost of prosecuting each one's individual claims, especially given the technical nature of the claims at issue. *See Smith v. Cardinal Logistics Mgmt. Corp.*, No. 07-2104 SC, 2008 WL 4156364, at *11 (N.D. Cal. Sept. 5, 2008) (small interest in individual litigation where damages averaged $25,000-$30,000 per year of work); Prelim. Order at 14 ("Class Members may not have a strong incentive to pursue their claims individually.").

Class resolution is also superior from an efficiency and resource perspective. Indeed, "[i]f Class Members were to bring individual lawsuits against [Defendants],

each Member would be required to prove the same wrongful conduct to establish liability and thus would offer the same evidence." *Volkswagen*, 2016 WL 4010049, at *12. The conduct at issue involved approximately 97,565 Mitsubishi Class Vehicles, and "there is the potential for just as many lawsuits with the possibility of inconsistent rulings and results." *Id.* "Thus, classwide resolution of their claims is clearly favored over other means of adjudication, and the proposed Settlement resolves Class Members' claims at once." *Id.* Superiority is met here, and Rule 23(e)(1)(B)(ii) is satisfied. *See* Prelim. Order at 14.

* * *

The Settlement Class meets all relevant requirements of Rule 23(a) and (b). Plaintiffs thus request that the Court confirm the certification of the Settlement Class and the appointment of the Settlement Class Representatives.

C. The Court should confirm Plaintiffs' Counsel as Settlement Class Counsel under Rule 23(g)(1).

Settlement Class Counsel have undertaken a significant amount of work, effort, and expense in litigating the Mitsubishi Plaintiffs' claims. Following these efforts, the Court appointed Co-Lead Counsel and the PSC as Settlement Class Counsel at the preliminary approval stage. *See* Prelim. Order at 24. In the intervening period, Settlement Class Counsel have continued to demonstrate the skill and experience necessary to oversee and effectuate this Settlement through their efforts in the approval process and in overseeing the Notice Program roll out. The Mitsubishi Plaintiffs thus request that the Court confirm Settlement Class Counsel under Rule 23(g)(1) in connection with Final Approval of the Settlement.

IV. SETTLEMENT CLASS COUNSEL'S REQUESTED FEE IS FAIR, REASONABLE, AND APPROPRIATE.

This is a complex case, both factually and legally. For almost six years, Settlement Class Counsel have persistently pursued Mitsubishi, and the other Defendants, for equipping and selling Class Vehicles with a dangerous safety

defect, and misleading consumers about it. The litigation has been both hard fought and protracted. As the Court is aware, the parties dispute nearly every fact and Defendants—including Mitsubishi—have raised comprehensive challenges to Plaintiffs' claims. Settlement Class Counsel persisted despite these hurdles, in an immense effort and substantial allocation of resources, and achieved a remarkable result for the Mitsubishi Settlement Class.

Settlement Class Counsel undertook this work without any guarantee of recovery or reimbursement over the course of many years. They now seek fair and reasonable compensation for the time and effort it took to secure a strong result for the Mitsubishi Class.

"[L]awyer[s] who recover[] a common fund . . . [are] entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). This "common-fund doctrine" allows a court to "assess[] attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Id.* Here, Settlement Class Counsel request attorneys' fees and costs of $2.5 million, which reflects 29.4% of the $8.5 million Settlement fund obtained for Mitsubishi Class Members.[10]

In deciding whether a requested attorneys' fee amount is appropriate, courts in this Circuit look to a number of factors including: (1) the results achieved; (2) the complexity of the case and skill required; (3) the risks of litigation; (4) the benefits to the class beyond the immediate generation of a cash fund; (5) the market rate of customary fees for similar cases; (6) the contingent nature of the representation and financial burden carried by counsel; and (7) a lodestar cross-check. *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 1047834, at *1 (N.D. Cal. Mar. 17, 2017) ("*VW 2L Fee*

[10] In its Preliminary Approval Order, the Court found that a fee request with the range of $2.3 to $2.55 million was within a reasonable range given the facts and circumstances of this case. Settlement Class Counsel respectfully submits, as explained further below, that a 29.4% award of $2.5 million is warranted here.

Order") (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-52 (9th Cir. 2002)); *see also Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). Each factor strongly supports Settlement Class Counsel's request in this case.

For the reasons explained below, the request is "'fundamentally fair, adequate, and reasonable'" considering the facts and circumstances of this litigation. *Staton*, 327 F.3d at 963 (quoting Fed. R. Civ. P. 23(e)). The Court should affirm its finding for purposes of preliminary approval that Plaintiffs' requested fee was "within a reasonable range." Prelim. Order at 24.

Settlement Class Counsel also requests reimbursement of reasonable out-of-pocket expenses of $50,000, detailed further in § IV.B below. Fed. R. Civ. P. 23(h); *see Miller v. Ghirardelli Chocolate Co*., No. 12-CV-04936-LB, 2015 WL 758094, at *7 (N.D. Cal. Feb. 20, 2015) (attorneys may recover reasonable expenses that would typically be billed to paying clients in non-contingency matters) (citing *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)).

A. Settlement Class Counsel obtained substantial and important benefits for the Mitsubishi Class.

The result Class Counsel secured for the Mitsubishi Class is the central factor to evaluate the reasonableness of a requested fee. *In re Bluetooth*, 654 F.3d at 942; *In re Omnivision Techs., Inc*., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008); *see also In re Nexus 6P Prods. Liab. Litig.*, No. 17-CV-02185-BLF, 2019 WL 6622842, at *12 (N.D. Cal. Nov. 12, 2019) ("The most critical factor is the results achieved for the class."); *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (same); Federal Judicial Center, *Manual for Complex Litigation* § 21.71 (4th ed.) ("The 'fundamental focus is the result actually achieved for class members.'") (citing Fed. R. Civ. P. 23(h) committee note).

That principle strongly supports the requested fee here. As detailed above, the Settlement provides sizeable cash payments that fairly reflect the harm each

Class Member suffered at the hands of Mitsubishi on account of the ACU Defect. That this Settlement achieves material monetary relief through the compromise of contested claims strongly supports the requested fee. *See In re Nexus 6P*, 2019 WL 6622842, at *12 (upward adjustment from the 25% benchmark where settlement "allow[ed] all class members to receive a monetary benefit").

Moreover, the Settlement also secures valuable non-monetary benefits for Mitsubishi Class Members in the innovative ten-year Inspection Protocol, which mandates procedures for the active investigation and documentation of airbag non-deployments that may be caused by electrical overstress. This significant (but unquantified) non-monetary relief further supports the requested fee. *See 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 that could not be accurately valued supported fee award of nearly 30%).

1. The Settlement resulted from Settlement Class Counsel's zealous representation in complex and risky litigation.

This case involves dozens of Defendants and allegations of a long-standing and complex fraudulent scheme. Defendants include six vehicle manufacturer groups and three component supplier groups, totaling twenty-nine Defendants. Many of these Defendants are based outside the U.S. and played various roles in the design, manufacture, testing, and sale of the Class Vehicles, as well as in concealing the ACU Defect.

Investigating the ACU Defect and evidence surrounding it, including numerous crashes over more than a decade, was technically challenging. This was particularly true given the wide range of Class Vehicles implicated, with some models dating back as far as 2010. Plaintiffs allege that evidence of the ACU Defect can be traced back to the ZF and STMicro Defendants' design and testing of the DS84 ACU in 2008. They further allege that Mitsubishi and the other Vehicle Manufacturers Defendants had knowledge of the ACU Defect, at minimum, shortly

after the DS84 ACUs were installed in the Class Vehicles and coordinated with each other to share information about and conceal the defect.

Investigating allegations of an extensive scheme that began nearly 15 years ago required comprehensive analysis of contemporaneous documentation and complex testing and engineering documents. Arriving at a nuanced understanding of the ways in which the Class Vehicles experience the defect in crashes (and otherwise) took time, effort, and expertise. To do so, Settlement Class Counsel retained and worked closely with experts to understand the complex minutiae of electrical engineering principles and microchip circuitry. Complexities aside, it was a risky case, too, for several reasons. As detailed above, most of Plaintiffs' claims against Mitsubishi (and others) have not yet survived a motion to dismiss.

That Settlement Class Counsel achieved such substantial relief at this juncture speaks to their skill, effort, and persistent dedication to the Class. It also strongly supports their fee request. *See, e.g.*, *Hanlon*, 150 F.3d at 1029 ("complexity and novelty of the issues" can justify upward departure from benchmark); *In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1450–51 (N.D. Cal. 1994) (same).

2. Precedent strongly supports the request for 29.4% of the fund in attorneys' fees here.

When a settlement establishes a common fund, it is both appropriate and preferred to award attorneys' fees based on a percentage of the monetary benefit obtained. *See Vizcaino*, 290 F.3d at 1047. The fund is not limited to cash payments, and reasonably includes *all* benefits obtained for the Class with a calculable economic value. '"[I]t is the complete package taken as a whole . . . that must be examined for overall fairness."' *Banh*, 2021 WL 3468113, at *7.

Settlement Class Counsel request $2.5 million in fees. As explained above, this represents 29.4% of the cash obtained in this case. This is well in line with awards in this district and throughout the circuit. *See, e.g.*, *Hernandez*, 2021 WL 5053476, at *6 (collecting cases and finding that attorneys' fees awards that are

one-third of the total settlement fund "are routinely upheld by the Ninth Circuit"); *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06–04149 MMM SHX, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (awarding 34% of the $8,500,000 common fund).[11]

Consistent with this authority, in granting preliminary approval, the Court observed that "based on the current information, a 30% recovery award is within the range of what is reasonable under the circumstances." Prelim. Order at 22. Settlement Class Counsel respectfully submit their 29.4% fee request remains reasonable and appropriate under the circumstances.[12] This is supported by the favorable and valuable outcome achieved for the Class, as well as the dedicated, focused, and technical work that Settlement Class Counsel undertook to obtain it.

3. Settlement Class Counsel carried considerable financial burden and risk in prosecuting this complex litigation.

It is well-established that attorneys who take on representation on a contingent basis are rewarded to account for the significant risk of receiving no

[11] In this Circuit, fee awards "exceed[] the [25%] benchmark" in "*most* common fund cases." *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-MD-2541-CW, 2017 WL 6040065, at *2 (N.D. Cal. Dec. 6, 2017) *aff'd*, 768 F. App'x 651 (9th Cir. 2019) (emphasis added); *see also 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' of 30% of $405 million settlement fund); *In re CRT Antitrust Litig.*, MDL No. 1917, 2016 WL 4126533, at *5 (N.D. Cal. Aug. 3, 2016) (awarding 30% of $576,750,000 fund); *In re Mego*, 213 F.3d at 463 (upholding district court's award of 33 1/3 percent of the settlement fund); *Vizcaino*, 290 F.3d at 1046 (affirming fee award of 28% of $96,885,000 settlement fund under the percentage method); *Boyd v. Bank of Am. Corp.*, No. SACV 13–0561–DOC (JPRx), 2014 WL 6473804, at *8 (C.D. Cal. Nov. 18, 2014) (awarding 33% of $5,800,000 settlement); *Stuart v. RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645, at *6 (N.D. Cal. Aug. 9, 2010) (awarding 33% of common fund); *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 450 (E.D. Cal. 2013) (awarding 33% of common fund).

[12] The total request of $2.55 million—which includes $2.5 million in fees and $50,000 in costs—is 30% of the $8.5 million Settlement cash value.

compensation. *See In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299-1300 (9th Cir. 1994). Such a practice encourages the legal profession to assume this risk and promotes competent representation for plaintiffs who might otherwise be unable to afford an attorney. *Id.*; *see also Vizcaino*, 290 F.3d at 1051.

Settlement Class Counsel devoted more than 100,000 hours to this consolidated litigation effort and advanced whatever expenses were necessary to see this case through to a successful outcome, all with a risk of zero compensation for their efforts and costs incurred. Co-Lead Decl. ¶ 22, Exhibit A. In so doing, Settlement Class Counsel "turn[ed] down opportunities to work on other cases to devote the appropriate amount of time, resources, and energy necessary to handle this complex case." *VW 2L Fee Order*, 2017 WL 1047834, at *3. This factor further supports Settlement Class Counsel's request.

4. A lodestar cross-check confirms the requested fees are reasonable.

"Because the benefit to the class is easily quantified in common-fund settlements," the Ninth Circuit permits district courts "to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar." *In re Bluetooth*, 654 F.3d at 942; *Gutierrez v. Amplify Energy Corp.*, No. 8:21-CV-01628 DOC JDE(x), 2023 WL 6370233, at *6 (C.D. Cal. Sept. 14, 2023) (in common fund cases in the Ninth Circuit, "the primary basis of the fee award remains the percentage method.") (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002)).

Nevertheless, courts employ a streamlined lodestar "cross-check" on the reasonableness of a requested award. *See, e.g.*, *Vizcaino*, 290 F.3d at 1050. In so doing, the Court need not "closely scrutinize each claimed attorney-hour" but rather "focus[es] on the general question of whether the fee award appropriately reflects the degree of time and effort expended." *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D. Cal. 2016); *see also Rieckborn v. Velti PLC*, No. 13-3889,

2015 WL 468329, at *21 (N.D. Cal. Feb. 3, 2015) (similar).

As explained below and in the accompanying Co-Lead Counsel Declaration, Settlement Class Counsel worked a reasonable number of hours billed at reasonable rates under the circumstances of this complex, multi-district litigation.

a. Class Counsel spent a reasonable number of hours advancing this complex litigation.

As summarized above, this is a technical case that required thorough investigation and analysis undertaken over almost six years. *See, e.g.*, § II, *supra*; Co-Lead Decl. ¶¶ 3, 33. Indeed, Settlement Class Counsel dedicated some 104,505.1 hours in advancing this litigation through July 31, 2024,[13] for a total "adjusted lodestar" of $44,097,048.78 using the CBO capped rates, and $51,244,855.16 using market rates, in that period.[14] *Id.* ¶ 16, Exhibits A, B.

As was true for the earlier Toyota Settlement, it is not practicable to disaggregate the common benefit work among the various individual defendants, because much of the work performed benefits the entire MDL collectively, not just the specific case or claim against any one Defendant. Therefore, Co-Lead Counsel have apportioned a percentage of the total lodestar attributable to the settling Defendant. Co-Lead Decl. ¶¶ 17-18. This approach is consistent with the method Co-Lead Counsel used (and the Court approved, *see In re ZF-TRW ACUs Toyota Prelim. App.*, 2023 WL 6194109, at *22) for their attorneys' fee request in the

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[13] Counsel use and present lodestar data for the time period through July 31, 2024 in its final format, in support of this motion, because substantial work on the Mitsubishi claims and settlement were incurred prior to that date.

[14] This "adjusted lodestar" amount reflects the subtraction of the lodestar previously allocated to the Toyota Settlement ($11,520,547.22 with capped rates, and $12,800,004.84 with market rates) from the current total lodestar figures. For that reason, the total case lodestar data reflected in the Exhibits submitted herewith is higher than the "adjusted lodestar" reported here, because the lodestar data in the Exhibits is comprehensive and includes all data, including the lodestar that was previously attributed to (and awarded for) Toyota.

Toyota Settlement. It applies equally to the work supporting the Mitsubishi Settlement. *See also* Prelim. Order at 22 (describing this approach for Mitsubishi settlement).

In their professional judgment and based on their familiarity with the work performed at their direction, Co-Lead Counsel estimate the work fairly and reasonably attributed to efforts that benefited the Mitsubishi Settlement Class and the prosecution of their claims against Mitsubishi as follows: from the total hours worked, 70% of the efforts are attributable to the six Vehicle Manufacturer Defendants, and the remaining 30% of work is specific to the two supplier Defendants (ZF and ST Micro), recognizing that much of the work for the suppliers also advances the claims against the Vehicle Manufacturers. *Id*. ¶¶ 17-18.

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

Based on the above, the estimated Mitsubishi lodestar for purposes of the attorneys' fee request, using the applicable rate caps, is approximately $1,234,717.37. Including the anticipated future work to implement and protect the Settlement through the Claims Period, Settlement Class Counsel expects the lodestar attributable to Mitsubishi to be $1,418,050.37.[15] Co-Lead Decl. ¶ 21.

[15] Based on their experience in defending and implementing other automotive class settlements, Settlement Class Counsel estimate that approximately $183,333 in

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That time was (and will continue to be) spent effectively. With those hours, Settlement Class Counsel reviewed and analyzed more than 11,000 pages of documents obtained through discovery from Mitsubishi for the Mitsubishi Plaintiffs' claims. They also reviewed millions of additional pages of relevant documents in the MDL. This extensive review informed their efforts to prosecute Plaintiffs' claims. *Id.* ¶¶ 5, 25-26. Analyzing, coding, and synthesizing this discovery was a very significant undertaking that was critical to the litigation and resolution of this case. *Id.*

Settlement Class Counsel also engaged in thorough legal research and briefing efforts on issues for Mitsubishi's pleading challenges, as well as the Joint Motion brought by all Defendants. *Id.* ¶ 24. Mitsubishi Plaintiffs' thorough and careful efforts to respond to these challenges ultimately prevailed to keep their claims in the consolidated pleadings before this Court. Mitsubishi's pleading challenges, however, proved more successful, and most of Mitsubishi Plaintiffs' claims against Mitsubishi did not survive its motion to dismiss. ECF 396. Mitsubishi Plaintiffs pressed on thereafter, researching and developing a 1,300+ page factually detailed operative Complaint that they believe adequately states claims against Mitsubishi and each of the remaining Defendants.

The settlement process itself also took significant time and persistence, and involved dozens of meetings, calls, information and data exchanges and much more over the course of some two years. *Id.* ¶ 6. Underpinning all of this was Settlement Class Counsel's work to fully understand the complex electrical engineering

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lodestar (approximately 300 more hours) will be necessary for the on-the-ground efforts to finalize, implement, and protect the Settlement. This will include, for example, work required to: (1) defend the Settlement against objections, if any; (2) protect the Settlement on appeal (if any appeals are lodged); and (3) oversee and help implement the Settlement, which will include, among other things, responding to inquiries from more than 100,000 Class members. Co-Lead Decl. ¶ 20. Settlement Class Counsel's reasonable hours appropriately reflect the efforts necessary to secure and protect the favorable outcome here.

principles and related issues involved in the ACU Defect, which provided the framework for understanding the allegations and alleged damages in this case.

As this (partial) list demonstrates, this litigation required a sustained, multi-pronged effort. Importantly, the Mitsubishi Plaintiffs and Settlement Class Counsel fought hard to reach this stage. The results won, after the hurdles faced, strongly support the fee award requested here. As the Court found at preliminary approval, "[t]he hours charged appear generally reasonable." Prelim. Order at 24.

b. Settlement Class Counsel billed reasonable rates for those hours.

As the Court noted in granting preliminary approval, Settlement Class Counsel's rates are capped by the Court-entered common benefit order ("CBO") (ECF 111), which "provides support for the reasonableness of the rates claimed." Prelim. Order at 23. The CBO—which was entered in 2020 and has not since been adjusted to account for inflation or the changes in market rates over the past five years—limits the hourly rates for all participating Plaintiffs' Counsel at $895/hour for partners; $350-$600/hour for associates; $415/hour for document review attorneys; and $175-$275/hour for paralegals and assistants. For many timekeepers, these Court-capped hourly rates fall well below their standard and customary rates. *See* Co-Lead Decl. ¶ 11. Indeed, the total adjusted lodestar applying each timekeeper's standard and routinely Court-approved hourly rates is $51,244,855.16 for a reduction of approximately 14% ($7.15 million) from the market-rate fees of participating counsel.[16] Settlement Class Counsel respectfully submit that compliance with the CBO provides strong support for the reasonableness of the rates used.

[16] The total lodestar using market rates is a conservative estimate. Participating Counsel submit their time using the capped CBO rates. Co-Lead Counsel have current market rate of some, but not all, Participating Counsel, and used those available rates to calculate the market rate lodestar. Co-Lead Counsel believe the rates would be even higher if the market rate data were complete.

In addition to the CBO, the reasonableness of Settlement Class Counsel's rates is also confirmed by comparison to rates commonly approved for attorneys in this Circuit. Indeed, "[a]ffidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). Courts in this Circuit routinely approve similar or higher hourly rates to those here in complex class action cases like this. *See, e.g.*, *Grey Fox, LLC v. Plains All-Am. Pipeline, L.P.*, No. CV 16-03157 PSG (JEMX), 2024 WL 4267431, at *5-6 (C.D. Cal. Sept. 17, 2024) (approving fees with lodestar crosscheck using Lieff Cabraser's hourly rates of $745 to $1,380 for partners, $345 to $720 for associates, and $345 to $535 for paralegals/research staff); *Waldrup v. Countrywide Fin. Corp.*, No. 2:13-CV-08833-CAS-AGRx, 2020 WL 13356468, at *2 (C.D. Cal. July 16, 2020) (approving Baron & Budd's hourly rates of $825 to $975 for partners, and $495 to $625 for associates, requested at ECF 479-1 at 16); *Ramirez v. Trans Union, LLC*, No. 12-CV-00632-JSC, 2022 WL 17722395, at *9 (N.D. Cal. Dec. 15, 2022) (approving hourly rates ranging "from $1,325 to $560 for partners and associates, and $485-$455 for 'litigation support' and paralegals"); *Gutierrez, JR. v. Amplify Energy Corp.*, No. 8:21-cv-01628-DOC (JDEx) (C.D. Cal. Jan. 26, 2023), ECF Nos. 667, 726 (standard hourly rates of $650-$1,010/hour for partners, $640-$675/hour for associates, and $525/hour for discovery/document review attorneys were "consistent with market rates"); *In re Wells Fargo & Co. S'holder Derivative Litig.*, 445 F. Supp. 3d 508, 527 (N.D. Cal. 2020), *aff'd*, 845 F. App'x 563 (9th Cir. 2021) (approving hourly rates up to $1,075 for partners and $660 for associates).[17]

[17] *See also In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 8:10-ML-02151 JVS FMO(x), 2013 WL 12327929, at *33 n.3 (C.D. Cal. July 24, 2013) (approving rates up to $950 per

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Overall, the blended average billing rate for the work described above is approximately $605 per hour. Co-Lead Decl. ¶ 19. This is in line with average rates in this District and reasonable here given the skill, experience, and reputation of Settlement Class Counsel—all of whom the Court appointed through a competitive leadership application process. *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), ECF 3396-2 ¶ 29 (N.D. Cal. June 30, 2017) (noting that the average blended rate of 40 class action settlements approved in that District in 2016 and 2017 was $528.11 per hour); *Herrera v. Wells Fargo Bank, N.A.*, No. 8:18-CV-00332-JVS-MRW, 2021 WL 9374975, at *13 (C.D. Cal. Nov. 16, 2021) (approving a blended rate of approximately $613 per hour); *Perez v. Rash Curtis & Assocs.*, No. 4:16-cv-03396-YGR, 2020 WL 1904533, at *20 (N.D. Cal. Apr. 17, 2020) (reviewing cases and finding blended rate of $634.48 to be reasonable).

Finally, recent data on the average rates charged in this district provides still further evidence in support of the rates used. Specifically, the "Real Rate Report identifies attorney rates by location, experience, firm size, areas of expertise and industry, as well as specific practice areas, and is based on actual legal billing, matter information, and paid and processed invoices from more than eighty companies." *Rolex Watch USA Inc. v. Zeotec Diamonds Inc.*, No. CV 02-1089 PSG (VBKx), 2021 WL 4786889, at *3 (C.D. Cal. Aug. 24, 2021). "[N]umerous courts in this District and elsewhere have turned to the annual Real Rate Report as a helpful guide." *Sarabia v. Ricoh USA, Inc.*, No. 820 CV 00218 JLS KES(x), 2023 WL 3432160, at *8 (C.D. Cal. May 1, 2023) (collecting cases).

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hour over ten years ago in automotive class action); *Schroeder v. Envoy Air, Inc.*, No. CV 16-4911-MWF (KSX), 2019 WL 2000578, at *8 (C.D. Cal. May 6, 2019) (approving rates of up to $890 for partners and up to $750 for senior associates); *Keegan v. Am. Honda Motor Co, Inc.*, No. CV 10-09508 MMM AJWX(x), 2014 WL 12551213, at *23 (C.D. Cal. Jan. 21, 2014) (approving class counsel's hourly rates up to $875 for partners and $595 for associates).

The most recent Real Rate Report, based on data collected through Q2 of 2023, supports the reasonableness of the hourly rates reflected in the CBO. *See* Co-Lead Decl. ¶¶ 28-29; *see also Grey Fox, LLC*, 2024 WL 4267431, at *5 (noting that the 2023 Real Rate Report has been a useful guidepost in measuring the reasonableness of hourly rates in the Central District of California). Specifically, it reflects an average hourly rate of $867 for litigation partners in Los Angeles, ranging from $525 (for the first quartile) to $1,159 (for the third quartile). Co-Lead Decl., ¶¶ 28-29 and Ex. C, at 16. For Los Angeles litigation associates, hourly rates range from $431 (for the first quartile) to $880 (for the third quartile), with an average hourly rate of $674. *Id*. These figures are well in line with those charged here and further evidence the reasonableness of Settlement Class Counsel's rates.

c. Class Counsel's performance and the results achieved justify a reasonable lodestar multiplier.

The Ninth Circuit *requires* an upward lodestar multiplier when certain risk factors are present and authorizes a multiplier for certain other "reasonableness" factors, including the quality of representation, the complexity of the issues presented, and most importantly, the benefit obtained for the class.[18] *See, e.g.*, *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975); *In re Bluetooth*, 654 F.3d at 942.

Based on Settlement Class Counsel's estimated lodestar multiplier at the preliminary approval stage of between 1.75 and 2.1, the Court approved the

[18] The "reasonableness" factors are (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Kerr*, 526 F.2d at 70.

Settlement, including the fee request, as likely to be reasonable. Prelim. Order at 24. Settlement Class Counsel confirm that the lodestar of $1,418,050.37 (using the CBO capped rates) yields a modest multiplier of 1.76 for work performed in furtherance of Plaintiffs' claims against Mitsubishi, including time anticipated for the on-the-ground work necessary to implement, oversee, and protect this Settlement through potential appeals. Co-Lead Decl. ¶ 21.

This multiplier is well-supported by the facts and history here, especially when considering the contingent nature of Settlement Class Counsel's work and related risks of no recovery at all. Moreover, as discussed at length above, the result obtained in the face of the significant challenges Settlement Class Counsel faced and the enormous effort undertaken in this nearly-six-years-long litigation more than supports the modest multiplier they request here. *See* §§ II.B, IV.A.2, *supra*.

d. The requested multiplier is squarely in line with those routinely approved in this Circuit.

While the relevant facts and history of this case provide ample support for the multiplier sought, it bears emphasis that the request is squarely within the "presumptively acceptable range of 1.0-4.0" in this Circuit. *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014); *Ochinero v. Ladera Lending, Inc.*, No. SACV 19-1136 JVS (ADSx), 2021 WL 4460334, at *8 (C.D. Cal. July 19, 2021) ("lodestar multipliers of 1.5 to 3.0 are most common").

In line with this presumption, Court orders routinely approve multipliers at or above those here. This includes settlements with a percentage of the fund similarly near or above the benchmark 25% as well. *See Vizcaino*, 290 F.3d at 1051 n.6 (approving 3.65 multiplier, and citing appendix of cases showing "a range of 0.6-19.6, with most . . . from 1.0-4.0 and a bare majority . . . in the 1.5-3.0 range"); *see also In re ZF-TRW ACUs Toyota Final App.*, 2023 WL 9227002, at *16 (approving multiplier of 2.35 in this litigation); *Fleming v. Impax Lab'ys Inc.*, No. 16-cv-06557, 2022 WL 2789496, at *9 (N.D. Cal. July 15, 2022) (awarding 30% in

attorneys' fees on a $33 million common fund and noting that 2.6 lodestar multiplier confirmed reasonableness of the request); *Kendall v. Odonate Therapeutics, Inc.*, No. 20-cv-01828, 2022 WL 1997530, at *7 (S.D. Cal. June 6, 2022) (33.3% fee representing a 2.36 multiplier was reasonable for a $12.8 million settlement); ECF 761-1 (compendium chart of cases previously submitted with percentage near or above the benchmark 25%, and with a lodestar multiplier of approximately 2.5 or above); ECF 815 at 42 (information on multipliers and related fee studies in Plaintiffs' final approval brief for the Toyota settlement).

Settlement Class Counsel's requested multiplier—1.76 including anticipated future time and 2.02 without, *see* Co-Lead Decl. ¶¶ 19-21—is a reasonable and appropriate multiplier, based on both the record in this case, and with reference to awards regularly made in this Circuit.

B. Settlement Class Counsel's expenses are reasonable.

Settlement Class Counsel may "recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters." *Brown v. CVS Pharmacy, Inc.*, No. 15-cv-7631, 2017 WL 3494297, at *9 (C.D. Cal. Apr. 24, 2017); *see also Staton*, 327 F.3d at 974; Fed. R. Civ. P. 23(h). This includes expenses that are reasonable, necessary, and directly related to the litigation. *See Willner v. Manpower Inc.*, No. 11-cv-2846, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015).

Here, Settlement Class Counsel seek $50,000 in litigation expenses incurred. This includes $39,250.73 in funds expended by Lead Counsel and PSC firms to advance the common benefit, and $10,749.27 that Settlement Class Counsel are responsibly reserving to cover the anticipated costs associated with the future on-the-ground administration and Settlement implementation efforts. Co-Lead Decl. ¶ 30. At approximately 0.59% of the Settlement value, these costs are *significantly* less than the average costs awarded in class action settlements. Theodore Eisenberg

& Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical Legal Stud. 248, 267 (2010) (mean and median of 2.8% and 1.7% before 2002 and 2.7% and 1.7% thereafter); Theodore Eisenberg et. al., *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 963 (2017) (mean and median of 3.9% and 1.7% since 2009).

More importantly, these costs are commensurate with the stakes, complexity, and intensity of this case. For example, they include costs for eDiscovery services and the platform necessary to process, maintain, and analyze millions of pages of documents. They also cover expert fees, which were necessary given the technical nature of the litigation and the efforts required to resolve it. Additionally, the costs include travel expenses related to hearing attendance, as well as meetings and negotiations held across the United States. Co-Lead Decl. ¶¶ 31-33.

No doubt, this is a technical, complex case, and it has been expensive to prosecute, with the portion assigned to Mitsubishi a small share of the total costs incurred. As courts have recognized, "Class Counsel had a strong incentive to keep expenses at a reasonable level due to the high risk of no recovery when the fee is contingent." *Gutierrez v. Amplify Energy Corp.*, No. 8:21-CV-01628 DOC JDEx, 2023 WL 3071198, at *7 (C.D. Cal. Apr. 24, 2023). Those incentives apply equally here, and Settlement Class Counsel expended only that which they believed was necessary to advance the interests of the Class. The requested costs are reasonable and should be reimbursed.

C. The Settlement Class Representatives have earned the requested service awards through five plus years of dedication to this case.

Settlement Class Counsel request service awards of $2,500 for each of the three Settlement Class Representatives. These awards, to be paid from the Settlement fund, recognize the time and effort each Settlement Class Representative dedicated to the case. At preliminary approval, this Court determined that, given the Settlement Class Representatives' "active role in the litigation, the number of hours

spent on the case, and the give-year period that it has been pending, incentive awards in the amount of $2,500 are reasonable." Prelim. Order at 20.

That conclusion remains sound. The requested amount falls well below the $5,000 "presumptively reasonable" award in this Circuit, and the time and effort the proposed Representatives dedicated to prosecuting this case clearly supports the request here. *In re CRT*, 2016 WL 4126533, at *11. *See also, e.g.*, *In re ZF-TRW ACUs Toyota Prelim. App.*, 2023 WL 6194109, at *18 (finding $2,500 to be a "reasonable" service award for Toyota settlement in this litigation); *In re ZF-TRW ACUs Toyota Final App.*, 2023 WL 9227002, at *13 (same on final approval for Toyota settlement); *Cisneros v. Airport Terminal Servs. Inc.*, No. 2:19-CV-02798-VAP-SPx, 2021 WL 3812163, at *9 (C.D. Cal. Mar. 26, 2021) ("Courts have generally found that $5,000 incentive payments are reasonable."); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (affirming awards of $5,000); *In re Mego*, 213 F.3d at 463 (same).

The Settlement Class Representatives have demonstrated unwavering commitment to investigating and prosecuting this case on behalf of the Class. Their efforts included: (1) providing extensive factual information to assist counsel in drafting the complaints; (2) regularly communicating with counsel to stay informed about developments in this litigation; (3) searching for and producing relevant materials related to their Class Vehicles during discovery; (4) collaborating with counsel to prepare and finalize detailed responses to Interrogatories; (5) reviewing and evaluating the terms of the proposed Settlement Agreement with counsel; and (6) expressing their continued willingness to protect the Class through final approval and Settlement administration.

Settlement Class Counsel estimates that these efforts conservatively required *at least* 25 hours of time from each Mitsubishi Plaintiff over the course of the litigation. The moderate service awards requested are well-earned.

V. CONCLUSION

Settlement Class Representatives and Settlement Class Counsel respectfully request that the Court certify the Mitsubishi Settlement Class; appoint Settlement Class Counsel and Settlement Class Representatives; grant final approval of the Settlement; approve an aggregate award of $2.55 million in attorneys' fees and expenses to be allocated by Co-Lead Counsel among firms performing work under the CBO; and award Class Representatives $2,500 to each Settlement Class Representative as a service award.

Dated: January 27, 2025

/s/ Roland Tellis

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record, including counsel for Defendants.

/s/ Roland Tellis
Roland Tellis