

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

AIMEE HICKMAN, *et al.*, individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:21-CV-02100-NLH-  
AMD

Motion Date: April 16, 2024

**PLAINTIFFS' MOTION FOR  
APPROVAL OF ATTORNEY'S  
FEES, EXPENSES, AND CLASS  
REPRESENTATIVE SERVICE  
AWARD**

**PLEASE TAKE NOTICE** that on April 16, 2024, at 2:00 P.M., or as soon thereafter as the matter can be heard, Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode (“Plaintiffs”), individually and on behalf of all others similarly situated, will move this Court before Hon. Noel L. Hillman, U.S.D.J., pursuant to Federal Rule of Civil Procedure 23 to enter the proposed Order Granting Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards, awarding (1) attorneys’ fees and expenses in the amount of \$750,000 to Class Counsel; and (2) a service award in the amount of \$3,750 per Class Vehicle to the Plaintiffs as the named Class Representatives.

In support of this motion, Plaintiffs rely upon the accompanying Memorandum of Law and the authorities cited therein; the declaration of Russell D.

Paul, submitted herewith; the Settlement Agreement and Release; the proposed Order, submitted herewith; and all files, records, and proceedings in this matter.

Dated: January 30, 2024

Respectfully submitted,

/s/ Russell D. Paul

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Motion Date: April 16, 2024

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’  
UNOPPOSED MOTION FOR APPROVAL OF ATTORNEY’S FEES,  
EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS**

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**I. INTRODUCTION**

Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode (“Plaintiffs”) move the Court to award: (1) attorneys’ fees and expenses in the amount of \$750,000; and (2) service awards to each Plaintiff as the named Class Representatives in the amount of \$3,750, distributed as one service award per Class Vehicle owned or leased by the named Plaintiffs.

As detailed below, Class Counsel successfully pursued this case in which Plaintiffs alleged violation of the consumer statutes of their states of residence, breach of express and implied warranties, and fraud by omission. As a result of Class Counsel and Plaintiffs’ efforts, they have achieved a settlement providing warranty extensions, as well as vouchers worth up to \$750 and reimbursement of certain previously unreimbursed out-of-pocket expenses for certain Settlement Class Members. This relief represents a complete recovery for Settlement Class Members who were adversely affected by a condition that Defendants later remedied via recall. Defendants Subaru of America, Inc. (“SOA”) and Subaru Corporation (“SBR”) deny the allegations and maintain that the subject vehicles are not defective, were properly designed, manufactured, marketed, distributed and sold, function properly, and that any issues with the transmissions were adequately addressed by

two separate recalls in 2019 and 2021. Defendants further maintain that no express or implied warranties were breached, and no consumer statutes or common law duties were violated.

To date, Class Counsel has not received any compensation for their efforts in the litigation, nor have they received reimbursement of the expenses they have advanced. Class Counsel's request is especially reasonable because the fees and awards will be paid directly by Defendants and will not reduce any of the reimbursement funds available to Settlement Class Members. *See, e.g., Haas v. Burlington Cnty.*, 2019 WL 413530, at \*9 (D.N.J. Jan. 31, 2019) (“[T]he amount of attorneys’ fees was negotiated as a separate aspect of the settlement agreement, which further supports reasonableness.”).

Similarly, the proposed \$3,750 service awards to Plaintiffs are well within the range of reasonable for approval in consumer class actions. *See, e.g., Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at \*19 (D.N.J. Mar. 22, 2013). Accordingly, Plaintiffs and Class Counsel respectfully request that the Court grant the present motion and approved the requested amounts.

## **II. LITIGATION AND SETTLEMENT HISTORY**

### **A. Plaintiffs’ Pre-Suit Investigation and Description of the Action**

Plaintiffs each purchased or leased 2019-2020 Subaru Ascent vehicles. All of these owners complained that their vehicles experienced hesitation, jerking,

shuddering, lurching, squeaking, whining, or other loud noises, delays in acceleration, inconsistent shifting, stalling, and/or a loss of power or ability to accelerate at all.

Class Counsel thoroughly investigated the alleged defect prior to filing the lawsuit, including, beginning in July 2018, analyzing the nature of the alleged defect; studied complaints made to the National Highway Traffic Safety Administration (“NHTSA”) as well as on third-party websites; researched publicly available technical information regarding the transmission in Class Vehicles including through technical service bulletins regarding the transmission, and recall information provided to NHTSA; interviewed and collected documents from over one hundred Settlement Class Members; and investigated potential claims. *See* Declaration of Russell D. Paul in Support of Plaintiffs’ Motion for Fees, Costs, and Service Awards (“Paul Fee and Service Award Decl.”), submitted simultaneously herewith, at ¶¶8-10; Declaration of Russell D. Paul in Support of Preliminary Approval of Class Action Settlement (“Paul Prelim. Approval Decl.”), ECF 67-2, at ¶¶9-14.

On February 4, 2021, Class Counsel mailed a notice letter to Defendants on behalf of Plaintiffs Aimee and Kelly and Frank Drogowski. On February 5, 2021, Class Counsel mailed a notice letter to Defendants on behalf of William Treasurer. On February 15, 2021, Class Counsel mailed a notice letter to Defendants on behalf of Plaintiffs John Taitano, Richard Palermo, and Cassandra and Steven Sember. On

February 26, 2021, Class Counsel mailed a notice letter to Defendants on behalf of Plaintiffs Shawn and Lori Woiwode. These letters specified the problems related to the transmission and regarding their experiences with their vehicles, seeking remedies for the Plaintiffs and a Class of similarly situated car owners. Plaintiffs filed their initial complaint on February 28, 2021, alleging that their vehicles were defective and asserting claims against Defendants for, *inter alia*, alleged violation of the consumer statutes of their states of residence, including the Maryland Consumer Protection Act, North Carolina Unfair and Deceptive Acts and Practices Act, Pennsylvania Unfair Trade Practices and Consumer Protection Law, Fraud by Omission or Fraudulent Concealment, Unjust Enrichment, along with a nationwide class, as well as breach of express and implied warranties. *Id.* at ¶¶15-17.

SOA filed its Motion to Dismiss the Class Action Complaint on April 12, 2021. ECF 14. In response, on May 14, 2021, Plaintiffs filed their First Amended Class Action Complaint, adding the remaining Plaintiffs and their state-specific causes of action under the consumer statutes of their states of residence as well as breach of express and implied warranties. ECF 16. On July 6, 2021, SOA filed its Motion to Dismiss the First Amended Class Action Complaint. ECF 18. On December 2, 2021, SBR filed its Motion to Dismiss the First Amended Class Action Complaint. ECF 28.

On January 21, 2022, Plaintiffs filed their opposition brief to SBR's Motion to Dismiss and to a separate Motion for Judicial Notice of a new Part 573 Safety Recall Report filed by SOA on December 9, 2021, indicating an intent to initiate a voluntary recall of certain 2019 and 2020 Subaru Ascents, commencing with a notification to vehicle owners in February 2022. ECF 33, 36. As result of this new recall, the Court permitted additional briefing related to the pending Motions to Dismiss. Defendants filed their reply briefs in support of their Motions to Dismission on February 18, 2022, Plaintiffs filed a Sur-Reply on March 11, 2022, and SBR filed a Sur-Sur Reply on March 18, 2023. ECF 38, 39, 43.

On October 19, 2022, the Court issued its Opinion and Order granting in part and denying in part each of SOA's and SBR's Motions to Dismiss. ECF 48, 49.

**B. Discovery and Settlement Negotiations**

The Parties began negotiations of a potential class settlement simultaneously with conducting discovery. The Court entered a Confidentiality Order and a Scheduling Order on December 6, 2022. ECF 56, 58. The parties then both propounded discovery requests.

Plaintiffs sent a Settlement Proposal Letter to Defendants on October 20, 2022. On December 19, 2022, counsel for Defendants initiated settlement discussions with Plaintiffs. Paul Prelim. Approval Decl., ECF 67-2, at ¶24. Thereafter, on January 11, 2023, the Parties engaged Bradley A. Winters, Esq., of

JAMS, as mediator. The Parties conferred in January and February 2023, beginning negotiations for a potential class settlement. *Id.* at ¶25. They held a pre-mediation conference on February 22, 2023, at which time Defendants provided details regarding Defendants' 2019 and 2021 Recalls related to the Class Vehicles' drive train and the separate clutch plate-related issue detailed in Service Bulletin 16-136-22 dated January 20, 2022 and subsequent revisions to the Recalls. *Id.* at ¶26. The Parties also exchanged confidential engineering information as well as other information regarding the alleged defective transmission in the Settlement Class Vehicles. *Id.* at ¶27. This enabled Class Counsel to gain an understanding of the strengths and weaknesses of Plaintiffs' claims.

The Parties attended two mediation sessions with Mr. Winters on February 24, 2023 and March 1, 2023. After months of vigorous, arm's length settlement negotiations, the Parties were eventually able to negotiate a Class Settlement of this action. *Id.* at ¶¶29-30.

Plaintiffs subsequently conducted confirmatory discovery by serving requests for production of documents and interrogatories on SOA and SBR on May 9, 2023. Plaintiff reviewed Defendants' responses and production beginning on June 23, 2023 and further took the deposition of SOA employee Davis Jose on August 15, 2023. This discovery confirmed scope of the Class Vehicles involved, as well as the extent and sufficiency of the Recalls performed by the Defendants. *Id.* at ¶31.

On October 17, 2023, the Court granted Preliminary Approval of Class Action Settlement to provide reimbursement of certain past paid expenses for Covered Repairs, specifically certifying a Settlement Class consisting of:

A natural person who is the current or former owner or lessee of a Settlement Class Vehicle, who purchased or leased the continental United States, including Alaska or Hawaii, who purchased the vehicle for purposes other than for resale.

Settlement Class Vehicles were identified as approximately 160,000 2019 and 2020 Subaru Ascents. *Id.* at ¶32; Order Granting Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement, ECF 68.

On January 15, 2024, the Class Notice was mailed to the Settlement Class in accordance with the approved Notice Plan. *See* Declaration of Jennifer M. Keough, submitted in connection with Plaintiffs’ Motion for Final Approval of Class Settlement (“JND Decl.”), at ¶9. On the same day, the dedicated settlement website and toll-free number with live operators went live. *Id.* at ¶15.

**C. The Settlement Agreement and the Reaction of the Class**

**1. Benefits to the Settlement Class**

**a. Hesitation and Slippage Related to the CVT Chain**

**i. Warranty Extension for Replaced CVTs Under Any Recall**

SOA has initiated several voluntary safety and emissions recalls that were supervised by NHTSA and that relate to the Continuously Variable Transmission (CVT) in the Settlement Class Vehicles, including Recall Nos. 21V-955 and 21V-



485, Manufacturer Recall Nos. WRK-21 and WRK-22, and the earlier WUV-07 recall, which was superseded by WRK-21 and WRK-22. These recalls target specific Subaru vehicles, such as the Class Vehicles, where the CVT chain may slip and/or break and/or the vehicle may experience hesitation or slipping.

As part of the Settlement, SOA will extend its Limited Warranty for Genuine Subaru Replacement Parts and Accessories for CVTs replaced under, or prior to, any recall to two years with no mileage limitation. This extension of the Limited Warranty follows the same terms as Subaru's Limited Warranty for Genuine Subaru Replacement Parts and Accessories, except for the extended duration.

**ii. Voucher For Settlement Class Members Who Made Visits to An Authorized Subaru Dealer to Address a Malfunction Associated with a Recall**

The Settlement provides that a Settlement Class Member may receive a voucher with a value of \$400 if they made two visits to an Authorized Subaru Dealer for a repair, attempted repair, replacement, diagnosis or inspection in which the primary purpose was to address a malfunction associated with a recall, which addresses symptoms such as the CVT chain slipping and/or breaking that can result in the vehicle experiencing hesitation or slipping. This excludes any repairs or visits related to an Authorized Subaru Dealer implementing a recall. For three or more such visits, the Voucher value is \$750. Vouchers must be used within one year from the date of issuance, after which they will expire and no longer be valid.

**b. Malfunctioning MPT Clutch and Shudder, Judder or Vibration**

The Settlement provides the following benefits for a specific type of malfunction within the CVT of the Settlement Class Vehicles, as addressed in Service Bulletin 16-136-22 (including all revisions), that is characterized by the potential failure of the multiple plate transfer (MPT) clutch and can result in the vehicle experiencing judder, shudder and vibration.

**i. Extended Warranty**

Where shudder, judder, and vibration issues related to the MPT clutch, as specified in Service Bulletin 16-136-22 occur, or where there is damage to any component (such as the engine shaft, transmission shaft, etc.) caused by a malfunctioning MPT clutch in Settlement Class Vehicles, Subaru will extend its Powertrain Limited Warranty for Settlement Class Vehicles to eight years or 100,000 miles, whichever occurs first, from the In-Service Date. Apart from the extended duration, this Settlement Extended Warranty adheres to the Powertrain Limited Warranty terms. This extended warranty covers a onetime repair of any component damaged by a damaged or malfunctioning MPT clutch (i.e., the engine shaft, transmission shaft, etc.), and a onetime MPT clutch replacement if the one-time repair is not effective.

**ii. Reimbursement for Expenses**

Under the Settlement, Subaru agrees to reimburse former and current owners and lessees of Settlement Class Vehicles upon providing sufficient proof for certain unreimbursed out-of-pocket expenses related to any repair, attempted repair, replacement, or inspection performed by an Authorized Subaru Dealer prior to the Notice Date in which the primary purpose was to address the occurrence of shudder, judder and vibration issues related to the MPT clutch, as specified in Service Bulletin 16-136-22 (including all revisions), or damage to any component (such as the engine shaft or transmission shaft) caused by a malfunctioning MPT clutch in Settlement Class Vehicles. Expenses related to other discrete component failures of the CVT not related to the occurrence of vibration, shudder, and/or judder or failures caused by misuse, abuse, or neglect do not qualify for reimbursement.

**iii. Voucher For Settlement Class Members Who Made Visits to an Authorized Subaru Dealer to Address Malfunctioning MPT Clutch and Shudder, Judder or Vibration**

The Settlement provides that a Settlement Class Member may receive a voucher with a value of \$400 if they made two visits to an Authorized Subaru Dealer for a repair, attempted repair, replacement, diagnosis or inspection in which the primary purpose was to address a malfunction within the CVT of the Settlement Class Vehicles, as addressed in Service Bulletin 16-136-22 (including all revisions), characterized by the potential failure of the MPT clutch that can result in the vehicle

experiencing judder, shudder and vibration. For three or more such visits, the Voucher value is \$750. Vouchers must be used within one year from the date of issuance, after which they will expire and no longer be valid.

## **2. Attorneys' Fees, Costs and Service Awards for Plaintiffs**

After the Parties had already agreed upon the Settlement relief, the Parties negotiated, and eventually resolved, the issues of service awards to Plaintiffs in their capacity as class representatives, as well as Class Counsel reasonable attorneys' fees and Expenses. Defendants have agreed to not oppose (a) Class Counsel's request for attorneys' fees and expenses in the combined aggregate amount of up to (and not exceeding) \$750,000, and (b) service awards of \$3,750 to the named Plaintiffs, distributed as one service award per Class Vehicle owned or leased by the named Plaintiffs, for a total combined service award of \$30,000. Plaintiffs will seek Court approval of these payments before the deadline for Settlement Class Members to file objections, as described in the schedule below. Significantly, the awards for class counsel's reasonable fees/expenses and service awards to the named Plaintiffs, up to the amounts agreed by the Parties, will not reduce or otherwise have any effect on the benefits the Settlement Class Members will receive.

## **3. Release of Claims**

In consideration of the Settlement benefits, Defendants and their related entities and affiliates (the "Released Parties," as defined in S.A. II.¶26) will receive

a release of claims and potential claims based on (1) a specific type of malfunction within the CVT of the Settlement Class Vehicles, as addressed in Service Bulletin 16-136-22 (including all revisions), characterized by the potential failure of the MPT clutch that can result in the vehicle experiencing judder, shudder and vibration; and (2) a malfunction associated with a Recall, which addresses symptoms such as the CVT chain slipping and/or breaking that can result in a Settlement Class Vehicle experiencing hesitation or slipping, which are the subject of this litigation and Settlement, including the claims that were or could have been asserted in the litigation related to these two malfunctions (the “Released Claims,” as defined in S.A. ¶II.25). The scope of the release properly reflects the issues, allegations and claims in this case and specifically excludes claims for death, personal injury and property damage (other than damage to the Settlement Class Vehicle itself).

#### **4. Notice to Settlement Class Members**

Notice has been disseminated to Settlement Class Members pursuant to the Notice Plan as described in Settlement Agreement, § VIII, and approved by this Court in the Preliminary Approval Order. *See* ECF 68; *see also* JND Decl. at ¶¶9-14.

On January 15, 2024, JND completed mailing 229,381 Court-approved Postcard Notices via first-class U.S. mail to potential Class Members. JND Decl. at ¶9. Settlement Class Members were located based on the Settlement Class Vehicles’

VINs (vehicle identification numbers) and using the services of a third-party data aggregation service. S.A. ¶ VIII.B.1.b; JND Decl. at ¶6. Thus, JND obtained the names and addresses of record of the Settlement Class Members state through DMV title and registration records. JND then checked the provided address against the National Change of Address Database, as well as using email append and matching schema processes to obtain and verify email addresses for as many potential Class Members as possible. In addition, for any individual mailed Notice that was returned as undeliverable, JND will re-mail the Notice to any provided forwarding address. For any undeliverable notice packets where no forwarding address was provided, JND will perform an advanced address search (e.g., a skip trace) and re-mail any undeliverable Class Notice packets to the resultant new and current addresses located. S.A. ¶ VIII.B.1c; JND Decl. at ¶6.

In addition to the mailed Class Notice, and with input from the Parties, JND also established a dedicated Settlement website, [www.cvtclassactionsettlement.com](http://www.cvtclassactionsettlement.com), which includes details regarding the lawsuit, the Settlement and its benefits, and the Settlement Class Members' legal rights and options including objecting to or requesting to be excluded from the Settlement and/or not doing anything; instructions on how and when to submit a claim for reimbursement; instructions on how to contact the Claim Administrator by e-mail, mail or (toll-free) telephone; copies of the Class Notice, Claim Form, the Settlement Agreement, Motions and

Orders relating to the Preliminary and Final Approval processes and determinations, and important submissions and documents relating thereto; important dates pertaining to the Settlement including the procedures and deadlines to opt-out of or object to the Settlement, the procedure and deadline to submit a claim for reimbursement, and the date, place and time of the Final Fairness Hearing; and answers to Frequently Asked Questions (FAQs). *See* S.A. ¶ VIII.B.1.f; JND Decl. at ¶15. To date, , the Settlement website has received 44,879 page views by 12,996 unique users. *See* JND Decl. at ¶16. The Court approved previously the Notice Plan, holding that this notice “satisfies Rule 23, due process, and constitutes the best notice practicable under the circumstances.” ECF 68, at ¶10.

Pursuant to 28 U.S.C. § 1715, the Class Action Fairness Act of 2005, JND also provided timely notice of this Settlement to the U.S. Attorney General and the applicable State Attorneys General (“CAFA Notice”) so that they may review the proposed Settlement and raise any comments or concerns to the Court’s attention prior to final approval. S.A. § VIII.A; JND Decl. at ¶¶3-4.

### **5. Response by Settlement Class Members**

Pursuant to the Preliminary Approval Orders, Settlement Class Members have until February 29, 2024 to object or to request exclusion from the Settlement Class. Settlement Class Members have until April 15, 2024 to submit Reimbursement Claims.

To date, there have been no objections to the Settlement. *See* Paul Decl. at ¶10. Only 15 Settlement Class Members have submitted requests to be excluded from the Settlement. *Id.* Plaintiffs and Defendants will file any supplemental papers addressing any objections by April 16, 2023.

### **III. ARGUMENT**

#### **A. Legal Standard**

Courts “may award reasonable attorney’s fees and nontaxable costs that authorized by law or by the parties’ agreement,” where a settlement is obtained for the class. Fed. R. Civ. P. 23(h). “The awarding of fees is within the discretion of the Court, so long as the Court employs the proper legal standards, follows the proper procedures, and makes findings of fact that are not clearly erroneous.” *In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at \*15 (D.N.J. May 14, 2012) (citing *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 727 (3d Cir. 2001)). When awarding fees in a class action settlement, the Court is “required to clearly articulate the reasons that support its fee determination.” *Henderson*, 2013 WL 1192479, at \*14 (citations omitted). By negotiating the fee at arm’s length, the parties followed the Supreme Court’s directive that “[i]deally, of course, litigants will settle the amount of a fee.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Further, courts in this Circuit “routinely approve incentive awards” to named plaintiffs. *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000).



Pursuant to the Settlement Agreement, Class Counsel seek a fee and expense award of \$750,000, accounting for both attorneys' fees and expenses. Plaintiffs also seek approval of \$3,750 service awards for each of the vehicles owned by the Class Representatives for a total of \$30,000. The requested awards are reasonable in light of the work performed and the results achieved by the Settlement and are consistent with awards approved by other courts in this District. The Settlement is the result of the dedicated efforts of Class Counsel and includes a thorough pre-litigation investigation by Class Counsel, involving a case with complex issues of fact and law. Moreover, the requested fees, expenses, and service awards will be paid separately from the benefits made available to the Settlement Class, resulting in no reduction of the amounts available to Settlement Class Members via reimbursement.

In class action settlements, attorneys' fees are assessed either through the percentage-of-recovery method or through the lodestar method. *Granillo v. FCA US LLC*, 2019 WL 4052432, at \*3 (D.N.J. Aug. 27, 2019) (quoting *In re AT&T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006)). Which of these two methodologies to use is "within the district court's sound discretion." *Charles v. Goodyear Tire & Rubber Co.*, 976 F. Supp. 321, 324 (D.N.J. 1997). Here, where there is no common fund, the lodestar method is typically used to assess fees. *See, e.g., Phillips v. Philadelphia Hous. Auth.*, 2005 WL 1899504, at \*3 (E.D. Pa. Aug. 8, 2005) (utilizing lodestar

method when there was no common fund); *Talone v. Am. Osteopathic Ass'n*, 2018 WL 6318371, at \*16 (D.N.J. Dec. 3, 2018) (same).

The Court should apply the lodestar method to determine a reasonable fee because the fees and expenses will be paid in addition to the benefits provided directly to the Settlement Class. “Here, the settlement benefits are not derived from a set pool of funds, and no specific monetary figure has been set aside to provide relief to the Class Members.” *Granillo*, 2019 WL 4052432, at \*3.<sup>1</sup> When applying this method, the Court “determines an attorney’s lodestar by multiplying the number of hours he or she reasonably worked on a client’s case by a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer.” *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). The Court “is not required to engage in this analysis with mathematical precision or ‘bean-counting’” and “may rely on summaries submitted by the attorneys” without “scrutiniz[ing] every billing record.” *Henderson*, 2013 WL 1192479, at \*15 (quoting *In re Rite Aid Corp. Sec. Litig.*, 396

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<sup>1</sup> As such, it is common for the lodestar method to be used by Courts in class action settlement against automobile manufacturers where settlement benefits are not derived by a common fund. *Id.*; *Skeen v. BMW of N. Am., LLC*, 2016 WL 4033969, at \*18 (D.N.J. July 26, 2016); *Henderson*, 2013 WL 1192479, at \*16; *Gray v. BMW of N. Am., LLC*, 2017 WL 3638771, at \*6 (D.N.J. Aug. 24, 2017).

F.3d 294, 306-07 (3d Cir. 2005)); *see Fox v. Vice*, 563 U.S. 826, 838 (2011) (“[T]rial courts need not, and indeed should not, become green-eyeshade accountants.”).

To evaluate the reasonableness of the fee, the district court is to consider ten factors, most of which were first identified in *Gunter*: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs’ counsel; (7) the awards in similar cases; (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigation; (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained; and (10) any innovative terms of settlement. *Halley v. Honeywell Int’l, Inc.*, 861 F.3d 481, 496 (3d Cir. 2017) (citing *Gunter*, 223 F.3d at 195, and *In re Diet Drugs*, 582 F.3d 524, 541 (3d Cir. 2009)).

These factors are not considered exhaustive, nor should they be applied formulaically. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 301-02. The district court has discretion to award fees, so long as it applies the correct legal standard and procedures and makes findings of fact that are not clearly erroneous. *See In re Cendant Corp. PRIDES Litig.*, 243 F.3d at 727.

**B. The Court Should Approve the Fee Award Agreed to by the Parties**

“In a certified class action, the court may award reasonable attorney's fees and ... costs that are authorized by law or by the parties' agreement.” Fed. R. Civ. P. 23(h). Here, the parties agreed that Defendants will pay \$750,000 for Class Counsel fees and expenses and \$30,000 to the Class Representatives separate and apart from the benefits provided to Settlement Class Members.

Courts generally prefer that litigants agree to a fee award. *See Hensley*, 461 U.S. at 437. (“Ideally, of course, litigants will settle the amount of the fee.”); *In re Ford Motor Co. Spark Plug Engine Prod. Liab. Litig*, 2016 WL 6909078, at \*9 (N.D. Ohio Jan. 26, 2016) (“Negotiated and agreed-upon attorneys' fees as part of a class action settlement are encouraged as an ‘ideal’ toward which the parties should strive.”). Where, as here, the fee award is to be paid separately by the defendant rather than as a reduction to a common fund, the “Court's fiduciary role in overseeing the award is greatly reduced, because there is no potential conflict of interest between attorneys and class members.” *Rossi v. Proctor & Gamble Co.*, 2013 WL 5523098, at \*9 (D.N.J. Oct. 3, 2013); *accord Granillo*, at \*2 (“[O]ne important consideration in this Court’s analysis is the ... provision that any awards of attorneys’ fees and costs is wholly separate and apart from the relief provided for the Settlement Class; thus relief will not be reduced by an award of the fees.”); *Haas*, 2019 WL 413530, at \*9 (“[T]he amount of attorneys' fees was negotiated as a

separate aspect of the settlement agreement, which further supports reasonableness.”). As such, the Court should find that the agreed fee award amounts are reasonable.

**C. Counsel’s Lodestar Amount Is Reasonable**

Class Counsel’s lodestar (\$692,904.20) plus expenses (\$11,946.52) is \$704,850.72. Paul Fee and Service Award Decl. ¶¶11-18. Counsel billed their time at their actual billing rates contemporaneously charged to hourly clients and those rates are consistent with the hourly rates routinely approved in this Circuit in complex class action litigation. *See Maldonado v. Houstoun*, 256 F.3d 181, 184-85 (3d Cir. 2001) (finding an attorney’s usual billing rate to be a starting point for assessing reasonableness); *Loughner v. Univ. of Pittsburgh*, 260 F.3d 173, 180 (3d Cir. 2001) (“The court ‘should assess the experience and skill of the prevailing party’s attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.’”) (quoting *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990)).

The first step is to ascertain the appropriate hourly rate, based on the attorneys’ customary billing rate and the “prevailing market rates” in the relevant community. *See In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at \*17 (D.N.J. Mar. 26, 2010). The rates of \$570 to \$875 per hour noted for the attorneys working on this matter are within the ranges of rates approved by other courts in this Circuit.

*See Granillo*, at \*4 (approving rates ranging from \$245 to \$725); *Bang v. BMW of North Am., LLC*, No. 15-06945, ECF No. 121 (same); *Cunningham v. Wawa, Inc.*, 2021 WL 1626482, at \*8 (E.D. Pa. Apr. 21, 2021) (approving hourly rates of \$235 to \$975); *In re Imprelis Herbicide Mktg., Sales Practices & Prod. Liab. Litig.*, 296 F.R.D. 351, 370 (E.D. Pa. 2013) (approving fee request where hourly rates peaked at \$1,200 and several attorneys' rates were at or above \$900).

The second step considers whether the billable time was reasonably expended. *Id.* “Time expended is considered ‘reasonable’ if the work performed was ‘useful and of a type ordinarily necessary to secure the final result obtained from the litigation.’” *Id.* at \*54-55 (quoting *Pub. Int. Rsch. Grp. of N.J., Inc. v. Windall*, 51 F.3d 1179, 1188 (3d Cir. 1985)). The Paul Declaration recounts the time and expenses incurred by Class Counsel and indicates that the professional time devoted to this case was reasonable. As discussed *supra*, Class Counsel has performed many tasks including a significant pre-litigation investigation including review of complaints and technical information submitted to NHTSA, drafting a notice letter, drafting the technical complaint, conducting confirmatory discovery, reviewing documents produced by Defendants, analyzing Defendants’ contention that their recalls have adequately remedied the alleged defect, interviewing and collecting documents from over one hundred Settlement Class Members, negotiating and documenting the settlement, and responding to inquiries from Settlement Class

Members. Paul Fee and Awards Decl. at ¶¶8-10. *See McLennan v. LG Elecs. USA, Inc.*, 2012 WL 686020, at \*10 (D.N.J. Mar. 2, 2012) (time spent investigating the case, responding to class members, working with experts, opposing motion to dismiss, and negotiating and crafting settlement was compensable).

As of January 28, 2024, Plaintiffs' counsel have already devoted 1,059.40 hours of contingent work litigating this matter. Paul Fee and Awards Decl. at ¶12. Using the requested amount of \$750,000, which includes fees and expenses, yields a 1.08 multiplier of Class Counsel's actual lodestar \$692,904.20.<sup>2</sup> Deducting expenses of \$11,946.52 from the requested fee and expense total amount of \$750,000 yields a 1.065 pure fee multiplier of Class Counsel's actual lodestar \$692,904.20. *See Saint v. BMW of N. Am., LLC*, 2015 WL 2448846, at \*15 (D.N.J. May 21, 2015) ("The lodestar multiplier is then obtained by dividing the proposed fee award by the lodestar amount."). The multiplier will decrease over time as Class Counsel continue to perform additional work on behalf of the Settlement Class, including supervising the ongoing administration of the Settlement claims process and responding to class member inquiries.

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<sup>2</sup> The lodestar figure is "presumptively reasonable" when it is calculated based on a reasonable hourly rate as applied to a reasonable number of hours expended. *Planned Parenthood of Cent. N.J. v. Att'y Gen. of N.J.*, 297 F.3d 253, 265 n.5 (3d Cir. 2002) (citations omitted).

Courts routinely find that a multiplier of one to four is fair and reasonable in complex class action cases. *See Boone v. City of Phila.*, 668 F. Supp. 2d 693, 714 (E.D. Pa. 2009); *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 341(3d Cir. 1998) (quoting 3 Herbert Newberg & Alba Conte, *Newberg on Class Actions*, §14.03 at 14-5 (3d ed. 1992)). The Third Circuit has observed that it has “approved a multiplier of 2.99 in a relatively simple case.” *Milliron v. T-Mobile USA, Inc.*, 423 F. App’x. 131, 135 (3d Cir. 2011) (citing *Cendant PRIDES*, 243 F.3d at 742)<sup>3</sup>; *see also In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at \*8 (D.N.J. May 31, 2012) (finding a multiplier of 1.6 “is an amount commonly approved by courts of this Circuit”); *McLennan*, 2012 WL 686020, at \*10 (finding a multiplier of 2.93 appropriate where, inter alia, “[c]lass counsel prosecuted this matter on a wholly contingent basis, which placed at risk their own resources, with no guarantee of recovery”); *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448,479 (D.N.J. 2008) (finding a multiplier of almost 2.3 to be reasonable). As such, the xxx multiplier here is reasonable and should be approved.

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<sup>3</sup> The Third Circuit has also said of the *Cendant PRIDES* fee award, “we approved of a lodestar multiplier of 2.99 in *Cendant PRIDES*, in a case we stated ‘was neither legally nor factually complex.’ The case lasted only four months, ‘discovery was virtually nonexistent,’ and counsel spent an estimated total of 5,600 hours on the case.” *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 173 (3d Cir. 2006).



**D. The Percentage of Recovery Method Cross-Check Also Supports the Requested Fee**

“Regardless of the method chosen, [the Third Circuit has] suggested it is sensible for a court to use a second method of fee approval to cross-check its initial fee calculation.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 300. In lodestar cases, courts often apply the percentage-of-recovery method to “cross-check” the reasonableness of the fee. See, e.g., *Granillo*, 2019 WL 4052432, at \*8 (applying lodestar method before conducting a cross-checking “using the percentage of recovery method”); *In re Philips*, 2012 WL 1677244, at \*17 (same).

The extension of the warranty provided to all Settlement Class Members clearly provides a valuable benefit in that it extends warranty terms from the previous Recall to cover instances of shudder, judder, and vibration issues related to the MPT clutch, as specified in Service Bulletin 16-136-22. The other benefits are a claims made settlement for which the deadline for submitting claims for reimbursement has not yet expired, and it is not yet known how many claims will be submitted or the amounts and validity of such claims, a valuation of this Settlement cannot yet be made. However, given that there are over 160,000 Settlement Class Vehicles, even if the Settlement benefits were only valued at \$100 per Class Vehicle for a total of \$16 million, and we believe it would be higher, it would clearly support Class Counsel’s requested fee. And this early resolution provides a substantial and

immediate benefit to the Settlement Class that might otherwise not be available or substantially reduced or delayed if this matter was litigated to conclusion.

**E. The Gunter Factors Support the Requested Fee**

Here, a close review of the *Gunter* factors also supports Class Counsel’s fee request as reasonable.

**1. The Benefit to the Class Is Significant**

The single most important factor in assessing fees is the size of the funds available to the class and the benefit provided to the class. *See Huffman v. Prudential Ins. Co. of Am.*, 2019 WL 1499475, at \*7 (E.D. Pa. Apr. 5, 2019) (citation omitted); *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106, at \*18 (D.N.J. Aug. 26, 2011). Here, the parties negotiated a settlement providing for a warranty extension as well as the provision of vouchers of up to \$750 and 100% reimbursement of past paid out-of-pocket expenses for certain Settlement Class Members. This confers a significant benefit upon the Class.

**2. There Are No Objections to the Settlement**

Although the time period for filing objections closes on February 29, 2024 and has not yet expired, to date, there are no objections to the Settlement. This supports the requested fee and incentive award. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir. 1995)(finding that “silence constitutes tacit consent” to the requested award). The reaction of the Class to the Settlement thus weighs strongly in favor of settlement.

### 3. Class Counsel Are Efficient and Highly Skilled

Courts of this Circuit measure the skill and efficiency of class counsel “by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and performance and quality of opposing counsel.” *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at \*16 (E.D. Pa. Jan. 25, 2016) (quoting *In re Computron Software, Inc.*, 6 F. Supp. 2d 313, 323 (D.N.J. 1998)).

Class Counsel have substantial experience in prosecuting automotive class actions such as this one. *See* ECF No. 67-2 at ¶4. Class Counsel is one of the preeminent class action and complex litigation firms in the country, and they have decades of experience prosecuting and trying complex and class action cases. Without the experience of Class Counsel, it is doubtful that the successful settlement of this matter could have been achieved, and that this outcome would have been resolved so efficiently.

Further, Defendants retained a nationally renowned law firm with a reputation for vigorous advocacy in the defense of complex civil cases. To obtain any recovery at all, Class Counsel had to overcome legal opposition of the highest quality. As such, this factor weighs in favor of approval of the fee award.

#### **4. The Complexity, Expense and Duration of Automotive Defect Litigation**

This factor weighs “the probable costs, in both time and money, of continued litigation.” *See In re General Motors*, 55 F.3d at 812 (quoting *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 801 (3d Cir. 1974)). Resolution of automotive defect class action cases often comes after years of intense litigation. *See Granillo*, at \*10 (resolution after four years of litigation); *Yaeger*, at \*2 (two years of litigation); *Skeen*, at \*24-25 (three years of litigation). Moreover, automotive defect class action litigation is particularly complex and it is not unusual for cases to be litigated for a decade. *See, e.g., Neale v. Volvo Cars of N. Am., LLC*, Case No. 2:10-cv-04407 (D.N.J.) (filed August 27, 2010 and dismissed with prejudice August 20, 2021 without a class wide resolution).

In contrast, Class Counsel here have efficiently secured relief for the Class that is available now, and not simply the “speculative promise of a larger payment years from now.” *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at \*16. As such, this factor weighs in favor of reasonableness.

#### **5. The Risk of Non-Payment for Class Counsel’s Efforts Were High**

“Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval.” *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at \*7. At the outset of the case, Class

Counsel faced substantial risk that the lawsuit would produce little or no fees for their efforts. As such, this factor weighs strongly in favor of the reasonability of the fee award, as courts of this District routinely hold. *See Granillo*, 2019 WL 4052432 at \*10 (“Class Counsel undertook this case on a purely contingent basis and faced a risk of receiving no compensation at all if the litigation was unsuccessful.”); *Saint*, 2015 WL 2448846 at \*18 (“This Court observed that ‘Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees.’”)(citation omitted).

**6. Class Counsel Has Devoted Significant Time to the Case**

Class Counsel has devoted over 1,059.40 hours to prosecute the case, which is a reasonable amount of time with which to secure the full reimbursement relief achieved for the Class. *See, e.g., Granillo*, 2019 WL 4052432 at \*11 (2,000 hours); *Saint*, 2015 WL 2448846 at \*18 (1,200 hours). As noted by the Third Circuit, “a prompt and efficient attorney who achieves a fair settlement without litigation serves both his client and the interests of justice.” *McKenzie Const., Inc. v. Maynard* (3d Cir. 1985). Here, Class Counsel has worked efficiently and expeditiously to achieve significant results that favor the Class. As such, this factor weighs in favor of approving the fee request.

## **7. The Requested Fee Is Consistent with Awards in Similar Cases**

To evaluate this factor, the Court must “(1) compare the actual award requested to other awards in comparable settlements; and (2) ensure that the award is consistent with what an attorney would have received if the fee were negotiated on the open market.” *Saint*, 2015 WL 2448846 at \*18. The requested fee here falls within the range of reasonableness of awards in similar automotive defect class action litigation in this District. *See Granillo*, 2019 WL 4052432 \*11 (\$1.2 million in fees); *Yaeger*, \*4 (\$1.5 million in fees); *Skeen*, at \*24-5 (2.1 million in fees); *Saint*, at \*19 (\$600,000 in fees).

Further, the requested fee is consistent with the rates of the open market. The use of standard hourly rates to calculate lodestar is one method by which courts review the open market. *See, e.g., Saint*, 2015 WL 2448846 at \*19 (evaluating the market price for counsel’s services by comparing the standard hourly rates of plaintiffs’ counsel with rates previously approved by the courts in complex class actions). As previously demonstrated *supra* at III.C, Class Counsel’s rates are within the range of reasonableness as demonstrated by the open market. As such, this factor weighs in favor of approving the fee request.

**8. The Entire Settlement Value Is the Result of Class Counsel's Efforts**

The value and benefits of the entire settlement has been secured through the efforts of Class Counsel. Similarly to *SEI Investments*, “Class Counsel were the only ones investigating the claims at issue in this case, and they alone initiated and actively litigated this federal action.” *Id.* at 12. As such, this factor weighs in favor of approval.

**9. The Requested Fee Is Commensurate With Customary Percentages in Private Litigation**

If Class Counsel had agreed to litigate on behalf of the individual, “the customary contingency fee would be between thirty and forty percent of the recovery.” *Id.* (citing cases). Further, where, as here, Class Counsel has sought approval of the fee by the class representative at the time of the attorney’s retention, it will support approval. *See, e.g., Devlin v. Ferrandino & Son, Inc.*, 2016 WL 7178338, at \*9 (E.D. Pa. Dec. 9, 2016). Here, in light of the relief for a large class of owners, Class Counsel is seeking fees under the lodestar calculation, which supports the reasonableness of the fee.

**10. The Innovation of the Terms of the Settlement Is a Neutral Factor**

In the absence of innovative terms, this final *Gunter-Halley* factor is neutral. *See McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 655 (E.D. Pa. 2015); *SEI Investments*, at \*12.

Together with the other factors which weigh in favor of approval, the requested fee clearly meets the threshold for reasonableness.

**F. The Court Should Approve Plaintiffs' Service Awards**

The named Plaintiffs in this action devoted substantial time and efforts that contributed to this Settlement. In particular, each Plaintiff underwent lengthy initial and follow-up interviews by Class Counsel to gather their facts; searching for and producing documents regarding their vehicles and the damages to those vehicles; agreeing to participate in evidence preservation obligations for both hardcopy and electronically stored information in the early stages of litigation as well as once discovery had commenced, in anticipation of written discovery requests, which were served in the form of requests for production, interrogatories, and requests for admission; review of the complaint; monitoring the overall progress of the litigation; engaging in frequent communications with Class Counsel; and reviewing and approving the settlement agreements. Paul Fee and Service Award Decl. at ¶22. For their efforts, Plaintiffs are entitled to a case contribution award of \$3,750 for each Settlement Class Vehicle.

In the Third Circuit, such service awards “compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation.” *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at \*22 (D.N.J. Apr. 8, 2011) (internal citations and quotations omitted). These awards also “reward



the public service of contributing to the enforcement of mandatory laws.” *Id.* (quotation omitted); *see also Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 333 n. 65 (3d Cir. 2011). Moreover, the requested \$3750 award for each Settlement Class Vehicle is similar to awards in other class actions, even those in which the plaintiffs were not deposed. *See Diaz v. BTG Int’l, Inc.*, 2021 WL 2414580, at \*9 (E.D. Pa. June 14, 2021) (\$10,000 service awards where plaintiffs were not deposed); *SEI Investments*, at \*14 (same); *Granillo*, at \*12 (approving \$5,000 service awards); *Henderson*, at \*19 (approving incentive awards of between \$5,000 and \$6,000 for each of six class representatives). The requested service awards are also lower than many awards in similar litigation. *See Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at \*3 (D. Minn. July 13, 2015) (approving \$25,000 service award to each plaintiff); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, at \*6 (E.D. Pa. Dec. 1, 2004) (approving \$20,000 service award to each plaintiff); *Stevens v. SEI Invs. Co.*, 2020 WL 996418, at \*14 (E.D. Pa. Feb. 28, 2020) (approving \$10,000 service award to plaintiff); *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at \*8 (approving \$10,000 and \$5,000 service awards). As such, the requested service award should be approved.

#### **IV. CONCLUSION**

For the foregoing reasons, Plaintiffs request that the Court grant their Motion and award: (1) attorney’s fees in the amount of \$750,000 to Class Counsel; and (3)

a service award in the amount of \$3,750 for each Settlement Class Vehicle, totaling \$30,000, to Plaintiffs as the named Class Representatives.

Dated: January 30, 2024

Respectfully submitted,

/s/ Russell D. Paul

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Class and Subclasses*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

AIMEE HICKMAN, *et al.*, individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:21-CV-02100-NLH-AMD

Motion Date: April 16, 2024

**DECLARATION OF RUSSELL D. PAUL IN SUPPORT OF PLAINTIFFS'  
MOTION FOR APPROVAL OF ATTORNEY'S FEES, EXPENSES, AND  
CLASS REPRESENTATIVES' SERVICE AWARDS**

I, Russell Paul, hereby declare as follows:

1. I am an attorney duly licensed to practice law before all of the courts of the Commonwealth of Pennsylvania, State of New York, State of New Jersey and State of Delaware as well as before the United States Court of Appeals for the Third, Seventh and Ninth Circuits, the United States District Courts of the Eastern District of Pennsylvania, District Court of Delaware, District Court of the Eastern District of Michigan, District Court of New Jersey, District Court of the Southern District of New York and District Court of the Eastern District of New York.

2. I am a shareholder at Berger Montague PC ("Berger Montague"), one of the counsel of record ("Class Counsel") for Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and Steven

Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode ("Plaintiffs").

3. I make this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Expenses and Service Awards. I have personal knowledge of the facts stated below and, if called upon, could competently testify thereto.

#### **I. INTRODUCTION AND QUALIFICATIONS OF CLASS COUNSEL**

4. My firm, Berger Montague, has been engaged in complex and class action litigation since 1970. While our firm has offices in Philadelphia, Pennsylvania; San Diego, California; Washington, D.C.; San Francisco, California; Chicago, Illinois; and Minneapolis, Minnesota, we litigate nationwide. Our firm's practice areas include Antitrust, Commercial Litigation, Commodities & Options, Consumer Protection, Corporate Governance & Shareholder Rights, Employment Law, Environmental & Mass Tort, ERISA & Employee Benefits, Insurance and Financial Products & Services, Lending Practices & Borrowers' Rights, Securities Fraud, and Whistleblowers, Qui Tam & False Claims Acts. Our compensation is almost exclusively from court-awarded fees, court-approved settlements, and contingent fee agreements. Berger Montague's Consumer Protection Group, of which I am a member, represents consumers when they are injured by false or misleading advertising, defective products, including automobiles, and various other unfair trade practices.

5. Berger Montague's successful class action settlements providing relief to automobile owners and lessees include: *Dack v. Volkswagen Grp. of Am., Inc.*, No. 4: :20-CV-00615-RK (W.D. Mo. Jan. 18, 2024), ECF 77 (preliminarily

approving class action settlement for owners and lessees of certain 2016-2023 Volkswagen and Audi vehicles relating to autonomous braking system issues); *Gjonbalaj v. Volkswagen Group of Am., Inc.*, No. 2:19-cv-07165-BMC (E.D.N.Y. Dec. 11, 2023), ECF 101 (obtaining settlement and court's final approval for class members' damages from sunroofs); *Rieger v. Volkswagen Grp. of Am., Inc.*, No. 1:21-cv-10546-NLH-MJS (D.N.J. Oct. 20, 2023), ECF 84 (preliminarily approving class action settlement for owners and lessees of certain 2012-2017 Audi vehicles relating to piston and oil consumption issues); *Gioffe v. Volkswagen Group of Am., Inc.*, No. 22-cv-00193 (D.N.J. Jun. 20, 2023) (obtaining settlement and court's final approval for class members' damages from malfunctioning gateway control modules); *Parrish v. Volkswagen Grp. of Am., Inc.*, No. 8:19-cv-01148 (C.D. Cal. Mar. 2, 2023), ECF 100 (final approval of class action settlement for owners and lessees of certain 2019 Volkswagen Jetta or 2018, 2019, and/or 2019 Volkswagen Tiguan vehicles equipped with 8-speed transmissions susceptible to possible oil leaks, rattling, hesitation, or jerking); *Patrick v. Volkswagen Grp. of Am., Inc.*, No. 8:19-cv-01908 (C.D. Cal. Sept. 28, 2021), ECF 72 (final approval of class action settlement for owners and lessees of certain 2019 and 2020 Volkswagen Golf GTI or Jetta GLI vehicles equipped with manual transmissions suffering from an alleged engine stalling defect); *Weckwerth v. Nissan N.A.*, No. 3:18-cv-00588 (M.D. Tenn. Mar. 10, 2020) (as co-lead counsel, obtained a settlement covering over 2 million class vehicles of an extended warranty and reimbursement of 100% of out-of-pocket costs); *Stringer v. Nissan N.A.*, 3:21-cv-00099 (M.D. Tenn. Sept. 7, 2021); *Norman v. Nissan N. Am., Inc.*, No. 18-cv-00588-EJR (M.D. Tenn. July, 16, 2019); ECF 102

*Batista v. Nissan N. Am., Inc.*, No. 14-24728-RNS (S.D. Fla. June 29, 2017), ECF 191 (approving class action settlement for an alleged CVT defect, including a two-year warranty extension); *Soto v. American Honda Motor Co., Inc.*, No. 3:12-cv-01377 (N.D. Cal. 2012) (as co-counsel, obtained a warranty extension and out-of-pocket expense reimbursements for consumers who purchased defective Hondas); *Vargas v. Ford Motor Co.*, No. CV12-08388 AB (FFMX), 2017 WL 4766677 (C.D. Cal. Oct. 18, 2017) (finally approving class action settlement involving transmission defects for 1.8 million class vehicles); *Davis v. General Motors LLC*, No. 8:17-cv-2431 (M.D. Fla. 2017) (as co-lead counsel, obtained settlement for defects in Cadillac SRX headlights); *Yeager v. Subaru of America, Inc.*, No. 1:14-cv-04490 (D.N.J. Aug. 31, 2016) (approving class action settlement for damages from defect causing cars to burn excessive amounts of oil); *Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.*, No. ATL-1461-03 (N.J. Sup. Ct. 2007) (as co-lead counsel, obtained settlement for nationwide class alleging damages from defectively designed timing belt tensioners); *In Re Volkswagen and Audi Warranty Extension Litigation*, No. 07-md-1790-JLT (D. Mass. 2007) (obtained settlement valued at \$222 million for nationwide class, alleging engines were predisposed to formation of harmful sludge and deposits leading to engine damage).

6. Other consumer class action settlements in which our firm was co-lead counsel include: *Cole v. NIBCO, Inc.*, No. 3:13-cv-07871-FLW-TJB (D.N.J. 2013) (obtaining a \$43.5 million settlement on behalf of nationwide class of consumers who purchased defective tubing manufactured by NIBCO and certain fittings and clamps used with the tubing); *In re: Certain Teed Fiber Cement Siding Litigation*,

MDL No. 2270 (E.D. Pa.) (obtained a settlement of more than \$103 million in a multidistrict products liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class); and *Tim George v. Uponor, Inc., et al.*, No. 12-CV-249 (D. Minn.) (achieving a \$21 million settlement on behalf of a nationwide class of consumers who purchased defective plumbing parts).

7. Class Counsel in this case have received the following appointments in automobile defect class actions: *Francis v. General Motors, LLC*, No. 2:19-cv-11044-DML-DRG (E.D. Mich.), ECF 40 (appointed as member of Plaintiffs' Steering Committee); *Weston v. Subaru of America, Inc.*, No. 1:20-cv-05876 (D.N.J.), ECF 49 (appointed as Interim Co-Lead Counsel); *Miller v. Ford Motor Co.*, No. 2:20-cv-01796 (E.D. Cal.) ECF 60 (appointed to Interim Class Counsel Executive Committee); *Powell v. Subaru of America, Inc.*, No. 1:19-cv-19114 (D.N.J.), ECF 26 (appointed as Interim Co-Lead Counsel); *Rieger v. Volkswagen Group of America, Inc.*, No. 1:21-cv-10546-NLH-EAP (D.N.J.), ECF 65 (appointed as Interim Lead Counsel); and *Harrison v. General Motors, LLC*, No. 2:21-cv-12927-LJM-APP (E.D. Mich.), ECF 35 (appointed as Interim Co-Lead Counsel). A profile of our firm's experience in complex class actions, and specifically in consumer protection and products liability cases, previously submitted as Exhibit 2 to the Declaration of Russell D. Paul in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. *See* ECF 67-11.

## **II. SUMMARY OF WORK PERFORMED**

8. The work reflected in the billing includes substantial pre-filing work, beginning in July 2018, including a thorough investigation of the alleged defect,

including, inter alia, analyzing the nature of the alleged defect; studying complaints made to the National Highway Traffic Safety Administration ("NHTSA") as well as on third-party websites; researching publicly available technical information regarding the gateway control modules in Class Vehicles including through Audi technical manuals, technical service bulletins regarding the gateway control module, and recall information provided to NHTSA; interviewing and collecting documents from over one hundred Settlement Class Members; and investigating potential claims.

9. On February 4, 2021, Class Counsel mailed a notice letter to Defendants on behalf of Plaintiffs Aimee and Kelly and Frank Drogowski. On February 5, 2021, Class Counsel mailed a notice letter to Defendants on behalf of William Treasurer. On February 15, 2021, Class Counsel mailed a notice letter to Defendants on behalf of Plaintiffs John Taitano, Richard Palermo, and Cassandra and Steven Sember. On February 26, 2021, Class Counsel Plaintiffs mailed a notice letter to Defendants on behalf of Plaintiffs Shawn and Lori Woiwode. These letters specified the problems related to the transmission and regarding their experiences with their vehicles, seeking remedies for the Plaintiffs and a Class of similarly situated car owners. Plaintiffs filed their initial complaint on February 28, 2021, alleging that their vehicles were defective and asserting claims against Defendants for, inter alia, alleged violation of the consumer statutes of their states of residence, including the Maryland Consumer Protection Act, North Carolina Unfair and Deceptive Acts and Practices Act, Pennsylvania Unfair Trade Practices and Consumer Protection Law, Fraud by Omission or Fraudulent Concealment, Unjust



Enrichment, along with a nationwide class, as well as breach of express and implied warranties.

10. Other work performed by Berger on this case includes: drafting the complaint; negotiating and entering into a Confidentiality Order; opposing two Motions to Dismiss; preparing and filing a Motion for Judicial Notice; exchanging information pertaining to Plaintiffs and members of the putative Class; reviewing discovery provided by Defendants, including detailed information as to the pertinent design aspects of the Class Vehicles and details about the recalls, the recall remedies and their efficacy; engaging in vigorous, arm's length settlement negotiations over the course of several months; preparing for and attending two mediation sessions on February 24, 2023 and March 1, 2023; preparing the settlement agreement, Class Notice and other related documents; drafting the Preliminary Approval papers; and responding to inquiries from Settlement Class Members.

### III. LODESTAR AND EXPENSES OF BERGER MONTAGUE

11. Below is a chart showing Berger Montague's total hours expended on this litigation through January 28, 2024, and corresponding lodestar computed at the current rates charged by the Firm. As of January 28, 2024, Berger Montague has spent 1,059.40 hours working on this litigation on a fully contingent basis, with a corresponding lodestar of \$692,904.20.

<b>Name</b>	<b>Position</b>	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
Paul, Russell	Shareholder	189.30	\$1,050	\$198,765.00
Abramson, Glen	Former Shareholder	0.20	\$760	\$152.00

Gertner, Abigail	Senior Counsel	214.70	\$760.00	\$163,172.00
Lesser, Natalie	Senior Counsel	163.70	\$595.00	\$97,401.50
Polakoff, Jacob	Senior Counsel	0.70	\$785	\$549.50
Park, Amey	Associate	111.70	\$725	\$80,982.50
Antoniou, Alexandra	Counsel	76.00	\$705	\$53,580.00
Wolfinger, Caitlin	Paralegal	95.70	\$425.00	\$40,672.50
Barnes, Colleen	Paralegal	10.40	\$340	\$3,536.00
Lee, Minsoo	Paralegal	17.30	\$330	\$5,709.00
Hamner, Peter	Research Specialist	0.60	\$685	\$411.00
Gebo, Rachel	Legal Project Team Leader	3.90	\$410	\$1,599.00
Arteaga, Alexandra	Legal Project Analyst	11.00	\$330	\$3,630.00
Kogut, Kathleen	Legal Project Analyst	157.00	\$260	\$40,820.00
Stock, Martin	Legal Project Analyst	1.60	\$325	\$520.00
Kudinenko, Valeriya	Legal Project Analyst	1.20	\$260	\$312.00
Giovanetti, Donna	Legal Assistant	4.20	\$260.00	\$1,092.00
<b>TOTAL</b>		<b>1,059.40</b>		\$692,904.20

12. Berger Montague's lodestar will increase in the subsequent months, given our ongoing work responding to Settlement Class Member inquiries, preparing

for the Final Approval Hearing and supplemental filings, monitoring the Settlement and claims administration process, and addressing any concerns of Settlement Class Members regarding their rights and options throughout the period of the extended warranty.

13. Berger Montague's lodestar does not include charges for out-of-pocket expenses. The Firm's expenses are recorded separately and are discussed below. The above summary of Berger Montague's lodestar was prepared from contemporaneous, daily time records regularly prepared and maintained by the attorneys and professionals who worked on this case, in tenths of an hour. All the hours that contributed to the lodestar amount reflected above were expended for the benefit of Plaintiffs and the Settlement Class Members.

14. The hourly rates for the attorneys and professional support staff at Berger Montague that are included above are the same as the regular rates that would be charged for their services in non-contingent matters and/or which have been accepted in other class action/collective action litigation by district courts in the Third Circuit and across the country. *See, e.g., Devlin v. Ferrandino & Son, Inc.*, No. 15-4976, 2016 WL 7178338, \*10 (E.D. Pa. Dec. 9, 2016) (“[T]he hourly rates for Class Counsel [including Berger Montague] are well within the range of what is reasonable and appropriate in this market.”); *In re Domestic Drywall Antitrust Litig.*, No. 2:13-md-2437-MMB, ECF No. 767 at 39 (E.D. Pa. July 17, 2018) (finding rates charged by Berger Montague among others to be “well within the range of rates charged by counsel in this district in complex cases”); *In re CertainTeed Fiber Cement Siding Litig.*, No. 2:11-md-02270-TON (E.D. Pa. Mar. 20, 2014).

15. I have reviewed the time that comprises Berger Montague's lodestar to ensure that it is accurate and reflective of the work that was performed. All the work performed as set forth above was necessary and reasonably incurred on behalf of Plaintiffs and the Settlement Class. My colleagues and I at Berger Montague have reviewed the billing records maintained in this case, ensuring that none of the work reflected on the billing records was redundant or duplicative.

16. To date, Class Counsel have received no compensation for their efforts to investigate and prosecute this Litigation and have received no reimbursement for the significant expenses they have incurred.

17. Class Counsel also request reimbursement of their reasonable out-of-pocket expenses incurred on behalf of Plaintiffs and the Settlement Class. These expenses consist predominantly of e-discovery hosting; transcripts; mediation sessions and related mediator fees; and computer research.

18. Specifically, to date, Berger Montague has already expended \$11,946.52 in unreimbursed out-of-pocket expenses in connection with this Litigation, as summarized below:

<b>TYPE OF EXPENSE</b>	<b>AMOUNT</b>
Computer Research	\$1,504.24
Delivery and Freight (FedEx)	\$370.40
DocuSign	\$79.36
E-Discovery Hosting	\$730.83
Filing Fees	\$402.00
Mediation Fees	\$6,907.04
Postage	\$43.20
Reproduction/ Color Prints	\$588.45
Service Fees	\$465.00
Transcripts	\$850.00
Travel	\$6.00

<b>TOTAL CURRENT BERGER MONTAGUE PC EXPENSES</b>	\$11,946.52
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19. These expenses were incurred on behalf of Plaintiffs and the Settlement Class on a fully contingent basis and have not been reimbursed. Berger Montague's expenses incurred in this litigation are reflected on the books and records of my Firm. These books and records are prepared from receipts, invoices, expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred, as reported to Berger Montague's accounting department. I have reviewed the expenses and believe that they are reasonable and were necessary to prosecute this case.

20. In addition to the above expenses, it is anticipated that Berger Montague will incur additional expenses in connection with the Litigation going forward. These anticipated additional expenses may include expenses that will be incurred in connection with appearing for the Final Approval Hearing, as well as additional expenses incurred in administering and monitoring the Settlement and assisting Settlement Class Members.

#### **IV. SERVICE AWARDS**

21. I believe that the requested service awards for the named Plaintiffs as set forth in Plaintiffs' Motion for Attorneys' Fees, Expenses and Service Awards, and supporting memorandum of law, are appropriate in this case in recognition of the Class Representatives' time and efforts on behalf of the Settlement Class.

22. In particular, each Plaintiff underwent lengthy initial and follow-up interviews by Class Counsel to gather their facts; searching for and producing

documents regarding their vehicles and the damages to those vehicles; agreeing to participate in evidence preservation obligations for both hardcopy and electronically stored information in the early stages of litigation as well as once discovery had commenced, in anticipation of written discovery requests, which were served in the form of requests for production, interrogatories, and requests for admission; review of the complaint; monitoring the overall progress of the litigation; engaging in frequent communications with Class Counsel; and reviewing and approving the settlement agreements.

23. I have conferred with counsel for Defendants, and Defendants do not oppose this motion.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Respectfully submitted,

/s/ Russell D. Paul

Russell D. Paul

Dated: January 30, 2024

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

AIMEE HICKMAN, *et al.*, on behalf  
of themselves and all others similarly  
situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:21-CV-02100-NLH-AMD

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES, EXPENSES,  
AND SERVICE AWARDS**

**THIS MATTER** having come before the Court on Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards filed on January 30, 2024; and

The Court having reviewed Plaintiffs' moving papers, including Plaintiffs' brief and supporting declarations, as well as the case file; and

Good cause having been shown, for the reasons expressed herein and as further set forth in the Court's Final Approval Order approving the parties' Settlement Agreement;

**IT IS ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2024, HEREBY  
ORDERED, ADJUDGED AND DECREED:**

1. Terms capitalized in this Order have the same meanings as those used in the Settlement Agreement.

2. The Notice Plan adequately and reasonably afforded Settlement Class Members the opportunity to respond to Plaintiffs' Motion for Attorneys' Fees,

Expenses, and Service Awards. The Court has considered and rejected any objections timely and properly submitted.

3. The Settlement confers substantial benefits on the Settlement Class Members.

4. Plaintiffs have submitted a Declaration of Russell D. Paul, Class Counsel in connection with Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards that adequately documents Class Counsel's vigorous and effective pursuit of the claims of Plaintiffs and the Settlement Class before this Court.

5. The Court finds the attorneys' fees and expenses in the amount of \$750,000 to Class Counsel to be fair and reasonable and within the range of attorneys' fees ordinarily awarded in this District and in the Third Circuit Court of Appeals using a hybrid approach combining the lodestar method and the percentage-of-recovery method. The Court finds that the expenses reported to the Court to date were necessary, reasonable, and proper in the pursuit of this Litigation.

6. The Court, therefore, grants attorneys' fees attorneys' fees and expenses in the amount of \$750,000. Defendants shall pay the attorneys' fees and expenses in the time and manner specified in the Settlement Agreement.

7. The Court further finds that Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and



Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode (“Plaintiffs”) devoted substantial time and energy to their duties. The Court therefore grants service awards in the amount of \$3,750 per Class Vehicle to the Plaintiffs as the named Class Representatives for their contributions in this case.

**IT IS SO ORDERED.**

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Hon. Noel L. Hillman  
United States District Judge