

Elizabeth J. Cabraser (State Bar No. 083151)  
ecabraser@lchb.com  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
Telephone: 415.956.1000  
Facsimile: 415.956.1008

*Plaintiffs' Lead Counsel and Chair of the Plaintiffs'  
Steering Committee*

*(Plaintiffs' Steering Committee Members Listed on  
Signature Page)*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

This Document Relates to:

ALL CONSUMER AND RESELLER  
ACTIONS

Case No. 3:17-md-2777-EMC

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

Hearing: January 23, 2019  
Time: 10:00 a.m.  
Courtroom: 5, 17th Floor

The Honorable Edward M. Chen

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**NOTICE OF MOTION AND MOTION**

TO ALL THE PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 23, 2019 at 10:00 a.m. or at such other date and time as the Court may set, in Courtroom 5 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, Lead Counsel and the Plaintiffs' Steering Committee, on behalf of a proposed Settlement Class of certain owners and lessees of Ram- and Jeep-branded EcoDiesel vehicles defined in the proposed Settlement Agreement, will and hereby do move the Court for an order granting preliminary approval of the Class Action Settlement and directing notice to the Class under Fed. R. Civ. P. 23(e)(1); appointing Settlement Class Counsel and Class Representatives under Fed. R. Civ. P. 23(g)(3); and scheduling a final approval hearing under Fed. R. Civ. P. 23(e)(2).

As discussed in the attached Memorandum of Points and Authorities, the Parties have negotiated a Settlement that provides substantial compensation to consumers for their economic losses, a robust extended warranty, and, in conjunction with the simultaneously submitted US-CA Consent Decree, takes action to mitigate the environmental harms caused by the EcoDiesel Vehicles at the center of this litigation by incentivizing and compensating the Class to bring them in for federal and California-approved and tested repairs to bring them into full emission compliance with federal and state law. The proposed notice program, which includes direct mail and e-mail notice, publication, and extensive multimedia outreach, fulfills the requirements of Rule 23 and due process as the best notice practicable under the circumstances. Plaintiffs thus respectfully request that the Court grant preliminary approval, direct notice to the proposed Class, and schedule a final approval hearing.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION: THE PROPOSED SETTLEMENT

Approximately 100,000 2014-2016 EcoDiesel Jeep Grand Cherokees and Ram 1500 trucks were marketed and sold by Fiat Chrysler in the United States. These EcoDiesel models commanded a premium price over their gas counterparts because they promised a package of benefits: traditional diesel performance and fuel economy (mpg) attributes, plus environmentally responsible emissions levels. These vehicles delivered on the first two benefits, but, unknown to their buyers and lessees, were rigged to cheat on the third. In actual operation, their emissions were higher than government regulations permitted. This case and the related proceedings by federal and state regulators were prosecuted, and the resulting class action and government settlements were negotiated, to bring the vehicles into compliance with emissions regulations, to incentivize their owners to bring them in for approved emissions fixes, and to compensate owners and lessees for the lost part of the diesel premium package they paid for but did not receive.

The proposed Settlement provides Class Members with substantial compensation. Most Class Members—current owners of EcoDiesel Vehicles—will receive \$3,075. All Class Members will receive significant benefits as summarized in this chart:

Category	Benefits	Class Member Payment
<b>Eligible Owner</b> (acquired vehicle on or before January 12, 2017)	Owner Payment + Approved Emissions Modification + Extended Warranty	<b>\$3,075</b>
<b>Eligible Owner</b> (acquired vehicle after January 12, 2017)	Owner Payment + Approved Emissions Modification + Extended Warranty	<b>\$2,460</b> (if an Eligible Former Owner or Lessee also makes a valid claim for benefits)  <u>OR</u>  <b>\$3,075</b> (if no other valid claim for same vehicle)
<b>Eligible Former Owner</b>	Former Owner Payment	<b>\$990</b>

<b>Eligible Lessee</b>	Lessee Payment	<b>\$990</b>
	+	
	Approved Emissions Modification	
	+	
	Extended Warranty	
<b>Eligible Former Lessee</b>	Lessee Payment	<b>\$990</b>

Further, in conjunction with the simultaneously negotiated US-CA Consent Decree, the Class Settlement mitigates environmental harm by offering an Approved Emissions Modification (the “AEM” or “Emissions Fix”) designed and tested to bring the Vehicles into compliance with the emissions standards to which they were originally certified, without materially affecting the Vehicles’ key attributes and fuel economy. All Class Members who receive an Emissions Fix will also receive a robust extended warranty for the greater of (i) 10 years from the date of initial sale or 120,000 actual miles on the vehicle odometer, whichever comes first; and (ii) 4 years or 48,000 miles, from date and mileage of installing the Emissions Fix, whichever comes first. None of these benefits will be reduced to pay Class Counsel’s attorneys’ fees or expenses.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

### **A. FACTUAL BACKGROUND**

As the operative class complaint alleges, this case involves the misleading marketing and sale of 2014-2016 EcoDiesel Ram 1500 and Jeep Grand Cherokees (the “EcoDiesel Vehicles” or “Vehicles”<sup>1</sup>). Working together, Defendants<sup>2</sup> designed and programmed hidden software features that significantly reduced the effectiveness of the Vehicles’ nitrogen oxide (NOx) reduction technology when operated under everyday driving conditions. As a result, the Vehicles emit harmful pollutants at illegally high levels, exceeding what a reasonable consumer would expect from an “Eco” vehicle. *See* Second Amended Complaint (“SAC”) Dkt. 310. Class Members paid a premium for the EcoDiesel option (the “EcoDiesel Premium”) for fuel-efficient and powerful vehicles that were environmentally friendly. *See* Dkt. 327 at 43-44. But they didn’t get

<sup>1</sup> “Eligible Vehicle” means the EcoDiesel Vehicles that are eligible to participate in the Settlement, as defined in the Settlement.

<sup>2</sup> “Defendants” are Fiat Chrysler Automobiles N.V., FCA US LLC, VM Motori S.p.A., VM North America, Inc. (collectively, “FCA”) and Robert Bosch GmbH and Robert Bosch LLC, (together, “Bosch”) unless otherwise noted.



1 the whole package. The proposed Settlement provides it.

## 2 **B. PROCEDURAL BACKGROUND**

3 On January 12, 2017 the U.S. Environmental Protection Agency (“EPA”) and California  
4 Air Resources Board (“CARB”) issued notices of violation (“NOV”) to Fiat Chrysler  
5 Automobiles N.V. and FCA US LLC, alleging the EcoDiesels contained undisclosed technology  
6 resulting in excess NOx emissions. The Department of Justice then filed a complaint against  
7 FCA on behalf of the EPA for violations of the Clean Air Act, and consumers across the country  
8 sued Defendants to vindicate their economic injuries. On April 5, 2017, the Judicial Panel on  
9 Multidistrict Litigation transferred all these federal actions to this Court. On June 19, 2017, the  
10 Court appointed Elizabeth J. Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP as Lead  
11 Counsel as well as a 9-firm Plaintiffs’ Steering Committee (“PSC”) (together, “Class Counsel”)  
12 to oversee the litigation on behalf of affected owners, lessees, and dealers. On July 13, 2017, the  
13 Court appointed Kenneth Feinberg as Settlement Master. In the 18 months that followed, a fully-  
14 deployed PSC has worked tirelessly both to prosecute the consumers’ claims and to work with the  
15 Defendants, the regulators, and the Settlement Master to achieve a global resolution. Lead  
16 Counsel created working groups within the PSC to ensure that the prosecution and settlement  
17 tracks proceeded in parallel and that the enormous amount of work was completed in the most  
18 organized and efficient manner possible.

### 19 **1. Litigation Track**

20 This case has been intensively litigated from its inception. The length and detail of the  
21 Amended, First Amended, and Second Amended Consolidated Consumer Class Action  
22 Complaints reflect the arduous process undertaken by Class Counsel to analyze the multi-party  
23 fraud alleged in this case, and to research, develop and assert the various claims and the remedies  
24 available to those harmed by Defendants’ conduct. Class Counsel filed a 365-page Complaint  
25 asserting claims for violations of The Racketeer Influenced and Corrupt Organizations Act  
26 (“RICO”), the Magnuson-Moss Warranty Act (“MMWA”), common law fraud, and consumer  
27 protection under all fifty States’ and the District of Columbia’s applicable statutes. Those  
28 allegations were later detailed and refined in a 375-page Amended Complaint (“FAC”). Rigorous

1 motion practice ensued. Both FCA and Bosch moved to dismiss the FAC, which Class Counsel  
 2 opposed in a consolidated 75-page opposition. After oral argument, the Court granted in part and  
 3 denied in part the motions, upholding Plaintiffs' RICO claim and granting leaving to amend to  
 4 provide clarifying detail on the common law fraud and consumer protection claims. Plaintiffs  
 5 then filed their 438-page Second Amended Complaint ("SAC"), and the parties conducted an  
 6 aggressive second round of dismissal briefing. All told, the two rounds of motions to dismiss  
 7 comprised 19 briefs with over 301 pages of briefing argued at three lengthy hearings.

8 The litigation also has included substantial class certification activity. Plaintiffs moved to  
 9 certify a nationwide class of owners/lessees of the Vehicles under RICO, the MMWA, and most  
 10 states' common law fraud and statutory consumer protection claims. The Parties submitted 780  
 11 pages of class certification briefing, including 17 highly technical briefs on the class certification  
 12 liability and damages experts.

13 The Parties have also conducted extensive discovery, including nearly 100 depositions.  
 14 After the PSC negotiated comprehensive expert, deposition, preservation, confidentiality, and ESI  
 15 protocols, it served FCA with 37 interrogatories, 130 document requests, and 188 requests for  
 16 admission, and Bosch with 45 interrogatories, 56 document requests, and 34 requests for  
 17 admission. *See* Declaration of Elizabeth J. Cabraser ("Cabraser Decl.") ¶ 4. In response,  
 18 Defendants produced over **5 million** pages of documents, and the PSC reviewed and analyzed  
 19 nearly 4 million of them through a massive, around-the-clock effort. *See* Declaration of Elizabeth  
 20 Koenig Decl. ¶¶ 4-7. To effectively analyze these productions, the PSC was required to  
 21 understand profoundly complicated emissions treatment system technology and the legal  
 22 complexities of Plaintiffs' claims, and, to master the difficulties and nuances of working with  
 23 documents written in German and Italian. The massive research, review, and analysis efforts  
 24 informed Plaintiffs' strategy for class certification and dispositive motion briefing and for 31  
 25 affirmative depositions of Defendants' engineers, executives, and experts. Cabraser Decl. ¶ 4.

26 The Parties litigated multiple discovery disputes, featuring multiple all-day in-person meet  
 27 and confer sessions and a voluminous exchange of letters. After hearings, Magistrate Judge  
 28 Corley resolved two of these disputes in Plaintiffs' favor by ordering Bosch to produce contested

documents.

All the proposed Settlement Class Representatives searched for, and provided documents and information responsive to, Defendants' numerous discovery requests (which totaled approximately 9,000 documents); completed a comprehensive 12-page fact sheet; and sat for deposition, often traveling many hours away from home to do so. Cabraser Decl. ¶ 12. In all, Class Counsel defended over 60 Plaintiff depositions in 17 states in approximately three months.

## 2. Settlement Track

Earnest settlement negotiations began shortly after the Court's appointment of Lead Counsel and the Settlement Master in July 2017. *See* Cabraser Decl. ¶ 6. Lead Counsel and the PSC's settlement working group engaged in extraordinarily complex arm's-length settlement negotiations with FCA and Bosch in an effort to resolve the consumer claims alongside those brought by the DOJ and CA AG. *Id.* ¶ 7. The Parties communicated regularly with the Settlement Master alone and in various combinations, in briefings, meetings, and formal negotiation sessions. *Id.* ¶ 8. Throughout the process, the PSC pushed FCA hard on two fronts: (1) to provide significant cash compensation to the class members, and (2) to offer a broad extended warranty to protect them from any future problems caused by the AEM. *Id.* ¶ 7.

The parties heeded the Court's direction to move with dispatch, and benefited from the assistance of Settlement Master Feinberg, who played a crucial role in supervising the negotiations and in helping to bridge the parties' differences in order to reach this Settlement. The result of all these meetings and negotiations is a comprehensive settlement, which the parties propose as an excellent, principled, and successful conclusion to this multi-party litigation. Because of the intense and continuous efforts undertaken by counsel, the Settlement Class Representatives, Settlement Master Feinberg, and this Court to move intensive settlement negotiations forward in parallel to the zealous litigation of Plaintiffs' claims, this Settlement comes just two years after news of the EcoDiesel scandal broke, and approximately 18 months after commencement of the MDL.

### III. SUMMARY OF SETTLEMENT TERMS

The Settlement provides substantial benefits to current and former Eligible Vehicle<sup>3</sup> owners and lessees by compensating their economic losses and through the additional value and of a robust extended warranty to protect repaired vehicles. None of these payments or benefits will be reduced by Class Counsel's fees or expenses.

#### A. THE SETTLEMENT CLASS DEFINITION

The Settlement Class is a nationwide class of all Persons (including United States citizens, residents, or United States military, or diplomatic personnel that are living or stationed overseas, and entities) who (1) on January 12, 2017 owned or leased a Ram 1500 or Jeep Grand Cherokee 3.0-liter diesel vehicle in the United States or its territories; or who (2) between January 12, 2017 and the Claim Submission Deadline for Eligible Owners and Eligible Lessees become the owner or lessee of an Eligible Vehicle in the United States or its territories; or who (3) own or lease an Eligible Vehicle in the United States or its territories at the time of participation in the Repair Program. The Class includes automobile dealers who are not FCA Authorized Dealers and who otherwise meet the Class definition.<sup>4</sup>

<sup>3</sup> All capitalized terms used in this section have the meaning set forth in the Class Action Agreement.

<sup>4</sup> Those excluded from the Class are:

- (a) Owners or lessees who acquired an Eligible Vehicle after January 12, 2017, and transferred title or terminated their lease before April 1, 2019;
- (b) Owners or lessees who acquired an Eligible Vehicle after January 12, 2017, and transferred title or terminated their lease after April 1, 2019, as a result of a total loss, but before the Claim Submission Deadline for Eligible Owners and Eligible Lessees;
- (c) Owners who acquired an Eligible Vehicle on or before January 12, 2017, and transferred title after January 10, 2019, but before April 1, 2019, unless title was transferred as a result of a total loss;
- (d) Lessees who leased their Eligible Vehicles on or before January 12, 2017, acquire ownership after January 10, 2019, and transfer ownership before the AEM is performed on the Eligible Vehicle;
- (e) Owners whose Eligible Vehicle is not Registered in the United States as of the date the AEM is performed;
- (f) Defendants' officers, directors and employees; Defendants' affiliates and affiliates' officers, directors and employees; their distributors and distributors' officers, directors and employees; and Authorized Dealers and Authorized Dealers' officers and directors;
- (g) Judicial officers and their immediate family members and associated court staff assigned to this case; and
- (h) All those otherwise in the Class who or which timely and properly exclude themselves

*Footnote continued on next page*

1           **B.       SETTLEMENT CLASS MEMBER BENEFITS**

2           In addition to providing the AEM free of charge, Defendants will pay up to an estimated  
3 \$307,460,800 in cash compensation to Class Members, if all Class Members participate in the  
4 Claims Program. Eligible Owners are eligible to receive the AEM plus a cash payment of \$3,075  
5 if no Eligible Former Owner or Former Lessee makes a valid claim on the same vehicle or \$2,460  
6 if an Eligible Former Owner or Former Lessee does make a valid claim on the same vehicle.  
7 Former Owners, Lessees, and Former Lessees are all eligible to receive \$990. These payments  
8 “*exceed* the economic harm suffered” under Plaintiffs’ EcoDiesel Premium damages theory “in  
9 nearly all cases,” Declaration of Ted Stockton (“Stockton Decl.”) ¶ 46 (emphasis added)—a  
10 remarkable result for a compromise of vigorously contested and litigated claims.

11           FCA will also provide an Extended Warranty for all Vehicles that receive an Emissions  
12 Fix, estimated to cost FCA \$105,000,000. Plaintiffs’ expert calculates the consumer value of the  
13 warranty at \$239,500,000.<sup>5</sup> See Declaration of Kirk Kleckner (“Kleckner Decl.”) at ¶¶ 1, 6.

14           **IV.       LEGAL STANDARD FOR APPROVAL**

15           Federal Rules of Civil Procedure 23(e) governs a district court’s analysis of the fairness of  
16 a proposed class action settlement and creates a multistep process for approval. First, a court  
17 must determine that it is likely to (i) approve the proposed settlement as fair, reasonable, and  
18 adequate, after considering the factors outlined in Rule 23(e)(2), and (ii) certify the settlement  
19 class after the final approval hearing. See Fed. R. Civ. P. 23(e)(1)(B); see also 2018 Advisory  
20 Committee Notes to Rule 23 (standard for directing notice is whether the Court “likely will be  
21 able both to approve the settlement proposal under Rule 23(e)(2) and . . . certify the class for  
22 purposes of judgment on the proposal”). Second, a court must direct notice to the proposed  
23 settlement class, describing the terms of the proposed settlement and the definition of the  
24 proposed class, to give them an opportunity to object to or to opt out of the proposed settlement.  
25 See Fed. R. Civ. P. 23(c)(2)(B); Fed. R. Civ. P. 23(e)(1), (5). Third, after a hearing, the court may

26           *Footnote continued from previous page*  
27           from the Class as provided in this Class Action Agreement.

28           <sup>5</sup> Class Counsel engaged Mr. Kleckner to independently value the Extended Warranty provisions  
in the Settlement based on the estimated costs to FCA. FCA has not reviewed or endorsed the  
retail value calculations conducted by Mr. Kleckner.

grant final approval of the proposed settlement on a finding that the settlement is fair, reasonable, and adequate, and certify the settlement class. Fed. R. Civ. P. 23(e)(2). In this District, a movant's submission should also include the information called for under the District's recently updated Procedural Guidance for Class Action Settlements. *See* Procedural Guidance for Class Action Settlements ("Procedural Guidance").

## **V. ARGUMENT**

The proposed Settlement presents a fair, reasonable, and adequate resolution of this litigation. Indeed, in securing payments that "*exceed* the economic harm suffered" under Plaintiffs' damages theory "in nearly all cases," the Settlement is an extraordinary result. All of the relevant factors weigh in favor of preliminary approval, and there can be no doubt that the Agreement was reached in a procedurally fair manner given Settlement Master Feinberg's ongoing guidance and assistance.

### **A. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.**

Rule 23(e)(2) identifies criteria for the Court to use in deciding whether to grant preliminary approval of a proposed class settlement and direct notice to the proposed class. The Class Settlement proposed here satisfies each one.

#### **1. The Settlement is the Product of Good Faith, Informed, and Arm's-Length Negotiations.**

The proposed Settlement Agreement arises out of serious, informed, and non-collusive negotiations facilitated by Court-appointed Settlement Master Feinberg over the course of nearly eighteen months. *See* Fed. R. Civ. P. 23(e)(2)(B). A settlement process facilitated by a court-appointed mediator weighs heavily in favor of approval. *Rosales v. El Rancho Farms*, No. 1:09-CV-00707-AWI, 2015 WL 4460635, at \*16 (E.D. Cal. July 21, 2015), *report and recommendation adopted*, 2015 WL 13659310 (E.D. Cal. Oct. 2, 2015) ("[T]he 'presence of a neutral mediator [is] a factor weighing in favor of a finding of non-collusiveness.'" (citation omitted)); *Pierce v. Rosetta Stone, Ltd.*, No. C 11-01283 SBA, 2013 WL 5402120, at \*5 (N.D. Cal. Sept. 26, 2013) (same). So too does the participation of government entities in negotiations. *See In re: Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL

2672 CRB (JSC), 2016 WL 6248426, at \*14 (N.D. Cal. Oct. 25, 2016), *aff'd sub nom. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, 895 F.3d 597 (9th Cir. 2018) (government participation in negotiations weighed “heavily in favor” of approval); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) (“The participation of a government agency serves to protect the interests of the class members, particularly absentees, and approval by the agency is an important factor for the court’s consideration.”) (citation omitted). Both were an integral part of the negotiations here. The procedurally fair manner in which this Settlement was reached weighs strongly in favor of granting preliminary approval.

2. **Class Representatives and Class Counsel Have and Continue to Zealously Represent the Class.**

The Class Representatives and Class Counsel have prosecuted this action on behalf of the Class with vigor and dedication for over a year-and-a-half. *See* Fed. R. Civ. P. 23(e)(2)(A). As detailed above, Class Counsel engaged in significant motion practice and massive offensive discovery efforts to prosecute the Class claims. *See supra*, § II B. 1. Counsel defended against two rounds of motions to dismiss and moved for and extensively litigated class certification and attendant expert issues. *See id.* The Settlement Class Representatives were likewise actively engaged—each produced numerous documents, sat for a lengthy deposition, and regularly communicated with counsel up to and including evaluating and approving the proposed Settlement. *See id.* Each of them was consulted on, and support, the terms of the settlement, and have expressed their continued willingness to protect the Class until the Settlement is approved and its administration completed. *See* Cabraser Decl. ¶ 14.

3. **The Settlement Provides Significant Benefits in Exchange for the Compromise of Strong Claims.**

The Settlement provides substantial Class relief, considering (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed distribution plan; and (iii) the fair terms of the separately-negotiated proposed award of attorney’s fees. *See* Fed. R. Civ. P. 23(e)(2)(C). Along with the US-CA consent decree, this comprehensive Class resolution mitigates environmental harms, incentivizes current owners and lessees to effectuate the environmental



goals of all settlements by bringing their vehicles in for the AEM, and compensates the Class for the economic losses suffered in purchasing or leasing them. All PSC members—an experienced group including preeminent class action litigators, consumer and environmental advocates, trial lawyers, and auto litigation veterans—support this Settlement, acknowledging the uncertainty in whether the Class could achieve a better outcome through further litigation. Continued litigation, trial, and appeal certainly would not secure the emissions modification program as swiftly as it will take place under current resolution.

a. **The Settlement Mitigates the Risks, Expenses, and Delays the Class Would Bear with Continued Litigation.**

The Settlement secures significant benefits, even in the face of the inherent uncertainties of litigation. Compromise in exchange for certain and timely provision of the benefits under the Settlement is an unquestionably reasonable outcome. *See 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 *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.”)).

This is a risky case. Defendants chose to fight, not concede. Defendants’ motions to dismiss—including a challenge to the RICO claim—remain pending. The outcome of these motions could have a significant impact on the Class’ prospects of a favorable resolution. Plaintiffs’ Class Certification motion is also challenged and undecided. FCA and Bosch dispute Plaintiffs’ damages theories and submitted multiple expert declarations to support their argument that damages are not calculable on a classwide basis. If the Court were to deny class certification, the case would be dead, and the Class Members would receive nothing. Even if a class were to be certified and upheld on appeal, the Class would face the risk, expense, and delay of trial and potentially lengthy appellate process, likely delaying any recovery for years.<sup>6</sup>

<sup>6</sup> A further consideration is the involvement of foreign defendants including FCA N.V.



The Settlement framework provides an emissions fix, a robust extended warranty, and substantial monetary compensation to the Class Members through a straightforward claims process designed to be as convenient to Class Members as possible. Each Class Member will receive information about the Emissions Fix through the proposed Notice Program. Class Members will then submit a simple Claim Form online or by mail that contains basic information and required documentation (e.g., identification, lease, registration). After a claim is reviewed for completeness and eligibility, FCA will extend an offer to eligible Class Members. The Class Member may accept the offer and get paid, or if they own or lease an Eligible Vehicle, schedule an appointment to receive an AEM. The AEM will then be performed, and the Class Member promptly will receive their Class Member Payment.

None of the settlement benefits will be reduced to pay Court-awarded attorneys' fees or costs to Class Counsel. These will be paid by Defendants in addition to class benefits. Plaintiffs' success in persuading Defendants to pay fees and costs in addition to Class Benefits has tremendous monetary value to the Class Members, who otherwise would have had to pay such fees and costs themselves out of their Settlement recovery. The terms of the Settlement Agreement were finalized only yesterday, so the Parties have not yet had the opportunity to

(Netherlands), Bosch GmbH (Germany), and VM Motori S.p.A. (Italy). Plaintiffs' allegations against these companies implicate actions taken in Europe. Additional risks thus arise should Plaintiffs have to prove the propriety of the Court's personal jurisdiction over these entities, or that U.S. law extends to reach their extraterritorial conduct.

1 negotiate the amount of attorneys' fees. Waiting until after the Settlement terms are nailed down  
 2 before discussing fees is a practice routinely approved by courts as in the Class' best interest. *See*  
 3 *Volkswagen.*, 2016 WL 6248426, at \*23. Class Counsel will provide information on the amount  
 4 of attorneys' fees and costs sought before the preliminary approval hearing, in the class notice,  
 5 and in a fee application, so that Class Members will have the opportunity to comment on or object  
 6 under Fed. R. Civ. P. 23(h) prior to the final approval hearing.

7 **4. The Proposed Settlement Treats All Class Members Equitably**  
 8 **Relative to One Another.**

9 The proposed Settlement fairly and reasonably allocates benefits among Eligible Owners,  
 10 Eligible Lessees, Eligible Former Owners, and Eligible Former Lessees, without any unwarranted  
 11 preferential treatment of class representatives or segments of the Class. *See* Fed. R. Civ. P.  
 12 23(e)(2)(D). Specifically, Eligible Owners who submit a valid claim will each receive \$3,075 in  
 13 compensation. An Eligible Owner's compensation will be reduced to \$2,460 if an Eligible Former  
 14 Owner also submits a valid claim for the same Eligible Vehicle, to allow compensation for the  
 15 former owner of the same Vehicle. Eligible Former Owners, Lessees, and Former Lessees will  
 16 each be entitled to \$990. The higher payment to Eligible Owners is designed to incentivize them  
 17 to bring in their Vehicles for the emissions modification—which is the primary mechanism to get  
 18 these Vehicles fixed and stop their excess emissions. FCA sold these Vehicles as EcoDiesels, but  
 19 it will take the Class to make them so.

20 Class Counsel intends to apply for service awards for the Settlement Class  
 21 Representatives, to be paid by Defendants in addition to the Class compensation. Service awards  
 22 “are fairly typical in class action cases” and “are intended to compensate class representatives for  
 23 work done on behalf of the class, to make up for financial or reputational risk undertaken in  
 24 bringing the action, and, sometimes, to recognize their willingness to act as a private attorney  
 25 general.” *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

26 A service award is appropriate here and does not constitute preferential treatment. No  
 27 Class Representative was promised, nor conditioned their representation on the expectation of a  
 28 service award. *See* Cabraser Decl. ¶ 15. The Representatives have each spent between 35 and 50

hours developing the case, conferring with counsel, answering discovery requests, searching for and producing documents, and preparing and testifying at their depositions. *Id.* Given this significant commitment, service awards are particularly appropriate, especially considering that Defendants will pay them in addition to the Class compensation.

**B. THE COURT WILL BE ABLE TO CERTIFY THE CLASS FOR SETTLEMENT PURPOSES UPON FINAL APPROVAL.**

Certification of a settlement class is “a two-step process.” *In re: Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2016 WL 4010049, at \*10 (N.D. Cal. July 26, 2016) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997)). First, the Court must find that the proposed settlement class satisfies Rule 23(a)’s four requirements. *Id.* (citing Fed. R. Civ. P. 23(a)). Second, the Court must find that “a class action may be maintained under either Rule 23(b)(1), (2), or (3).” *Id.* (citing *Amchem Prods.*, 521 U.S. at 613). Here, the Class readily satisfies all Rule 23(a)(1)-(4) and (b)(3) certification requirements, and certification should be granted for settlement purposes. *See Volkswagen*, 2016 WL 6248426 at \*28 (certifying analogous settlement class of owners and lessees of Volkswagen- and Audi-branded “clean diesel” vehicles). When “[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there will be no trial.” *Amchem Prods.*, 521 U.S. at 620.

**1. The Settlement Class Meets the Requirements of Rule 23(a).**

**a. 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). Numerosity is generally satisfied when the class exceeds forty members. *See, e.g., Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000). It is undisputed that approximately 100,000 Class Vehicles were sold and leased nationwide and that the Settlement Class—which includes current and former owners and lessees of these Vehicles—includes more than 100,000 members. The large size of the Settlement Class and its geographic dispersal across the United States also renders joinder impracticable. *See*

1 *Palmer v. Stassinis*, 233 F.R.D. 546, 549 (N.D. Cal. 2006) (“Joinder of 1,000 or more co-  
2 plaintiffs is clearly impractical.”). Numerosity is satisfied.

3 **b. There Are Common Questions of Law and Fact.**

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

11 Courts routinely find commonality where, as here, the class claims arise from the  
12 defendant’s uniform course of conduct. *See, e.g., Cohen v. Trump*, 303 F.R.D. 376, 382 (S.D.  
13 Cal. 2014) (“Here, Plaintiff argues his RICO claim raises common questions as to ‘Trump’s  
14 scheme and common course of conduct, which ensnared Plaintiff[] and the other Class Members  
15 alike.’ The Court agrees.”); *Negrete v. Allianz Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 488 (C.D.  
16 Cal. 2006) (finding common core of factual and legal issues in “the questions of whether Allianz  
17 entered into the alleged conspiracy and whether its actions violated the RICO statute.”).<sup>7</sup>

18 Here, the Settlement Class claims are rooted in common questions of fact as to  
19 Defendants’ fraudulent scheme to deceive regulators and consumers as to the true nature of  
20 EcoDiesel emissions and the hidden technology that made it possible. *See, e.g., SAC at ¶ 325*;  
21 *see also Volkswagen*, 2016 WL 4010049, at \*10 (similar scheme). These common questions will,  
22 in turn, generate common answers “apt to drive the resolution of the litigation” for the Settlement  
23 Class as a whole. *See Dukes*, 564 U.S. at 350. As the Settlement Class’s “injuries derive from

24 <sup>7</sup> Likewise, courts routinely find commonality in cases where uniform misrepresentations and  
25 omissions were employed to deceive the public. *See Ries v. Ariz. Beverages USA LLC*, 287  
26 F.R.D. 523, 537 (N.D. Cal. 2012) (“Courts routinely find commonality in false advertising  
27 cases.”); *Astiana v. Kashi Co.*, 291 F.R.D. 493, 501-02 (S.D. Cal. 2013) (same); *see also Guido v.*  
28 *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 to generate common answers  
apt to drive the resolution of the litigation’”) (quoting *Dukes*, 564 U.S. at 350).

[D]efendants’ alleged ‘unitary course of conduct,’” Plaintiffs have “‘identified a unifying thread that warrants class treatment.’” *Sykes v. Mel Harris & Assocs. LLC*, 285 F.R.D. 279, 290 (S.D.N.Y. 2012), *aff’d*, 780 F.3d 70 (2d Cir. 2015). Just like *Volkswagen*, “[w]ithout class certification, individual Class Members would be forced to separately litigate the same issues of law and fact which arise from Volkswagen’s use of the defeat device and Volkswagen’s alleged common course of conduct.” 2016 WL 4010049, at \*10 (citation omitted).

c. **The Settlement Class Representatives’ Claims Are Typical of Other Class Members’ Claims.**

Rule 23(a)(3)’s typicality requirement counsels that “‘the claims or defenses of the representative parties are 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)). “Like the commonality requirement, the typicality requirement is ‘permissive’ and requires only that the representative’s claims are ‘reasonably co-extensive with those of absent class members; they need not be substantially identical.’” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon*, 150 F.3d at 1020). Typicality “assure[s] that the interest of the named representative aligns with the interests of the class.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting *Hanlon*, 976 F.2d at 508). Thus, where a plaintiff suffered a similar injury and other class members were injured by the same course of conduct, typicality is satisfied. *See Parsons*, 754 F.3d at 685; *see also Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir. 2012) (“The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.”).

Here, the same course of conduct that injured the Settlement Class Representatives injured other Settlement Class Members in the same way. The 60 Settlement Class Representatives, like other Settlement Class Members, purchased or leased Eligible Vehicles that emit excessive NOx pollutants without knowing the truth about the Vehicles’ emissions, and include both current and former owners and lessees, from 42 states. Like all Class Members, the Settlement Class Representatives have testified that they would not have done so, or would have paid less, had the

1 truth been disclosed. And finally, both the Representatives and Class Members will similarly—  
 2 and equitably—benefit from the relief provided by the Settlement. The typicality requirements  
 3 are satisfied. *See Volkswagen*, 2016 WL 4010049, at \*11 (typicality satisfied for comparable  
 4 settlement class).

5 **d. The Settlement Class Representatives and Class Counsel Have**  
 6 **and Will Protect the Interests of the Settlement Class.**

7 Rule 23(a)(4)’s adequacy requirement is met where, as here, “the representative parties  
 8 will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “This  
 9 requirement is rooted in due-process concerns—‘absent class members must be afforded adequate  
 10 representation before entry of a judgment which binds them.’” *Radcliffe v. Experian Info. Sols.,*  
 11 *Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013) (quoting *Hanlon*, 150 F.3d at 1020). Adequacy entails  
 12 a two-prong inquiry: “‘(1) do the named plaintiffs and their counsel have any conflicts of interest  
 13 with other class members and (2) will the named plaintiffs and their counsel prosecute the action  
 14 vigorously on behalf of the class?’” *Evon*, 688 F.3d at 1031 (quoting *Hanlon*, 150 F.3d at 1020).  
 15 Both prongs are readily satisfied here.

16 The Settlement Class Representatives have no interests antagonistic to Settlement Class  
 17 Members and will continue to vigorously protect class interests, as they have throughout this  
 18 litigation. *See Clemens v. Hair Club for Men, LLC*, No. C 15-01431 WHA, 2016 WL 1461944,  
 19 at \*2-3 (N.D. Cal. Apr. 14, 2016). Indeed, the Settlement Class Representatives “are entirely  
 20 aligned [with the Settlement Class] in their interest in proving that [FCA and Bosch] misled them  
 21 and share the common goal of obtaining redress for their injuries.” *Volkswagen*, 2016 WL  
 22 4010049, at \*11. The Representatives understand their duties as class representatives, have  
 23 agreed to consider the interests of absent Settlement Class Members, and have actively  
 24 participated in this litigation. *See* Cabraser Decl. ¶ 14. *See, e.g., Trosper v. Stryker Corp.*, No. 13-  
 25 CV-0607-LHK, 2014 WL 4145448, at \*29 (N.D. Cal. Aug. 21, 2014) (“All that is necessary is a  
 26 ‘rudimentary understanding of the present action and ... a demonstrated willingness to assist  
 27 counsel in the prosecution of the litigation.’”). The proposed Settlement Class Representatives  
 28 are more than adequate.

Rule 23(g) requires this Court to appoint class counsel to represent the Settlement Class. *See* Fed. R. Civ. P. 23(g). At the outset of the MDL, as part of a competitive application process, the Court chose Lead Counsel and each member of the PSC due to their qualifications, experience, and commitment to the successful prosecution of this case. The criteria that the Court considered in appointing Lead Counsel and the PSC were substantially similar to the considerations set forth in Rule 23(g). *See, e.g., Clemens*, 2016 WL 1461944, at \*2. Class Counsel, and their respective law firms, have undertaken an enormous amount of work, effort, and expense in this litigation and demonstrated their willingness to devote whatever resources were necessary to see it through to a successful outcome. *See* Cabraser Decl. ¶ 5. This Court found at the outset, and they have demonstrated in action, their ability to represent the interests of the Settlement Class. *See* Dkt. 173. They should be appointed as Settlement Class Counsel under Rule 23(g)(3), and confirmed under 23(g)(1) upon final approval.

## 2. The Settlement Class Meets the Requirements of Rule 23(b)(3).

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

### a. Common Issues of Law and Fact Predominate.

"The predominance inquiry 'asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.'" *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted)). "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.'" *Id.* (citation omitted). At its core, "[p]redominance is a question of efficiency." *Butler v. Sears, Roebuck & Co.*, 702 F.3d 359, 362 (7th Cir. 2012). Thus, "[w]hen common questions present a significant aspect of the case and they can be resolved



1 for all members of the class in a single adjudication, there is clear justification for handling the  
2 dispute on a representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022.

3 The Ninth Circuit favors class treatment of fraud claims stemming from a “common  
4 course of conduct,” like the scheme alleged here. *See In re First Alliance Mortg. Co.*, 471 F.3d  
5 977, 990 (9th Cir. 2006); *Hanlon*, 150 F.3d at 1022-23. Even outside of the settlement context,  
6 predominance is readily met for RICO and consumer claims arising from the defendants’  
7 fraudulent scheme or common course of conduct. *See Amchem Prods.*, 521 U.S. at 625; *Wolin*,  
8 617 F.3d at 1173, 1176 (consumer claims based on uniform omissions certifiable where  
9 “susceptible to proof by generalized evidence,” even if individualized issues remain);  
10 *Friedman v. 24 Hour Fitness USA, Inc.*, No. CV 06-6282 AHM (CTx), 2009 WL 2711956, at \*8  
11 (C.D. Cal. Aug. 25, 2009) (“Common issues frequently predominate in RICO actions that allege  
12 injury as a result of a single fraudulent scheme.”); *see also Klay v. Humana, Inc.*, 382 F.3d 1241,  
13 1256-57 (11th Cir. 2004) (affirming certification of RICO claim where “all of the defendants  
14 operate nationwide and allegedly conspired to underpay doctors across the nation, so the  
15 numerous factual issues relating to the conspiracy are common to all plaintiffs [and the] corporate  
16 policies constitute[d] . . . the very heart of the plaintiffs’ RICO claims”).

17 Here, too, questions of law and fact common to the claims of the Settlement Class  
18 Members predominate over any questions affecting only individual members, and the underlying  
19 class certification briefs allow this Court to conduct the “thorough predominance analysis” that  
20 the Ninth Circuit requires. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod.*  
21 *Liab. Litig.*, 895 F.3d 597, 609 n.17 (9th Cir. 2018) (distinguishing *In re Hyundai & Kia Fuel*  
22 *Econ. Litig.*, 881 F.3d 679, 690 (9th Cir. 2018), which was later vacated). As in *Volkswagen*, a  
23 uniform scheme to mislead regulators and consumers by concealing the defeat devices in the  
24 Class Vehicles is central to the claims asserted in the operative complaint. *Compare, e.g.*,  
25 Dkt. 310 (SAC), at ¶¶ 32, 292, 325, 329, *with Volkswagen*, 2016 WL 4010049, at \*12. Plaintiffs  
26 here allege Defendants “perpetrated the same fraud in the same manner against all [Settlement]  
27 Class Members.” *Volkswagen*, 2016 WL 4010049, at \*12. Predominance is satisfied.



b. **Class Treatment Is Superior to Other Available Methods for the Resolution of This Case.**

Superiority 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*, 2014 WL 4145448, at \*17 (citation omitted).

Class treatment here is far superior to the litigation 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 damages sought by each Settlement Class Member are small relative to the cost of prosecuting each one’s individual claims. *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).

Class resolution is 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. With a class of approximately 100,000, “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.*<sup>8</sup>  
 Superiority is met here, and Rule 23(e)(1)(B)(ii) is satisfied.

**3. The Proposed Settlement Merits Approval Under This District's Procedural Guidance.**

This District recently updated its Procedural Guidance for Class Action Settlements. Its provisions are relevant to this Agreement are addressed below.

**a. The Litigation and Settlement Classes Are Essentially Identical.**

Where a litigation class has not been certified, the Guidance instructs a party to explain differences between the settlement class and claims to be released compared to the class and claims in the operative complaint. *See Guidance*, Preliminary Approval (1)(a), (1)(c). Here, the proposed Settlement Class is essentially identical to the class in the operative complaint. Dkt. 310 (SAC) at ¶ 258. The Settlement Class buttons up the class period, which had been left open in the SAC, and treats Class Members equitably according to their date of purchase or lease vis-à-vis the EPA's January 12, 2017 NOV. Such refinement in the definition of the Settlement Class from that in the SAC is appropriate to facilitate a principled and equitable Settlement. Those relatively few people who may have been class members under the previously-proposed definition but are not members of the proposed Settlement Class are not releasing their claims.

**b. The Settlement Recovery is a Fair Proxy for the Recovery Available if Plaintiffs Had Prevailed on Each of Their Claims.**

The Guidance instructs a party to explain the potential class recovery if plaintiffs had fully prevailed on each of their claims and the factors bearing on the amount of the compromise. *See* Procedural Guidance (1)(e). In this case, Plaintiffs submitted the reports of experts Colin Weir and Steven Gaskin that present two methods of calculating overpayment damages—one based on a conjoint analysis and the other based on the EcoDiesel premium overpayment. The conjoint

<sup>8</sup> Moreover, all private federal actions seeking relief for the Settlement Class are before this Court as part of the MDL. That the JPML saw fit to consolidate all related federal cases demonstrates that a single proceeding is preferable to a multiplicity of lawsuits. The government's suit is also pending before this Court, thereby enabling this Court to approve and enforce the provisions of the related settlements as a global resolution to this litigation. The certification of the Settlement Class completes this advantageous unified jurisdiction. *See Volkswagen*, 2016 WL 4010049, at \*12.

1 model, however, was simply “demonstrative” and was to be altered if, for example, a fix became  
 2 available, as it now has. *See, e.g.*, Dkt. 421 at 3, 5, 13. Thus, the damages awards under this  
 3 Settlement are based on the EcoDiesel premium model, which also accords with the Court’s  
 4 recognition of a premium damages model in its Rule 12 Order. *See* Dkt. 290 at 8-9, 43.

5 If Plaintiffs had fully prevailed on each their claims, it is possible they would have  
 6 received treble damages under their civil RICO claim. 18 U.S.C. § 1964(c). But success on this  
 7 claim was by no means guaranteed, as this Court had cautioned the parties. And, as general  
 8 matter, “courts do not traditionally factor treble damages into the calculus for determining a  
 9 reasonable settlement value.” *Rodriguez*, 563 F.3d at 964. The Settlement secures compensation  
 10 that meets or significantly exceeds virtually all Class Members’ actual single damages, an  
 11 excellent result by any measure, and avoid the lengthy delay of litigation and appeal, while also  
 12 enabling the Eligible Vehicles to be expeditiously fixed.

13 **c. The Proposed Allocation Plan for the Settlement Fund.**

14 The Procedural Guidance requires an explanation of the proposed allocation for the  
 15 settlement fund. *See* Procedural Guidance (1)(f). As explained above, the settlement provides  
 16 three possible compensation levels tied to a Class Members’ status. *See supra*, § I. The  
 17 differences reflect an equitable apportionment based on economic principles, and incentivizes  
 18 owners to have their vehicles’ emissions systems fixed as quickly as possible.

19 **d. A Substantial Number of Class Members Are Expected and**  
 20 **Incentivized To Participate.**

21 The Settlement is designed, in conjunction with the Consent Decree, to incentivize and  
 22 facilitate a minimum claims rate of 85%, and the parties are committed to achieving the highest  
 23 claims rate possible. Class Members themselves are financially incentivized to participate in the  
 24 recall, because the Emissions Fix is a prerequisite to compensation for current keyholders.  
 25 Because both Class Members and Defendants are financially motivated to achieve a high  
 26 participation rate, the parties anticipate significant participation. *See* Procedural Guidance (1)(g).

27 **e. Reversion**

28 The Settlement is designed as a “claims-made” settlement, meaning Defendants will

1 compensate each valid claim for compensation. Thus “[i]f every consumer comes in for the  
 2 settlement ..., every penny ... gets spent.” *Volkswagen*, 2016 WL 6248426, at \*22. FCA has  
 3 strong incentives to compensate as many Class Members as possible, because any money it could  
 4 potentially save by not compensating Class Members would be lost, in the form of penalties of  
 5 more than \$6,000 per vehicle, for failing to achieve the 85% participation required by the  
 6 Consent Decree. *See* Procedural Guidance (1)(h).

7 **f. The Settlement Administrator Selection Process and Costs**

8 The Parties solicited bids from five well-known and experienced notice and settlement  
 9 administration vendors. *See* Cabraser Decl. ¶ 9. After reviewing multiple detailed and  
 10 competitive bids, the Parties agreed on the Angeion Group to serve as the Settlement Claims and  
 11 Notice Administrator. Lead Counsel has selected Angeion as the Settlement Claims and Notice  
 12 Provider in five cases over the last two years, but has also worked with numerous other  
 13 Settlement Claims and Notice Administrators over this time period. *Id.*, ¶ 10. Angeion estimates  
 14 that the administrative costs of administering the settlement will be approximately \$ 1,500,000.  
 15 *See* Declaration of Steven Weisbrot (“Weisbrot Decl.”), ¶ 53. FCA will pay these costs. *See*  
 16 Settlement Agreement, § 8.4. *See* Procedural Guidance (2).

17 **g. Attorneys’ Fees**

18 As detailed above, Class Counsel will seek reasonable attorneys’ fees, negotiated  
 19 separately from the Settlement under the Rule 23(h) procedure, which will not reduce Class  
 20 Members’ recovery in any way. *See supra*, § V. A. 3. C. *See* Procedural Guidance (6).

21 **h. Incentive Awards**

22 Plaintiffs will seek appropriate service awards for Representatives in light of their  
 23 commitment and dedication to this litigation. *See supra*, V. A. 4.

24 **i. Notice of Compliance with CAFA.**

25 Pursuant to the Settlement Agreements and as required by CAFA, the settling Defendants  
 26 will serve notices in accordance with the requirements of 28 U.S.C. § 1715(b) within ten days of  
 27 the filing of this motion. This Court has jurisdiction over the instant matter pursuant to 28 U.S.C.  
 28 § 1332(d) and CAFA, which vest the Court with original jurisdiction over any multi-state class

1 action where the aggregate amount in controversy exceeds \$5 million and where the citizenship  
 2 of any member of the class of plaintiffs is different from that of any defendant. Because it does  
 3 not provide for a recovery of coupons (28 U.S.C. § 1712), do not result in a net loss to any Class  
 4 Member (28 U.S.C. § 1713), and do not provide for payment of greater sums to some Class  
 5 Members solely on the basis of geographic proximity to the Court (28 U.S.C. § 1714), the  
 6 Settlement Agreement is fully complies with CAFA.

7 **j. Information About Past Distributions in Comparable Class**  
 8 **Settlements.**

9 The Procedural Guidance requests estimates on the number and percentage of claimants  
 10 based on recent similar settlements. This case is unusual in that it aims to halt and mitigate  
 11 ongoing harm as well as compensate damages. In that respect, it has similarities to, and  
 12 differences from, the recent 2.0-liter, 3.0-liter, and Bosch class settlements in the VW “Clean  
 13 Diesel” MDL. In the recently completed 2.0-liter settlement, approximately 483,000 class  
 14 members submitted claims for an overall participation rate of nearly 95%. *See* 11/27/18 Report  
 15 of Independent Claims Supervisor, Dkt. 5585, available at [cand.uscourts.gov/crb/vwmdl](http://cand.uscourts.gov/crb/vwmdl). The  
 16 3.0-liter settlement, not yet complete, but with a class size (80,000 vehicles) most similar to this  
 17 one, has already seen nearly 70,000 claims, and a participation rate exceeding 85% for each  
 18 subset of 3.0-liter vehicles. *See* 12/13/18 Claims Supervisor Report, Dkt. 5715. The \$327.5  
 19 Bosch Settlement, which involves neither buybacks or repairs, but simply pays compensation  
 20 ranging from \$175 to \$1500 to 2.0- and 3.0-liter owners and lessees, while also not yet  
 21 completed, reflects similarly high claims and distribution rates.

22 This case will utilize a similar notice and outreach program, government-approved  
 23 emissions repairs, substantial compensation, and a simplified administration that does not involve  
 24 buybacks, enabling the reasonable prediction that the participation rate will be similarly high and  
 25 that most of the money committed to the consumer settlement will be paid out, and addressing the  
 26 “reversion” inquiry of the Procedural Guidance. Class Members are not expected to leave  
 27 Defendants’ money on the table at a rate that would impair the Settlement’s fairness, adequacy  
 28 and reasonableness. Given the significantly smaller Class size and much simpler administration,

1 notice and administration costs, paid by Defendants in addition to Class benefits, will be less than  
2 those for the VW-related settlements.

3 **C. THE PROPOSED NOTICE PROGRAM PROVIDES THE BEST**  
4 **PRACTICABLE NOTICE.**

5 Rule 23(e)(1) requires that before a proposed settlement may be approved, the Court  
6 “must direct notice in a reasonable manner to all class members who would be bound by the  
7 proposal.” “Notice is satisfactory if it ‘generally describes the terms of the settlement in sufficient  
8 detail to alert those with adverse viewpoints to investigate and come forward and be heard.’”  
9 *Churchill*, 361 F.3d at 575 (citation omitted). For a Rule 23(b)(3) Settlement class, the Court must  
10 “direct to class members the best notice that is practicable under the circumstances, including  
11 individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P.  
12 23(c)(2)(B). The best practicable notice is that which is “reasonably calculated, under all the  
13 circumstances, to apprise interested parties of the pendency of the action and afford them an  
14 opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S.  
15 306, 314 (1950).

16 The proposed notice program meets these standards. The Parties created this proposed  
17 notice program—including both the content and the distribution plan—with the Angeion Group,  
18 an experienced firm specializing in comprehensive noticed settlement management in complex  
19 class litigation. The Program includes a Short and Long Form Notice, and a comprehensive  
20 Settlement Website ([www.EcoDieselSettlement.com](http://www.EcoDieselSettlement.com)), that are clear and complete, and that meet  
21 all the requirements of Rule 23 and the Procedural Guidance. *See* Procedural Guidance (3).

22 The Long Form Notice is designed to explain Class Members’ rights and obligations  
23 under the Settlement in clear terms and in a well-organized and reader-friendly format. It  
24 includes an overview of the litigation; an explanation of the Settlement benefits; contact  
25 information for Class Counsel; the address for a comprehensive Settlement Website that will  
26 house links to the notice, motions for approval, attorneys’ fees, and other important documents;  
27 instructions on how to access the case docket; and detailed instructions on how to participate in,  
28 object to, or opt out of the Settlement. The Short Form Notice is in eye-catching “postcard” form

conveying the basic structure of the Settlement and designed to capture Class Members' attention with concise, plain language. It directs readers to the Settlement Website (where the Long Form Notice is available) for more information.<sup>9</sup> The principal method of reaching Class Members will be through individual direct mail notice, consisting of postcard notices by U.S. first class mail to all readily identifiable Class Members. Direct mail notice will be coupled with individual notice by email (designed specifically to avoid spam filters), a robust paid-media campaign including national newspapers and magazines and digital banner advertisement, a toll-free telephone number and a Settlement Website. Weisbrot Decl. ¶¶ 10-12, 16-43. This Notice Plan, grounded in individual notice, comports with accepted standards and with this District's Procedural Guidance regarding notice and opt-outs.

#### **D. THE PROPOSED FINAL APPROVAL HEARING SCHEDULE**

The last step in the settlement approval process is the fairness hearing, at which the Court may hear any evidence and argument necessary to evaluate the Settlement and the application for attorneys' fees and costs. The Parties propose a detailed schedule for final approval and implementation in ¶ 12.3 of the Settlement Agreement, and incorporate it by reference herein.

#### **VI. CONCLUSION**

Plaintiffs respectfully request that the Court (1) determine under Rule 23(e)(1) that it is likely to approve the Settlement and certify the Settlement Class; (2) direct notice to the Class through the proposed notice program; and (3) schedule the final approval hearing under Rule 23(e)(2).

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<sup>9</sup> These notices cover all of the elements outlined in Rule 23(c)(2)(B).



1 Dated: January 10, 2019

Respectfully submitted,

LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP

By: /s/ Elizabeth J. Cabraser

Elizabeth J. Cabraser  
LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111  
Telephone: 415.956.1000  
Facsimile: 415.956.1008  
E-mail: [ecabraser@lchb.com](mailto:ecabraser@lchb.com)

*Plaintiffs' Lead Counsel*

9 Roland K. Tellis  
10 BARON & BUDD, P.C.  
11 15910 Ventura Boulevard, Suite 1600  
12 Encino, CA 91436  
13 Telephone: 818.839.2320  
14 Facsimile: 818.986.9698  
15 Email: [rtellis@baronbudd.com](mailto:rtellis@baronbudd.com)

W. Daniel ("Dee") Miles, III  
BEASLEY, ALLEN, CROW, METHVIN,  
PORTIS  
& MILES P.C.  
218 Commerce Street  
Montgomery, AL 36104  
Telephone: 800.898.2034  
Facsimile: 334.954.7555  
Email: [dee.miles@beasleyallen.com](mailto:dee.miles@beasleyallen.com)

14 Lesley E. Weaver  
15 BLEICHMAR FONTI & AULD, LLP  
16 555 12th Street, Suite 1600  
17 Oakland, CA 94607  
18 Telephone: 415.445.4003  
19 Facsimile: 415.445.4020  
20 Email: [lweaver@bfalaw.com](mailto:lweaver@bfalaw.com)

David S. Casey, Jr.  
CASEY GERRY SCHENK FRANCAVILLA  
BLATT & PENFIELD LLP  
110 Laurel Street  
San Diego, CA 92101-1486  
Telephone: 619.238.1811  
Facsimile: 619.544.9232  
Email: [dcasey@cglaw.com](mailto:dcasey@cglaw.com)

18 Steve W. Berman  
19 HAGENS BERMAN  
20 1918 8th Avenue, Suite 3300  
21 Seattle, WA 98101  
22 Telephone: 206.623.7292  
23 Facsimile: 206.623.0594  
24 Email: [steve@hbsslaw.com](mailto:steve@hbsslaw.com)

Lynn Lincoln Sarko  
KELLER ROHRBACK L.L.P.  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101  
Telephone: 206.623.1900  
Facsimile: 206.623.3384  
Email: [lsarko@kellerrohrback.com](mailto:lsarko@kellerrohrback.com)

22 Joseph F. Rice  
23 MOTLEY RICE, LLC  
24 28 Bridgeside Boulevard  
25 Mount Pleasant, SC 29464  
26 Telephone: 843.216.9000  
27 Facsimile: 843.216.9450  
28 Email: [jrice@motleyrice.com](mailto:jrice@motleyrice.com)

Rachel L. Jensen  
ROBBINS GELLER RUDMAN & DOWD  
LLP  
655 West Broadway, Suite 1900  
San Diego, CA 98101  
Telephone: 619.231.1058  
Facsimile: 619.231.7423  
Email: [rachelj@rgrdlaw.com](mailto:rachelj@rgrdlaw.com)



Stacey P. Slaughter  
ROBINS KAPLAN LLP  
800 LaSalle Avenue, Suite 2800  
Minneapolis, MN 55402  
Telephone: 612.349.8500  
Facsimile: 612.339.4181  
Email: [sslaughter@robinskaplan.com](mailto:sslaughter@robinskaplan.com)

*Plaintiffs' Steering Committee*

**CERTIFICATE OF SERVICE**

I hereby certify that, on January 10, 2019, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ Elizabeth J. Cabraser  
Elizabeth J. Cabraser

Elizabeth J. Cabraser (State Bar No. 083151)  
ecabraser@lchb.com  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
Telephone: 415.956.1000  
Facsimile: 415.956.1008

*Plaintiffs' Lead Counsel and Chair of the Plaintiffs'  
Steering Committee*

*(Plaintiffs' Steering Committee Members Listed on  
Signature Page)*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

This Document Relates to:

ALL CONSUMER AND RESELLER  
ACTIONS

Case No. 3:17-md-2777-EMC

**DECLARATION OF ELIZABETH J.  
CABRASER IN SUPPORT OF MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT AND DIRECTION  
OF NOTICE UNDER FED. R. CIV. P. 23(e)**

Hearing: January 23, 2019  
Time: 10:00 a.m.  
Courtroom: 5, 17th Floor

The Honorable Edward M. Chen

1 I, Elizabeth J. Cabraser, declare:

2 1. I am an attorney admitted to the Bars of the State of California and the Northern  
3 District of California. I am counsel of record for the Plaintiffs in these proceedings, and serve,  
4 pursuant to Pretrial Order No. 3: Order Appointing Plaintiffs' Lead Counsel, Plaintiffs' Steering  
5 Committee and Government Coordinating Counsel (Docket No. 173) ("PTO 3"), as Lead  
6 Plaintiffs' Counsel. I respectfully submit this Declaration in support of the Motion for  
7 Preliminary Approval of Class Settlement and Direction of Notice under Federal Rule of Civil  
8 Procedure 23(e). I have personal knowledge of the facts set forth herein and, if called as a  
9 witness, I could and would testify competently to them.

10 2. I have served as Lead Counsel for Plaintiffs and the proposed Class in this  
11 consolidated MDL litigation since July 2017. In this position, I have had a primary role in  
12 devising the litigation and settlement strategies for the Class, supervising the Plaintiffs' Steering  
13 Committee ("PSC") and other authorized common benefit counsel, and have been actively and  
14 personally involved in prosecuting and resolving the litigation.

15 **PSC (Class Counsel's) Efforts in Prosecuting this Litigation on behalf of the Class**

16 3. Prosecution of this complex, multi-party litigation necessarily required the  
17 commitment of a substantial amount of time, labor, and effort from the PSC. The Parties  
18 conducted extensive discovery, facilitated by early negotiation of comprehensive expert,  
19 deposition, preservation, confidentiality, and Electronically Stored Information (ESI) protocols.  
20 They coordinated and worked in close cooperation with DOJ attorneys in conducting discovery as  
21 necessary and appropriate to their joint and respective goals.

22 4. Class Plaintiffs served FCA with 37 interrogatories, 130 document requests, and  
23 188 requests for admission; and served Bosch with 45 interrogatories, 56 document requests, and  
24 34 requests for admission. To actively pursue a useful, informative, and meaningful response to  
25 these requests, Class Counsel conducted extensive negotiations with both FCA and Bosch  
26 regarding the identification of document custodians, the use of search terms, the completeness of  
27 discovery requests, and deposition scheduling. Over the course of 18 months, Class Counsel took  
28 31 depositions, including 26 witnesses from FCA, three witnesses from Bosch, and depositions of

1 two experts submitted in support of Defendants' Opposition to Plaintiffs' Motion for Class  
2 Certification. They have defended the depositions of the proposed Settlement Class  
3 representatives and Plaintiffs' experts.

4 5. PSC members, and their respective law firms, have undertaken an enormous  
5 amount of work, effort, and expense in this litigation, on a priority basis, and demonstrated their  
6 devotion of whatever resources were necessary to see it through to a successful outcome. They  
7 have pledged to continue this work, effort, and expense through the Settlement approval,  
8 administration, and distribution process.

9 **Negotiations and Finalization of the Proposed Settlement Agreement and Notice Program**

10 6. Settlement negotiations in this action commenced soon after the Court's  
11 appointment of Lead Counsel and the Settlement Master in July 2017, in parallel with active  
12 litigation, including intensive discovery and motions practice, as described above.

13 7. Lead Counsel and the PSC's settlement working group engaged in extraordinarily  
14 complex arm's-length settlement negotiations with FCA and Bosch, in coordination with the DOJ  
15 and California AG attorneys (who represented the EPA and CARB, respectively), while  
16 maintaining the necessary confidentiality of these negotiations, in an effort to resolve the  
17 consumer claims alongside the US-CA consent decree. Throughout the process, the settlement  
18 working group pushed FCA hard on two fronts: first, to provide significant cash compensation to  
19 the class members, and second, to offer a broad and detailed extended warranty to protect them  
20 from any future problems caused by the emissions fix. The Parties communicated regularly with  
21 the Settlement Master alone and in various combinations, in briefings, meetings, and formal  
22 negotiation sessions over many days and on both coasts.

23 8. The class and government settlements' provisions are interlocking; together they  
24 interact to achieve far more than any could alone. Compensation to the class not only provides  
25 recovery of damages, but incentivizes participation in the emissions repair program at the highest  
26 level. Consumers' economic recovery is the engine maximizing environmental mitigation.  
27 Economic and environmental benefits combine to promote consumer protection and restorative  
28 justice.

1           9.       In preparation for filing for preliminary approval of the proposed settlement and  
2 direction of notice to the proposed class, Class Counsel solicited bids from five well-known and  
3 experienced notice and settlement administration vendors, and received multiple detailed and  
4 competitive bids. After reviewing these proposed, the Parties agreed on the Angeion Group to  
5 serve as the Settlement Claims and Notice Administrator.

6           10.      Lead Counsel has selected Angeion as the Settlement Claims and Notice Provider  
7 in five cases over the last two years, but has also worked with numerous other Settlement Claims  
8 and Notice Administrators over this time period.

9                   **Contributions of the Proposed Settlement Class Representatives**

10          11.      Based on my significant experience in complex consumer class action litigation  
11 and my observations during the course of this case, it is my professional opinion that each of the  
12 60 proposed Settlement Class Representatives listed in Exhibit A to Class Plaintiffs' Motion for  
13 Preliminary Approval willingly, constructively, and effectively contributed to the prosecution of  
14 the claims on behalf of the Class.

15          12.      Each Settlement Class Representative completed a 12-page fact sheet, pursuant to  
16 Pretrial Order 9, as part of the parties' exchange of initial disclosures. In addition, each  
17 Representative searched for documents and information in hard copy and throughout their online  
18 accounts and provided those documents to counsel in response to Defendants' numerous written  
19 discovery requests. Counsel ultimately produced approximately 9,000 documents from named  
20 Plaintiffs.

21          13.      Further, each Settlement Class Representative prepared and sat for a deposition of  
22 up to eight hours pursuant to the stipulated Deposition Protocol in this case. Many of them  
23 travelled far from their homes, including by airplane, to do so.

24          14.      The Settlement Class Representatives regularly communicated with counsel to stay  
25 abreast of the developments in this litigation. Each was consulted on the terms of the Settlement  
26 Agreement before it was signed, approve its terms, and support its approval by the Court. They  
27 have expressed their continued willingness to protect the Class until the Settlement is approved  
28 and implemented.

15. Given the substantial discovery undertaken and intensive litigation schedule, each Representative spent an estimated 35 to 50 hours of their time to contribute to the prosecution of this case behalf of the Class. In light of this commitment of time, effort, and dedication, I believe it is appropriate under applicable Ninth Circuit and Northern District caselaw that each of them receive a service award in the amount of \$5,000, to be paid by Defendants if approved by the Court. No Settlement Class Representative was promised, nor conditioned their representation, service or support, on the expectation of a service award.

I declare under penalty of perjury that the forgoing is true and correct. Executed this 10th day of January, 2019, at San Francisco, California.

/s/ Elizabeth J. Cabraser  
Elizabeth J. Cabraser

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

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

Plaintiffs,

v.

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

Defendants.

MDL 2777 EMC

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

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

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

2. I have been responsible in whole or in part for the design and implementation of hundreds  
of court-approved class action notice and administration programs and have taught numerous  
accredited Continuing Legal Education courses on the Ethics of Legal Notification in Class Action  
Settlements, using Digital Media in Class Action Notice Programs, as well as Class Action Claims  
Administration, generally. I am the author of multiple articles on Class Action Notice, Class



1 Action Claims Administration, and Notice Design in publications such as *Bloomberg*, *BNA Class*  
 2 *Action Litigation Report*, *Law360*, the *ABA Class Action and Derivative Section Newsletter*.

3 3. I am a certified professional in digital media sales by the Interactive Advertising Bureau  
 4 (“IAB”) and I am co-author of the Digital Media section of Duke Law’s *Guidelines and Best*  
 5 *Practices—Implementing 2018 Amendments to Rule 23*.

6 4. I have given public comment and written testimony to the Judicial Conference Committee  
 7 on Rules of Practice and Procedure on the role of direct mail, email, digital media and print  
 8 publication, in fulfilling Due Process notice, and I have met with representatives of the Federal  
 9 Judicial Center to discuss the 2018 amendments to Rule 23 and suggest educational programs for  
 10 the judiciary concerning class action notice procedures.

11 5. Prior to joining Angeion’s executive team, I was employed as Director of Class Action  
 12 services at Kurtzman Carson Consultants, an experienced class action notice and settlement  
 13 administrator. Prior to my notice and claims administration experience, I was employed in private  
 14 law practice.

15 6. My notice work comprises a wide range of class action settlements that include product  
 16 defect, false advertising, consumer fraud, employment, antitrust, tobacco, banking, firearm,  
 17 insurance, and bankruptcy cases. I have been at the forefront of infusing digital media, as well as  
 18 big data and advanced targeting, into class action notice programs. For example, the Honorable  
 19 Sarah Vance stated in her December 31, 2014 Order in *In Re: Pool Products Distribution Market*  
 20 *Antitrust Litigation*, MDL No. 2328:

21 To make up for the lack of individual notice to the remainder of the  
 22 class, the parties propose a print and web-based plan for publicizing  
 23 notice. The Court welcomes the inclusion of web-based forms of  
 24 communication in the plan.... The Court finds that the proposed  
 method of notice satisfies the requirements of Rule 23(c)(2)(B) and  
 due process.

25 The direct emailing of notice to those potential class members for  
 26 whom Hayward and Zodiac have a valid email address, along with  
 27 publication of notice in print and on the web, is reasonably calculated  
 28 to apprise class members of the settlement.

1 As detailed below, courts have repeatedly recognized my work in the design of class action notice  
2 programs:

3 (a) On February 24, 2017, The Honorable Ronald B. Rubin in *James Roy et al. v.*  
4 *Titeflex Corporation et al.*, No. 384003V (Md. Cir. Ct.), noted when granting preliminary  
5 approval to the settlement:

6 What is impressive to me about this settlement is in addition to all  
7 the usual recitation of road racing litanies is that there is going to be  
8 a) public notice of a real nature and b) about a matter concerning not  
9 just money but public safety and then folks will have the knowledge  
10 to decide for themselves whether to take steps to protect themselves  
11 or not. And that's probably the best thing a government can do is to  
12 arm their citizens with knowledge and then the citizens can make a  
13 decision. To me that is a key piece of this deal. ***I think the notice***  
14 ***provisions are exquisite.*** (Emphasis added).

15 (b) Likewise, on May 12, 2016, in his Order granting preliminary approval of the  
16 settlement in *In Re Whirlpool Corporation Front Loading Washer Products Liability Litigation*,  
17 MDL No. 2001 (N.D. Ohio), The Honorable Christopher A. Boyko ruled:

18 The Court, having reviewed the proposed Summary Notices, the  
19 proposed FAQ, the proposed Publication Notice, the proposed Claim  
20 Form, and the proposed plan for distributing and disseminating each  
21 of them, finds and concludes that the proposed plan for distributing  
22 and disseminating each of them will provide the best notice  
23 practicable under the circumstances and satisfies all requirements of  
24 federal and state laws and due process.

25 (c) In *In Re LG Front Load Washing Machine Class Action Litigation*, Civil Action  
26 No. 08-51 (MCA) (LDW) (D.N.J.), the Honorable Madeline Cox Arleo ruled:

27 This Court further approves the proposed methods for giving notice  
28 of the Settlement to the Members of the Settlement Class, as reflected  
in the Settlement Agreement and the joint motion for preliminary  
approval. The Court has reviewed the notices attached as exhibits to  
the Settlement, the plan for distributing the Summary Notices to the  
Settlement Class, and the plan for the Publication Notice's  
publication in print periodicals and on the internet, and finds that the  
Members of the Settlement Class will receive the best notice  
practicable under the circumstances. The Court specifically  
approves the Parties' proposal to use reasonable diligence to identify  
potential class members and an associated mailing and/or email

1 address in the Company's records, and their proposal to direct the  
2 ICA to use this information to send absent class members notice both  
3 via first class mail and email. The Court further approves the plan for  
4 the Publication Notice's publication in two national print magazines  
5 and on the internet. The Court also approves payment of notice costs  
6 as provided in the Settlement. The Court finds that these procedures,  
7 carried out with reasonable diligence, will constitute the best notice  
8 practicable under the circumstances and will satisfy due process.

7 7. By way of background, Angeion is an experienced class action notice and claims  
8 administration company formed by a team of executives that have had extensive tenures at five  
9 other nationally recognized claims administration companies. Collectively, the management team  
10 at Angeion has overseen more than 2,000 class action settlements and distributed over \$10 billion  
11 to class members. The executive profiles as well as the company overview are available at  
12 [http://www.angeiongroup.com/meet\\_the\\_team.htm](http://www.angeiongroup.com/meet_the_team.htm).

13 8. This declaration will describe the notice program that Angeion has proposed to use in this  
14 Litigation, including certain considerations that informed the development of the notice program,  
15 and why it will provide due process of law to the Settlement Class.

### 16 **OVERVIEW OF THE NOTICE PROGRAM**

17 9. The proposed notice program was designed to reach the greatest practicable number of  
18 Class Members. The notice program utilizes a combination of direct notice via U.S. mail and email  
19 (where both are available) coupled with a robust paid media campaign, featuring state-of-the-art  
20 targeted internet banner advertisements, social media, and print publication in national industry  
21 magazines, and newspapers.

22 10. Direct mail notice and email notice, where available, will be the principal methods of notice,  
23 providing Class Members with an opportunity to read, review, and understand their rights in this  
24 litigation. Additionally, to supplement the direct notice campaign, Angeion recommends a paid  
25 media program consisting of national newspapers, consumer and trade magazines, digital banner  
26 advertisement and social media.  
27  
28

11. The digital portion of the notice program is designed to deliver an approximate 70% reach with an average frequency of 3.00 times. In practice, this means that 70% of our target audience is likely to see a digital advertisement concerning the Settlement an average of 3.00 times each. The 70% reach is separate and apart from the direct notice, print media notice and social media efforts described in greater detail below.

12. In addition, Angeion has been informed that FCA will establish a dedicated website and toll-free line for this Settlement, both of which are difficult to measure in terms of reach percentage but will nonetheless aid in informing the class of their rights and responsibilities under the Settlement.

13. The Federal Judicial Center states that a publication notice plan that reaches 70% of class members is one that reaches a “high percentage” and is within the “norm”. Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, “Managing Class Action Litigation: A Pocket Guide for Judges”, at 27 (3d Ed. 2010). Here, the direct notice effort is likely to reach most Class Members at least once, with a robust publication plan acting as a strong and effective supplement to reach and remind Class Members of their rights in this litigation.

14. For the reasons described in greater detail below, it is my opinion that the notice program here is the best notice that is practicable under the circumstances and fully comports with due process and Rule 23 of the Federal Rules of Civil Procedure.

#### **CLASS DEFINITION**

15. The *Consumer and Reseller Dealership Class Action Settlement Agreement and Release* (“Settlement Agreement”) defines the “Class” as a nationwide class, including Puerto Rico, of all Persons (this includes individuals who are United States citizens, residents, or United States military, or diplomatic personnel that are living or stationed overseas, as well as entities) who (1) on January 12, 2017 owned or leased a Ram 1500 or Jeep Grand Cherokee 3.0-liter diesel vehicle in the United States or its territories (an “Eligible Vehicle”) or who (2) between January 12, 2017 and the Claim Submission Deadline for Eligible Owners and Eligible Lessees become the owner or lessee of an Eligible Vehicle in the United States or its territories; or who (3) own or lease an

1 Eligible Vehicle in the United States or its territories at the time of participation in the Repair  
2 Program. The Class includes automobile dealers who are not Authorized Dealers and who  
3 otherwise meet the definition of the Class.

4 **DIRECT NOTICE**

5 16. Angeion has been advised by counsel that a comprehensive list of potential class members  
6 will be provided, which will include former and current customer names and addresses, and in some  
7 cases, customer email address. The direct notice effort will consist of mailing postcard notices by  
8 U.S. first-class mail, postage prepaid to all readily identifiable Class Members in the records  
9 maintained by and/or provided by FCA. Mailing a postcard ensures that it will not be accidentally  
10 discarded without opening it. In addition, the postcard will bear the Court's seal, which lends it  
11 authenticity. In accordance with this District's Class Action Settlement Guidance, the postcard  
12 advises Class members to check the settlement website, which will be updated periodically.

13 17. Angeion has been informed that the estimated number of affected vehicles is 99,986 and  
14 that FCA anticipates being able to provide records for the vast majority of current owners and  
15 lessees, as well as most former owners and lessees. The exact totals will be reported to the Court in  
16 a supplemental declaration after Angeion has received the full data set provided by FCA.

17 18. Further, notice of the Settlement will be provided to Class Members upon request and the  
18 Long Form Notice will be available on the Settlement website as a PDF file.

19 19. In order to be certain that we are utilizing the most current mailing addresses for Class  
20 Members, prior to mailing, all addresses on the Class Member list will be processed through the  
21 United States Postal Service ("USPS") National Change of Address ("NCOA") database. This  
22 process provides updated address information for individuals and businesses who have moved in  
23 the last four years and who filed a change of address card with the USPS.

24 20. Similarly, in an effort to deliver postcard notices to the intended Class Member recipients,  
25 the notice program provides for the following: (1) postcard notices that are returned as  
26 undeliverable by the USPS and have a forwarding address will be re-mailed to that forwarding  
27 address; (2) postcard notices that are returned as undeliverable by the USPS without a forwarding  
28

1 address will be subject to address verification searches (“skip tracing”), utilizing a wide variety of  
2 data sources, including public records, real estate records, electronic directory assistance listings,  
3 etc. to locate updated addresses. Postcard notices will then be re-mailed to updated addresses  
4 located through skip tracing.

5 21. The direct mail effort will be supplemented by sending notice to all Class Members that  
6 have an email address in the records provided by FCA. It is important to note that the email effort  
7 will be in addition to, not in lieu of, the mailed notice efforts described herein.

8 22. Below I have outlined some of Angeion’s practices to increase deliverability and readability  
9 of email notice. Specifically, Angeion will employ the following best practices regarding the email  
10 notice.

11 23. As an initial matter, Angeion designs the email notice to avoid common “red flags” that  
12 might otherwise cause the recipient’s spam filter to block the email notice or identify it as spam.  
13 For example, Angeion will not include the long form Notice of Settlement as an attachment to the  
14 email notice because attachments are often interpreted by various Internet Service Providers  
15 (“ISP”) as spam. Rather, in accordance with industry best practices, Angeion will include electronic  
16 links to all operative documents so that recipients can easily access this information.

17 24. Angeion also accounts for the reality that some emails will inevitably be blocked during the  
18 initial delivery attempt. Therefore, after the initial noticing campaign is complete, Angeion, after  
19 an approximate 12-24-hour rest period, which allows any temporary block at the ISP level to expire,  
20 will direct a second round of email notice to any email addresses that were previously blocked. In  
21 Angeion’s experience, this minimizes the number of emails that may have erroneously been  
22 blocked by sensitive servers.

23 25. To further reinforce awareness of the Settlement, a notice of reminder (“Reminder Notice”) will be sent to reasonably identifiable Class Members that have not submitted a claim, opted out of  
24 the Class Action Settlement, or missed an applicable Claim Submission Deadline. The Reminder  
25 Notice shall inform such Class Members of the deadlines to file a claim in order to receive benefits  
26 pursuant to this Class Action and shall direct those Class Members to the Settlement Website. The  
27  
28

Reminder Notices will be sent via USPS first-class mail, postage prepaid, or by email, and will be sent on two separate occasions: (1) the first Reminder Notice will be sent at least 180 days prior to the end of the Settlement Benefit Period; and (2) the second Reminder Notice will be sent at least 120 days prior to the end of the Settlement Benefit Period.

### **MEDIA NOTICE TARGET AUDIENCE**

26. To supplement the comprehensive direct notice efforts and effectuate notice to absentee Class Members, the notice program also contemplates and includes a robust paid media campaign. The definition of the Class and list of Eligible Vehicles (as defined in the Settlement Agreement) were used as a starting point to design the media portion of the notice program.

27. Specifically, the Settlement Agreement defines an Eligible Vehicle as Model Year 2014 through 2016 Ram 1500 and Jeep Grand Cherokee vehicles equipped with 3.0-liter V6 diesel engines that (1) are covered, or purported to be covered, by the EPA Test Groups in the table immediately below this paragraph; and (2) have not been modified pursuant to an Approved Emissions Modification. Eligible Vehicle excludes (i) any vehicle that was never sold in the United States or its territories and also excludes (ii) any vehicle that is not Registered in the United States or its Territories as of the date the Approved Emissions Modification is performed, unless the vehicle is owned or leased by individuals who are United States military or diplomatic personnel that are living or stationed overseas. A vehicle must be Operable to be considered an Eligible Vehicle.

### **Eligible Vehicles**

<b>Model Year</b>	<b>EPA Test Group(s)</b>	<b>Vehicle Make and Model(s)</b>
2014	ECRXT03.05PV	Ram 1500 EcoDiesel
2014	ECRXT03.05PV	Jeep Grand Cherokee EcoDiesel
2015	FCRXT03.05PV	Ram 1500 EcoDiesel
2015	FCRXT03.05PV	Jeep Grand Cherokee EcoDiesel
2016	GCRXT03.05PV	Ram 1500 EcoDiesel
2016	GCRXT03.05PV	Jeep Grand Cherokee EcoDiesel



28. In light of the above information, data from 2018 comSCORE//GfK MRI Media + Fusion was used to formulate the following target definition to profile Class Members:

- Domestic Vehicles Make/Model Most Recent Purchase/Lease - Jeep [Jeep Grand Cherokee/Laredo] or
- Make/Model of New Car/Truck If Deciding Today-Ram [Ram Pickup] and
- I am willing to pay more for a product that is environmentally safe [Any Agree]

29. Based on the target definition, the potential Target Audience size is estimated to be 1,026,000. It is important to note that the Target Audience is intentionally overinclusive, based on objective syndicated data, and if were taken as standalone effort, would allow the Parties to report the reach and frequency to the Court with the confidence that the reach within the target audience and the number of exposure opportunities, complies with Due Process and exceeds the Federal Judicial Center's threshold as to reasonableness in notification programs.

30. As it relates to the Target Audience, understanding the socio-economic characteristics, interests and practices of a target group aids in the proper selection of media to reach that target. Here, the Target Audience has the following characteristics:

- Adults aged 25-54, with an average age of 45
- 51.56% are married
- 48.35% have earned a degree
- 42.98% live in households with total income above \$75K
- 58.87% are employed, with 51.95% working full time
- 57.12% are female

31. To identify the best vehicles to deliver messaging to the Target Audience, traditional media quintiles were reviewed, which measure the degree to which an audience uses a particular form of media relative to the general population. Here, objective syndicated data demonstrate that members of the target audience are "heavy" internet users, using the internet an average of 19

1 hours per week. Likewise, members of the Target Audience read an average of 4 newspapers  
2 issues per month and read 6 magazines per month.

3 32. Given the strength of our target audience's internet use as well as their verified magazine  
4 and newspaper use, Angeion recommends utilizing print publication combined with a robust  
5 internet advertising campaign to supplement the direct notice campaign.

6 **ONLINE NOTICE**

7 33. Angeion utilizes advanced targeting, machine learning, and a known and verifiable target  
8 audience profile, to ensure that members of the target audience are reached online. Through this  
9 "programmatic" approach, Angeion's focus will be on effectively reaching the prototypical  
10 absentee Class Member.

11 34. Specifically, multiple targeting layers will be implemented to help ensure delivery to the  
12 most appropriate users, inclusive of search targeting, category contextual targeting, keyword  
13 contextual targeting, and site retargeting. The banner advertisements will run on desktop and  
14 mobile devices to reach the most qualified audience on the websites where Class Members are  
15 likely to surf, shop and browse. Search terms will be relevant to Chrysler, Ram and Jeep.  
16 Moreover, Angeion will target users who are currently browsing or have recently browsed content  
17 in contextual categories such as 'environmentally friendly' to help qualify impressions to ensure  
18 messaging is served to the most relevant audience. Additionally, where available, purchase data  
19 will be utilized to further qualify the audience.

20 35. Angeion also employs Lotame, a demand management platform ("DMP"), as well as  
21 Integral Ad Science ("IAS"), an online ad verification and security provider, to provide a greater  
22 quality of service to ad performance.

23 36. Lotame allows Angeion to learn more about the online audiences that are being reached.  
24 From this data, demographic profiles can be refined and leveraged for changes in targeting  
25 strategies to increase the overall performance of the digital campaign.

26 37. Angeion also utilizes Integral Ad Science ("IAS"), the leading ad verification company to  
27 recognize and foil fraudulent internet activity. IAS has received the Media Rating Council "MRC"  
28

1 accreditation for Sophisticated Invalid Traffic (“SIVT”) detection for desktop and mobile web  
2 traffic, which adds a critical level of safety to the notice program.

3 38. The internet banner notice portion of the notice program will be implemented using a 4-week  
4 desktop and mobile campaign, utilizing standard IAB sizes (160x600, 300x250, 728x90, 300x600,  
5 320x50 and 300x50). A 3x frequency cap will be imposed to maximize reach. The banner notice  
6 portion of the notice program is designed to result in serving approximately 2,155,000 impressions.

7 39. Further, the online portion of the notice program incorporates a custom Facebook digital  
8 campaign that specifically targets users who meet the demographic and/or psychographic profile  
9 of a typical Class Member. This portion of the notice campaign will run concurrently with the  
10 internet banner ad campaign described above.

11 40. Angeion will also cause the settlement to be promoted on Twitter. Our methodology  
12 includes an “active listening” component wherein we monitor Twitter traffic for discussion of the  
13 settlement, and actively provide notice, and/or answers to frequently asked question via Twitter as  
14 appropriate. This service is not measurable in terms of reach and frequency but provides an  
15 invaluable service to those class members seeking information about the settlement via Twitter.

### 16 **PUBLICATION NOTICE**

17 41. In addition to the internet banner notice campaign described above, the notice program  
18 utilizes print publication notice in consumer-facing and industry publications as well as national  
19 newspapers to reach potential Class Members.

20 42. To identify the best print vehicle for delivering notice of the Settlement to the target  
21 audience, SRDS was used to determine the best newspapers and trade publications. *New York Times*  
22 and *USA Today* were chosen as the best titles for this notice program due their national footprint.  
23 One ¼ page B&W insertion is recommended in each title and will be distributed nationwide.

24 Publication	25 Circulation
26 New York Times	972,000
27 USA Today	250,000

43. In addition, a ½ page B&W insertion in the trade publications *Motor* and *Automotive News* will be included to reach consumers and professionals in the automotive industry.

Publication	Circulation
Motor	130,000
Automotive News	57,458

### **CLAIMS STIMULATION NOTICING PACKAGE**

44. In addition to the above notice efforts, Angeion will also create and implement a Claims Stimulation Noticing Package consisting of digital, social and print publication in order to maximize claim filing rates. The Claims Stimulation Noticing will use simplified messaging specifically designed to drive Class Members to the Settlement Website and ultimately make a claim. Angeion will provide a supplemental declaration to provide the Court with the details and effective implementation of the Claims Stimulation Noticing.

### **RESPONSE MECHANISMS**

45. FCA will establish and maintain a website at [www.EcoDieselSettlement.com](http://www.EcoDieselSettlement.com) to enable Class Members to obtain up-to-date information about the Settlement, including the Long Form Notice and Settlement Agreement.

46. FCA will establish a telephone call center to address Class Member inquiries.

47. Angeion will establish a post office box to receive any Class Member correspondence.

### **REACH AND FREQUENCY**

48. While the gravamen of this notice program is the comprehensive direct notice campaign, this declaration provides the reach and frequency evidence which courts systematically rely upon in reviewing class action notice programs for adequacy. It further provides the objective syndicated data source, from which the percentages are derived. The reach percentage and the number of exposure opportunities, meets or exceed the guidelines as set forth in the Federal Judicial Center's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*.

1 49. Specifically, in addition to providing direct notice to nearly every class member via U.S.  
2 Postal mail or email, and in some cases both, the media notice program is designed to deliver an  
3 approximate 70% reach with an average frequency of 3.00 times. This reach percentage is not  
4 inclusive of the direct notice efforts described herein, nor does it include the print media, the  
5 Settlement website and call center, as those are not readily calculable in the reach percentage but  
6 will nonetheless substantially aid in informing the Class Members of their rights and options under  
7 the Settlement.

8 **PLAIN LANGUAGE NOTICE DESIGN**

9 50. The Settlement notices are designed to be “noticed,” reviewed, and—by presenting the  
10 information in plain language—understood, by Settlement Class Members. The design of the  
11 Notices follows principles embodied in the Federal Judicial Center’s illustrative “model” notices  
12 posted at [www.fjc.gov](http://www.fjc.gov). The notice forms contain plain-language summaries of key information  
13 about Settlement Class members’ rights and options. Consistent with normal practice, prior to being  
14 delivered and published, all notice documents will undergo a final edit for accuracy. Moreover,  
15 the use of pictographs in the notice forms themselves provide a simplified class member experience  
16 that may lead to a greater level of understanding than is typical in other similar notice programs.

17 51. Rule 23(c)(2) of the Federal Rules of Civil Procedure requires class action notices to be  
18 written in “plain, easily understood language.” Angeion maintains a strong commitment to adhering  
19 to this requirement, and it is my opinion that the notice forms here fully satisfy this requirement.

20 52. My colleagues and I have had the opportunity to review and edit the notice forms for this  
21 case. In my opinion, all the forms of notice are noticeable, clear, and concise, and are written in  
22 plain, easily understood language. The notice forms effectively communicate key information  
23 about the Settlement and are designed to alert the reader that the Notice is an important document  
24 and that the content may affect them.

**ESTIMATED COSTS OF NOTICE AND ADMINISTRATION**

53. The estimated cost of notice and administration is \$1,500,000, which is a reasonable sum where the direct notice campaign contemplates mailed notice (with associated postage costs) to approximately one hundred thousand Class Members, undeliverable mailings will be processed and re-mailed, the publication notice campaign has been designed to target 70% of the class, claims will be audited, payments issued to Class Members, and includes a robust claims stimulation noticing package.

**CONCLUSION**

54. In my opinion, the Notice Plan will provide full and proper notice to Settlement Class Members before any claims, opt-out and objection deadlines.

55. It is my opinion that the Notice Program provides Class Members Due Process of Law and is the best notice that is practicable under the circumstances and is fully compliant with Rule 23 of the Federal Rules of Civil Procedure.

56. After effectuating the notice plan, Angeion will provide a final report verifying its effective implementation.

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

Dated: January 9, 2019

  
STEVEN WEISBROT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

This Document Relates to:  
ALL ACTIONS

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

**DECLARATION OF EDWARD M.  
STOCKTON IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT AND DIRECTION OF  
NOTICE UNDER FED. R. CIV. P. 23(e)**

The Honorable Edward M. Chen



## I. INTRODUCTION

1. My name is Edward M. Stockton. I am the Vice President and Director of Economics Services of The Fontana Group, Inc. (“Fontana”), a consulting firm located at 3509 North Campbell Avenue, Tucson, Arizona 85719. I also serve on the Board of Directors of Fontana and its parent company, Mathtech, Inc. Fontana provides economic consulting services and expert evidence regarding the retail motor vehicle industry and other industries throughout the United States and Canada.

2. Plaintiffs’ counsel engaged Fontana in this matter to evaluate the economic effects upon consumers of certain Fiat Chrysler Automobiles (“FCA”) Jeep Grand Cherokee and Ram 1500 vehicles. The “Subject Vehicles” at issue are those equipped with the “EcoDiesel” engine option.

**Table 1** below identifies these Subject Vehicles.

**Table 1: Subject Vehicles**

Brand/Model	Year(s)	Engine Type
Jeep Grand Cherokee	2014	EcoDiesel
Jeep Grand Cherokee	2015	EcoDiesel
Jeep Grand Cherokee	2016	EcoDiesel
Dodge Ram 1500	2014	EcoDiesel
Dodge Ram 1500	2015	EcoDiesel
Dodge Ram 1500	2016	EcoDiesel

3. Plaintiffs and Defendants<sup>1</sup> have reached a resolution of the claims in this matter. Plaintiffs inform me that the resolution is a compromise position that is not the product of agreement over allegations in this matter. In conducting this assignment, I consider the settlement terms in the context of Plaintiffs’ allegations in this matter. This declaration describes my analysis and findings with respect to this assignment.

4. I have personal knowledge of the subject matter referenced in this document. If called upon, I will testify to the contents of this Declaration.

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<sup>1</sup> The Defendants include FCA and Bosch (Robert Bosch LLC and Robert Bosch GmbH).

## II. QUALIFICATIONS

5. My experience and that of Fontana are relevant to the subject matter of these Actions. My qualifications and experience are described in my *curriculum vitae*, which is attached as **Tab 1** to this Declaration. A list of my testimony within the last four years appears as **Tab 2**.

6. I served as the economic expert for the Plaintiff Steering Committee in the Volkswagen “Clean Diesel” matter in the United States,<sup>2</sup> which concerns both 2.0-liter and 3.0-liter vehicles. I also assisted the Consortium of Class Counsel in the analysis, negotiation and eventual settlement of claims related to 2.0-liter and 3.0-liter vehicles in the Volkswagen “Clean Diesel” matters in Canada. Fontana has extensive other experience analyzing many other aspects of the retail automotive industry, including the economic impact on consumers from various product defects and irregularities. For example, Fontana was the primary economic expert for the consumer classes in the Toyota Motor Corp. “Unintended Acceleration” matter in the United States and Canada,<sup>3</sup> which involved extensive analysis of class-wide economic damages to consumers who had purchased certain subject Toyota vehicles. I served in a central role in those matters, developing economic loss models and, where applicable, applying the settlement proceeds to settlement class members.

7. I have studied and opined upon economic damage matters within other industries. One example is the Wells Fargo “Unauthorized Accounts” matter, in which my colleague, Dr. Sanford Weisberg, and I developed a method by which to measure economic damages and distribute settlement proceeds to consumers who experienced inflated borrowing costs as a result of allegedly unauthorized activity. The United States District Court, Northern District of California cited to this model in granting class action settlement approval.<sup>4</sup>

<sup>2</sup> United States District Court, Northern District of California, San Francisco Division, MDL No. 2672 CRB (JSC).

<sup>3</sup> United States District Court, Central District of California, Southern Division, Case No. 8:10ML2151 JVS (FMOx); Ontario Superior Court of Justice Court File Nos. CV-10-396029-00CP, 10-47583 and CV-10-401396-00CP; Quebec Superior Court Province of Quebec, District of Montreal, No. 500-06-000490-090; In the Queen’s Bench, Judicial Center of Regina, QB No. 231 of 2010; Supreme Court of Nova Scotia, No. 325-0116.

<sup>4</sup> United States District Court, Northern District of California, San Francisco Division, Case No. 15-cv-02159-VC.

### 1      **III.      ASSIGNMENT**

2      8.      Plaintiffs’ counsel requested that Fontana conduct analysis and, if appropriate, form  
 3      opinions on the questions of a) if, assuming Plaintiffs’ allegations to be true in part or in whole,  
 4      consumers of the Subject Vehicles suffered economic harm, b) whether methods exist to assess  
 5      this prospective harm, c) the degree to which the benefits provided by the proposed Class Action  
 6      Settlement reasonably compensate consumers in relation to potential economic harm suffered. As  
 7      described in the body of this Declaration, I find with a reasonable degree of professional certainty  
 8      that a) if FCA, indeed, sold the Subject Vehicles with an emissions defects present at the time of  
 9      sale, consumers suffered economic harm therefrom, b) overpayment at the time of purchase or  
 10      acquisition is a reasonable method to assess this prospective harm, and c) the proposed Class  
 11      Action Settlement reasonably and materially compensates consumers in a manner that is  
 12      conceptually consistent with remedy of the alleged harm.

### 13      **IV.      ECONOMIC HARM TO CONSUMERS**

#### 14      **A)      Nature of Economic Harm Suffered**

15      9.      Plaintiffs allege that FCA marketed and sold the Subject Vehicles as environmentally  
 16      friendly, using the “ECO” moniker, but equipped these vehicles with software or “defeat devices”  
 17      that altered engine performance during emissions testing. The defeat devices are alleged to have  
 18      concealed the fact that, under normal operating conditions, the Subject Vehicles released  
 19      emissions of nitrogen oxides in excess of the standards to which the vehicles were certified.  
 20      Plaintiffs also allege that the Subject Vehicles would not have been available for sale and would  
 21      not have been sold or leased to consumers had the true characteristics of the vehicles been known  
 22      to consumers and/or disclosed to them.

23      10.      Assuming these allegations to be true, consumers who purchased Subject Vehicles did so  
 24      under conditions that were inherently different from those for which they bargained. Instead,  
 25      consumers overpaid for the Subject Vehicles because the vehicles lacked certain attributes that  
 26      FCA marketed as being present in the vehicles, such as emissions performance and regulatory  
 27      emissions compliance. The vehicles also included negative attributes for which consumers did not  
 28      bargain, including but not limited to an alleged defect that caused the release of excess and

1 potentially harmful amounts of NOx emissions, and a device that was alleged to elude detection  
2 by emissions testing equipment (“defeat device”).

3 11. Plaintiffs inform me that the parties agree that FCA will execute a repair to the emissions  
4 systems of the Subject Vehicles. If FCA is able to provide a competent repair that creates  
5 emissions performance in line with original representations, it is reasonable to assume that the  
6 vehicles will be restored to their original represented characteristics, thereby terminating most or  
7 all of the ongoing economic harm from initial overpayment. This declaration analyzes economic  
8 impact from assumed initial overpayment but does not assess technical aspects of the proposed  
9 emissions repair.

#### 10 **i) Overpayment Effects**

11 12. Assuming Plaintiffs’ allegations to be true, all consumers who purchase new Subject  
12 Vehicles overpay at the time of purchase, which increases the market prices of used Subject  
13 Vehicle at the time of purchase. The effects on consumers from the overpayment are not limited  
14 to price at the time of purchase. Residual and indirect overpayment effects, such as higher interest  
15 costs or registration fees, continue.

16 13. It is appropriate to assess overpayment damages at the time of purchase. This means  
17 assessing the transaction on an *ex ante* basis. While after-the-fact or *ex post* data may assist in  
18 evaluating the initial terms of a transaction, post-purchase findings generally are not  
19 independently sufficient to assess damages. Rather, these data may inform an analysis of how  
20 consumers would have responded with certain new information incorporated.<sup>5</sup>

21 14. The following example illustrates this point. Imagine that a hypothetical life insurance  
22 carrier sells term life policies that are not underwritten. 10,000 consumers purchase these  
23 hypothetical policies and pay an average of \$5,000 in premiums, for a total of \$50 million in  
24 premium payments. The mortality experience during the terms of the policies results in scheduled  
25 payouts of \$35 million. However, the policies are not backed and do not pay.

26 <sup>5</sup> Consumer behavior data acquired post-purchase or post-revelation should not be equated with  
27 full disclosure or knowledge of an initial product defect. Post-revelation data may reflect  
28 differences in market conditions between the initial sale time period and the time period observed,  
expectation of a remedy, uneven awareness or perception of a defect, or unrelated constraints that  
affect market demand.

15. From an *ex post* perspective, one may conclude that beneficiaries received \$35 million less than they would have had the policies been underwritten. Since other policy holders did not die during their terms, their outcomes were the same with and without underwritten policies. Thus, the unpaid \$35 million would be the first measure of harm. However, this figure is conceptually incorrect.

16. Had consumers known at the time of purchase that the policies would not pay in the event of death, their willingness to pay for the policies would have been nil. Thus, consumers overpaid by the entire \$50 million in premium payments, since they exchanged the premium payments for insurance instruments that they would have valued at \$0 at the time of purchase had the true facts been known to them. Since consumers make purchases on forward-looking bases, it is appropriate to assess overpayment from the point of purchase, evaluating the manner in which the transaction would have changed had the true characteristics of the transaction been known.

17. The life insurance example provides a conceptually helpful, but extreme, example of overpayment effects. However, it is possible to modify the hypothetical circumstances to illustrate more practically applicable concept. What if, instead of valueless policies, the insurer partially backed their policies initially but eventually backed them in full? Thus, instead of policies that would pay 100 percent of their face values over ten-year terms, they would pay 80 percent over the first two years and fully pay over the last eight years of the term.

18. The latter life insurance example is more representative of a matter in which consumers overpay for a partially defective product, or a defective component, that the seller eventually remedies. The key is to establish a framework to assess economic damages that occur under such a circumstance. The following section of the declaration sets forth such a framework.

**Consumer Decision Theory:**

19. Consumers decide which goods and services to purchase based upon their consideration of both the actual and expected attributes of those items and how those compare to the actual and expected attributes of competing items. According to classical decision theory, the consumer's objective is to maximize the expected value of the outcome of the decision-making process. This means that consumers rank-order potential outcomes and attempt to acquire or reach outcomes

1 that offer more perceived value than alternatives. This is not to say that consumers have prescient  
2 knowledge about the future performance of their assets; rather, they choose options perceived at  
3 the time of purchase to be preferable to alternatives assuming discrete choices are available.

4 20. Consumers' process for maximizing expected benefits from transactions involves valuing  
5 positive expected utility components of a transaction and discounting negative expected utility  
6 components of the transaction. For durable goods, such as motor vehicles, consumers assess the  
7 perceived attributes and attractiveness at the time of purchase but also consider the risk and  
8 uncertainty of that expected performance over time. For example, a vehicle with questionable  
9 expected reliability and resale value presents less favorable prospects that the vehicle will  
10 perform in an acceptable state in the future. A vehicle with high expected reliability and resale  
11 value presents more favorable prospects that the vehicle will perform acceptably in the future.  
12 Consumers balance the attributes of the vehicles and the expectation that those attributes will  
13 continue to perform in the future when evaluating transactions.

14 21. Consumers "normalize," or balance, these positive and negative expected utilities across  
15 competing goods and services using a well-known mechanism—price. Consumers are generally  
16 risk-averse, meaning that they tend to weigh the consequences of potentially negative outcomes,  
17 such as emissions non-compliance, more heavily than they weigh positive outcomes. The more  
18 negative and severe the possible consequence, the higher the discount necessary to accept the  
19 product.

20 22. In seeking to maximize their expected net benefits from transactions, consumers make  
21 comparative assessments, which could be detailed and complete or more instinctive. Consumers  
22 consider the entire suite or bundle of differing product qualities of competing purchase options  
23 by, for example, observing the product, reviewing informational materials, and forming  
24 assessments based upon their perception of the brand. These efforts by consumers, either on a  
25 sophisticated or unsophisticated basis, inform the judgments about the expected outcomes  
26 associated with purchasing certain products.

27 23. These expected outcomes, described in Utility Functions or Expected Utility Functions,<sup>6</sup>

28 <sup>6</sup> See Von Neumann/Morgenstern Utility Theorem or, generally, Expected Utility Functions.

1 assess potential purchases or leases by taking into account the expected lifetime of use or  
2 ownership of a product, the probabilities of positive and negative outcomes, the timing of the  
3 probability of positive and negative outcomes, and the magnitude and direction of those potential  
4 outcomes.

5 24. No matter how detailed a consumer's assessment of product qualities, analyzing the  
6 economic impact on the consumer's consideration of an undisclosed design defect that existed  
7 from the time of original acquisition— such as the emissions defect alleged in this matter – need  
8 not be overly complex. It is necessary only to evaluate how the attractiveness of the transaction  
9 changes when knowledge of a design defect is added to the vehicle characteristics after  
10 negotiations have completed.

11 25. In accordance with economic theory, concealing a design defect from consumers and  
12 potential consumers directly impairs the consumer's assessment of a potential transaction and  
13 leads to a different outcome (price and/or purchase probability) than what would have occurred  
14 had the defect been disclosed. This means that a vehicle with an unknown emissions defect is  
15 different from the vehicle that the consumer perceives it to be. Furthermore, if concealment of a  
16 defect occurs, it interferes with and short-circuits the consumer's process for assessing the  
17 expected utility of a transaction. The consumer would reach a different perception of utility and  
18 value a transaction differently, depending upon whether a seller revealed or concealed the defect.

19 **ii) Analysis of Overpayment Effects**

20 26. Under plaintiffs' allegations, overpayment at the time of purchase occurred because  
21 vehicles lacked characteristics that FCA represented to be part of the transaction (e.g.,  
22 environmentally clean operation and emissions compliance) but did include characteristics that  
23 were not represented to be components of the transaction (e.g., excess emissions, defeat device).  
24 Consumers who experience these direct overpayment effects will typically also incur indirect  
25 overpayment effects such as increased interest charges, increased taxes and registration fees, and  
26 possibly higher insurance premiums.

27 27. In cases in which a seller remedies an initial defect, the initial overpayment amount may  
28 not entirely represent economic damages to the consumer. Nor does a competent repair remedy

all economic damage suffered by the consumer. Rather, in a generalized case, economic damages that flow from an initial defect that the seller eventually remedies are a function of the initial overpayment increment and a schedule of the consumer's consumption of the good's value.

**Initial Overpayment:**

28. Buying or leasing a more expensive vehicle, all other things equal, results in higher direct ownership costs over the consumer's ownership life or lease term whether that overpayment occurs immediately or over time. In this case, consumers paid some additional amount for the EcoDiesel option, which I describe as the "diesel premium." I consider the diesel premium to be the starting point for the analysis of the relevant initial overpayment in this matter.

29. Parties have not agreed over either the amounts that consumers paid for the diesel premium or the degree to which the diesel premium directly relates to the engine component at issue in this matter. In addition, certain transaction data I reviewed indicate that consumers generally received some discount off of the list prices of the vehicles at the time of purchase, which supports an inference that some of that discount was applicable to the list price of the diesel premium. Furthermore, the package that included the diesel premium in at least some of the Subject Vehicles included other equipment upgrades along with the engine option. For the purposes of this declaration, I assume the relevant diesel premium to equal 90% of the MSRP of the entire EcoDiesel option cost associated with the Subject Vehicles. **Table 2** below identifies the typical amounts by model and model year.

**Table 2: Estimated Diesel Premium:**

Diesel Option Cost	2014	2015	2016
Grand Cherokee	\$4,050	\$4,050	\$4,050
Ram 1500	\$4,050	\$4,293	\$4,293

Note: Figures Assume 10% Discount off List or MSRP Option Cost, which is a conservative and conventional estimate.

30. Overpayment effects generally increase over time. The actual and/or perceived components that increase a vehicle's value depreciate over the life of that vehicle. For example, an upgraded transmission adds more value to a new truck than it does to a truck with 200,000 miles. In the case of a lease, the lessor receives back from the lessee at the end of the lease a



1 vehicle that has diminished in value by a greater amount than a similar, but less expensive  
2 vehicle—one without the premium component. Accordingly, a rational lessor charges the lessee  
3 for this increased depreciation by way of a higher lease payment. Conceptually, purchases and  
4 leases are not different from each other in this regard. Acquisition and sales prices in a purchase  
5 correspond to capitalization cost and residual value in a lease.

6 31. The chart in **Tab 3** illustrates the overpayment effect over a vehicle's life cycle. For the  
7 purpose of this declaration, one can assume that the two value schedules (lines) represent the  
8 Subject Vehicles with and without the diesel premium. Initially, the consumer pays more for the  
9 purportedly premium vehicle, which can be assumed to be the vehicle in its represented  
10 condition. The lower value line represents the vehicle in the condition actually delivered. Even  
11 absent market knowledge of the alleged defect or the presence of excess depreciation, the  
12 depreciation of the premium vehicle is higher in absolute terms than that of the alternate  
13 vehicle—the vehicle actually delivered. This diminishing difference between the values of the  
14 vehicle represented and vehicle actually delivered represents the ongoing and increasing  
15 overpayment experienced over time.

16 32. Since I have been asked to assume that FCA will execute a competent repair on the  
17 Subject Vehicles, the chart displays the assumption that the values of the premium and alternate  
18 vehicles intersect upon provision of an emissions repair restores the vehicles to the condition they  
19 would have been in but-for the alleged emission defect. This occurs because the vehicle value  
20 schedule associated with vehicle with an alleged emissions defect is assumed to terminate at the  
21 time of the repair, leaving only the value schedule associated with the vehicle in negotiated  
22 condition.

23 **Utility/Consumption Schedule:**

24 33. The nature of this settlement does not require individualized analysis of vehicle values.  
25 The MSRP values of the EcoDiesel option vary much less than the overall MSRP values of the  
26 Subject Vehicles. Furthermore, since the settlement does not contemplate vehicle buyback or  
27 quasi-rescission provisions, sophisticated analysis of retail replacement costs or individualized  
28 depreciation are not necessary.

34. For the purpose of analyzing economic effects on consumers and settlement payments, I assume a linear 8-year depreciation schedule. This equates to 12.5% of original vehicle value per year. Since the oldest Subject Vehicles are model year 2014, estimated vehicle values based on the 12.5% annual linear depreciation schedule are in line with overall depreciation schedules using industry sources such as NADA values or Kelley Blue Book values. Even though new vehicles generally experience rapid depreciation, followed by periods of accelerating and diminishing depreciation that relate to mileage levels and warranty status, the Subject Vehicles will be between approximately three and five years old at the time of the availability of the proposed emissions repair. This vehicle age range lies between the periods of high initial depreciation and the latter stages of a vehicle life cycle in which depreciation applies to much lower vehicle values.

#### V. ESTIMATING POTENTIAL DIRECT ECONOMIC HARM TO BE COMPENSATED

35. The general formula applied to estimate overpayment damages is the following:

*Direct Overpayment: Initial Overpayment \* [Vehicle Value Consumed/Overall Vehicle Value]*

#### ECONOMIC HARM EXAMPLE:

Initial Overpayment: \$4,000

Vehicle Ownership: 3 Years

Economic Harm =  $\$4,000 * 3 * 0.125 = \$1,500$

36. The intuition of this calculation is as follows. For 3 years, or 37.5% of the vehicle's life, the consumer has not received the benefit of the \$4,000 diesel premium. Following the provision of the emissions repair, the vehicle is remedied to its represented condition with full would-be value following thereafter.

37. Owners of vehicles with only one claimant receive \$3,075 each under the settlement agreement. The \$3,075 represents at least 71.6% of the assumed diesel premium, which again, is a contested estimate. Even assuming a five-year ownership duration, this leaves over \$543 [ $\$3,075 - \$4,050 * 0.625 = \$543.75$ ] of remaining compensation for indirect overpayment effects. In most cases, monetary compensation to these owners exceeds direct overpayment effects under the

1 assumptions expressed herein by over \$900.

2 **Multiple Consumer Payment Eligibility:**

3 38. Some class vehicles changed hands after January 2017, which was the assumed revelation  
4 date of the alleged emissions defect. Certain prior lessees and owners who disposed of their  
5 vehicles after this time are eligible for payment, along with consumers who are still in possession  
6 of the vehicles. In these cases, the total amount of compensation per vehicle is higher than it is in  
7 the case of vehicles with single consumer compensation eligibility. The economic justification for  
8 this structure is as follows.

9 39. First, some settlement funds incentivize participation by current keyholders in the  
10 emissions repair. This is a reasoned provision, as it helps accomplish the class-wide goal of  
11 arresting the environmental harm allegedly caused by the vehicles, and it is rational to assume  
12 that some benefit flows to class members for overall emissions compliance. Additionally,  
13 “Keyholder” payments for consumers who are not the original purchasers or lessees compensate  
14 class members for participation in overpayment effects associated with their vehicles.  
15 Keyholders receive uniform payments of \$2,460, but if the former owner or lessee who possessed  
16 the vehicle as of 1/12/2017 does not make a claim, the Keyholder receives a uniform payment of  
17 \$3,075.

18 40. Eligible former owners and lessees also receive compensation under the settlement.  
19 Compensation is fixed at \$990 per claimant. This compensates claimants for overpayment effects  
20 experienced during their possession of the Subject Vehicles. While I do not have access to  
21 individual durations of ownership, I did analyze average acquisition and disposition dates for  
22 Subject Vehicles. In general, the relatively newer nature of the Subject Vehicles means that prior  
23 owners and lessees tended to have relatively short possession of the vehicles, which limited their  
24 exposure to overpayment effects. The higher aggregate overall ( $\$2,460 + \$990 = \$3,450$ ) payments  
25 that result for split-claimant vehicles has additional economic justification beyond the fix  
26 participation incentive. Many class vehicles that changed hands likely experienced some  
27 recondition as they transferred from the private and wholesale markets to the retail market. By  
28 way of example, a hypothetical vehicle traded in for \$28,000 may have been quality-checked,

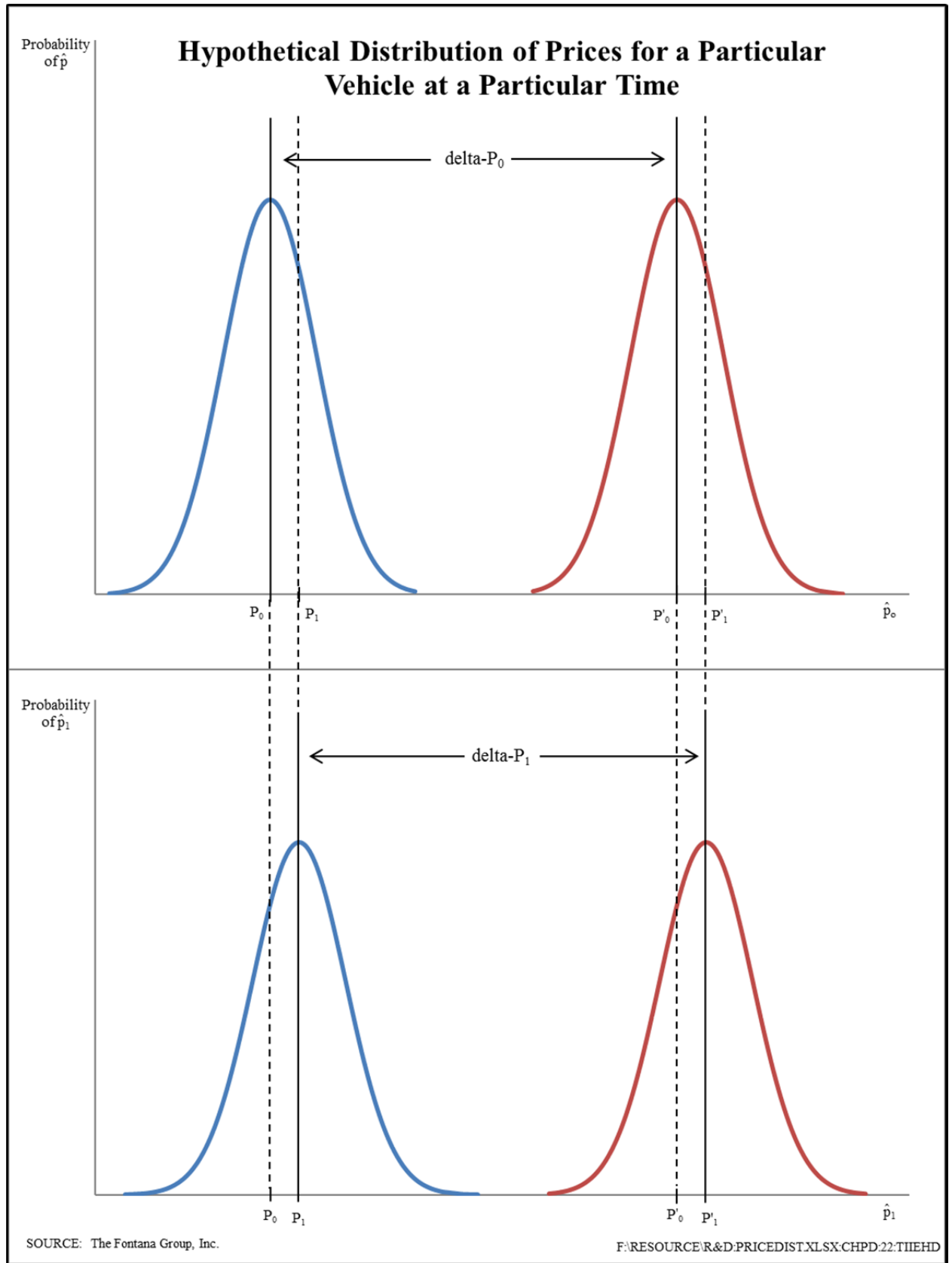
1 cosmetically improved, and supplemented with certain dealer protections for buyers, raising its  
2 value to \$32,000 for retail sale. Accordingly, re-sold vehicles, particularly newer ones, would  
3 generally experience more gross depreciation over time, which may result in higher aggregate  
4 overpayment effects. Total compensation to eligible former owners and lessees allows for the  
5 somewhat higher overall overpayment effects that likely occurred with some of the split-claimant  
6 vehicles.

7 **Settlement on a Class-Wide Basis:**

8 41. Diversity among the characteristics of class members does not impair the reasonable  
9 execution of a settlement on a class-wide basis. It is reasonable to assess the proposed Class  
10 Action Settlement for the degree to which an undisclosed alleged emissions defect caused  
11 economic harm, all other things equal, compared what would have occurred but-for the alleged  
12 defect. As shown below, under this framework, similarities of class members significantly  
13 outweigh differences.

14 42. Most light vehicles, like the subject vehicles, are highly differentiated products. In this  
15 case, “differentiated” conveys two meanings. The first is that they are literally *different* from each  
16 other. The second is that there is some distinction associated with the brand and product name  
17 that conveys a sense of value to customers beyond the observable physical characteristics of the  
18 product itself.

19 43. Both elements of differentiation are relevant here. Manufacturers communicate pricing  
20 levels through “MSRP.” Furthermore, they modify those prices to market conditions through  
21 public-facing adjustments, such as lease specials or “cash back” promotions. Manufacturers also  
22 adjust to market forces through modification of effective selling prices to dealerships, who are the  
23 direct customers for manufacturers’ products. Examples of effects on prices to dealerships could  
24 be “dealer cash” or other incentive programs. Although pricing is generally not fixed through the  
25 entire offering period of a new model, parties still make substantial commitments and decisions  
26 that are tethered to the reliability of market pricing levels, both for new vehicles and used  
27 vehicles.



**Consumer-driven Differences and Transactional Idiosyncrasies:**

44. Individual vehicle consumers vary from each other in manners that affect their transactions. However, these differences are not problematic, nor do they function as an impediment to evaluating or compensating damages on a class-wide basis. The example figures above show two hypothetical distributions of probabilities of purchase prices for the same vehicle, but one as purchased by a low negotiation buyer, and the other purchased by a high negotiation buyer. The hypothetical vehicle is subject to some assumed true discount or premium that exists market-wide between what a product actually costs and what it would cost but for the premium or discount. This discount or premium is represented by the increment, “delta-p”. The relative positions of the side-by-side curves represent the effects on transaction prices from the negotiating skill of the buyers. Since negotiating skill, compulsion, budget, price sensitivity, market, and seasonality would generally affect transaction both of a subject vehicle and of an alternative vehicle, delta-p remains the meaningful difference between the transactions, with or without consideration of individualized factors.


45. The same principle applies to the notion of compensating the class based on an alleged overpayment. Just as a market-wide premium meaningfully explains price differences for both high negotiation and low negotiation consumers, an alleged overpayment increment for the subject vehicles compared to alternative vehicles without defects informs the analysis of overpayment on a class-wide basis. The relevant measure is the degree to which overpayment for the Subject Vehicle prices occurred relative to comparable models without the alleged emissions defect. To the extent that different consumers negotiate more or less aggressively or scrutinize transactions more or less carefully, they would do so with the Subject Vehicles and the alternate vehicles as well. Differences in the negotiating skills or individualized preferences of class members does not frustrate the reasonable economic basis for the settlement, under an overpayment framework.

**VI. CONCLUSION**

46. Settlement benefits payable to Class Members under the Class Action Settlement exceed total economic harm to those consumers from direct overpayment effects and leave substantial

1 additional compensation that likely exceeds indirect overpayment effects as well. Considering  
2 settlement benefits at the vehicle level, rather than at the aggregate level, the Class Action  
3 Settlement would exceed economic harm suffered based on the economic overpayment model  
4 presented herein in nearly all cases, and reasonably relate to economic harm associated with the  
5 class vehicles. Specifically, proposed payments relate to an assumed overpayment level of 90%  
6 of the EcoDiesel MSRP amount and ownership over an 8-year value consumption schedule.  
7 Perceived diversity among class members does not impair the reasonableness of the proposed  
8 settlement. Finally, the monetary incentive to Keyholders to participate in the emissions repair  
9 provides some benefit on a class-wide basis that is reasonably considered, although not quantified  
10 in this declaration.

11 Executed on January 9, 2019

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13 Edward M. Stockton  
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**TAB 1**



## EDWARD M. STOCKTON

### EDUCATION

University of Arizona, Tucson, AZ

M.S., Agriculture and Resource Economics (Applied Econometrics), 2010.

Western Michigan University, Kalamazoo, MI

B.A., Economics, 1998

### POSITIONS

The Fontana Group, Inc., Tucson, Arizona

*Vice President Economics Services: 2012 - present*

*Director of Economics Services: 2011 - 2012*

*Case Manager: 2005 - 2011*

*Senior Analyst: 2000 - 2005*

*Analyst: 1998 - 1999*

Old Ina Corporation Tucson, AZ

*Supervisor, Analyst, Manager: 1995 - 1998*

### RESEARCH AND CONSULTING EXPERIENCE

Mr. Stockton manages the analysis of documents, data and markets in the retail automobile industry and other industries. He has provided consultation to automobile dealers and attorneys in numerous areas including:

- Retail automobile franchising, economics and marketing
- Allocation of new vehicles during shortages
- Franchise terminations
- Franchise additions and relocations
- Analysis of manufacturer customer satisfaction measurement programs
- Customer satisfaction measurement
- Sales and profitability forecasts
- Financial analysis
- Statistical and econometric analyses
- Consumer credit
- Economic theory

## REPRESENTATIVE CLIENT ASSIGNMENTS

*Association of Equipment Manufacturers, AGCO Corporation, CNH Industrial America LLC, Deere & Company, and Kubota Tractor Corporation, v. the Hon. Doug Burgum, Governor of the State of North Dakota, in His Official Capacity, and the Hon. Wayne Stenehjem, Attorney General of the State of North Dakota, in His Official Capacity, and North Dakota Implement Dealers Association, Intervenor-Defendant, Bismarck, ND, 2018-.*

Provided deposition testimony.

*Napleton's Arlington Heights Motors, Inc. f/k/a Napleton's Palatine Motors, Inc. d/b/a Napleton's Arlington Heights Chrysler Dodge Jeep RAM, an Illinois Corporation; et. al, v FCA US LLC, Chicago, IL, 2017-.*

Provided deposition testimony.

*Star Houston, Inc. d/b/a Star Motor Cars v. Volvo Cars of North America, LLC, Houston, TX, 2017-.*

Provided deposition and hearing testimony.

*Sioux City Truck Sales, Inc. v. Peterbilt Motors Company, Sioux City, IA, 2017-.*

Provided deposition and hearing testimony.

*Capitol Buick GMC, LLC v. General Motors LLC, Baltimore, MD, 2017-.*

Provided deposition and hearing testimony.

*Crown Chrysler Jeep, Inc. d/b/a Crown Kia v. Kia Motors America, Columbus, OH, 2017-.*

Provided deposition and hearing testimony.

*Folsom Chevrolet, Inc. dba Folsom Chevrolet v. General Motors, LLC, Folsom, CA, 2017-.*

Provided deposition and hearing testimony.

*Sunnyvale Automotive Inc., dba Sunnyvale Ford Lincoln v. Ford Motor Company, Sunnyvale, CA, 2017-.*

Provided deposition testimony.

*Omar Vargas, Robert Bertone, Michelle Harris, and Sharon Heberling, individually and on behalf of a class of similarly situated individuals v. Ford Motor Company, Los Angeles, CA, 2017-.*

*Charles Johnson, et al. individually and on behalf of all others similarly situated v. Ford Motor Company, Huntington, WV, 2017-.*

Provided deposition testimony.

*Shawn Panacci v. Volkswagen Aktiengesellschaft, Volkswagen Group Canada, Inc., Audi Aktiengesellschaft, VW Credit Canada, Inc. and Audi Canada*, Toronto, Ontario, Canada, 2017-.

*Rebecca Romeo and Joe Romeo v. Ford Motor Company and Ford Motor Company Canada, Limited*, Toronto, Ontario, Canada, 2017-.

Provided cross-examination testimony.

*Duncan McDonald v. Samsung Electronics Canada, Inc.* Toronto, Ontario, Canada, 2017-.

Provided cross-examination testimony.

*The Estate of Richard C. Poe, Richard C. Poe II v. Paul O Sergeant, Jr., et al.*, El Paso, TX, 2017-

Provided deposition testimony.

*Star Houston, Inc. d/b/a Star Motor Cars v. VCWH. LLC d/b/a Volvo Cars West Houston and Volvo Cars of North America, LLC*, Houston, TX, 2017-.

Provided deposition testimony.

*Option Consommateurs et Francois Grondin Personne Désignée C. Volkswagen Group Canada Inc. et al.* (2L), Montreal, Quebec, 2017-.

*Option Consommateurs et Francois Grondin Personne Désignée C. Volkswagen Group Canada Inc. et al.* (3L), Montreal, Quebec, 2017-.

*John M. McIntosh v. Takata Corporation, TK Holdings, Toyota Motor Corporation, Toyota Motor Manufacturing, Canada Inc., and Toyota Motor Manufacturing Indiana, Inc.*, Toronto, Ontario Canada, 2017-

*Rick A. Des-Rosiers and Stephen Kominar v. Takata Corporation, TK Holdings, Honda Motor Co., LTD, Honda of America Manufacturing, Inc., and Honda Canada*, Toronto, Ontario, Canada 2017-.

*Yogesh Kalra v. Mercedes-Benz Canada Inc., Daimler AG, Mercedes-Benz USA LLC and Mercedes-Benz Financial Services Canada Corporation*, Toronto, ON, Canada, 2017-.

Provided cross-examination (deposition) testimony.

*Lake Forest Sports Cars, LTD v. Aston Martin Lagonda of North America, Inc.*, Chicago, IL, 2017.

Provided deposition testimony.

*Shahriar Jabbari and Kaylee Heffelfinger on behalf of themselves and all others similarly situated v. Fargo Company and Wells Fargo Bank, N.A.* San Francisco, CA, 2016-.

*Matthew Robert Quenneville et al. v. Volkswagen Group Canada, Inc., Volkswagen Aktiengesellschaft, Volkswagen Group of America, Inc., Audi Canada, Audi Aktiengesellschaft, Audi of America, Inc., Inc., and VW Credit Canada, Inc. (2L), Ontario, Canada, 2016-.*

*Matthew Robert Quenneville et al. v. Volkswagen Group Canada, Inc., Volkswagen Aktiengesellschaft, Volkswagen Group of America, Inc., Audi Canada, Audi Aktiengesellschaft, Audi of America, Inc., Inc., and VW Credit Canada, Inc. (3L), Ontario, Canada, 2016-.*

*Fort Collins Nissan, Inc. d/b/a Tynan's Kia, v. Kia Motors America, Inc., Ft. Collins, CO, 2015-.*  
Provided deposition testimony.

*In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation, Napleton et al v. Volkswagen Group of America et al., No. 16-02086, 2015-.*

*Northwest Hills Chrysler Jeep, LLC; Gengras Chrysler Dodge Jeep, LLC; Crowley Jeep Dodge, Inc.; Papa's Dodge, Inc. v. FCA US, LLC and Mitchell Dodge, Inc., Canton, CT, 2015-2017.*  
Provided deposition testimony.

*VMDT Partnership, LP, v. Thornbury Township, Delaware County, Pennsylvania, 2015-.*  
Provided hearing testimony.

*John Deere Construction & Forestry Company v. Rudd Equipment Company, Inc., Houston, TX, 2015-2017.*  
Provided hearing testimony.

*Ball Automotive Group d/b/a Ball Kia, v. Kia Motors America, Inc., San Diego, CA, 2015-2017.*  
Provided deposition testimony.

*GB Auto Corporation d/b/a Frisco Kia, v. Corinth Automotive Plano, d/b/a Central Kia of Plano, Kia Motors America, Inc. Intervenor, Dallas, TX, 2015-2017.*  
Provided deposition testimony.

*Walter Timmons Enterprises, Inc., d/b/a Timmons Subaru v. Subaru of America, Inc., Long Beach, CA, 2016-2017.*

*Motor Werks Partners, LP, v. General Motors, LLC, Chicago, IL, 2015-2017.*  
Provided deposition testimony.

*Jeff Looper et al., v. FCA US LLC, f/k/a Chrysler Group, LLC, et al., California and Texas, 2015-2016.*  
Provided deposition testimony.

*In Re: Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation*, San Francisco, CA, 2015-2017.

*Dependable Dodge, Inc. v. Fiat Chrysler Automobiles, Inc.*, Canoga Park, CA, 2015-2017.  
Provided deposition and hearing testimony.

*Wayzata Nissan, LLC v. Nissan North America, Inc., et al.*, Wayzata, MN, 2015-2017.  
Provided pre-filed trial testimony.

*Glick Nissan, Inc. v. Nissan North America, Inc.*, Westborough, MA, 2015-2016.

*Northwest Hills Chrysler Jeep, LLC; Gengras Chrysler Dodge Jeep, LLC; Crowley Jeep Dodge, Inc.; Papa’s Dodge, Inc. v. FCA US, LLC and Mitchell Dodge, Inc.*, Canton, CT, 2015-2016.

*Volvo Construction Equipment North America, LLC v. Clyde/West, Inc.*, Spokane, WA, 2015.

*General Motors, LLC v. Hall Chevrolet LLC dba Hall Chevrolet*, Virginia Beach, VA, 2015-2016.

*Long Beach Motors, Inc. dba Long Beach Honda v American Honda Motor Co., Inc.*, Long Beach, CA, 2015.

*Tom Matson Dodge Inc. v. FCA US LLC.*, Seattle, WA, 2015.

*Ferrari of Atlanta*, Atlanta, GA 2015.

*Grossinger Autoplex, Inc. v. General Motors, LLC*, Chicago, IL, 2015-2016.  
Provided deposition and hearing testimony.

*Mathew Enterprise, Inc. v. Chrysler Group LLC*, San Jose, CA, 2015-2016.  
Provided deposition and trial testimony.

*Navistar v. New Baltimore Garage*, Warrenton, VA, 2015-2016.  
Provided hearing testimony.

*Mathew Enterprise, Inc., a California Corporation, and Mathew Zaheri, an individual v. Chrysler Group, LLC, a Delaware Liability Company; Chrysler Group Realty Company, LLC, a Delaware Limited Liability Company, and DOES 1-40*, San Jose, CA 2014-2015.  
Provided trial and deposition testimony.

*CNH America, LLC n/k/a CNH Industrial America, LLC v. Quinlan’s Equipment, Inc.*, Racine, WI, 2014-2015.  
Provided deposition testimony.

*Grayson Hyundai, LLC and Twin City Hyundai, Inc., v. Hyundai Motor America*, Knoxville, TN, 2014-2015.

Provided deposition testimony.

*TrueCar, Inc. v. Sonic Automotive, Inc., and Sonic Divisional Operations, LLC*, Los Angeles, CA, 2015-2016.

Provided deposition testimony.

*TECC, Complainant v. GM Respondent before the California New Motor Vehicle Board*, Oakland, CA, 2014-15.

*US District Court Southern District of NY in re General Motors LLC Ignition Switch Litigation*, NY, NY, 2014-.

*Feldten, LLC, d/b/a Tennyson Chevrolet v. Keith Lang, Lang Auto Sales, Inc., Gordon Chevrolet, Inc., Stewart Management Group, Inc., Scott Rama, Susan Ianni, and Mike Meszaros, and Gordon Chevrolet, Inc. & Stewart Management Group, Inc.* Detroit, MI, 2014-2016.

*Canadian Toyota Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, 2014-.

*Jim Hardman, Buick GMC*, Gainsville, GA, 2014-2016.

*Bates Nissan, Inc., v. Nissan North America Inc.*, Killeen, TX, October 2014-2017.

Provided deposition and hearing testimony.

*Recovery Racing, LLC d/b/a Maserati of Fort Lauderdale v. Maserati North America, Inc., and Rick Case Weston, LLC, d/b/a Rick Case Maserati*, Ft. Lauderdale, FL, 2014-.

Provided hearing testimony.

*Sweeten Truck Center, L.C. v. Volvo Trucks North America, a Division of Volvo Group North America, LLC*, Before the Texas Department of Motor Vehicles Motor Vehicle Division, Austin, TX, 2014-.

Provided deposition and hearing testimony.

*Beck Chevrolet Co, Inc. v. General Motors LLC*, New York, NY 2014-2016.

Provided trial testimony.

*BSAG Inc., and Bob Stallings Nissan of Baytown, Inc. v. Baytown Nissan, Inc., Burklein Family Limited Partnership, Nissan North America, Inc., and Frederick W. Burklein*, Harris County, TX 2014-.

Provided deposition testimony.

*Richard C.B. Juca v. Larry H. Miller Corporation*, Peoria, AZ, 2014.

*General Motors, LLC v. Leep Chev, LLC, d/b/a Lujack's Chevrolet*, Scott County, IA. 2014-2015  
Provided deposition testimony.

*Century Motors Corporation v. Chrysler Group, LLC et al.*, Wentzville, MO 2014-2015.  
Provided deposition and trial testimony.

*Keyes European, LLC v. Encino Mercedes, LLC, Steve Zubieta, David Floodquist, Shimon Broshinsky and Does 1-20*, Los Angeles, CA, 2014.

*Ohio Auto Dealers Association*, 2014.

*Transteck, Inc. d/b/a Freightliner of Harrisburg v. Daimler Trucks North America, LLC (Freightliner Trucks Division)*, Harrisburg, PA, 2014-2015.

*Butler Toyota et al v. Toyota Motor Sales*, Indianapolis, IN, 2014.

*Wayzata Nissan, LLC v. Nissan North America, Inc., et al.*, Wayzata, MN, 2013-2017.

*Santa Cruz Nissan, Inc., dba Santa Cruz Nissan v. Nissan North America, Inc.*, Santa Cruz, CA 2013-2015.  
Provided deposition and hearing testimony.

*Majid Salim v. Henry Khachaturian aka Hank Torian, Torian Holdings, Fremont Automobile Dealership, LLC., and Does 1-20*, Alameda County, CA, 2013-2014.  
Provided deposition and trial testimony.

*GMAC v. Lloyd Belt, Lloyd Belt GM Center, Inc., and Lloyd Belt Chrysler, Inc.*, Eldon, MO 2013-2014.  
Provided deposition testimony.

*General Motors v. Englewood Auto Group, LLC*, Englewood, NJ, 2012-2014.

*Bob Wade Autoworld v. Ford Motor Company*, Harrisonburg, VA, 2011-2012.  
Provided hearing testimony.

*Van Wie Chevrolet, Inc. d/b/a Evans Chevrolet v. General Motors LLC and Sharon Chevrolet, Inc.*, Baldwinsville, NY, 2012-2017.  
Provided deposition testimony.

*Midcon Compression L.L.C. v. Loving County Appraisal District*, Loving County, TX, 2013.  
Provided deposition testimony.

*Texas Automobile Dealers Association*, Austin, TX, 2013.

Provided hearing testimony before Business and Industry Committee in Texas H.O.R.

*Tyler Automotive*, Niles, MI, 2013.

*Sutton Suzuki*, Matteson, IL 2013.

*Carson Toyota/Scion, Cabe Toyota/Scion, Norwalk Toyota/Scion and South Bay Toyota/Scion v. Toyota Motor Sales, U.S.A., Inc.*, Long Beach, CA, 2012-2013.

Provided deposition and hearing testimony.

*James T. Stone, individually, and on Behalf of JDJS Auto Center, Inc. v. Jacob A. DeKoker, Pro Financial, Inc., and JDJS Auto Center, Inc.*, Tyler, TX, 2012.

*New Country Automotive Group*, Saratoga Springs, NY, 2013-.

*Goold Patterson*, Las Vegas, NV, 2012.

*James Rist v. Denise Mueting and the Dominican Sisters of Peace*, Littleton, CO, 2012-2013.

*Law Office of Gary E. Veazey*, Memphis, TN, 2012.

*Randy Reed Nissan*, 2012.

*Arent Fox, LLP*, 2012.

*Chrysler Group, LLC v. Sowell Automotive, Inc. et al.*, 2012-2013.

*Morrie's European Car Sales, Inc. dba Morrie's Cadillac-Saab v. General Motors, LLC*, Minneapolis, MN, 2012-.

Provided deposition testimony.

*Dulles Motorcars, Inc. d/b/a Dulles Subaru v. Subaru of America*, Leesburg, VA, 2012-.

Provided hearing testimony.

*Bowser Cadillac, LLC v. General Motors, LLC v. Rohrich Cadillac, Inc.*, McMurray, PA, 2012-.

Provided hearing testimony.

*In Re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Expert Report of Products Liability Litigation*, Santa Ana, CA, 2010-.

*Bob Wade Autoworld*, 2012.



*Planet Subaru, John P Morrill, and Jeffrey R. Morrill v. Subaru of New England*, Hanover, MA, 2011-2012.

*Hill Nissan v. Jenkins Nissan*, Winterhaven, FL, 2011-2012.

*Burns & Levinson*, Boston, MA 2011-.

*Brydon, Sweringen & England*, 2011.

*Napleton Automotive Group*, Chicago, IL, 2011.

*Orloff Imports*, Chicago, IL, 2011.

*Boas International Motors, dba San Francisco Honda*, San Francisco, CA, 2011-.

*Carson CJ, LLC and Kenneth Phillips v. Sonic Automotive, Inc., Sonic-Carson F, Inc, Avalon Ford, Inc. dba Don Kott Chrysler Jeep, and Does 1 - 100*, Los Angeles, CA, 2010-2012.  
Provided deposition and hearing testimony.

*First United, Inc. A California Corporation dba De La Fuente Cadillac v. General Motors, Greiner Poway, Inc. and Does 1-50*, San Diego, CA, 2012.

*Ionia Automotive Management, LLC and Beverly Kelly v. Berger Motor Sales, Ned Berger, Jr, LC and Ned Berger Jr.*, Mason, MI, 2012-2013.

*Riverside Motorcycle, Inc. dba Skip Fordyce Harley-Davidson v. Harley-Davidson Motor Company*, Riverside, CA, 2011- 2012.  
Provided deposition and hearing testimony.

*Leep Hyu, LLC, an Iowa Corporation also known as Lujack Hyundai v. Hyundai Motors America, Green Family Hyundai Inc., and Green Family Holdings LLC*, Davenport, Iowa, 2011.  
Provided trial testimony.

*Royal Motor Sales*, San Francisco, CA, 2011-2012.

*Miller Barondess*, Los Angeles, CA, 2011.

*Brotherhood of Maintenance of Way Employee Division/IBT*, Washington, DC, 2011-.

*Star Houston, Inc., d/b/a Star Motor Cars v. Mercedes-Benz USA, LLC*, Houston, TX, 2010-2013.  
Provided deposition testimony and hearing testimony.

*Chapman's Las Vegas Dodge, LLC and Prestige Chrysler Jeep Dodge, LLC v. Chrysler Group LLC*, Las Vegas, NV, 2011- 2012.

Provided deposition and hearing testimony.

*Laidlaw's Harley-Davidson Sales, Inc. dba Laidlaw's Harley-Davidson v. Harley-Davidson Motor Company*, Sacramento, CA, 2011- 2012.

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*Agrillo v. Martinez*, Tucson, AZ, 2011.

*Hyundai of Milford, LLC, d/b/a Key Hyundai v. Hyundai Motor America*, Milford, CT, 2011.

*Houston Mack Sales & Service d/b/a Houston Isuzu Truck, Inc. v. Hayes Leasing Company, Inc. d/b/a Hayes UD Trucks-Houston*, Houston, TX, 2011-2012.

*Bo Beuckmann Ford*, Ellisville, MO, 2011-.

*Boas International Motors dba San Francisco Honda v. American Honda Motor Co.*, San Francisco, CA, 2011.

*Life Quality BMW*, Brooklyn, NY, 2011-2012.

*Forrester Lincoln Mercury v. Ford Motor Company*, Chambersburg, PA, 2011-.

Provided hearing testimony.

*North Palm Motors, LLC d/b/a Napleton's North Palm Lincoln Mercury v. Ford Motor Company*, West Palm Beach, FL, 2011.

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*Daphne Automotive, LLC dba Eastern Shore Toyota and Shawn Esfahani v. Pensacola Motor Sales d/b/a Bob Tyler Toyota and Fred Keener*, Mobile, AL, 2010-2011.

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*Bob Wade AutoWorld v. Ford Motor Company*, Harrisonburg, VA, 2010-2011.

*East West Lincoln Mercury*, Landover Hills, MD, 2010-2011.

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*JP Chevrolet*, Peru, IL, 2010-2011.

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*Hayes Leasing v. Wiesner Commercial Truck Center*, Houston, TX, 2010.

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Provided deposition testimony.

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*Rally Auto Group, Inc. v. General Motors, LLC*, Palmdale, CA, 2010.

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*Leep Chev, LLC, v. General Motors, LLC*, South Bend, IN, 2010.

*Mike Finnin Motors, Inc., v. Chrysler Group LLC*, Dubuque, IA, 2010.  
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*Sedars Motor Co., Inc. and Community Motors of Mason City, Inc. v. General Motors LLC*, Cedar Falls, IA, 2010.

*Burke, Warren, MacKay & Serritella, P.C.*, Chicago, IL, 2010-.

*First Family, Inc. d/b/a Bredemann Chevrolet v. General Motors, LLC*, Park Ridge, IL, 2010.

*Lou Bachrodt Chevrolet Co. d/b/a Lou Bachrodt Jeep v. Chrysler Group, LLC*, Rockford, IL, 2010.  
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*Cape County Auto Park I, Inc. v. Chrysler Group, LLC*, Cape Girardeau, MO, 2010.  
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*Fury Dodge, LLC v. Chrysler Group, LLC*, Lake Elmo, MN, 2010.  
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*Midtown Motors, Inc., d/b/a John Howard Motors v. Chrysler Group LLC*, Morgantown, WV, 2010.  
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*Deur Speet Motors, Inc. v. General Motors, LLC*, Fremont, MI, 2010.

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*Arenson & Maas*, Cedar Rapids, IA, 2010-.

*Nyemaster, Goode, West, Hansell & O'Brien, PC*, Des Moines, IA, 2010

*C. Basil Ford, Inc. v. Ford Motor Company*, Buffalo, NY, 2010.

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*Monroeville Chrysler v. DaimlerChrysler Motors Company*, Pittsburgh, PA, 2008.

*Bowser Cadillac, LLC v. General Motors Corporation and Saab Cars USA, Inc.*, Pittsburgh, PA, 2008-2009.

*Carlsen Subaru v. Subaru of America, Inc.*, San Francisco, CA, 2008.  
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*Suburban Dodge of Berwyn, Inc., and Lepetomane XXII, Inc., v. DaimlerChrysler Motors Company, LLC and DaimlerChrysler Financial Services Americas LLC*, Chicago, IL, 2007-2008.  
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*Wiggin & Nourie, P.A.*, Manchester, NH, 2007-2008.

*McCall-T LTD., a Texas limited partnership d/b/a Sterling McCall Toyota & Sterling McCall Scion, et al. v. Gulf States Toyota, Inc., McCall- T LTD., et al. v. Madison Lee Oden et al.*, Houston, TX, 2007-2009.

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*Fowler Motors, Inc. v. BMW of North America, LLC*, Conway, SC, 2006-2008.

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*Serra Chevrolet, Inc. d/b/a Serra Kia v. Kia Motors America, Inc., et al.*, Birmingham, AL, 2006-2009.

*Cardenas Enterprises, Inc., d/b/a Cardenas Toyota BMW v. Gulf States Toyota, Inc. and Toyota Motor Sales, USA, Inc.*, Harlingen, TX, 2006.

*North Avenue Auto, Inc., d/b/a Grand Honda v. American Honda Motor Co., Inc. a California Corporation*, Chicago, IL, 2006-2009.

*Saleen, Inc.*, Irvine, CA, 2006-2009.

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*Sonic Automotive, Inc. v. Rene R. Isip, Jr.; RRIJR Auto Group, Ltd., d/b/a Rene Isip Toyota of Lewisville, and John Eagle*, Lewisville, TX, 2005.

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*Lone Star Truck Group*, Albuquerque, NM, 2005-2006.

*Thomas Bus Gulf Coast, Inc.*, Houston, TX, 2005.

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*Alamo Freightliner*, San Antonio, TX, 2004-2005.

*GKG Motors, Inc. d/b/a Suzuki of San Antonio v. Cantwell Fielder, Ltd. d/b/a Quality Suzuki and American Suzuki Motor Corporation*, San Antonio, TX, 2004-2007.

*Maple Shade Motor Corporation v. Kia Motors America, Inc.*, Turnersville, NJ, 2004-2006.

*Star Houston, Inc. d/b/a Star Motor Cars, Inc. v. Mercedes-Benz-USA, LLC*, Austin, TX, 2004-2006.

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*Mazda Motors of America v. Maple Shade Motor Corporation, d/b/a Maple Shade Mazda et al.*, Maple Shade, NJ, 2004.

*Wickstrom Chevrolet-Pontiac-Buick-GMC. v. General Motors Corporation, Chevrolet Division*, Austin, TX, 2004.

*Sea Coast Chevrolet - Oldsmobile, Inc.* Belmar, NJ, 2004.

*Steve Taub, Inc. d/b/a Taub Audi v. Audi Of America, Inc.*, Santa Monica, CA, 2003.

*Toledo Mack Sales and Service, Inc. v. Mack Truck, Inc.*, Columbus, OH, 2003.

*Cooper & Elliot*, Columbus, OH, 2003.

*Bayshore Ford Truck Sales, Inc., et al. v. Ford Motor Company*, New Castle, DE, 2003-2013.

*Maritime Ventures, LLC; Maritime Motors, Inc. v. City of Norwalk; Norwalk Redevelopment Agency*, Norwalk, CT, 2003.

*Cox Nuclear Pharmacy, Inc. and Accuscan, LLC v. CTI Molecular Imaging, Inc.*, Mobile, AL, 2002-.

*Mazda Motor of America, Inc. v. David J. Phillips Buick-Pontiac, Inc.*, Orange County, CA, 2002- 2003.

*Kimnach Ford*, Norfolk, VA, 2002-.

*Brown & Brown Chevrolet v. General Motors*, Phoenix, AZ, 2002.

*New Country Toyota*, Durango, CO, 2002-2003.

*ALCO Cadillac-Pontiac Sales, Inc. v. General Motors Corp. et al*, Englewood Cliffs, NJ, 2001-2003.

*Al Serra Chevrolet, Inc. v. General Motors Corp.*, Flint, MI, 2001.

*Bayou Ford Truck Sales, Inc. d/b/a Bayou City Ford-Sterling v. Sterling Truck Corp.*, Houston, TX, 2001-2002.

*Fred Lavery Company et al. v. Nissan North America, Inc., et al.*, Birmingham, MI, 2000-2002.

*Tamaroff Buick and Sunshine Automotive, Inc. v. American Honda*, Detroit, MI, 2000-2006.

*Applegate Chevrolet, Inc. v. General Motors Corporation* Flint, MI, 2000-2001.

*Anchorage Chrysler Center, Inc. v. DaimlerChrysler Motors Corporation*, Anchorage, AK, 2000-2003.

*Ford Motor Company v. Pollock Motor Co., Inc. f/k/a Pollock Ford Co., Inc., v. Ford Motor Credit*, Gadsden, AL, 1999-2001.

*Suzuki Motor Corporation Japan v. Consumers Union of United States, Inc.*, Orange County, CA, 1999.

*Arata Motor Sales v. American Honda Motor Co., et al.*, Burlingame, CA, 1999.

*Star Motor Cars v. Mercedes-Benz of North America, Inc.*, Houston, TX, 1999.

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*Landmark Chevrolet Corporation v. General Motors Corporation et al*, Houston, TX, 1998-2002.



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*Volkswagen of America, Inc., et al. v. Pompano Imports, Inc., d.b.a. Vista Motor Company*, Pompano Beach, FL, 1998-1999.

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Joseph S. Goode, Mark M. Leitner, and Ted Stockton, "Franchise and Dealership Litigation Damages" in *The Comprehensive Guide to Economic Damages*, ed. Jonathan Dunnitz and Nancy Fannon, 5<sup>th</sup> Edition, Business Valuation Resources, 2018.

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*White Paper: Customer Satisfaction*, co-authored with Dr. Ernest H. Manuel, Jr., 2010.

*White Paper: Sales Effectiveness (RSI and MSR): Flaws in Manufacturers' Measurement of Dealers' Sales Performance*, co-authored with Dr. Ernest H. Manuel, Jr., 2010.

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*Business Cycles and Fraud*, presentation to AutoCPA Group, September 23, 2016.

*Trends in Franchise Economics and a Theory of Dealer Investment*, presented to CPA group, Oklahoma City, OK, 2014.

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Testimony before the Texas House of Representatives on behalf of the Texas Automobile Dealers Association regarding public policy issue related to franchise law, April 9, 2013.

"Navigating the Post-Slump Environment," presentation to Chief Financial Officers Group, Palm Springs, CA, April 2012.

“How Dealers Can Protect Themselves” presentation to AutoCPA Group, 2011.

Minnesota Auto Dealers, issues related to General Motors and Chrysler bankruptcies and dealer arbitrations, 2010.

Arizona Electric Power Cooperative, hourly load forecasting using econometric estimation, 2006.

**TAB 2**

**Cases in which Mr. Stockton gave deposition, hearing  
or trial testimony during the past four years**

*Association of Equipment Manufacturers, AGCO Corporation, CNH Industrial America LLC, Deere & Company, and Kubota Tractor Corporation, v. the Hon. Doug Burgum, Governor of the State of North Dakota, in His Official Capacity, and the Hon. Wayne Stenehjem, Attorney General of the State of North Dakota, in His Official Capacity, and North Dakota Implement Dealers Association, Intervenor-Defendant* (U.S. District Court, District of North Dakota).  
Provided deposition testimony 12/2018.

*Napleton's Arlington Heights Motors, Inc. f/k/a Napleton's Palatine Motors, Inc. d/b/a Napleton's Arlington Heights Chrysler Dodge Jeep RAM, an Illinois Corporation; et. al, v FCA US LLC*, (U.S. District Court Northern District of Illinois Eastern Division).  
Provided deposition testimony 11/2018.

*Fort Collins Nissan, Inc. d/b/a Tynan's Kia, v. Kia Motors America, Inc.*, (U.S. District Court District of Colorado).  
Provided deposition testimony 8/2018.

*Star Houston, Inc. d/b/a Star Motor Cars v. Volvo Cars of North America, LLC*, (Texas State Office of Administrative Hearings).  
Provided deposition testimony 8/2018 and hearing testimony 9/2018.

*Capitol Buick GMC, LLC v. General Motors LLC*, (State of Maryland Before the Motor Vehicle Administration)  
Provided deposition testimony 1/2018 and hearing testimony 3/2018.

*Crown Chrysler Jeep, Inc. d/b/a Crown Kia v. Kia Motors America*, (Ohio Motor Vehicle Dealer Board)  
Provided deposition testimony 11/2017 and hearing testimony 2/2018-3/2018.

*Folsom Chevrolet, Inc. dba Folsom Chevrolet v. General Motors, LLC*, (State of California New Motor Vehicle Board)  
Provided deposition testimony 11/2017 and 2/2018; and hearing testimony 2/2018.

*Sioux City Truck Sales, Inc. v. Peterbilt Motors Company*, (Iowa Department of Inspections and Appeals, Administrative Hearing Division)  
Provided deposition and hearing testimony 2/2018.

*Duncan McDonald v. Samsung Electronics Canada, Inc.*, (Ontario Superior Court of Justice)  
Provided cross-examination testimony 12/2017.

*Sunnyvale Automotive Inc., dba Sunnyvale Ford Lincoln v. Ford Motor Company*, (State of California New Motor Vehicle Board)  
Provided deposition testimony 10/2017.

*Rebecca Romeo and Joe Romeo v. Ford Motor Company and Ford Motor Company Canada, Limited*, (Ontario Superior Court of Justice)

Provided cross-examination testimony 10/2017.

*Charles Johnson, et al. individually and on behalf of all others similarly situated v. Ford Motor Company*, (U.S. District Court for the Southern District of West Virginia, Huntington Division)

Provided deposition testimony 7/2017.

*Northwest Hills Chrysler Jeep, LLC; Gengras Chrysler Dodge Jeep, LLC; Crowley Jeep Dodge, Inc.; Papa's Dodge, Inc. v. FCA US, LLC and Mitchell Dodge, Inc.*, (Connecticut Department of Motor Vehicles).

Provided deposition testimony 12/2016 and 1/2017, and hearing testimony 5/2017.

*Star Houston, Inc. d/b/a Star Motor Cars v. VCWH. LLC d/b/a Volvo Cars West Houston and Volvo Cars of North America, LLC*, (Texas State Office of Administrative Hearings).

Provided deposition testimony 5/2017.

*In the Matter of the Estate of Richard C. Poe, Richard C. Poe, II v. Paul O. Sergent at al.*, (Probate Court Number One El Paso, TX)

Provided deposition testimony 4/2017

*Ball Automotive Group d/b/a Ball Kia, v. Kia Motors America, Inc.*, (State of California New Motor Vehicle Board).

Provided deposition testimony 4/2017.

*Yogesh Kalra v Mercedes-Benz Canada Inc., Daimler AG, Mercedes-Benz USA LLC and Mercedes-Benz Financial Services Canada Corporation*, (Ontario Superior Court of Justice).

Provided cross-examination (deposition) testimony 3/2017.

*Lake Forest Sports Cars, LTD v. Aston Martin Lagonda of North America, Inc.*, (Motor Vehicle Review Board State of Illinois).

Provided deposition testimony 3/2017.

*GB Auto Corporation d/b/a Frisco Kia, v. Corinth Automotive Plano, d/b/a Central Kia of Plano, Kia Motors America, Inc. Intervenor*, (Texas Department of Motor Vehicles, Motor Vehicle Division).

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*John Deere Construction & Forestry Company v. Rudd Equipment Company, Inc.*, (American Arbitration Association).

Provided hearing testimony 2/2017.

*Walter Timmons Enterprises, Inc. dba Timmons Subaru v. Subaru of America*, (State of California New Motor Vehicle Board).  
Provided deposition testimony 11/2016

*Motor Werks Partners, LP, v. General Motors, LLC* (United States District Court for the Northern District of Illinois Eastern Division).  
Provided deposition testimony 10/2016.

*Mathew Enterprise, Inc. v. FCA f/k/a Chrysler Group LLC*, (U.S. District Court Northern District of California).  
Provided deposition testimony 12/2015 and 3/2016, and trial testimony 9/29/16.

*Jeff Looper et al., v. FCA US LLC, f/k/a Chrysler Group, LLC, et al.*, (United States District Court Central District of California, Eastern Division).  
Provided deposition testimony 9/2016.

*Dependable Dodge, Inc. v. Fiat Chrysler Automobiles, Inc.*, (State of California New Motor Vehicle Board).  
Provided deposition testimony 7/2016 and hearing testimony 9/2016.

*Wayzata Nissan, LLC v. Nissan North America, Inc., et al.*, (State of Minnesota District Court, Fourth Judicial District, Hennepin County).  
Provided pre-filed trial testimony 7/2016.

*Grossinger Autoplex, Inc. v. General Motors, LLC*, (Office of the Secretary of State of Illinois before the Motor Vehicle Review Board).  
Provided deposition testimony 1/2016 and hearing testimony 3/2016.

*CNH America, LLC n/k/a CNH Industrial America, LLC v. Quinlan's Equipment, Inc.*, (State of Wisconsin Circuit Court Racine County).  
Provided deposition testimony 1/2016.

*Navistar v. New Baltimore Garage, Inc.* (Commonwealth of Virginia Department of Motor Vehicles).  
Provided hearing testimony 10/2015.

*Bates Nissan, Inc., v. Nissan North America Inc.*, (State Office of Administrative Hearings, Provided deposition testimony 7/2015 and hearing testimony 9/2015.

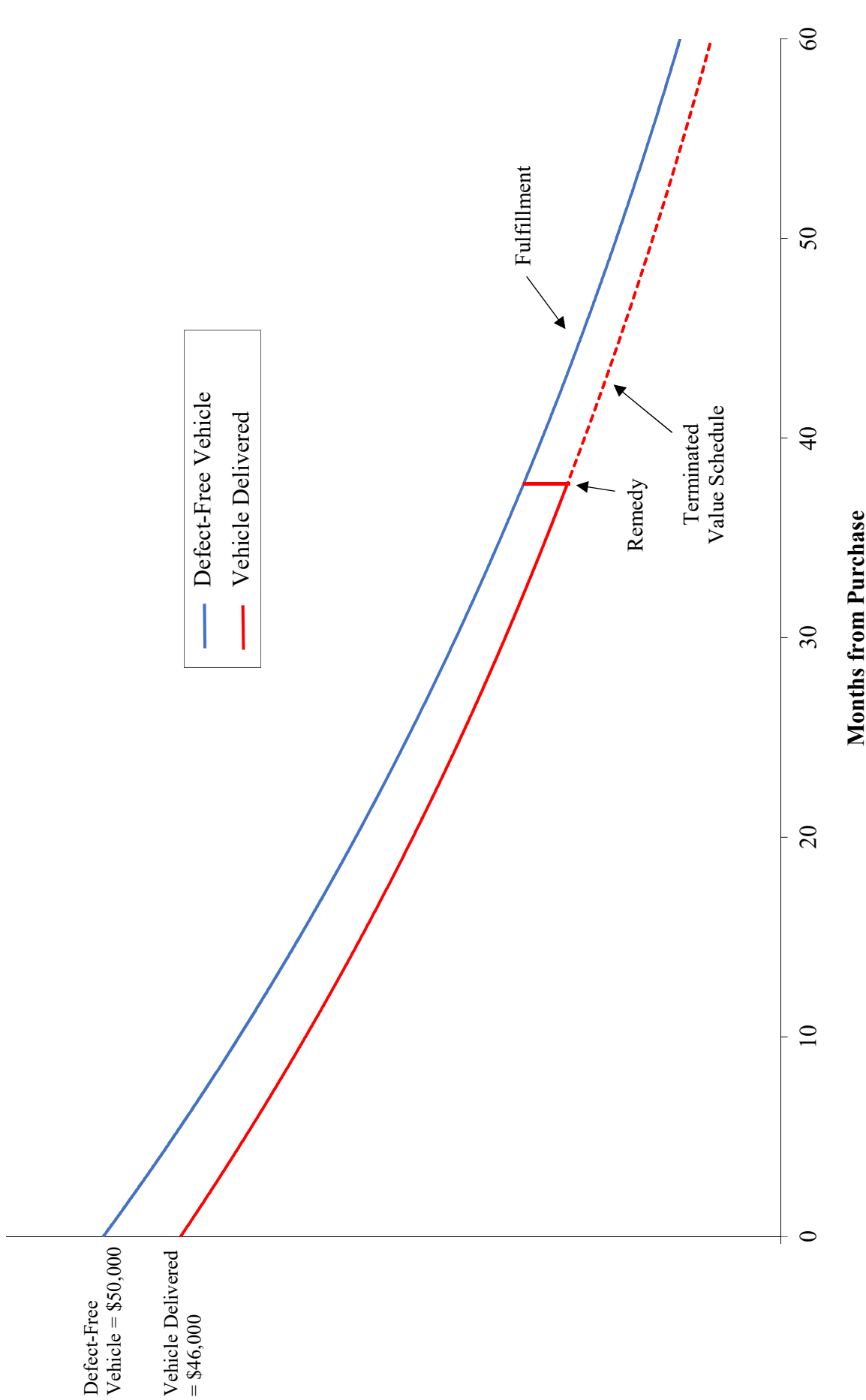
*TrueCar, Inc. v. Sonic Automotive, Inc., and Sonic Divisional Operations, LLC* (United States District Court for the Central District of California).  
Provided deposition testimony 5/2015.

*Mathew Enterprise, Inc., a California Corporation, and Mathew Zaheri, an individual vs. Chrysler Group, LLC, a Delaware Liability Company; Chrysler Group Realty Company, LLC, a*

*Delaware Limited Liability Company, and DOES 1-40* (Superior Court of the State of California, County of Santa Clara).  
Provided trial testimony 3/2015.

*Grayson Hyundai, LLC and Twin City Hyundai, Inc., vs. Hyundai Motor America* (Tennessee Motor Vehicle Commission).  
Provided deposition testimony 3/2015.

Overpayment Effects Illustration



NOTE: Depreciation assumed to be 1.5% per month.

SOURCE: The Fontana Group, Inc.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

Case No. 3:17-md-2777-EMC

**DECLARATION OF KIRK D. KLECKNER  
REGARDING VALUATION OF THE  
SETTLEMENT'S EXTENDED  
WARRANTY**

The Honorable Edward M. Chen

KIRK D. KLECKNER, of full age, declares as follows:

**1. Summary of Opinions**

a. This declaration pertains to the valuation of the benefits provided to Class Members by the extend warranty provisions (Extended Warranty) of the above referenced class action's *Consumer And Reseller Dealership Class Action Settlement Agreement And Release* (Settlement Agreement).

b. The Defendants in this matter are Fiat Chrysler Automobiles N.V., FCA US LLC, Sergio Marchionne, VM Motori S.p.A., VM North America, Inc., Robert Bosch GmbH, and Robert Bosch LLC.

c. Based on the analyses explained below, I have determined within a reasonable degree of professional certainty that the value of the Extended Warranty benefits is \$239,500,000.

**2. Experience and Qualifications**

a. I am a Certified Public Accountant in the United States with an MBA. I have an ABV accreditation in business valuation and intangible asset valuation from the American Institute of Certified Public Accountants (AICPA). I am an Accredited Senior Appraiser (ASA-BV) from the American Society of Appraisers. I have litigation-related experience in valuing economic losses and damages, and I have a Certified in Financial Forensics (CFF) accreditation from the AICPA.

b. My experience includes seven years as the Chief Financial Officer for a well-respected Top 50 United States automotive dealership group; 19 years with an accounting firm including roles as shareholder, Chief Operating Officer, and Director of Business Valuation and Litigation Support Services; and performing services for hundreds of companies in a wide array of industries, including but not limited to retail dealerships, property and casualty insurance, warranty insurance, and distribution.

c. As CFO of an automotive dealership group, I worked on service and warranty matters. My duties as CFO included establishing and overseeing extended service contractual relationships, and establishing and overseeing automotive dealer-owned reinsurance entities and structures for extended service warranty contracts and other insurance-related products.

d. My experience as an expert includes the following automotive warranty related class action settlement valuation determinations: 1) the Warranty Extension and other class member benefits provided for by the Volkswagen and Audi Warranty Extension class action settlement agreement<sup>1</sup>; 2) the Customer Support Program related class member benefits provided for by the Toyota-United States class action settlement agreement<sup>2</sup>; 3) the Customer Support Program in the Toyota-Canadian class action settlement agreement<sup>3</sup>; and 4) the Customer Support Programs related class member benefits provided for by each of class action settlement agreements in the various vehicle manufacturer Takata Airbag class actions<sup>4</sup>.

e. My *curriculum vitae* is attached as Exhibit A.

### **3. Valuation Purpose, Scope and Primary Materials and Information Considered**

a. Plaintiff's Counsel asked me to independently value the Settlement Agreement's Extended Warranty benefits provided to Class Members based on the Defendants' estimate of the average per vehicle estimated cost that the Defendants expect to incur from the Extended Warranty.

b. In conducting my work and forming my opinions, I was provided and have considered, in addition to my substantial experience in this area, the materials and information identified in Exhibit B. I believe the materials and information available to me provided sufficient data from which I could draw valid valuation conclusions.

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<sup>1</sup> The United States District Court District Of Massachusetts, In re Volkswagen and Audi Warranty Extension Litigation, Docket No. 1:07-md-01790

<sup>2</sup> Central District Of California, Southern Division, In Re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, And Products Liability Litigation, United States District Court, Case No. 8:10ML2151 JVS (FMOx)

<sup>3</sup> Canadian Toyota Unintended Acceleration Marketing, Sales Practices, And Products Liability Litigation Settlement Agreement (various courts)

<sup>4</sup> The United States District Court For The Southern District Of Florida, In Re: Takata Airbag Products Liability Litigation, Case 1:15-Md-02599 (Settlement Agreements for BMW, Mazda, Subaru, Toyota, Honda, Nissan and Ford)

c. My Valuation Primary Assumptions and Limiting Conditions, Information Requested, Valuation Methodology, Valuation Conclusion, and Certifications and Representations are reported below.

#### **4. Valuation Primary Assumptions and Limiting Conditions**

a. My analyses, opinions, and conclusions are limited only by the Valuation Primary Assumptions and Limiting Conditions outlined in Exhibit C.

#### **5. Information Requested**

a. To understand the nature of the Extended Warranty:

i. I requested and received the most recent draft version of the Settlement Agreement.

ii. I asked the Defendants to provide and received:

1. The average per vehicle estimated dealership warranty rate cost that Fiat Chrysler expect to incur from the Extended Warranty;

2. The estimated number of eligible vehicles covered by the Extended Warranty;

3. The underlying new vehicle warranty for the subject vehicles; and

4. The parts covered by the Extended Warranty.

#### **6. Extended Warranty – Valuation Methodology and Valuation Conclusion**

a. To estimate the value of the Extended Warranty, my valuation approach was based on estimating the market price Class Members would pay to purchase a Hypothetical Extended Service Contract (Hypothetical ESC) that is equivalent to the financial protection resulting from the existence of the Extended Warranty.<sup>5 6</sup> This approach has been accepted by many courts and was incorporated in my valuations—upon which the courts and parties relied—

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<sup>5</sup> An extended service contract (ESC), sometimes called an extended warranty or plan, provides a warranty on certain vehicle parts beyond the coverage of the vehicle's original standard manufacturer warranty. Typical ESC levels of coverage vary from "power train only" up to full "bumper to bumper." The ESC is a contractual agreement between the vehicle owner and the ESC obligor (typically an independent insurance company or manufacturer affiliated insurance company). Consumers typically purchase an ESC from a dealer at the point of vehicle purchase.

<sup>6</sup> OPINION AND ORDER, JOSEPH A. O'KEEFE Plaintiff v. MERCEDES-BENZ USA, LLC Defendant, Civil Action No. 01-CV-2902, Civil Action No. 03-CV-1480, United States District Court, E.D. Pennsylvania, April 2, 2003, B, 2 – "We believe that the benefits to the class are most accurately measured by making an estimation of the Extended Coverage Program's market price. We realize that this figure is difficult to estimate because the Extended Coverage Program—or any similar warranty product—is not on the market. Yet, economists, actuaries, investors and business people must estimate and value risk in all types of market transactions. A warranty is simply the ex ante market price of insuring against a foreseeable risk. Any other measure except the market price would over or underestimate the benefit to the class."

in the VW/Audi, Toyota-US, Toyota-Canadian and Takata Airbag related class actions mentioned in Section 2 above. Thus, I employed methods and analyses of a type reasonably relied upon by courts and experts in my field in forming opinions or inferences on the subject.

b. My method to calculate the estimated per vehicle premium for the Hypothetical ESC is based on how a warranty insurance company would establish such a premium if it had a reliable estimate of the Hypothetical ESC's future claim costs.

c. Insurance and warranty companies establish premium prices based on market price factors and/or their estimated claim and operating costs plus profit. In this case, an estimate of claim costs is available, and I can estimate ESC warranty company other costs and profit variables based on the claim costs estimate.

i. The Defendants provided their estimate of Fiat Chrysler expected Extended Warranty costs (\$1,050 average per vehicle). However, Fiat Chrysler Extended Warranty costs are lower than the dealership "retail" repair rate costs consumers and ESC providers would pay. Therefore, I added a retail cost increment to derive the Hypothetical ESC claim costs (\$220 per vehicle).

ii. In the U.S., most ESCs are sold by dealers. Dealers mark-up the price of the warranties from their wholesale cost. The ESCs are underwritten by third-party warranty companies that generally consist of 1) factory providers (affiliates of vehicle manufacturers like Ford, GM, Honda, Toyota, etc.) and 2) independent providers (American Financial Warranty Corporation, Allstate, Assurant Solutions, C.N.A. National Warranty Corporation, JM&A Group, Protective, etc.). Generally, the retail price of factory provider warranties is thought to be higher than comparable third-party warranties. ESC warranty companies operate for a profit. Thus, consumers pay retail prices that cover ESC warranty company claim costs, net operating costs and profit and ESC seller (dealer) profit.

1. ESC warranty company net operating costs include claim administration, loss adjustment expenses, acquisition costs, premium taxes and general operations expenses less investment income.

2. ESC warranty company profit is the result of return on investment objectives, product claim risk attributes and results, market competitive pressures and regulatory considerations. In the U.S., ESC warranty company premiums and profits are subject to state insurance regulation. Further, there are significant competitive market pressures impacting ESC contract prices and, therefore, ESC profits.

iii. Based on my experience and knowledge of vehicle ESC industry premium pricing, I applied the following cost relationship percentages to derive the estimated retail cost of the Hypothetical ESC:

1. 53% of the premium for the estimated claim costs per vehicle;
2. 25% of the premium to cover warranty company operating costs; and
3. 22% of the premium to cover profit and risk considerations.

iv. The results of this  $53\% + 25\% + 22\% = 100\%$  premium build-up from estimate claim costs is illustrated in Exhibit D.

v. Given the nature of the Hypothetical ESC, I did not make an assumption on how it would be distributed to consumers. Would there be a dealer mark-up? To be conservative in my valuation estimate, I assumed the Hypothetical ESC would be sold directly to the consumer with no incremental distribution mark-up.

d. The Extended Warranty Valuation Summary and Conclusion are outlined in Exhibit D, illustrating the results from the per vehicle premium build-up multiplied by the number of eligible vehicles covered by the Extended Warranty. My Valuation Conclusion for the Extended Warranty made available to Class Members is \$239,500,000.

## **7. Certifications and Representations**

- a. The statements of fact in this declaration are true and correct.
- b. These are my personal, impartial, and unbiased professional analyses, opinions, and conclusions, all of which are stated to a reasonable degree of professional certainty.
- c. I do not have any bias, present interest, or prospective interest with respect to this matter, or any bias or personal interest with respect to the parties involved with this assignment.
- d. My engagement in this assignment and the compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or any direction in value, the amount of the value opinions, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this valuation.

I declare under penalty of perjury that the foregoing is true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment. Executed this 8th day of January 2019, at Blaine, Minnesota.



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KIRK D. KLECKNER

## EXHIBIT A – Curriculum Vitae of Kirk D. Kleckner CPA MBA ABV ASA-BV CFF

Kirk is currently:

- President of ValuationUSA, LLC - a valuation and succession planning firm serving closely held businesses and their owners
- President of Automotive Development Group Capital and Consulting, LLC – dealership profitability consulting firm

Kirk's experience includes:

- Seven years as Chief Financial Officer for a well-respected Top 50 dealership group known for its world class customer experiences and business processes
- Nineteen years with an accounting firm including roles as shareholder, Chief Operating Officer, and Director of Business Valuation and Litigation Support Services
- Consulting work for hundreds of companies in an array of industries including but not limited to: retail dealership, casualty insurance, distribution, manufacturing, construction, insurance, reinsurance, service, non-profit, bank, retail, tool and die, technology, trucking and warehouse

Kirk is a CPA, MBA and has professional accreditations including:

- Accredited in Business Valuation (ABV) from the American Institute of Certified Public Accountants (AICPA)
- Accredited Senior Appraiser in Business Valuation (ASA-BV) of the American Society of Appraisers
- Certified in Financial Forensics, AICPA (CFF)

Kirk's expertise leverages both his professional and hands-on industry experience as a Chief Financial Officer for a \$500 million business. Kirk's expertise and experience includes buying, selling and integrating of businesses; managing businesses; succession planning, business and intangible asset valuation for strategic transactions; income, gift and estate tax; owner transactions and litigation purposes.

Kirk is a qualified expert witness with experience in complex business litigation, economic damages calculations, business valuation and intangible asset valuation. Recently, Kirk was a valuation expert in the greater than \$100,000,000 damage award class action cases --- In re Volkswagen & Audi Warranty Extension Litigation (MDL 1790); In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation (No. 8:10ML2151 JVS); and multiple Takata airbag class action product liability settlements including BMW, Ford, Honda, Mazda, Nissan, Subaru and Toyota.

### Academic and Professional Credentials

- **ABV** - Accredited in Business Valuation, AICPA,
- **ASA-BV** - Accredited Senior Appraiser-Business Valuation, American Society of Appraisers
- **CFF** - Certified in Financial Forensics, AICPA (granted exclusively to CPAs who demonstrate considerable expertise in forensic accounting through knowledge, skills, and experience in areas including: family law; valuations; financial statement misrepresentation; and economic damages calculations.
- **MBA** - Master of Business Administration, Concentration Finance, University of Minnesota
- **CPA** - Certified Public Accountant, State of Minnesota and Iowa
- Bachelor of Arts, Accounting and Business Administration, Wartburg College



## Positions and Experience

**President – ValuationUSA, LLC (2008)** – Professional services consulting firm specializing in the following areas:

- succession planning, owner wealth accumulation, preservation and transfer planning
- business and intangible asset valuation
- gift and estate tax
- strategic acquisition and divestiture transactions
- value enhancement
- expert opinions – litigation, economic loss / damage analysis and independent opinions / expert testimony

**President – Automotive Development Group Capital and Consulting, LLC (2009)** – Business specializing in helping dealership groups and their owners establish and sustain competitive advantages that lead to performance at extraordinary levels.

**Executive Vice President and Chief Financial Officer - Walser Automotive Group, Minneapolis, MN (2000–2007)** - Automobile dealership group with related leasing, collision repair, reinsurance and real estate operations (\$500 million of revenues, fourteen locations and 750 employees)

**Chief Operating Officer, Director of Valuation and Consulting Department, and Shareholder - Wilkerson, Guthmann + Johnson, Ltd., St. Paul, MN (1981 – 2000)** - Public accounting firm with 40 members and offices in St. Paul, Blaine and Minneapolis. *Industries Served:* Auto dealership, casualty insurance, manufacturing, construction, insurance, service, non-profit, bank, retail, trucking and warehouse.

## Professional Affiliations

- *American Society of Appraisers*, a Member and an Accredited Senior Appraiser- Business Valuation (ASA-BV) - ASA is an organization of appraisal professionals. The ASA promotes the exchange of ideas and experiences among its members; maintains the Principles of Appraisal Practice and Code of Ethics for the guidance of its members; maintains universal recognition that members of the Society are objective, unbiased appraisers and consultants, and awards professional designations to qualified members.
- *American Institute of Certified Public Accountants*, a Member and an Accredited in Business Valuation Member (ABV), Certified in Financial Forensics (CFF)
- *Minnesota Society of Certified Public Accountants*, a Member
- *Twin Cities Estate Planning Council*, a Member

## Select Presentations

- *Business Value: What Leads to a High Performance Manufacturing Business?* 2016 Minnesota Manufacturing Executives, Minneapolis, MN
- *Eight Characteristics of High Value Dealerships*, 2014 Michigan Automotive Dealers Conference, Livonia, MI
- *Eminent Domain Asset Identification, Classification and Valuation*, Eminent Domain 2011: Essential Updates and Issues, Hennepin County Bar Association, Minneapolis, MN
- *Eight Characteristics of High Value Dealerships (And Why Dealers Should Care About Them)*, 2010 AICPA Auto Dealership Conference, Phoenix, AZ
- *AICPA / ASA Business Conference Review*, American Society of Appraisers, Minneapolis, MN
- *Fourteen Evolving Dealership Strategies*, Chicago Automobile Trade Association / Compli, Chicago; Dealer Driving Force Group, Charlotte, NC
- *Integrating Business Value Creation and Tax Planning*, 2010 Management & Business Advisers Conference, MN Society of CPAs, Minneapolis, MN



- *Tax Reduction Strategies for Today's Business Environment*, M&I Bank
- *What Leads to Dealership High Performance*, The New Dealership Era Symposium Sponsored by Compli and Wells Fargo, Bloomington, MN
- *Business and Real Estate Valuation Timely Opportunities*, Thrivent Financial Annual Meeting, Roseville, MN
- *Business Valuation for Attorneys*, Various
- *Understanding Financial Statements for Attorneys*, Various

#### **Select Appraisal and Litigation Support Education**

- ASA 2015 Advanced Business Valuation Conference, Las Vegas, NV
- How Probability Affects Discounts for Lack of Marketability, 2015
- ASA Annual Business Valuation Conference, 2015, 2014
- MNCPA Business Valuation Conference, 2015, 2013, 2009, 2008
- Price and Value: Discerning the Difference, 2015
- National 7 Hour USPAP for Business Valuation, 2014
- Michigan CPA Automobile Dealers Conference, 2014
- Buying and Selling a Privately Owned Business, 2014
- The NEW Choice of Entity Decision, 2014
- The Best Income Tax, Estate Tax and Financial Planning Ideas of 2013
- Family Law Conference, 2013
- Valuing Early Stage Companies, 2013
- Special Topics in the Valuation of Intangible Assets, 2012
- Using Market Data to Support Real Estate Partnership Discounts, 2012
- Reasonable Compensation: Application and Analysis for Appraisal, Tax and Management Purposes, 2011
- AICPA National Business Valuation Conference, 2011, 2008
- Factors of Comparability: Considerations Affecting Market Royalty Rates and Intangible Property Valuations, 2011
- 20<sup>th</sup> Annual National Expert Witness Conference, 2011
- Pluris Discount for Lack of Marketability Study Results, 2010
- Business Valuations for SBA Loan Purposes: Important Developments and Perspectives, 2010
- The Exploration, Examination, and Dissection of Reasonable Compensation, 2010
- Valuation Issues in Estate and Gift Tax, 2010
- Advanced Issues in Fairness and Solvency Opinions, 2010
- Real Option Valuation, 2009
- Monte Carlo Simulation, 2009
- Reconciling the Lack of Marketability Discount Theories, 2009
- Reasonable Compensation, 2008
- National Business Valuation Conference (AICPA / ASA), 2008



- Cost of Capital, 2008
- ASA International Appraisal Conference 2008
- Illinois Business Valuation Conference, 2008
- Evaluating Risk Business Valuation Conference, 2008
- Reconciling the Lack of Marketability Discount Theories 2008
- ABV Examination Review Course, 2007
- ABV Examination Review Course and Exam
- Valuation of Family Limited Partnerships and Limited Liability Companies
- S Corporation Valuation Issues
- Employment Damages Workshop
- Tax Issues in Divorce
- Expert Witness in an Untested Litigation Area
- Uniform Standards of Appraisal Practice, Course and Exam
- Selection and Use of an Expert in Litigation
- Income Tax Planning for Estates and Trusts
- Family Limited Partnerships in Minnesota

**Publications Authored by The Witness Within the Preceding Ten Years**

- None

**Cases in Which the Witness Has Testified as An Expert at Trial or By Deposition Within the Preceding Four Years**

- Puklich v. Puklich, North Dakota South Central Judicial District, Dealership Damages, Owner Breach of Fiduciary Duty, Deposition - 10/2/2017, Trial - 11/27/2017
- Gulf Coast Tractor and Trailer, LLC. v. Kubota Tractor Corporation, United States District Court Middle District of Florida, Breach of Contract, Deposition - 12/27/2018

## **EXHIBIT B – Primary Materials and Information Considered**

In addition to the information data described in Section 5 above, I considered the following:

- Various interviews with extended service contract professionals' familiar with the U.S. markets.
- Various interviews with parts and service professionals familiar with the U.S. vehicle service department pricing, operations and warranty versus retail pricing rates
- Various analyses of retail market price relationships between pre-owned vehicle purchase prices and extended service contract purchase prices
- Various analyses of retail market price relationship between new vehicle purchase prices and vehicle manufacturer new vehicle warranty costs
- New vehicle warranty terms and conditions for various manufacturers
- Allstate vehicle service agreements and prices
- C.N.A. National Warranty Corporation vehicle service agreements and prices
- Protective vehicle service agreements and prices
- Various warranty insurance company state filings showing rate filings and rate manual guidelines
- Extended service contract information for various manufacturer programs
- *NADA DATA* - Various reports providing average service department revenue mix for labor and parts

**EXHIBIT C – Valuation Primary Assumptions and Limiting Conditions**

- Information provided by the Defendants is accurate and responsive to the information request including the average per vehicle estimated dealership warranty rate cost that Fiat Chrysler expects to incur from the Extended Warranty.
- My calculations assume a Valuation Effective Date of May 15, 2019; if the timing of the final approval date of the Settlement Agreement occurs as expected during early 2019, my valuation conclusions will be materially accurate.
- While I believe my valuation conclusions are valid, I reserve the right to submit a revised valuation to correct any inadvertent errors or omissions or if additional information is provided.

**Exhibit D****Extended Warranty Valuation Summary and Conclusion**

Average per vehicle estimated manufacturer extended warranty cost at dealership warranty reimbursement rates	+		\$1,050
Adjust warranty reimbursement rate costs to what consumers would pay at dealership service retail rates	+		\$220
Estimated Hypothetical Extended Service Contract (ESC) claim costs	=	53%	\$1,270
Adjustments to build-up to Hypothetical ESC premium amount from claim costs:			
Warranty company operating costs including insurance premiums taxes (net of investment income)	+	25%	\$599
Warranty company underwriting profit and risk considerations	+	22%	\$527
Estimated per vehicle Hypothetical ESC premium amount	=	100%	\$2,396
Estimated number of eligible vehicles covered by the Extended Warranty	x		99,986
Estimated Extended Warranty Value	=		\$239,532,461
<b>Valuation Conclusion</b>			<b>\$ 239,500,000</b>

Elizabeth J. Cabraser (State Bar No. 083151)  
ecabraser@lchb.com  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
Telephone: 415.956.1000  
Facsimile: 415.956.1008

*Plaintiffs' Lead Counsel and Chair of the Plaintiffs'  
Steering Committee*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

This Document Relates to:

ALL CONSUMER AND RESELLER  
ACTIONS

Case No. 3:17-md-2777-EMC

**DECLARATION OF ELIZABETH  
KOENIG, ESQ. IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT NOTICE UNDER RULE  
23(E)**

Hearing: January 23, 2019  
Time: 10:00 a.m.  
Courtroom: 5, 17th Floor

The Honorable Edward M. Chen

1 I, Elizabeth Koenig, hereby declare as follows:

2 1. I am a Senior Litigation Consultant at International Ligation Services (“ILS”),  
3 based in Irvine, California. The Plaintiffs’ Steering Committee (the “PSC”) retained ILS as their  
4 electronic discovery (“e-discovery”) consultant for this action and, pursuant to that retention, I  
5 have managed the Plaintiffs’ e-discovery databases and document and electronically stored  
6 information (“ESI”) review for this action.

7 2. I am a 2006 graduate of UCLA School of Law and am admitted to practice law in  
8 California. I previously practiced law for eight years at Milbank, Tweed, Hadley, and McCloy  
9 LLP, where I worked extensively on e-discovery matters in civil litigations and regulatory  
10 matters. In November 2014, I joined ILS, where I provide e-discovery consulting and project  
11 management services, including in such litigations as *In Re: Volkswagen “Clean Diesel”*  
12 *Marketing, Sales Practices and Products Liability Litigation* (MDL No. 2672, N.D. Cal. 2016)  
13 and *In Re: Takata Airbags Product Liability Litigation* (MDL No. 2599, S.D. Fla. 2015).

14 3. I provide this declaration in support of Plaintiffs’ Motion for Preliminary Approval  
15 of Class Settlement Notice under Rule 23(e). The facts stated in this declaration are within my  
16 own personal knowledge or were provided by ILS’s technical staff under my direction. If called  
17 as a witness to testify, I could and would competently testify to the facts contained in this  
18 declaration.

19 4. As of December 26, 2018, Defendant FCA has produced over 261,100 documents  
20 in this action, constituting over 2,781,000 million pages of electronically stored information.

21 5. At the PSC’s direction, ILS processed and loaded these documents to Plaintiffs’  
22 document repository for the PSC’s review. ILS also performed a deduplication process on the  
23 documents before the PSC’s review. As of December 26, 2018, the PSC has analyzed over  
24 204,600 of the documents produced by FCA, constituting over 2,185,800 pages of electronically  
25 stored information.

26 6. As of December 26, 2018, Defendant Bosch has produced over 499,000  
27 documents in this action, constituting nearly 2,500,000 pages of electronically stored information.  
28

1           7.       At the PSC's direction, ILS processed and loaded these documents to Plaintiffs'  
2 document repository for the PSC's review. ILS also performed a deduplication process on the  
3 documents before the PSC's review. As of December 26, 2018, the PSC has analyzed over  
4 340,000 of the documents produced by Bosch, constituting over 1,860,000 pages of electronically  
5 stored information.

6           I declare under penalty of perjury that the foregoing is true and correct. Executed in  
7 Fairfax, California, this ninth of January 2019.

8   
9 \_\_\_\_\_  
10 Elizabeth Koenig

# **EXHIBIT A**



No.	Settlement Class Representative	State of Residence	State of Purchase	Model Year	Make/Model
1.	Alley, Anthony	TX	MS	2015	Ram 1500
2.	Bali, Doru	MI	KY	2014	Jeep Grand Cherokee
3.	Bernstein, Leslie	CA	CA	2016	Ram 1500
4.	Bihorean, Marius	GA	NC	2015	Ram 1500
5.	Boykin, James	FL	VA	2015	Ram 1500
6.	Brinkman, Elmer and Barbara	SD	SD	2016	Ram 1500
7.	Broom, Jamie	LA	TX	2015	Ram 1500
8.	Burwell, Adam	OR	ID	2016	Ram 1500
9.	Calhoun, Karl	WA	ID	2016	Ram 1500
10.	Carillo, Giuseppe	NY	CT	2016	Ram 1500
11.	Carter, Aaron	IL	IL	2015	Jeep Grand Cherokee
12.	Chavez, Jose	CA	CA	2016	Ram 1500
13.	Claflin, Joshua	WI	MN	2015	Ram 1500
14.	DeBerry, James	FL	GA	2016	Ram 1500
15.	Devault, Edward	ME	ME	2014	Jeep Grand Cherokee
16.	Edwards, Anthony	TN	TN	2015	Ram 1500
17.	Fasching, Mathue	ID	OR	2016	Ram 1500
18.	Feist, Tommy	CO	CO	2016	Ram 1500
19.	Feldman, Victor	AL	TX	2015	Ram 1500
20.	Fragoso, Miguel	NC	NC	2016	Jeep Grand Cherokee
21.	Giauque, Gregory	CA	AZ	2015	Jeep Grand Cherokee
22.	Gillespie, Tom	GA	GA	2014	Ram 1500
23.	GN Systems, Inc.	FL	FL	2014 2014 2015 2016 2016	Ram 1500 Ram 1500 Ram 1500 Ram 1500 Ram 1500
24.	Greenberg, Benjamin	MA	MA	2015	Jeep Grand Cherokee
25.	Griggs, Jeffrey	TN	GA	2014	Ram 1500

No.	Settlement Class Representative	State of Residence	State of Purchase	Model Year	Make/Model
26.	Gunderson, Jake	NM	NM	2015	Ram 1500
27.	Heidlebaugh, Jessica	PA	MD	2014	Jeep Grand Cherokee
28.	Hiner, Brian	VA	VA	2014	Jeep Grand Cherokee
29.	Holland, Lee	OK	OK	2015	Ram 1500
30.	Holm, Ronald	MT	MT	2015	Ram 1500
31.	Hood, Connie	NE	NE	2014	Jeep Grand Cherokee
32.	Johnson, Matthew and Amanda Kobussen	AK/WA	AK	2015	Jeep Grand Cherokee
33.	Johnson, Michael	GA	SC	2014	Ram 1500
34.	Korrell, Donald II	MD	PA	2014	Jeep Grand Cherokee
35.	Lindholm, Richard	NE	NE	2015	Ram 1500
36.	Loescher, Andrew	WA	ND	2015	Ram 1500
37.	Mattingly, Christopher	NV	NV	2016	Ram 1500
38.	McGann, Thomas Jr.	NY	NY	2016	Ram 1500
39.	Melin, Ernest Jr.	SC	SC	2016	Ram 1500
40.	Milner, George	NY	NY	2014	Ram 1500
41.	Montgomery, Ryan	CO	CO	2014	Ram 1500
42.	Muckenfuss, Bryan	SC	SC	2015	Ram 1500
43.	Norton, Michael	NJ	NJ	2014	Jeep Grand Cherokee
44.	Petersen, Kirk	IA	IA	2015	Ram 1500
45.	Phillips, Melvin	MO	AR	2015	Ram 1500
46.	Price, Samuel	LA	NC	2014	Ram 1500
47.	Radziewicz, John	LA	LA	2014	Jeep Grand Cherokee
48.	Reichert, Bobby	FL	FL	2016	Ram 1500
49.	Richards, Mark	IN	IN	2016	Ram 1500
50.	Roberts, Jon	OH	OH	2014	Ram 1500
51.	Ruiz, Kelly	WY	WY	2014	Jeep Grand Cherokee
52.	Sandifer, Jesse	WA	WA	2016	Ram 1500

<b>No.</b>	<b>Settlement Class Representative</b>	<b>State of Residence</b>	<b>State of Purchase</b>	<b>Model Year</b>	<b>Make/Model</b>
53.	Silio, Miguel	FL	FL	2015	Jeep Grand Cherokee
54.	Stephens, Nelson John	GA	AL	2014	Ram 1500
55.	Tonnesen, Wayne	NJ	WI	2016	Ram 1500
56.	Turner, William, III	GA	GA	2014	Jeep Grand Cherokee
57.	WEB Farms, Inc.	NM	TX	2014	Ram 1500
58.	Webb, John	CO	CO	2016	Ram 1500
59.	Webster, Stonewall, III	NC	NC	2016	Ram 1500
60.	Wilson, John	UT	UT	2016	Ram 1500

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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 IN RE CHRYSLER-DODGE-JEEP  
13 ECODIESEL<sup>®</sup> MARKETING, SALES  
14 PRACTICES, AND PRODUCTS  
15 LIABILITY LITIGATION

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

THE HONORABLE EDWARD M. CHEN

14 This Document Relates to:

15 ALL CONSUMER AND RESELLER  
16 DEALER ACTIONS

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT AND DIRECTION OF  
NOTICE UNDER RULE 23(E)**

17  
18 Before the Court is Plaintiffs' Motion for Preliminary Approval of Class Settlement and  
19 Direction of Notice under Rule 23(e) ("Motion").

20 WHEREAS, a proposed Class Action Settlement Agreement (the "Settlement") has been  
21 reached between Court-appointed Lead Counsel and the Plaintiffs' Steering Committee ("PSC")  
22 on behalf of a defined proposed Settlement Class of certain current and former owners and lessees  
23 of 2014-2016 Jeep Grand Cherokee and Ram 1500s with a 3.0 liter "EcoDiesel" engine (the  
24 "Eligible Vehicles"), which resolves certain claims against Defendants pertaining to the Eligible  
25 Vehicles listed below;

26 WHEREAS, the Fiat Chrysler Defendants also entered related agreements with the United  
27 States Department of Justice ("DOJ") on behalf of the Environmental Protection Agency  
28 ("EPA"), and the State of California by and through the California Air Resources Board

1 (“CARB”) and California’s Office of the Attorney General (“CA AG”);

2 WHEREAS, the Court, for the purposes of this Order, adopts all defined terms as set forth  
3 in the Settlement;

4 WHEREAS, this matter has come before the Court pursuant to Plaintiffs’ Motion for  
5 Preliminary Approval of the Class Action Settlement and Direction of Notice Under Fed. R. Civ.  
6 P. 23(e) (the “Motion”);

7 WHEREAS, Defendants do not oppose the Court’s entry of the proposed Preliminary  
8 Approval Order;

9 WHEREAS, the Court finds that it has jurisdiction over the Action and each of the Parties  
10 for purposes of settlement and asserts jurisdiction over the Settlement Class Representatives for  
11 purposes of considering and effectuating this Settlement;

12 WHEREAS, the Court held a Preliminary Approval Hearing on January 23, 2019; and

13 WHEREAS, this Court has considered all of the presentations and submissions related to  
14 the Motion and, having presided over and managed these MDL proceedings as Transferee Judge,  
15 since the April 2017 Transfer Order, with the facts, contentions, claims and defenses as they have  
16 developed in these proceedings, and is otherwise fully advised of all relevant facts in connection  
17 therewith.

18 **IT IS HEREBY ORDERED AS FOLLOWS:**

19 **I. PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT:**

20 1. The proposed Settlement appears to be the product of intensive, thorough, serious,  
21 informed, and non-collusive negotiations overseen by the Court-appointed Special Master  
22 Kenneth Feinberg; has no obvious deficiencies; does not improperly grant preferential treatment  
23 to the Settlement Class Representatives or segments of the Class; and appears to be fair,  
24 reasonable, and adequate, such that notice of the Settlement should be directed to the Class  
25 Members, and a Final Approval Hearing should be set.

26 2. Accordingly, the Motion is GRANTED.  
27  
28

1 **II. THE CLASS, CLASS REPRESENTATIVES, AND CLASS COUNSEL**

2 3. “Class” or “Settlement Class” means, for purposes of this Class Action Settlement  
 3 only, a nationwide class, including Puerto Rico, of all Persons (this includes individuals who are  
 4 United States citizens, residents, or United States military, or diplomatic personnel that are living  
 5 or stationed overseas, as well as entities) who (1) on January 12, 2017 owned or leased a Ram  
 6 1500 or Jeep Grand Cherokee 3.0-liter diesel vehicle in the United States or its territories; or who  
 7 (2) between January 12, 2017 and the Claim Submission Deadline for Eligible Owners and  
 8 Eligible Lessees become the owner or lessee of an Eligible Vehicle in the United States or its  
 9 territories; or who (3) own or lease an Eligible Vehicle in the United States or its territories at the  
 10 time of participation in the Repair Program. The Class includes automobile dealers who are not  
 11 Authorized Dealers and who otherwise meet the definition of the Class. The following entities  
 12 and individuals are excluded from the Class:

13 (a) Owners or lessees who acquired an Eligible Vehicle after January 12, 2017,  
 14 and transferred ownership or terminated their lease before April 1, 2019;

15 (b) Owners or lessees who acquired an Eligible Vehicle after January 12, 2017,  
 16 and transferred ownership or terminated their lease after April 1, 2019, as a result of a total loss,  
 17 but before the Claim Submission Deadline for Eligible Owners and Eligible Lessees;

18 (c) Owners who acquired an Eligible Vehicle on or before January 12, 2017,  
 19 and transferred ownership after January 10, 2019, but before April 1, 2019, unless ownership was  
 20 transferred as a result of a total loss;

21 (d) Lessees who leased their Eligible Vehicles on or before January 12, 2017,  
 22 acquire ownership after January 10, 2019, and transfer ownership before the AEM is performed  
 23 on the Eligible Vehicle;

24 (e) Owners whose Eligible Vehicle is not Registered in the United States as of  
 25 the date the AEM is performed;

26 (f) Defendants’ officers, directors and employees; Defendants’ affiliates and  
 27 affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors  
 28 and employees; and Authorized Dealers and Authorized Dealers’ officers and directors;

1 (g) Judicial officers and their immediate family members and associated court  
2 staff assigned to this case; and

3 (h) All those otherwise in the Class who or which timely and properly exclude  
4 themselves from the Class as provided in this Class Action Agreement.

5 4. The Plaintiffs' Lead Counsel and members of the Plaintiffs' Steering Committee  
6 who were appointed by the Court in Pretrial Order No. 3 on June 19, 2017, have applied for  
7 appointment as Settlement Class Counsel, and the proposed Settlement Class Representatives,  
8 named as Plaintiffs in the earlier-filed Second Amended Consolidated Consumer Class Action  
9 Complaint, are listed in Exhibit F to the Motion.

10 **III. PRELIMINARY FINDINGS**

11 5. The Court finds that it will likely be able to approve, under Rule 23(e)(2), the  
12 proposed Settlement Class as defined above, consisting of current and former owners and lessees  
13 of approximately 100,000 identifiable Eligible Vehicles.

14 6. The Court furthermore finds that it will likely be able to certify the class for  
15 purposes of judgment on the proposal, because the Settlement Class likely meets the numerosity  
16 requirement of Rule 23(a)(1), as well as the commonality and predominance requirements of Rule  
17 23(a)(2) and (b)(3).

18 **IV. NOTICE TO CLASS MEMBERS**

19 7. Under Rule 23(c)(2), the Court finds that the content, format, and method of  
20 disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot filed on  
21 January 10, 2019, and the Settlement Agreement and Release, including direct First Class mailed  
22 notice to all known Class Members and an extensive and targeted publication campaign, is the  
23 best notice practicable under the circumstances and satisfies all requirements provided in Rule  
24 23(c)(2)(B) and due process. The Court approves such notice, and hereby directs that such notice  
25 be disseminated in the manner set forth in the proposed Settlement Agreement to Class Members  
26 under Rule 23(e)(1).

**V. SCHEDULE AND PROCEDURES FOR DISSEMINATING NOTICE, FILING CLAIMS, REQUESTING EXCLUSION FROM THE CLASS, FILING OBJECTIONS TO THE CLASS ACTION SETTLEMENT, AND FILING THE MOTION FOR FINAL APPROVAL**

<b>Proposed Date</b>	<b>Court Adopted Date (if altered)</b>	<b>Event</b>
January 10, 2019	_____, 2019	Settlement Class Representatives file Motion for an Order Approving Notice
January 23, 2019	_____, 2019	Hearing on Motion for an Order Approving Notice
January 24, 2019	_____, 2019	Class Notice Program begins
February 25, 2019	_____, 2019	Motions for Final Approval and Attorneys' Fees and Expenses filed
April 1, 2019	_____, 2019	Objection and Opt-Out Deadline
April 22, 2019	_____, 2019	Reply Memoranda in Support of Final Approval and Fee/Expense Application filed
April 29, 2019 – May 3, 2019	_____, 2019	Final Approval Hearing.
Date of entry of Final Approval Order and US-CA Consent Decree	_____, 2019	Claims Period Begins

**VI. FINAL APPROVAL HEARING**

8. The Final Approval Hearing shall take place on \_\_\_\_\_, 2019 at \_\_\_\_:00 a.m. at the United States District Court for the Northern District of California, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102, before the Honorable Edward M. Chen, to determine whether the proposed Class Settlement is fair, reasonable, and adequate,



whether it should be finally approved by the Court, and whether the Released Claims should be dismissed with prejudice under the Settlement and the Notice Program.

## **VII. OTHER PROVISIONS**

9. Plaintiffs' Lead Counsel and the members of the PSC are hereby appointed as Settlement class counsel under rule 23(g)(3) ("Class Counsel"). Settlement Class Counsel and Defendants are authorized to take, without further Court approval, all necessary and appropriate steps to implement the Settlement, including the approved Notice Program.

10. The deadlines set forth in this Preliminary Approval Order, including, but not limited to, adjourning the Final Approval Hearing, may be extended by Order of the Court, for good cause shown, without further notice to the Class Members, except that notice of any such extensions shall be included on the Settlement Website. Class Members should check the Settlement Website regularly for updates and further details regarding extensions of these deadlines. Exclusions and Objections must meet the deadlines and follow the requirements set forth in the approved notice in order to be valid.

11. Class Counsel and Defendants' Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with the Preliminary Approval Order or the Class Action Settlement, including making, without further approval of the Court, minor changes to the Settlement, to the form or content of the Class Notice, or to any other exhibits that the Parties jointly agree are reasonable or necessary.

12. The Court shall maintain continuing jurisdiction over these proceedings for the benefit of the Class as defined in this Order.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE EDWARD M. CHEN  
UNITED STATES DISTRICT JUDGE