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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

This Document Relates to:

ALL CONSUMER AND RESELLER ACTIONS

No. 3:15-md-02672-CRB

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES AND COSTS UNDER FED. R. CIV. P. 23(H) AND PRETRIAL ORDER NOS. 7 AND 11 RE: BOSCH CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: May 11, 2017
Time: 8:00 a.m.
Place: Courtroom 6, 17th floor

The Honorable Charles R. Breyer

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. 23(h), Pretrial Order Nos. 7 (Dkt. No. 1084) ("PTO 7") and 11 (Dkt. No. 1084) ("PTO 11"), and the Court's direction in the Order Granting Preliminary Approval of the Bosch Class Action Settlement (Dkt. No. 2920), Plaintiffs' Lead Counsel/Settlement Class Counsel, on behalf of Plaintiffs' Steering Committee/Class Counsel and all counsel performing common benefit services under the provisions of PTO 11, hereby moves the Court for an Order approving the award of $51 million for attorneys' fees and $1 million in expenses arising from the claims resolved by the Amended Class Action Settlement Agreement and Release (Dkt. No. 2918) (the "Settlement" or "Bosch Settlement"). This Motion is based on and supported by the Memorandum of Points and Authorities, below, the Declarations of Elizabeth J. Cabraser and Brian T. Fitzpatrick, attached as Exhibits A and B hereto, and the activities and events in these MDL proceedings to date.

The Settlement secures a non-reversionary $327.5 million fund to compensate consumers for their losses associated with the Bosch Defendants' role in the Volkswagen defeat device scheme. This substantial payment is in addition to the $11 to $14 billion to which Volkswagen is committed through the 2.0-liter and 3.0-liter settlements. The overwhelmingly positive reaction of Class Members and the administrative ease of making a claim under the Settlement ensure that the vast majority of Class Members will receive their settlement benefits with minimal effort.

From this fund, Settlement Class Counsel seek $51 million in attorneys' fees and $1 million in reasonable costs and expenses. The combined fees and costs amount to less than 16% of the total common fund, a percentage that falls well below the benchmark in this Circuit, and a lodestar cross-check yields a modest multiplier that is justified by the diligent representation and exceptional results in this case. Settlement Class Counsel thus submit that the fees and costs requested are fair and reasonable, and respectfully request that the Court approve them.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

This fee request arises in a unique context: the Settlement Class that it compensates has already benefited (or will benefit, pending final approval) from two separate settlements addressing the Volkswagen "Clean Diesel" defeat device scandal (the "Volkswagen settlements" or "2.0-liter and 3.0-liter settlements"). Dkt. Nos. 1804, 2894. Together, those settlements secure commitments between $11 and $14 billion for the Class (assuming all Class Members make claims), and result resulting in individual payments from Volkswagen[1] ranging from a minimum of thousands of dollars up to over $100,000. The preliminarily-approved Settlement with Robert Bosch GmbH and Robert Bosch LLC ("Bosch" or the "Bosch Defendants") provides an *additional*, non-reversionary fund of $327.5 million for these same Class Members. Those funds will be distributed in further individual net payments of up to $350 for 2.0-liter Class Members and up to $1,500 for 3.0-liter Class Members (depending on their status as an owner or lessee), with payments to begin shortly after final approval by this Court. The administrative ease and speed associated with making a claim and receiving funds ensures that the vast majority of the Class Members will receive their Settlement benefits quickly and with minimal effort.

Unsurprisingly, Class Members overwhelmingly support the Settlement. Although the objection and opt-out deadline has not yet passed (all objections will be addressed in the reply brief), more than five weeks have transpired since the Settlement received preliminary approval. In that time, approximately eight consumers have requested exclusion from the Class, and two Class Members have submitted objections. Together, that represents less than 0.002% of the Class, a strikingly low number.

Notwithstanding the notable result for the Class—achieved with extraordinary speed—Settlement Class Counsel (alternatively referred to as "Class Counsel" and the "PSC") request only 15.57% of the common fund in attorneys' fees, a percentage that falls well below the Circuit's benchmark of 25%. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir.

[1] For simplicity, the term Volkswagen is used in the brief to refer to the Volkswagen, Audi, and Porsche Defendants; however, the precise and respective obligations of each of those defendants are set forth in the 2.0-liter and 3.0-liter settlements. Dkt. Nos. 1804, 2894.

2002). This request is more than justified under the circumstances of this case. Unlike the claims against Volkswagen, Class Counsel litigated the claims against Bosch largely on their own. While the private plaintiffs were the first to sue both Bosch and the Volkswagen Defendants, the government agencies that joined the litigation against Volkswagen have not sued Bosch. As a result, Class Counsel took the lead on the investigation, formal discovery, and trial preparation involving these complex and uncertain claims, based on complex and uncertain proof, against a highly motivated defendant that continues to vigorously defend itself against other private plaintiffs on many grounds that are equally applicable to the Plaintiffs in this action. In this context, a fee request of $51 million, which is less than 16% of the common fund, and reflects a modest lodestar multiplier of only 2.32, is reasonable and fair.

Plaintiffs thus respectfully request an aggregate common benefit award of $51 million in fees and $1 million in costs, to be allocated by Plaintiffs' Lead Counsel among the PSC firms and additional counsel performing work under Pretrial Order Nos. 7 and 11.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

The Court is very familiar with the history of the "Clean Diesel" litigation and the terms of the Bosch Settlement. In short, it provides significant value to Class Members on top of the funds already recovered through the Volkswagen settlements, and it does so little more than a year after the litigation was consolidated before this Court—a remarkably quick result for litigation of this scope and complexity.

A. The Bosch Settlement Provides Significant Relief for the Class.

The Settlement provides a non-reversionary fund of $327.5 million, adding to the billions of dollars in Class payments provided by the 2.0-liter and 3.0-liter settlements with Volkswagen. Together, this recovery likely reflects the largest consumer class action settlement ever. Funds from the Bosch Settlement will be available to all members of the 2.0-liter and 3.0-liter Classes and will be distributed such that $163,267,450 will be shared among 2.0-liter Class Members and $113,264,400 will be shared among 3.0-liter Class Members. The precise distribution is prescribed by an allocation plan designed by the Federal Trade Commission ("FTC") after an independent analysis to ensure that all Class Members are fully and fairly compensated for their

losses. The individual payments range from $175 to $1,500, depending on the Class Member's vehicle and status as owner, former owner, or lessee. Moreover, these payments will be made *automatically* to any Class Member who submits a valid claim under either of the Volkswagen settlements, shortly after (and if) the Court grants final approval to the Settlement, and there is an additional, streamlined claim process for those who either opted out of the Volkswagen settlements or missed relevant deadlines. Because this is a non-reversionary fund, moreover, if any monies remain at the conclusion of the settlement benefit period, the remaining funds will be redistributed to Bosch Class Members or, if that is not economically viable, distributed through *cy pres* payments.

B. Class Counsel Worked Around the Clock, at the Court's Direction, to Secure a Comprehensive and Expeditious Resolution.

The speed in which the Settlement was reached is remarkable and was made possible only by the considerable efforts undertaken by Class Counsel. News of the defeat device broke on September 18, 2015, prompting hundreds of lawsuits. Three months later, the Judicial Panel on Multidistrict Litigation consolidated the actions before this Court, Dkt. No. 1, and on January 22, 2016, the Court appointed Lead Counsel and the 21-firm PSC, Dkt. No. 1084. The Court tapped an unusually large PSC for a reason: to accomplish an extraordinary amount of work at record pace.

> The Court notes it has appointed 21 attorneys to the PSC (in addition to Ms. Cabraser); the Court believes this is an appropriate number given the amount of work this litigation may entail and the need for an expeditious resolution of the matter.

Dkt. No. 1084 at ¶ 7. The Court's words proved prescient, for it took around-the-clock efforts from the entire PSC—and other attorneys Lead Counsel enlisted, per PTO 11—to advance both the litigation and the settlement negotiations swiftly and aggressively.

Settlement negotiations with Volkswagen began from almost the moment the Court appointed the Settlement Master and Class Counsel. Since that time, settlement discussions grew to include the Bosch Defendants, and occurred on both coasts of the United States, in person and telephonically, without regard to holidays, weekends, or time zones. Declaration of Settlement

Master Robert S. Mueller, III ("Mueller Decl.") ¶ 4. The negotiations were extraordinarily intense and complex, particularly considering the timeframe and the number of issues and parties involved, including attorney representatives from numerous governmental entities. Mueller Decl. ¶¶ 5-7.

At the same time, Class Counsel established more than a dozen working groups of PSC members and other counsel—including a group devoted entirely to Bosch—that worked tirelessly to advance the litigation swiftly, and to prepare for the possibility of a trial. Litigation working groups were charged with performing, and did in fact perform, the following tasks, among others:

a. Drafting a thorough Consolidated Consumer Class Action Complaint and Consolidated Reseller Dealer Class Action Complaint asserting claims against Bosch for violating, among other things, the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and drafting an Amended Consolidated Consumer Class Action Complaint and Second Amended Consolidated Reseller Dealer Class Action Complaint (together, the "Complaints"), based on extensive research and discovery that strengthened the contentions about Bosch's alleged role in the conspiracy;

b. Submitting and evaluating information on hundreds of plaintiffs and selecting 174 plaintiffs to serve as class representatives in the Consolidated Consumer Class Action Complaint, with additional dealership plaintiffs to serve as representatives in the Consolidated Amended Reseller Class Action Complaint;

c. Drafting and serving voluminous written discovery requests on Bosch, including Requests for Production, Requests for Admission, and Interrogatories;

d. Reviewing, analyzing and coding millions of pages of documents related to Bosch, which required the reviewing attorneys not only to understand the legal and technical complexities of the "defeat device" but also to master the difficulties and nuances when working with documents composed in German;

e. Engaging in meet and confers (both in-person and telephonically) concerning the scope of discovery and Bosch's objections to discovery;

f. Preparing a letter to Magistrate Judge Corley to assist with the resolution of the parties' various discovery disputes;

g. Drafting a motion for class certification;

h. Retaining and working with technical experts to understand issues pertaining to diesel engine systems and Bosch's creation of the software used as a defeat device;

i. Retaining and working with economic experts to analyze damages and perform damages modeling; and

1. Preparing for trial by, among other things, drafting a comprehensive trial plan and various filings pertaining to an expedited trial.

All of these tasks were essential, for settlement was by no means a foregone conclusion. Indeed, the Parties vigorously litigated Bosch's alleged role in the fraud up until the moment a tentative agreement was announced, as evidenced by the stipulation filed by the parties on December 2, 2016, regarding briefing on Bosch's forthcoming motions to dismiss. *See* Dkt. No. 2414. As Bosch's counsel remarked at the preliminary approval hearing, "I see many members of the PSC in the jury box right now whom I know from litigation and not from settlement negotiation." Feb. 14, 2017, Preliminary Approval Hearing, Tr. at 77:8-12.

Advancing all of these tasks simultaneously was, to say the least, a very serious undertaking. The result of all this intense litigation and the parallel intense settlement talks is an outstanding Settlement for all Class Members, secured remarkably quickly given the scope and complexity of the litigation.

III. ARGUMENT

A. Class Counsel's Fee Request Is Fair, Reasonable, and Appropriate.

In deciding whether a requested fee amount is appropriate, the Court's role is to determine whether such amount is "fundamentally 'fair, adequate, and reasonable.'" *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)); *see also In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1294-95 n.2 (9th Cir. 1994) (the overriding principle is that the fee award be "reasonable under the circumstances"). Here, Settlement Class Counsel have requested an amount substantially below that which would be considered reasonable under

the Ninth Circuit's fee jurisprudence, and their fee request is well justified when that law is applied to the facts of this case. Notably, in conducting its independent allocation analysis, the FTC included consideration of an appropriate fee for Settlement Class Counsel, and calculated net distributions to Class Members based upon the award of the funds requested here, which it considers reasonable and does not oppose.

Where a settlement establishes a common fund or calculable monetary benefit for the class members, the preferred method is to award attorneys' fees based on a percentage of the monetary benefit obtained. *See Vizcaino*, 290 F.3d at 1047; *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). In the Ninth Circuit, the long-established and oft-applied benchmark award of attorneys' fees in common fund cases is 25%. *Bluetooth*, 654 F.3d at 942. As noted by class action expert Professor Brian Fitzpatrick in his accompanying declaration, of the 111 class actions in the Ninth Circuit analyzed in a detailed, empirical study, the most common fee percentages awarded were 25%, 30%, and 33%, with a mean and median of 23.9% and 25%, respectively. Ex. B, Declaration of Brian T. Fitzpatrick ("Fitzpatrick Decl.") ¶ 14. Even in cases with settlements of a value similar to or greater than this Settlement, courts routinely award fees between 25% and 35% of the common fund. *See, e.g., Allapattah Services v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) (awarding 31.3% of $1.075 billion settlement fund and citing fourteen cases involving settlement funds between $40-696 million with fee awards between 25-35% of the fund); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL. No. 1827, 2013 U.S. Dist. LEXIS 49885 (N.D. Cal. Apr. 3, 2013) (awarding 28.5% of $1.08 billion fund). Indeed, of all the settlements analyzed in Professor Fitzpatrick's study that were valued between $250 million and $500 million, the mean and median fee percentages were 17.8% and 19.5%, respectively. Fitzpatrick Decl. ¶ 16. Class Counsel's request of $51 million in fees is roughly 15.57% of the $327.5 million common fund, which is well under both the mean and median fee percentages and more than justified under the law of this Circuit.

Although 25% is the presumptive benchmark, courts in the Ninth Circuit frequently reference a number of additional factors in evaluating the reasonableness of a requested fee. These include: (1) the result achieved; (2) the complexity of the case and risks the case involved;

(3) the contingent nature of the fee and financial burden carried by counsel; (4) the skill required and the quality of the work of plaintiffs' counsel; and (5) the customary fees for similar cases. *Vizcaino*, 290 F.3d at 1048-50; Fitzpatrick Decl. ¶ 12. Courts may also engage in a streamlined lodestar "cross-check" analysis. *Vizcaino*, 290 F.3d at 1048-50; Fitzpatrick Decl. ¶ 12. Each of these factors supports Class Counsel's request.

1. Class Counsel Obtained Exceptional Results for the Class.

The benefit obtained for the class is the single most important factor. *In re Bluetooth*, 654 F.3d at 942; *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). It weighs heavily in favor of approving Class Counsel's fees.

As detailed at length above, in the Settlement approval briefing, and in the Court's Order preliminarily approving the Settlement, the Settlement secures a non-reversionary fund of $327.5 million—resulting in individual net payments between $175 to $1500—in *addition* to the four- to six-figure awards for which Class Members are eligible under the related Volkswagen settlements. Together, this likely represents the largest set of consumer class action settlements ever.

The distribution plan for the fund is outlined in detail in the Settlement and in the Court's Order preliminarily approving the Settlement. Dkt. Nos. 2918, 2920. The FTC, the premier federal consumer protection agency, designed this plan to ensure that all Class Members receive full and fair compensation for their losses. Moreover, the streamlined claims process, which sends payments automatically to any Class Member who submits a valid claim in either of the Volkswagen settlements, ensures that virtually everybody who is entitled to payment under the Settlement will get paid quickly and with minimal effort.

This result is particularly notable given the very real possibility that even if the Plaintiffs had prevailed in proving liability at trial—by no means a given, for the reasons outlined below—their ultimate recovery may not have totaled the amount secured by this Settlement (and it certainly would not have been secured at this speed). Because Class Members will have received substantial compensation through the Volkswagen settlements for the economic losses associated with the defeat device scheme, there was a risk that any potential recovery would have been offset, partially or entirely, by the funds Class Members already received. Even if the Class secured an

additional judgment against Bosch, moreover, Bosch maintained that it was indemnified by Volkswagen for any liability arising from the defeat devices. The Volkswagen settlements, in turn, provide that if that indemnification claim succeeded, Class Members would "waive enforcement of [their] judgment against . . . Bosch . . . by the amount of the damages that [Volkswagen is] . . . held to be responsible for by way of indemnification of . . . Bosch." Dkt. No. 1685-5 ¶ 6. Furthermore, while treble damages were potentially available under Plaintiffs' RICO claim, "it is inappropriate to measure the adequacy of a settlement amount by comparing it to a possible trebled base recovery figure." *Cty. of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1324 (2d Cir. 1990).

In the context of this uncertainty, the scope of the Settlement with the Bosch Defendants—and the speed in which it was secured—is even more impressive. Thus, the strength of the Settlement benefits, the most important factor in the reasonableness evaluation, strongly supports Class Counsel's requested fees.

2. <u>This Case Against Bosch was Complex and Involved Significant Risk.</u>

This was a difficult case from the start, and, as described above, it is not at all certain that the Class could obtain a better outcome against Bosch through continued litigation, trial, and appeal—much less at the speed at which it was accomplished through the Settlement. Indeed, the litigation thus far has revealed very significant disputes on a number of factual and legal issues necessary for Plaintiffs to prevail.

As to the facts, unlike Volkswagen, Bosch never came close to even arguably conceding any element of liability. Indeed, Plaintiffs and Bosch have advanced competing narratives about a number of key documents underpinning Plaintiffs' case. For example, while Plaintiffs assert that one particular document is strong evidence that Bosch knew about and participated in Volkswagen's defeat device scheme, Bosch claims that document does not implicate the EDC-17 engine software that Plaintiffs allege contained the defeat device and does not concern diesel vehicles at all. Similarly, Plaintiffs assert that another document regarding the "acoustic function" (a euphemism sometimes used to reference the defeat device) reflects conversations between Volkswagen's CEO and Bosch GmbH's CEO about the critical issues in this case, demonstrating

Bosch's knowledge of, complicity with, and participation in the defeat device scheme. Bosch vigorously disputes this interpretation, arguing instead that the document refers only to diesel vehicle acoustics. Thus, while Plaintiffs continue to believe strongly in the allegations in their Complaints, the proof underlying those allegations was hotly contested, and Plaintiffs' ultimate success at trial was far from certain.

The case presented considerable legal hurdles as well. Plaintiffs' principal claim against Bosch was brought under the RICO statute. Even assuming the absence of factual disputes, prevailing on that claim was not a given. Bosch recently briefed a motion to dismiss a similar RICO claim brought by the non-settling Volkswagen Franchise Dealers. That briefing outlines some of the potential legal obstacles to the consumer and reseller dealers' RICO claim, including challenges to standing, causation, and damages, among other things. Dkt. Nos. 2864, 3052. Moreover, Bosch GmbH, a German company, challenged the Court's exercise of jurisdiction—an argument which, if correct, would significantly impair Plaintiffs' claims. Bosch was prepared to aggressively defend itself, and was not without the legal means to do so.

Furthermore, Settlement Class Counsel took the initiative to instigate the claims against a parts-supplier that many did not believe could be directly linked to the TDI scheme, and took the laboring oar in the complex and uncertain task of investigating and prosecuting those claims on their own. In sum, the case against Bosch was a difficult one, and the risks involved with taking it to trial were considerable. In light of that, and in recognition of the Class Counsel's diligence in pursuing these difficult claims, this factor strongly supports Class Counsel's fee request.

3. Class Counsel Carried Substantial Financial Risk and Burden in Prosecuting this Case on a Contingent Basis.

The Court's orders appointing the PSC and providing a protocol for common benefit work and expenses establish that this matter is purely contingent, with all fees and expenses subject to approval by the Court. Dkt. Nos. 1084, 1254. All PSC members were required to regularly contribute to the litigation fund (they have advanced millions of dollars in common benefit assessments to date) and devoted thousands of hours to this litigation without any guarantee that they would be reimbursed for their time and efforts. Cabraser Decl. ¶ 6. The demands of the case

were high, and, as noted above, settlement was far from a foregone conclusion. Thus, this factor, too, supports Class Counsel's request.

4. Class Counsel's Skill and Work Product Have Been Exemplary.

This was (and remains) a complex case requiring the skills of a "group of diverse" and "highly competent counsel," as the Court has recognized. Feb. 25, 2016, Status Conference Hr'g Tr., Dkt. No. 1270 at 5:8-12. The Court selected Class Counsel out of a group of approximately 150 applying attorneys and concluded that Class Counsel "are qualified attorneys with extensive experience in consumer class action litigation and other complex cases." Dkt. No. 1688 at 18. Even Volkswagen's counsel dubbed Class Counsel an "all-star cast of . . . some of the best plaintiffs' lawyers in America." Dkt. No. 2079 at 27:8-9. As the Court noted in the Order granting preliminary approval of the 2.0-liter settlement, "[t]he extensive efforts undertaken thus far in this matter," including the myriad of litigation and settlement related-duties outlined herein, "are indicative of Lead Plaintiffs' Counsel's and the PSC's ability to prosecute this action vigorously." Dkt. No. 1688 at 16. Likewise, in the Order granting preliminary approval in this case, the Court recognized that "[t]he extensive efforts undertaken thus far in this matter are indicative of Lead Plaintiffs' Counsel's and the PSC's ability to prosecute this action vigorously." Dkt. No. 2920 at 12. The skill and diligence demonstrated by Class Counsel in this litigation, therefore, support their requested fees.

5. Customary Fees in Similar Cases Exceed Those Requested Here.

Comparing the requested fees to awards in similar cases highlights the reasonableness of the application. As explained herein, and detailed in the accompanying Declaration of Professor Fitzpatrick, the fees requested here are well below the benchmark. Indeed, Professor Fitzpatrick's analysis reveals that "class counsel's fee request is lower than over 80% of the fee awards in this Circuit," and is below both the median and mean fee percentages awarded in settlements between $250 and $500 million. Fitzpatrick Decl. ¶¶ 15-16.

Even if the Court were to combine the fees requested here with the $167 million in fees awarded in connection with the 2.0-liter settlement, the combined fees would still represent no more than 9.2% of the aggregate settlement values (using an extremely conservative, $2 billion

valuation of the 2.0-liter settlement).[2] This, too, is well below both the Circuit's benchmark and the customary percentages awarded in super-mega-fund cases, as detailed in the 2.0-liter fee briefing. Dkt. Nos. 2175, 2186. This factor strongly supports the reasonableness of Class Counsel's request.

6. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees.

The lodestar method of evaluating attorneys' fees is not favored. There are many reasons for this, including the fact that the lodestar method is onerous to calculate and can create tension between the interests of class counsel and the interests of the class. Fitzpatrick Decl. ¶¶ 8-10, 21 (collecting and analyzing cases). While some courts nevertheless employ a "streamlined" lodestar analysis to "cross-check" the reasonableness of a requested award, such a cross-check is not necessary, especially where, as here, the percentage requested falls significantly below the benchmark. *Ebarle v. Lifelock, Inc.*, No. 15-CV-00258-HSG, 2016 WL 5076203, at *11 (N.D. Cal. Sept. 20, 2016) ("The Court declines to conduct a lodestar cross-check in this case, given that under the percentage-of-the-fund method the fee request was significantly below the 25% benchmark."); *Craft v. Cty. of San Bernardino*, 624 F. Supp. 2d 1113, 1122 (C.D. Cal. 2008) ("A lodestar cross-check is not required in this circuit, and in some cases is not a useful reference point."); *Aichele v. City of L.A.*, No. CV-12-10863-DMG, 2015 WL 5286028, at *6 (C.D. Cal. Sept. 9, 2015) (same). Although unnecessary, a lodestar cross-check would result in only a modest multiplier of 2.32, which is well within the bounds of reasonableness.

In this case, the Court established a protocol for identifying, categorizing, and recording common benefit time in PTOs 7 and 11. Class Counsel have followed those directions, as described in the accompanying declaration of Elizabeth J. Cabraser, and collected and reviewed common benefit time submissions from all 21 PSC firms and many others that were designated by Lead Counsel to perform common benefit work. Ex. A, Cabraser Decl. ¶¶ 9-10. The hours

[2] In fact, with approximately 18 months to go before the claims deadline in the 2.0-liter settlement, over 203,000 buybacks have *already been completed*, and well over $5 billion has already been paid or approved for payment to consumers.

worked and rates billed are summarized in the Declaration of Elizabeth Cabraser.[3] *Id.* at ¶¶ 14-17. In short, the total number of hours worked to advance the common benefit is 46,551.6. *Id.* at ¶ 11. The aggregate lodestar is $21,974,497.63. *Id.* The average billing rate is $472.05 per hour. *Id.* at ¶ 15.

The rates billed (customary rates, as PTO 11 directed) are reasonable. Hourly rates should be guided by the prevailing market rates for similar work performed by attorneys of comparable skill, experience, and reputation. *Blum v. Stenson*, 465 U.S. 886, 895 (1984); *Hajro v. U.S. Citizenship & Immigration Servs.*, 900 F. Supp. 2d 1034, 1054 (N.D. Cal. 2012). Even in 2013, rates in the San Francisco area could exceed $1,000 per hour. *See* 2013 National Law Journal Billing Survey. Courts in this district have therefore approved rates comparable to those claimed here. *See, e.g.*, *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730, at *9 (N.D. Cal. Sept. 2, 2015); *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA, 2015 WL 2438274, at *5 (N.D. Cal. May 21, 2015). Indeed, this Court recently approved almost identical rates in its Order Granting Plaintiffs' Motion for Attorneys' Fees and Costs Relating to 2.0-Liter Settlement. Dkt. No. 3053 at 8.

The resulting blended rate of $472.05 is also reasonable under the circumstances of this case, Fitzpatrick Decl. ¶ 21, especially given the skill, experience, and reputation of Class Counsel—who were selected by the Court, after written submissions and oral presentations, from a pool of over 150 applicants and who were directed by the Court to devote their personal attention to this case, Dkt. No. 1084 at ¶ 5. The empirical analysis conducted by Professor William C. Rubenstein in his declaration supporting the 2.0-liter fee application reinforces this

[3] Providing more than hours worked and billing rates is unnecessary. *See* Order Granting Plaintiffs' Motion for Attorneys' Fees and Costs Relating to 2.0-Liter Settlement, Dkt. No. 3053 at 8 n.5 (overruling objection and concluding that identical categories of information complied with PTO 11 and provided sufficient basis to conduct a lodestar cross-check); *accord Winterrowd v. Am.Gen.Annuity Ins. Co.*, 556 F.3d 815, 827 (9th Cir. 2009) (quoting *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (Cal. Ct. Appl. 1986) ("Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.")); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 264 (N.D. Cal. 2015) ("The lodestar cross-check calculation need entail neither mathematical precision nor bean counting . . . [courts] may rely on summaries submitted by the attorneys and need not review actual billing records." (citation omitted) (internal quotation marks omitted)).

conclusion. There, Professor Rubinstein noted that in the 35 fee petitions filed in this District in 2015 and 2016 that had sufficient information to generate a blended billing rate, the rates "ranged from a low of $363.14/hour to a high of $720.08/hour" and resulted in an average of "530.82"/hour. Dkt. No. 2786-3 at ¶ 18. The blended hourly rate here falls well below that average—a notable accomplishment given the composition of the PSC, the speed at which Class Counsel advanced the case on multiple tracks, and the complexity of the case. *See id.* at ¶¶ 18-19.

The time expended was also necessary. As explained above, the Court and the Class expected counsel to prosecute this case aggressively and on many fronts. Doing so required extraordinary dedication and time commitment. These efforts were necessary to achieve this significant settlement.

Finally, the facts of this case, and the law in this Circuit, support an upward lodestar multiplier. "The Ninth Circuit has held that '[t]he district court must apply a risk multiplier to the lodestar when (1) attorneys take a case with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence the case was risky.'" Rubenstein Declaration, Dkt. No. 2786-3 at ¶ 26 (quoting *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016)). As discussed above, the claims against Bosch involved significant risk, as exemplified in the briefing surrounding Bosch's motion to dismiss the RICO claims brought by the Volkswagen Franchise dealers. Dkt. Nos. 2864, 3052. There, Bosch vigorously attacks not only the viability of the RICO claim (which shares core elements with the consumer and reseller dealers' claims), but also the very basis of the Court's jurisdiction. Again, this simply was not a case where the defendant made any concessions regarding liability—each and every legal and factual issue was hotly disputed. Moreover, the private plaintiffs bore the brunt of the litigation workload, and the risks, on their own. The government parties to this litigation did not sue Bosch, and the private plaintiffs took the lead in the formal discovery review, expert analysis, litigation, and trial preparation. In short, this was risky litigation, and the Ninth Circuit's upward "risk" multiplier is justified, if not mandatory.

Even if it were not, however, a discretionary upward multiplier would be appropriate to reflect a number of "reasonableness factors," including the quality of representation and the

benefit obtained for the class. *In re Bluetooth*, 654 F.3d at 941-42. Those factors are discussed at length above, and also justify the multiplier requested here. Fitzpatrick Decl. ¶ 21. Indeed, given the circumstances of this case, a multiplier of 2.32 is quite modest. *Id.* As Professor Rubenstein noted, three separate empirical studies show that

> multipliers are higher in cases with larger returns, with the mean multipliers rising to 2.39 (in cases with recoveries over $44.6 million) in one study; to 3.18 (in cases with recoveries over $175.5 million) in another study; and to 4.5 (in cases with recoveries over $100 million) in a third study.

Rubenstein Decl. ¶ 29 (citing William B. Rubenstein, 5 *Newberg on Class Actions* § 15:89 (5th ed. 2015); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. EMPIRICAL LEGAL STUD. 248, 274 (2010); Stuart J. Logan, Beverly C. Moore & Jack Moshman, *Attorney Fee Awards in Common Fund Class Actions*, 24 CLASS ACTION REP. 167 (2003)); *accord* Fitzpatrick Decl. ¶ 21 (finding that the mean and median multipliers in settlements valued between $250 million and $500 million was 3.37 and 3.41, respectively). Here, the multiplier of 2.32 falls below all the relevant mean and median multipliers, and is well supported by the risk of the litigation and the benefit achieved for the Class. Combining this request with the 2.0-liter fees does not alter the analysis. The global lodestar thus far in the 2.0-liter and Bosch consumer litigation is $87.5 million, which yields a global multiplier of 2.55. That is less than the 2.63 multiplier that this Court found was "more than reasonable given the complexities of this case and the extraordinary result achieved for the Class." Dkt. No. 3503 at 8. For the same reasons that multiplier did not render the fee there unreasonable, it also does not call into question the global fees associated with the consumer fee awards and requests to date.

B. Class Counsel's Expenses are Reasonable and Appropriate.

"Class counsel are entitled to reimbursement of reasonable out-of-pocket expenses." *Wakefield v. Wells Fargo & Co.*, No. 3:13-cv-05053 LB, 2015 WL 3430240, at *6 (N.D. Cal. May 28, 2015); *see also Staton*, 327 F.3d at 974; Fed. R. Civ. P. 23(h). Expenses that are reasonable, necessary, directly related to the litigation, and normally charged to a fee-paying client are recoverable. *See, e.g.*, *Willner v. Manpower Inc.*, No. 11-cv-02846-JST, 2015 WL

3863625, at *7 (N.D. Cal. June 22, 2015); *Buccellato v. AT&T Operations, Inc.*, No. C10-00463-LHK, 2011 WL 3348055, at *2 (N.D. Cal. June 30, 2011).

As with the common benefit time, PTO 11 outlines the Court-approved procedure for identifying, categorizing, recording, and reviewing expenses. Class Counsel complied with that Order. Cabraser Decl. ¶ 9. The total amount of reimbursable expenses pursuant to PTO 11 equals $1 million. *Id.* ¶ 16. That covers $804,614.09 in relevant costs already expended to advance the common benefit by Lead Counsel, all 21-PSC firms, and numerous other firms designated by lead counsel to perform common benefit work. *Id.* Examples of such expenses include: hiring numerous experts to strengthen Plaintiffs' litigation and settlement positions; establishing and maintaining a sophisticated document review platform and support team to facilitate the review and analysis of millions of pages of documents; and advancing half of the costs of the Court-appointed Settlement Master, among many other things. Each expenditure falls into one of the 19 categories specified by the Court. The requested expenses also include $195,385.91 in anticipated future costs associated with seeking final approval for the Settlement, defending it on appeal, if approved, and implementing the Settlement for more than 550,000 Class Members. *Id.* ¶ 17. The total costs expended and projected are well within the customary range of costs associated with litigation of this scope and recoveries of this magnitude. Fitzpatrick Decl. ¶ 22. As with the fees, the costs for which Class Counsel seek reimbursement fall below both the $3.2 million mean and $2 million median costs awarded in settlements of similar values. *Id.* The costs are therefore reasonable and should be reimbursed.

IV. CONCLUSION

For the foregoing reasons, Settlement Class Counsel respectfully request that the Court grant Class Counsel's Motion and award $51 million in attorneys' fees and $1 million in costs related to the Bosch Settlement, to be allocated by Plaintiffs' Lead Counsel among the PSC firms and additional counsel performing work under PTOs 7 and 11.

Dated: March 24, 2017

Respectfully submitted,

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By: */s/ Elizabeth J. Cabraser*

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Plaintiffs' Steering Committee and Settlement Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that, on March 24, 2017, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

EXHIBIT A

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

This Document Relates to:

ALL CONSUMER AND RESELLER ACTIONS

MDL 2672 CRB (JSC)

DECLARATION OF ELIZABETH J. CABRASER IN SUPPORT PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS UNDER FED. R. CIV. P. 23(H) AND PRETRIAL ORDER NOS. 7 AND 11 RE: BOSCH CLASS ACTION SETTLEMENT

The Honorable Charles R. Breyer

I, ELIZABETH J. CABRASER, declare:

1. I am an attorney admitted to the Bars of the State of California and the Northern District of California. I am counsel of record for Plaintiffs in these proceedings, and serve, pursuant to Pretrial Order No. 7: Order Appointing Plaintiffs' Lead Counsel, Plaintiffs' Steering Committee, and Government Coordinating Counsel (Dkt. No. 1084) ("PTO 7"), as Lead Plaintiffs' Counsel.

2. I also serve, pursuant to this Court's Orders Granting Preliminary Approval of Settlement (Dkt. No. 2920), as Lead Settlement Class Counsel for the Bosch Settlement Class.

3. The Volkswagen "Clean Diesel" claims were predominantly asserted in the form of class action complaints, many of which named the Bosch Defendants. Within weeks of the revelations regarding the Volkswagen Defendants' use of "defeat devices" in diesel vehicles, hundreds of class action complaints had been filed in or removed to federal courts. These cases were coordinated and centralized by the Judicial Panel on Multidistrict Litigation under 28 U.S.C. § 1407 and assigned to Hon. Charles R. Breyer by Transfer Order dated December 8, 2015 (Dkt. No. 1). Over one thousand actions, most styled as class actions, have become a part of these MDL proceedings. They have been managed, pleaded, prosecuted, discovered, and, as to the consumer and reseller dealer claims against the Volkswagen and Bosch Defendants, certified and settled (or are pending final approval) as Rule 23 class actions, with the PSC tasked with filing consolidated class action complaints, conducting common discovery, and appointed to serve as Class Counsel. Pursuant to this authority, Settlement Class Counsel negotiated the Amended Consumer Class Action Settlement Agreement and Release (Dkt. No. 2918) (the "Settlement"), which the Court preliminarily approved on February 16, 2017.

4. In PTO 7, the Court appointed counsel to lead these MDL proceedings and set forth their responsibilities. From 150 leadership applications received, the Court appointed 21 attorneys to the PSC, and the undersigned as Plaintiffs' Lead Counsel, noting that "this is an appropriate number given the amount of work this litigation may entail and the need for an expeditious resolution of this matter." Dkt. No. 1084 at ¶ 7. The Court also vested Plaintiffs' Lead Counsel with "the authority to retain the services of any attorney not part of the PSC to

perform any common benefit work, provided the attorney so consents and is bound by the PSC's compensation structure." *Id*. at ¶ 2.

5. In Pretrial Order No. 11: Protocol for Common Benefit Work and Expenses ("PTO 11") (Dkt. No. 1254), the Court defined "Compensable Common Benefit Work and Common Expenses" and set forth the Court-ordered "Protocols for Submission of Time and Expenses" and for reimbursement of common benefit work.

6. To date, all PSC members have participated actively in funding the prosecution of the Class claims, by performing work on a priority basis as assigned and authorized by the undersigned, by incurring the necessary and appropriate out-of-pocket travel and administrative costs to do so, and additionally by contributing millions of dollars in assessments to a common benefit fund. This fund has been used to retain experts (including liability, technical, and procedural experts) to finance the massive document analysis and expedited trial preparation effort, and to pay one half of the services of the Court-appointed Settlement Master and his team, pursuant to Pretrial Order No. 6: Appointment of Robert S. Mueller III as Settlement Master (Dkt. No. 973 at ¶ 4).

7. Section 11.1 of the operative Amended Consumer Class Action Settlement Agreement and Release (Dkt. No. 2918) provides that Bosch shall pay the reasonable attorneys' fees and costs for work performed by Class Counsel, and other attorneys designated by Class Counsel, related to the prosecution and resolution of the claims against Bosch, in an amount to be approved by the Court, out of the $327.5 million settlement fund. The Long Form Notice further advises Class Members that Settlement Class Counsel will seek a maximum of 16% of the Settlement fund in attorneys' fees plus expenses. These fees and costs are the subject of the instant Motion.

8. The work of these MDL proceedings, and of the Bosch Settlement, is unfinished. The Settlement must be administered, implemented, defended and enforced until its benefits have been delivered to all successful claimants. The fee request includes an amount reserved to compensate PSC and additional firms who are authorized by the undersigned under PTOs 7 and 11 to perform this prospective and necessary work.

9. Pursuant to the procedures outlined in PTO 11, attorneys and staff working at my direction and under my supervision collected and reviewed submissions of common benefit time and reimbursable costs and expenses submitted by the PSC and other law firms from whom I and other PSC members requested common benefit work per PTO 11. The database maintaining the submissions has been meticulously maintained and updated weekly.[1]

10. Only time and expenses that inured to the common benefit of the Bosch Settlement Class and that advanced the claims resolved in the Amended Consumer Class Action Settlement Agreement and Release have been included in the time presented and the costs submitted. This excludes all time and expenses submitted in connection with the 2.0-liter fee application. There has been no double billing.

11. The total number of common benefit hours associated with the prosecution and resolution of the claims against the Bosch Defendants is approximately 46,551.6. This results in a combined lodestar of $21,974,497.63. That includes the hours already worked and the associated lodestar broken down by the Court-approved categories outlined in PTO 11,[2] as shown in Table 1 below. Again, these hours were not included in the 2.0-liter fee application and will not be included in any other fee application. The total fees requested—$51 million—represent a 2.32 multiplier of the combined lodestar.

[1] The information contained in this Motion and Declaration complies with the procedures set forth in PTO 11, the specific protocol on time and costs adopted by the Court, and N.D. Cal. Civil Local Rule 54-5 by reporting on the quantum and categories of work performed pursuant to PTO 11.

[2] These task codes are: 1. Lead Counsel Calls/Meetings; 2. PSC Calls/Meetings; 3. Lead Counsel/PSC Duties; 4. Administrative; 5. MDL Status Conf.; 6. Court Appearance; 7. Research; 8. Discovery; 9. Doc. Review; 10. Litigation Strategy & Analysis; 11. Dep. Prep/Take/Defend; 12. Pleadings/Briefs/pre-trial Motions/Legal; 13. Science; 14. Experts/Consultants; 15. Settlement; 16. Trial Prep/Bellwether; 17. Trial; 18. Appeal; 19. Miscellaneous.

Table 1

Category Breakdown		
PTO 11 Category	**Total Hours**	**Total Lodestar**
1	162.3	$130,044.50
2	181.3	$130,372.50
3	985.7	$639,862.40
4	126.8	$43,827.00
5	106.3	$74,804.00
6	112.5	$95,685.50
7	1,200.6	$597,820.50
8	2,840.2	$1,691,099.00
9	31,093.4	$12,889,727.98
10	1,323.1	$855,218.00
11	91.3	$52,998.00
12	1,001.5	$684,416.50
13	0.3	$205.00
14	805.0	$531,443.50
15	2,095.0	$1,400,991.50
16	135.5	$113,522.50
17	32.4	$23,121.00
18	0.2	$160.00
19	26.3	$21,478.00
Reserved	4,231.97	$1,997,700.26
Total	**46,551.6**	**$21,974,497.63**

12. As shown above, the total also includes 4,231.97 hours of reserved time ($1,997,700.26 in reserved lodestar) to cover the work necessary to (1) continue the process of obtaining final approval of the Settlement, (2) defend and protect the Settlement on appeal, (3) assist in the implementation and supervision of the Settlement, and (4) guide the hundreds of thousands of Class Members through the Settlement claims and distribution period, among other things. This sum will be held in reserve and used to compensate the PSC members and other firms to be authorized by Plaintiffs' Lead Counsel to perform these necessary and appropriate steps to assure the delivery of Settlement benefits to the Class.

13. A similar process of projecting reserved time was outlined in my Declaration in support of the 2.0-liter fee application. Dkt. No. 2175-1 at ¶¶ 16-17. There, the projection was calculated in three steps. First, the average hours and lodestar associated with Settlement

implementation from the months of July, August, and September, 2016—the three full months between preliminary approval of the 2-liter Settlement and the filing of the 2.0-liter fee application—was determined. Second, the monthly average was multiplied by the number of months remaining in the 2.0-liter Settlement period. Third, the projected total was *reduced by 75%*, and rounded, resulting in a final, conservative, projected Settlement-administration lodestar. The Court approved the requested fees as reasonable and appropriate and granted Plaintiffs' fee application. Dkt. No. 3053.

14. Given the Court-ordered timing of the fee application in this case, only 1.5 months passed between the filing of the Settlement and the filing of the instant motion. This time period did not provide sufficient data for a reliable extrapolation. Thus, to calculate the projected hours and lodestar in this case, Settlement Class Counsel used the already modest calculations from the 2.0-liter context as a starting place. There, the projected time and lodestar that resulted from the calculation described above represented approximately 20% of the time and lodestar that had already been worked to advance the 2.0-liter Settlement at that time. Here, that percentage was cut in half: the reserved time projected for this fee application amounts to only 10% of the time already expended in this litigation thus far. This further reduction accounts for the reality that the administration of this Settlement, while complex, will likely not require as much labor as will be required to oversee the repair and buyback of almost 500,000 cars. Nevertheless, given the many other tasks that Settlement Class Counsel will have to perform, outlined in paragraph 13, above, and given that the Settlement Class here is even larger than the 2.0-liter Class, this is a very conservative estimate.

15. The range of hourly rates varied considerably given the diversity of lawyers and law firms tasked to perform common benefit work and includes some of the most qualified and experienced lawyers in the country who the Court appointed to the PSC. The hourly billing rates ranged from $310 to $1,650 for partners; from $185 to $850 for associates; and from $125 to $450 for paralegals. These are the customary billing rates of the submitting lawyers and paralegals, reflecting their experience and the economies of their law practices. My customary hourly rate, for example, awarded by federal courts in this District and elsewhere—including by

this Court in the Order Granting Plaintiffs' Motion for Attorneys' Fees and Costs Related to 2.0-liter Settlement, Dkt. No. 3053—is $1,000 per hour. The average hourly billing rate for all common benefit work performed and projected per PTO 11 is $472.05.

16. The aggregate common benefit costs and expenses total is $1 million. This total includes the costs already expended, which are broken down by Court-approved category in PTO 11[3] in Table 2 below.

Table 2

Category Breakdown	
PTO 11 Category	**Common Benefit Costs**
1	$474,106.74
2	$20,023.17
3	$164.76
4	$19.18
5	$4,593.69
6	$7,804.19
7	$2,970.25
8	$69,118.17
9	$16,478.26
10	$662.70
11	$120,678.07
12	$213.75
13	$8,873.78
14	$2,059.66
15	$12,659.86
16	$6,517.59
17	$1,923.13
18	$18,954.39
19	$36,792.79
Reserved	$195,385.91
Total	**$1,000,000.00**

[3] The cost categories are: 1. Assessment Fees; 2. Federal Express / Local Courier, etc.; 3. Postage Charges; 4. Facsimile Charges; 5. Long Distance; 6. In-House Photocopying; 7. Outside Photocopying; 8. Hotels; 9. Meals; 10. Mileage; 11. Air Travel; 12. Deposition Costs; 13. Lexis/Westlaw; 14. Court Fees; 15. Witness / Expert Fees; 16. Investigation Fees / Service Fees; 17. Transcripts; 18. Ground Transportation (i.e. Rental, Taxis, etc.); and 19. Miscellaneous

17. As shown above, the total requested costs per PTO 11 also include $195,385.91 in projected costs, which Settlement Class Counsel is responsibly reserving to cover expenses associated with the continued oversight, implementation, and defense of the Settlement.

18. Plaintiffs thus seek an aggregate common benefit award of $51 million in fees and $1 million in costs, to be allocated by Plaintiffs' Lead Counsel among the PSC firms and additional counsel performing work under PTOs 7 and 11.

I declare under penalty of perjury that the forgoing is true and correct. Executed in San Francisco, California, this 24th day of March 2017.

/s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

EXHIBIT B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

This Document Relates to:

ALL CONSUMER AND RESELLER ACTIONS

MDL 2672 CRB (JSC)

DECLARATION OF BRIAN T. FITZPATRICK IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS UNDER FED. R. CIV. P. 23(H) AND PRETRIAL ORDER NOS. 7 AND 11

The Honorable Charles R. Breyer

Background and qualifications

1. I am a Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I graduated from the University of Notre Dame in 1997 and Harvard Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid O'Scannlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Attachment 1.

2. My teaching and research at Vanderbilt and New York University have focused on class action litigation. I teach the Civil Procedure, Federal Courts, and Complex Litigation courses at Vanderbilt. In addition, I have published a number of articles on class action litigation in such journals as the University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the University of Arizona Law Review, and the NYU Journal of Law & Business. My work has been cited by numerous courts, scholars, and popular media outlets, such as the New York Times, USA Today, and the Wall Street Journal. I am also frequently invited to speak at symposia and other events about class action litigation, such as the ABA National Institutes on Class Actions in 2011, 2015, and 2016, and the ABA Annual Meeting in 2012. Since 2010, I have also served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies. In 2015, I was elected to the membership of the American Law Institute.

3. In December 2010, I published an article in the Journal of Empirical Legal Studies entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811 (2010) (hereinafter "*Empirical Study*"). This article is what I believe to be the most comprehensive examination of federal class action settlements and attorneys' fees that has ever been published. Unlike other studies of class actions, which have been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study attempted to examine every class action settlement approved by a federal court over a two-year period, 2006-2007. *See*

id. at 812-13. As such, not only is my study an unbiased sample of settlements, but the number of settlements included in my study is several times the number of settlements per year that has been identified in any other empirical study of class action settlements: over this two-year period, I found 688 settlements, including 169 from the Ninth Circuit alone. *See id.* at 817. I presented the findings of my study at the Conference on Empirical Legal Studies at the University of Southern California School of Law in 2009, the Meeting of the Midwestern Law and Economics Association at the University of Notre Dame in 2009, and before the faculties of many law schools in 2009 and 2010. This study has been relied upon by a number of courts, scholars, and testifying experts.[1]

4. I have been asked by class counsel to opine on whether the attorneys' fees and expenses they have requested here are reasonable in light of the empirical studies of fees and in light of economic analyses of class counsel's incentives. In order to formulate my opinion, I reviewed a number of documents provided to me by class counsel; I have attached a list of these

[1] *See, e.g., Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (relying on article to assess fees); *Brown v. Rita's Water Ice Franchise Co. LLC*, 2017 WL 1021025, at *9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 1629349, at *17 (S.D.N.Y. Apr. 24, 2016) (same); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, 2016 WL 721680, at *42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, 2015 WL 4528880, at *19-20 (E.D. La. July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 2147679, at *2-4 (N.D. Ill. May 6, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 1399367, at *3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 2015 WL 605203, at *12 (N.D. Ill. Feb. 12, 2015) (same); *In re Neurontin Marketing and Sales Practices Litigation*, 2014 WL 5810625, at *3 (D. Mass. Nov. 10, 2014) (same); *Tennille v. W. Union Co.*, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F.Supp.3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 991 F.Supp.2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation*, 4 F.Supp.3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Products Liability Litigation*, 2013 WL 5295707, at *3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers Discrimination Litigation*, 953 F.Supp.2d 82, 98-99 (D.D.C. 2013) (same); *In re Southeastern Milk Antitrust Litigation*, 2013 WL 2155387, at *2 (E.D. Tenn., May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

documents in Attachment 2. As I explain, based on my study of settlements across the country and in the Ninth Circuit in particular, I believe the requests here are within the range of reason.[2]

Case background

5. In September of 2015, it became known that Volkswagen had deceived the public and federal and state governments for many years by installing a so-called "defeat device" (so named because it was designed to defeat emissions-testing machines) in its 2.0- and 3.0-liter diesel automobiles. Shortly thereafter, the federal government, the State of California, and hundreds of private plaintiffs filed civil lawsuits against Volkswagen and its affiliated entities for fraud and environmental harms. Bosch supplied software for Volkswagen's automobiles. As a result, a number of private plaintiffs filed civil lawsuits against it as a co-conspirator and alleged it violated the federal Racketeer Influenced and Corrupt Organizations Act. All these lawsuits were transferred to this Court pursuant to the Multidistrict Litigation statute, and the private plaintiffs have now reached settlements with Volkswagen and Bosch to resolve many of these lawsuits. This fee request relates to a settlement on behalf of consumers and resale dealers with Bosch. The Court certified a settlement class and preliminarily approved the settlement on February 16, 2017. The parties are now seeking final approval of the settlement.

6. The settlement class includes current owners and lessees and many former owners and lessees of Volkswagen 2.0- and 3.0-liter diesel vehicles. *See* Settlement Agreement ¶ 2.15. Under the settlement, Bosch will pay the class $327.5 million, to be allocated, after the deduction of attorneys' fees and expenses, per a formula derived by the Federal Trade Commission. *See id.* at ¶¶ 4.1, 4.4 11.1. In particular, class members will receive between $175 and $1500 depending on their circumstances. *See* Preliminary Approval Order p. 5. Most class members will receive these payments automatically by virtue of filing a claim in the 2.0- and 3.0-liter settlements with Volkswagen, but class members who did not participate in those settlements can still participate here by filing a claim. *See* Settlement Agreement ¶¶ 5.4-5.7. If any monies are left over after distribution (and perhaps redistribution) to class members, none of it will revert to Bosch; instead

[2] Needless to say, any legal analysis I provide in this declaration I provide only for context; the ultimate determination on the reasonableness of the fees and costs is, of course, reserved for the sound discretion of the Court.

it will go to an appropriate third party approved by the court in *cy pres*. *See id.* at ¶ 4.3. Bosch will also pay all notice and settlement administration expenses on top of these amounts. *See id.* at ¶¶ 5.3, 8.2. In exchange for this consideration, the class will release Bosch from, among other things, "any and all claims" that "are related to any Eligible Vehicle" or that "relate to the 2.0-liter TDI Matter or the 3.0 Liter TDI Matter." *See id.* at ¶ 9.3.

7. Class counsel have now asked the court to award them attorneys' fees equal to $51 million, or less than 16% of the total settlement fund. They have also requested reimbursement of $1 million in expenses. In my opinion, and based upon the empirical analysis discussed herein, these requests are within the range of reason.

Assessment of the reasonableness of the request for attorneys' fees

8. This is a so-called "common fund" settlement where the efforts by attorneys for the plaintiff have created a common fund for the benefit of class members, but, because this is a class action and there is no fee-shifting statute applicable, the attorneys can be compensated only from the fund they have created. At one time, courts that awarded fees in common fund class action cases did so using the familiar "lodestar" approach. *See* Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043, 2051 (2010) (hereinafter "*Class Action Lawyers*"). Under this approach, courts awarded class counsel a fee equal to the number of hours they worked on the case (to the extent the hours were reasonable), multiplied by a reasonable hourly rate as well as by a discretionary multiplier that courts often based on the risk of non-recovery and other factors. *See id.* Over time, however, the lodestar approach fell out of favor in common fund class actions. It did so largely for two reasons. First, courts came to dislike the lodestar method because it was difficult to calculate the lodestar; courts had to review voluminous time records and the like. Second—and more importantly—courts came to dislike the lodestar method because it did not align the interests of class counsel with the interests of the class; class counsel's recovery did not depend on how much the class recovered, but, rather, on how many hours could be spent on the case. *See id.* at 2051-52. According to my empirical study, the lodestar method is now used to award fees in only a small percentage of class action cases, usually those involving fee-shifting statutes or those where the relief is predominantly injunctive

in nature (and the value of the injunction cannot be reliably calculated). *See* Fitzpatrick, *Empirical Study*, *supra*, at 832 (finding the lodestar method used in only 12% of settlements).

9. The more popular method of calculating attorneys' fees today is known as the "percentage" method. Under this approach, courts select a percentage that they believe is fair to class counsel, multiply the settlement amount by that percentage, and then award class counsel the resulting product. The percentage approach became popular precisely because it corrected the deficiencies of the lodestar method: it is less cumbersome to calculate, and, more importantly, it aligns the interests of class counsel with the interests of the class because the more the class recovers, the more class counsel recovers. *See* Fitzpatrick, *Class Action Lawyers*, *supra*, at 2052.

10. In the Ninth Circuit, district courts have the discretion to use either the lodestar method or the percentage method in common fund cases. *See In re Washington Public Power Supply Sys. Securities Litig.*, 19 F.3d 1291, 1295 (9th Cir. 1994) ("[D]istrict court has discretion to use either method in common fund cases."). In light of the well-recognized disadvantages of the lodestar method and the well-recognized advantages of the percentage method, it is my opinion that courts should generally use the percentage method in common fund cases whenever the value of the settlement can be reliably calculated. Only where the value of the settlement cannot be reliably calculated is it my opinion that courts should use the lodestar method; in these circumstances, the lodestar method is the only feasible choice. In this case, the settlement consists of cash and can be easily valued; therefore, the percentage method should be used.

11. Under the percentage method, courts must 1) calculate the value of the settlement and then 2) select a percentage of that value to award to class counsel. When selecting the percentage, courts in the Ninth Circuit use 25% as the "'bench mark' percentage for the fee award," which "can then be adjusted upward or downward to account for any unusual circumstances involved in the case." *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989). *See also Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (stating that the 25% benchmark percentage "should be adjusted . . . when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors"). In various cases, the Ninth

Circuit has identified at least eight different factors that district courts can examine in deciding whether to increase or decrease an award from the benchmark:

(1) the results achieved by class counsel, *see Six Mexican Workers*, 904 F.2d at 1311; *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002);

(2) the length the case has transpired, *see Six Mexican Workers*, 904 F.2d at 1311; *Vizcaino*, 290 F.3d at 1050;

(3) the complexity of the case, *see Six Mexican Workers*, 904 F.2d at 1311; *In re Pacific Enters. Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995);

(4) the risks the case involved, *see In re Pacific Enters. Securities Litig.*, 47 F.3d at 379; *Vizcaino*, 290 F.3d at 1048-49;

(5) the percentages awarded in other class action cases, *see Vizcaino*, 290 F.3d at 1050;

(6) any non-monetary benefits obtained by class counsel, *see In re Pacific Enters. Securities Litig.*, 47 F.3d at 379; *Vizcaino*, 290 F.3d at 1049; *Staton v. Boeing*, 327 F.3d 938, 946 (9th Cir. 2003).

(7) the percentages in standard contingency-fee agreements in similar individual cases, *see Vizcaino*, 290 F.3d at 1049; and

(8) class counsel's lodestar, *see id.* at 1050-51.

12. As I explain below, the fee request here is well below the Ninth Circuit's 25% benchmark. In my opinion, this fraction is easily justified in light of the empirical analysis in this declaration and the relationship between that analysis and the Ninth Circuit's factors. Moreover, even if these fees are added to the others class counsel has collected in this litigation, class counsel's global compensation is well below the benchmark and likewise justified by the Ninth Circuit's factors.

13. As I noted above, this settlement is easily valued. It is equal to $327.5 million plus the monies Bosch will pay in notice and settlement administration expenses. Although we do not yet know what those latter monies are, it does not matter to my opinion: we know that the fee request here will end up no more than 16% of the settlement, and, in my opinion, 16% would be justified by the Ninth Circuit's factors.

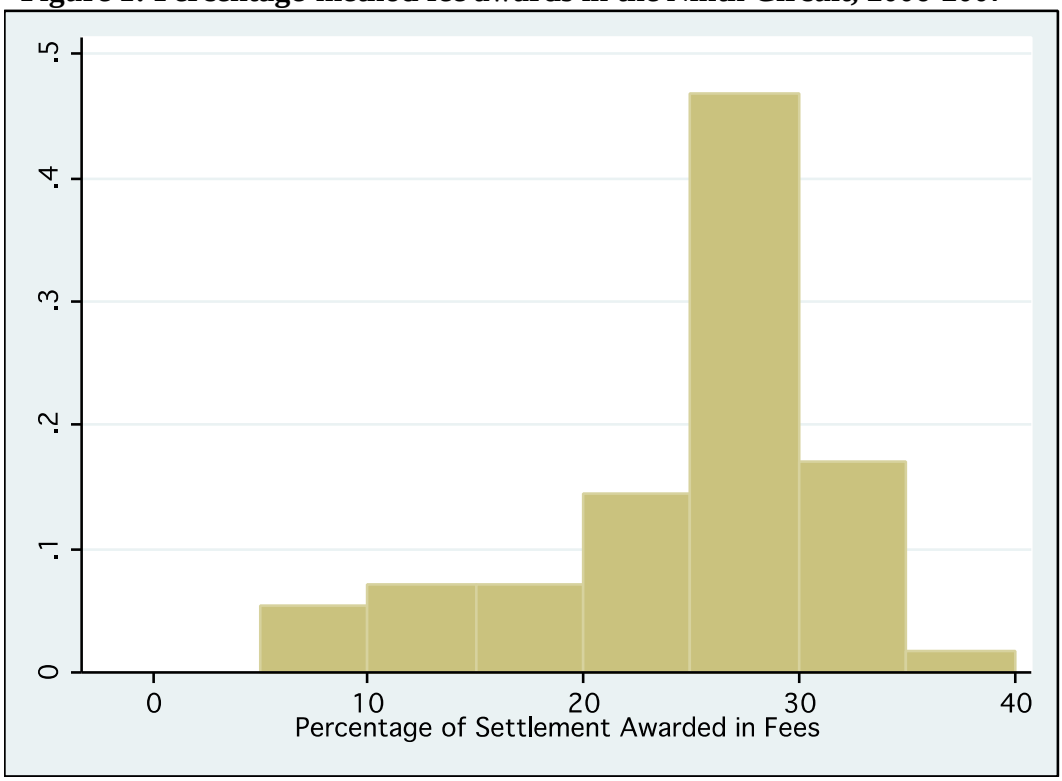
14. Consider first the factor that looks at how this request measures up against others: (5) the percentages awarded in other class action cases. According to my empirical study, the most common fee percentages awarded in common fund class actions were 25%, 30%, and 33%,

with the mean and median at 25%. *See* Fitzpatrick, *Empirical Study*, *supra*, at 833, 838 (Figure 6). The numbers for the 111 settlements in the Ninth Circuit where the percentage method was used were quite similar: the most common percentages were also 25%, 30%, and 33%, with the vast majority of awards also between 25% and 35%, and a mean of 23.9% and median of 25%. My numbers agree with the other large-scale academic study of class action fee awards. *See* Theodore Eisenberg & Geoffrey P. Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 260 (2010) (hereinafter "*Eisenberg & Miller*") (finding mean and median of 24% and 25% nationwide, and 25% in Ninth Circuit).[3] Needless to say, all of these numbers greatly exceed the fee requested here.

15. Indeed, in order to see more clearly where the fee request here falls among other awards, I graphed the distribution of the Ninth Circuit's percentage awards from my study in Figure 1. The figure shows what fraction of settlements (y-axis) had fee awards within each five-point range of fee percentages (x-axis). Thus, for example, nearly half of all settlements (i.e., nearly .5 of all settlements) had fee awards that fell between 25% (inclusive) and 30%. As the Figure shows, class counsel's fee request is lower than over 80% of the fee awards in this Circuit.

[3] The fee-percentage numbers in the Eisenberg-Miller study are often slightly lower than in my study because their methodology led them to oversample larger settlements. *See* Fitzpatrick, *Empirical Study*, *supra*, at 829.

Figure 1: Percentage-method fee awards in the Ninth Circuit, 2006-2007



16. It should be noted that the nationwide data in my empirical study (again, consistent with the Eisenberg-Miller study) showed that settlement size had a statistically significant but inverse relationship with the fee percentages awarded—i.e., that federal courts awarded lower percentages in cases where settlements were larger. *See* Fitzpatrick, *Empirical Study*, *supra*, at 838, 842-44. For example, there were eight settlements in my dataset for between $250 million and $500 million, and the mean and median fee percentages in these cases were 17.8% and 19.5%, respectively. *See id.* at 839. Many courts and commentators, including me, do not endorse this bigger-settlement-smaller-fee approach because it creates bad incentives for class counsel.[4] Nonetheless, even if it is followed here, class counsel's fee request is still below the

[4] *See, e.g.*, *In re Cendant Corp. Litigation*, 264 F.3d 201, 284 n. 55 (3d Cir. 2001) ("Th[e] position [that the percentage of a recovery devoted to attorneys fees should decrease as the size of the overall settlement or recovery increases] . . . has been criticized by respected courts and commentators, who contend that such a fee scale often gives counsel an incentive to settle cases too early and too cheaply." (alteration in original)); *Allapattah Services, Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1213 (S.D. Fla. 2006) (awarding fees of 31.33% of $1.075 billion because "[w]hile some reported cases have advocated decreasing the percentage awarded as the gross class recovery increases, that approach is antithetical to the percentage of the recovery method . . . . By not rewarding class counsel for the additional work necessary to achieve a better outcome for the class, the sliding scale approach creates the perverse incentive for class counsel to settle too early for too little"); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011) (awarding 30% of $410 million and quoting *Allapattah*); *In re Toyota Motor Corp. Unintended*

mean and median in my study for settlements of similar size. As such, this factor supports the fee request here.

17. Consider next the factors that assess how the relief in this settlement stacks up against the obstacles class counsel faced: (1) the results achieved by class counsel, (3) the complexity of the case, and (4) the risks the case involved. First, consider the results. The results are rather remarkable because the class may very well have recovered much more than they would have been able to recover at trial: as Bosch argued, the class was already essentially made whole by the settlement with Volkswagen leaving no injury left for Bosch to compensate. This remarkable result came despite the fact that the class faced even steeper risks than it did in the case against Volkswagen. Unlike Volkswagen, Bosch did not arguably concede several elements of liability. Quite the contrary: Bosch contested every conceivable element of the class's RICO cause of action. Thus, not only did class counsel have to take on the added burden of establishing liability in this case, but they still had to deal with the same risks they faced against Volkswagen: how to calculate damages and whether the defendant would deplete its assets before the class could collect any judgment it obtained. Moreover, because so much of Bosch's alleged misconduct took place in Germany, it is not clear whether the court even has personal jurisdiction over it and whether the federal RICO law would be applicable here, *see RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2111 (2016) ("Section 1964(c) requires a civil RICO plaintiff to allege and prove a domestic injury to business or property and does not allow recovery for foreign injuries. The application of this rule in any given case will not always be self-evident, as disputes may arise as to whether a particular alleged injury is 'foreign' or 'domestic.'). Finally, it must be noted that, unlike the litigation against Volkswagen, class counsel was unaided in this

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Acceleration Marketing, Sales Practices, and Products Liability Litigation, No. 8:10ML-02151-JVS, at 17 n.16 (C.D. Cal., Jun. 17, 2013) ("The Court also agrees with . . . other courts, e.g., *Allapattah*, which have found that decreasing a fee percentage based only on the size of the fund would provide a perverse disincentive to counsel to maximize recovery for the class."). Consider the following example: if courts award class counsel 30% of settlements if they are under $100 million, but only 20% of settlements if they are over $100 million, then rational class counsel will prefer to settle cases for $90 million (*i.e.*, a $27 million fee award) than $125 million (*i.e.*, a $25 million fee award). Such incentives are obviously perverse.

case by the federal and California governments; the governments did not bring suit against Bosch. For all these reasons, these factors, too, support the fee request here.

18. Consider next factor (2): the length this case has transpired. This case has not lasted as long as most class action cases. According to my empirical study, the average and median times in which settlements were reached in class actions were around three years. See Fitzpatrick, *Empirical Study*, *supra*, at 820. This is, admittedly, a reason why the court might wish to depart downward from the benchmark. Again, however, class counsel's request has already incorporated this consideration by departing significantly from the benchmark. In my opinion, the length-the-case-has-transpired factor is more a proxy for class counsel's performance than a measure of class counsel's performance itself; it is a proxy for whether class counsel have dug far enough into the case to know what the case is worth and to provide the court with information about what the case is worth so it can evaluate whether the recovery here is warranted by the risks and complexities of the case. As I explained above, the recovery here is very successful compared to most class actions in light of the risks the class faced here. As such, I do not believe this factor is reason to reduce class counsel's fee award even further below the benchmark than class counsel have already requested.

19. Consider next factor "(6) any non-monetary benefits." Like most class action settlements, this settlement does not include any non-monetary benefits. *See* Fitzpatrick, *Empirical Study*, *supra*, at 824 (finding that 89% of class action settlements include cash relief but only 23% confer injunctive or declaratory relief). As such, this factor is neutral with regard to class counsel's fee request.

20. Consider next factor (7): the percentages in standard contingency-fee agreements in similar individual cases. It is well known that standard contingency-fee percentages in individual litigation are at least 33%, much greater than the percentage requested here. *See, e.g.*, Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 Fordham L. Rev. 247, 248 (1996) (noting that "standard contingency fees" are "usually thirty-three percent to forty percent of gross recoveries" (emphasis omitted)); Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DePaul L. Rev. 267, 286 (1998) (reporting

the results of a survey of Wisconsin lawyers, which found that "[o]f the cases with a [fee calculated as a] fixed percentage [of the recovery], a contingency fee of 33% was by far the most common, accounting for 92% of those cases"). Unsurprisingly, class counsel have informed me that many of the class representatives here have entered into retainer contracts agreeing to pay their lawyers at least 33%. I normally do not put much stock in individual retainer agreements because the small-stakes nature of typical class claims are very different than those in individual cases; retainer agreements signed by class representatives are usually not credible because class representatives have so little at stake they are indifferent as to what fraction their lawyers might take from them. In this litigation, however, class members had real money at stake, as the settlements with Volkswagen show, many of them had tens of thousands of dollars at stake. As such, the retainer agreements signed by the class members have more credibility as real market transactions. For this reason, they provide another basis to depart upward with respect to class counsel's fee percentage. I do not mean to suggest, of course, that the fee award in a class action should necessarily be the same as the fee in an individual case; class actions often deliver economies of scale and lower transaction costs and their fee awards should reflect that. But comparing the 33% fee agreed to in these retainer agreements with the fee request here as a percentage of the settlement is consistent with substantial economies of scale and accompanying savings to class members.

21. Consider finally factor (8): class counsel's lodestar. Although, in my opinion, it does more harm than good to consider class counsel's lodestar when awarding fees under the percent method,[5] if the court does consider it, the court should know that there is nothing unusual

[5] The so-called "lodestar crosscheck" reintroduces the very same undesirable consequences of the lodestar method that the percentage method was designed to correct in the first place. In particular, if class counsel believe that courts will cap the percentage awarded at some multiple of their lodestar, then they will have precisely the same incentives they would if courts used the lodestar method alone: to be inefficient, perform unnecessary projects, delay results, and overbill and overstaff work in order to run up their lodestar. *See Vizcaino v. Microsoft Corp.*, 290 F.3d at 1050 n. 5 ("The lodestar method is merely a cross-check on the reasonableness of a percentage figure, and it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee . . . ."). The lodestar crosscheck also caps the amount of compensation class counsel can receive from a settlement, thereby misaligning their incentives from those of class members, and blunting their incentive to achieve the largest possible award for the class. *See* Fitzpatrick, *Class Action Lawyers*, *supra*, at 2065-66. Consider the following example. Suppose a class action lawyer had incurred a lodestar of $1 million in a class action case. If that counsel believed that a court would not

about the multiplier that would result from class counsel's request here. Class counsel have reported a lodestar of approximately $22 million (including some $2 million in anticipated time to shepherd home the settlement over the next three years), *see* Cabraser Declaration ¶¶ 11-12, which would result in a lodestar multiplier of approximately 2.32 if the court grants their fee request. This works out to an approximated blended hourly rate of $472 per hour which in my experience is not unreasonable. Not only is this multiplier smaller than the one the court previously approved in the 2.0-liter consumer settlement (2.63), but it is smaller than the multipliers in many other cases. In my empirical study, the lodestar crosscheck multipliers ranged from .07 to 10.26, with a mean and median of 1.65 and 1.34, respectively. *See* Fitzpatrick, *Empirical Study*, *supra*, at 834. These numbers are consistent with the Eisenberg-Miller study. *See Eisenberg & Miller*, *supra*, at 273 (finding mean multiplier of 1.81). The multiplier that would result here would be higher than the typical case, but this is not the typical case. The relationship between settlement size and lodestar multipliers is the opposite of that between settlement size and fee percentages: as the settlement size increases, the lodestar multiplier class counsel receives typically increases as well. *See id.* at 274 ("As the recovery decile increases, the multiplier also tends to increase, with the multiplier in the highest recovery decile more than triple that of the multiplier in the lowest recovery decile."). Indeed, when compared to cases of similar size, the multiplier here is considerably smaller. Although I did not report them separately, in my empirical study, six of the settlements between $250 million and $500 million had ascertainable lodestar multipliers, and the mean and median of those multipliers were 3.37 and 3.41, respectively. Thus, the multiplier here is very modest. Indeed, that the multiplier here is so modest despite the relatively short duration of this litigation is a testament to how busy class counsel have been over the last one and one-half years.

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award him a 25% fee if it exceeded twice his lodestar, then he would be rationally indifferent between settling the case for $8 million and $80 million (or any number higher than $8 million). Although I am not suggesting that class counsel here would have been tempted in this way—these are some of the finest class action lawyers in America—the decisions courts make today set the expectations for class action lawyers tomorrow, and it is bad public policy to create the expectation that the lodestar crosscheck will cap class counsel's fees under the percentage method.

Assessment of the reasonableness of the request for expenses

22. Class counsel have requested approximately $1 million in expenses in connection with this settlement. Although I have not reviewed each dollar of these expenses in any detail, comparison to other cases shows little reason to worry that the expenses here are unreasonable. In the Eisenberg-Miller study, the authors found that the average and median expense awards were 2.7% and 1.7%, respectively, of their class action settlements. *See* Eisenberg & Miller, *supra*, at 274. Thus, the expenses requested here are a fraction of the expenses awarded in the typical class action case. Although Professors Eisenberg and Miller found that expenses as a percentage of settlement declined as the settlement size increased, *see id.* at 275, even compared to settlements of similar size, the expenses here are modest. Although I did not report them separately, the mean and median expense awards in the settlements in my study between $250 million and $500 million were $3.2 million and $2 million, respectively. Again, the request here is considerably smaller. Of course, it is true that this case has not transpired as long as many other cases; thus, I would not have expected class counsel to have incurred more expenses than in the typical case of this size (even with the accelerated litigation schedule class counsel pursued here). As I would expect, the request here is smaller than in the typical case. In other words, from all outward appearances, class counsel have been responsible with their expenses.

23. For all these reasons, I believe the fees and expenses requested here are within the range of reasonable awards.

24. My compensation in this matter has been $695 per hour plus expenses.

Nashville, TN

March 24, 2017

Brian T. Fitzpatrick

ATTACHMENT 1

BRIAN T. FITZPATRICK

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ACADEMIC APPOINTMENTS

VANDERBILT UNIVERSITY LAW SCHOOL, *Professor*, 2012 to present
- *FedEx Research Professor*, 2014-2015; *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Federal Courts, Complex Litigation, Comparative Class Actions
- Hall-Hartman Outstanding Professor Award, 2008-2009
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

EDUCATION

HARVARD LAW SCHOOL, J.D., *magna cum laude*, 2000
- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

UNIVERSITY OF NOTRE DAME, B.S., Chemical Engineering, *summa cum laude*, 1997
- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

CLERKSHIPS

HON. ANTONIN SCALIA, Supreme Court of the United States, 2001-2002

HON. DIARMUID O'SCANNLAIN, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

EXPERIENCE

NEW YORK UNIVERSITY SCHOOL OF LAW, Feb. 2006 to June 2007
John M. Olin Fellow

HON. JOHN CORNYN, United States Senate, July 2005 to Jan. 2006
Special Counsel for Supreme Court Nominations

SIDLEY AUSTIN LLP, Washington, DC, 2002 to 2005
Litigation Associate

BOOKS

THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press, forthcoming 2018)

ACADEMIC ARTICLES

A Tribute to Justice Scalia: Why Bad Cases Make Bad Methodology, 69 VAND. L. REV. 991 (2016)

The Hidden Question in Fisher, 10 NYU J. L. & LIBERTY 168 (2016)

An Empirical Look at Compensation in Consumer Class Actions, 11 NYU J. L. & BUS. 767 (2015) (with Robert Gilbert)

The End of Class Actions?, 57 ARIZ. L. REV. 161 (2015)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, 98 VA. L. REV. 839 (2012)

Twombly *and* Iqbal *Reconsidered*, 87 NOTRE DAME L. REV. 1621 (2012)

An Empirical Study of Class Action Settlements and their Fee Awards, 7 J. EMPIRICAL L. STUD. 811 (2010) (selected for the 2009 Conference on Empirical Legal Studies)

Do Class Action Lawyers Make Too Little?, 158 U. PA. L. REV. 2043 (2010)

Originalism and Summary Judgment, 71 OHIO ST. L.J. 919 (2010)

The End of Objector Blackmail?, 62 VAND. L. REV. 1623 (2009) (selected for the 2009 Stanford-Yale Junior Faculty Forum)

The Politics of Merit Selection, 74 MISSOURI L. REV. 675 (2009)

Errors, Omissions, and the Tennessee Plan, 39 U. MEMPHIS L. REV. 85 (2008)

Election by Appointment: The Tennessee Plan Reconsidered, 75 TENN. L. REV. 473 (2008)

Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?, 13 MICH. J. RACE & LAW 277 (2007)

BOOK CHAPTERS

Civil Procedure in the Roberts Court in BUSINESS AND THE ROBERTS COURT (Jonathan Adler, ed., Oxford University Press, 2016)

Is the Future of Affirmative Action Race Neutral? in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 (Ellen Katz & Samuel Bagenstos, eds., Michigan University Press, 2016)

ACADEMIC PRESENTATIONS

The Ironic History of Rule 23, University of Washington Law School, Seattle, WA (July 14, 2016)

What Will and Should Happen to Affirmative Action After Fisher v. Texas, American Association of Law Schools Annual Meeting, New York, NY (January 7, 2016) (panelist)

Litigation Funding: The Basics and Beyond, NYU Center on Civil Justice, NYU Law School, New York, NY (Nov. 20, 2015) (panelist)

Do Class Actions Offer Meaningful Compensation to Class Members, or Do They Simply Rip Off Consumers Twice?, ABA National Institute on Class Actions, New Orleans, LA (Oct. 22, 2015) (panelist)

Arbitration and the End of Class Actions?, Quinnipiac-Yale Dispute Resolution Workshop, Yale Law School, New Haven, CT (Sep. 8, 2015) (panelist)

The Next Steps for Discovery Reform: Requester Pays, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

Private Attorney General: Good or Bad?, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

Liberty, Judicial Independence, and Judicial Power, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

The Economics of Objecting for All the Right Reasons, 14th Annual Consumer Class Action Symposium, Tampa, FL (Nov. 9, 2014)

Compensation in Consumer Class Actions: Data and Reform, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, NY (Nov. 7, 2014)

The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?, Northern District of California Judicial Conference, Napa, CA (Apr. 13, 2014) (panelist)

The End of Class Actions?, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, FL (Apr. 4, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, University of Missouri School of Law, Columbia, MO (Mar. 7, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, George Mason Law School, Arlington, VA (Mar. 6, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law, Lexington, VA (Nov. 7-8, 2013)

Is the Future of Affirmative Action Race Neutral?, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School, Ann Arbor, MI (Oct. 11, 2013)

The Mass Tort Bankruptcy: A Pre-History, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School, Nashville, TN (Sep. 28, 2013) (panelist)

Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, FL (Apr. 12, 2013) (panelist)

The End of Class Actions?, Symposium on Class Action Reform, University of Michigan Law School, Ann Arbor, MI (Mar. 16, 2013)

Toward a More Lawyer-Centric Class Action?, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School, New York, NY (Nov. 30, 2012)

The Problem: AT & T as It Is Unfolding, Conference on *AT & T Mobility v. Concepcion*, Cardozo Law School, New York, NY (Apr. 26, 2012) (panelist)

Standing under the Statements and Accounts Clause, Conference on Representation without Accountability, Fordham Law School Corporate Law Center, New York, NY (Jan. 23, 2012)

The End of Class Actions?, Washington University Law School, St. Louis, MO (Dec. 9, 2011)

Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, IL (Sep. 15-16, 2011) (participant)

Is Summary Judgment Unconstitutional? Some Thoughts About Originalism, Stanford Law School, Palo Alto, CA (Mar. 3, 2011)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Northwestern Law School, Chicago, IL (Feb. 25, 2011)

The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote, University of Iowa Law School, Iowa City, IA (Feb. 3, 2011) (panelist)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Washington University Law School, St. Louis, MO (Oct. 1, 2010)

Twombly *and* Iqbal *Reconsidered*, Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School, Cleveland, OH (Sep. 17, 2010)

Do Class Action Lawyers Make Too Little?, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

Originalism and Summary Judgment, Georgetown Law School, Washington, DC (Apr. 5, 2010)

Theorizing Fee Awards in Class Action Litigation, Washington University Law School, St. Louis, MO (Dec. 11, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Conference on Empirical Legal Studies, University of Southern California Law School, Los Angeles, CA (Nov. 20, 2009)

Originalism and Summary Judgment, Symposium on Originalism and the Jury, Ohio State Law School, Columbus, OH (Nov. 17, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School, South Bend, IN (Oct. 10, 2009)

The End of Objector Blackmail?, Stanford-Yale Junior Faculty Forum, Stanford Law School, Palo Alto, CA (May 29, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, University of Minnesota School of Law, Minneapolis, MN (Mar. 12, 2009)

The Politics of Merit Selection, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School, Columbia, MO (Feb. 27, 2009)

The End of Objector Blackmail?, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law, Chicago, IL (Oct. 9, 2008)

Alternatives To Affirmative Action After The Michigan Civil Rights Initiative, University of Michigan School of Law, Ann Arbor, MI (Apr. 3, 2007) (panelist)

OTHER PUBLICATIONS

Former clerk on Justice Antonin Scalia and his impact on the Supreme Court, THE CONVERSATION (Feb. 24, 2016)

Lessons from Tennessee Supreme Court Retention Election, THE TENNESSEAN (Aug. 20, 2014)

Public Needs Voice in Judicial Process, THE TENNESSEAN (June 28, 2013)

Did the Supreme Court Just Kill the Class Action?, THE QUARTERLY JOURNAL (April 2012)

Let General Assembly Confirm Judicial Selections, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

"Tennessee Plan" Needs Revisions, THE TENNESSEAN (Feb. 3, 2012)

How Does Your State Select Its Judges?, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

On the Merits of Merit Selection, THE ADVOCATE 67 (Winter 2010)

Supreme Court Case Could End Class Action Suits, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

Kagan is an Intellect Capable of Serving Court, THE TENNESSEAN (Jun. 13, 2010)

Confirmation "Kabuki" Does No Justice, POLITICO (July 20, 2009)

Selection by Governor may be Best Judicial Option, THE TENNESSEAN (Apr. 27, 2009)

Verdict on Tennessee Plan May Require a Jury, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

Tennessee's Plan to Appoint Judges Takes Power Away from the Public, THE TENNESSEAN (Mar. 14, 2008)

Process of Picking Judges Broken, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

Disorder in the Court, LOS ANGELES TIMES (Jul. 11, 2007)

Scalia's Mistake, NATIONAL LAW JOURNAL (Apr. 24, 2006)

GM Backs Its Bottom Line, DETROIT FREE PRESS (Mar. 19, 2003)

Good for GM, Bad for Racial Fairness, LOS ANGELES TIMES (Mar. 18, 2003)

10 Percent Fraud, WASHINGTON TIMES (Nov. 15, 2002)

OTHER PRESENTATIONS

A Respected Judiciary—Balancing Independence and Accountability, Florida Bar Annual Convention, Orlando, FL (June 16, 2016) (panelist)

Future Amendments in the Pipeline: Rule 23, Tennessee Bar Association, Nashville, TN (Dec. 2, 2015)

The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

Hedge Funds + Lawsuits = A Good Idea?, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

Judicial Selection in Historical and National Perspective, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

Life as a Supreme Court Law Clerk and Views on the Health Care Debate, Exchange Club, Nashville, TN (Apr. 3, 2012)

The Tennessee Judicial Selection Process—Shaping Our Future, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

Reexamining the Class Action Practice, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

Judicial Selection in Kansas, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

Judicial Selection and the Tennessee Constitution, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

Judicial Selection in Tennessee, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

Ethical Implications of Tennessee's Judicial Selection Process, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

PROFESSIONAL ASSOCIATIONS

Member, American Law Institute
Referee, Journal of Empirical Legal Studies
Reviewer, Oxford University Press
Reviewer, Supreme Court Economic Review
Member, American Bar Association
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights
Board of Directors, Tennessee Stonewall Bar Association
American Swiss Foundation Young Leaders' Conference, 2012
Bar Admission, District of Columbia

COMMUNITY ACTIVITIES

Board of Directors, Nashville Ballet; Nashville Talking Library for the Blind, 2008-2009

ATTACHMENT 2

Documents Reviewed:

- Consumer Class Action Settlement Agreement and Release (document 1606, filed 6/28/16) and exhibits thereto
- Plaintiffs' Notice of Motion, Motion, and Memorandum in Support of Preliminary Approval of the Class Action Agreement and Approval of Class Notice (document 1609, filed 6/28/16)
- Amended Order Granting Preliminary Approval of Settlement (document 1698, filed 7/29/16)
- Federal Trade Commission's Statement Supporting the Settlement (document 1781, filed 8/26/16)
- Plaintiffs' Notice of Motion, Motion, and Memorandum in Support of Final Approval of the 2.0-Liter TDI Consumer and Reseller Dealer Class Action Settlement (document 1784, filed 8/26/16) and exhibits thereto
- Plaintiffs' Reply Memorandum in Support of Motion for Final Approval of the 2.0-Liter TDI Consumer and Reseller Dealer Class Action Settlement (document 1976, filed 9/30/16)
- Transcript of Proceedings (10/18/16)
- Order Granting Final Approval of the 2.0-Liter TDI Consumer and Reseller Dealership Class Action Settlement (document 2102, filed 10/25/16)
- Plaintiffs' Notice of Motion, Motion, and Memorandum in Support of Preliminary Approval of the Bosch Class Action Settlement Agreement and Release and Approval of Class Notice (document 2838, filed 1/31/17) ("Preliminary Approval Motion") and exhibits thereto
- Robert Bosch GMBH and Robert Bosch LLC's Notice of Motion and Motion to Dismiss Volkswagen-Branded Franchise Dealer Amended and Consolidated Class Action Complaint; Memorandum of Points and Authorities in Support Thereof (document 2864, filed 2/3/17)
- Transcript of Proceedings (2/14/17)
- Class Action Settlement Agreement and Release (Amended) (document 2918, filed 2/16/17) ("Settlement Agreement")
- Order Granting Preliminary Approval of the Bosch Class Action Settlement (document 2920, filed 2/16/17) ("Preliminary Approval Order")

- Order Granting Plaintiffs' Motion for Attorneys' Fees and Costs Relating to 2.0-Liter Settlement (document 3053, filed 3/17/17)

- Declaration of Elizabeth J. Cabraser in Support of Settlement Class Counsel's Motion for Attorneys' Fees and Costs under Fed. R. Civ. P. 23(h) and Pretrial Order Nos. 7 and 11 (filed herewith) ("Cabraser Declaration")

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

This Document Relates to:

ALL CONSUMER AND RESELLER ACTIONS

No. 3:15-md-02672-CRB

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS UNDER FED. R. CIV. P. 23(H) AND PRETRIAL ORDER NOS. 7 AND 11 RE: BOSCH CLASS ACTION SETTLEMENT

The Honorable Charles R. Breyer

Before the Court is Plaintiffs' Motion for Attorneys' Fees and Costs Under Fed. R. Civ. P. 23(h) and Pretrial Order Nos. 7 and 11 Re: Bosch Class Action Settlement (the "Motion"). The Motion is **GRANTED** for the reasons stated therein, and the Court awards $51 million in fees and $1 million in costs in connection with the Bosch Class Action Settlement, to be allocated by Plaintiffs' Lead Counsel among the PSC firms and additional counsel performing work under Pretrial Order Nos. 7 and 11.

IT IS SO ORDERED.

Dated:

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CHARLES R. BREYER
United States District Judge