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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: MERCEDES-BENZ EMISSIONS LITIGATION	Civil Action No. 2:16-0881 (KM) (ESK) **NOTICE OF MOTION**

To: All Counsel by ECF

COUNSEL:

PLEASE TAKE NOTICE that on July 12, 2021, at 10:30 a.m. at the United States District Court for the District of New Jersey, located at the Martin Luther King Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey, Plaintiffs will respectfully move the Court for entry of Orders, consistent with the Court's preliminary approval Orders entered on September 16, 2020 and October 21, 2020, under Rule 23 of the Federal Rules of Civil Procedure that (1) grants final approval of the Settlements; (2) certifies the Settlement Class; (3) finds that Notice to the Class was directed reasonably and satisfies due process; (4) confirms appointment of Class Counsel, the Settlement Class Representatives, and the

Settlement Administrator; (5) grants Plaintiffs' requests for attorneys' fees, expenses, and service awards; (6) reserves jurisdiction over the Settlements and their implementation and enforcement; and (7) enters final judgment.

PLEASE TAKE FURTHER NOTICE that, in support of the motion, the undersigned intend to rely on the accompanying Memorandum of Law and supporting Declaration of Jennifer M. Keough, along with the submissions filed in support of Plaintiffs' Motions for Preliminary Approval and Motion for Award of Attorneys' Fees and Costs, as well as arguments of counsel and all records on file.

PLEASE TAKE FURTHER NOTICE that proposed forms of Final Approval Order and Final Judgment consistent with the submissions in support of the Motions for Preliminary Approval will be provided.

Dated: June 21, 2021

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE MERCEDES-BENZ EMISSIONS LITIGATION	Civil Action No. 16-881(KM)(ESK) Special Master Dennis M. Cavanaugh, U.S.D.J. (Ret.)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENTS

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I. INTRODUCTION

Plaintiffs, on behalf of themselves and other members of the proposed settlement Class, are pleased to present to the Court for final approval their proposed Settlements with Mercedes Benz USA, LLC ("MBUSA") and Daimler Aktiengesellschaft (collectively, the "Mercedes Defendants" or "Mercedes") and Robert Bosch GmbH and Robert Bosch LLC (collectively, the "Bosch Defendants" or "Bosch").

The Settlements are designed to complement and work together with Mercedes' settlements with the Environmental Protection Agency and the California Air Resources Board, which filed a Consent Decree in the United States District Court for the District of Columbia that resolves regulatory claims against Mercedes and sets a schedule for implementing an Approved Emissions Modification ("AEM") to the Subject Vehicles (certain model year 2009–2016 diesel vehicles sold or leased in the United States and equipped with the BlueTEC II emission control technology) that will modify the emission control system software calibration and certain related hardware to ensure that the vehicles meet the emissions standards to which they were originally certified.

For each Subject Vehicle that receives an AEM, the Consent Decree provides an "Extended Modification Warranty" backing certain emissions-related components for a period equal to the greater of: (i) 10 years from date of initial sale or 120,000 miles on the odometer, whichever comes first; or (ii) 4 years or 48,000 miles from the date of installation of the Approved Emission Modification, whichever comes first.

Notice and implementation of the government Consent Decree and the Settlements are designed to be coordinated.

The Settlements before the Court provide substantial benefits to the Class. Class Members who submit Valid Claims are eligible to receive payment of up to $3,590 to current owners and lessees; payment of $897.50 to former owners and lessees; and the prospect of additional payments if Mercedes does not meet certain milestones set forth in the Mercedes Settlement. The collective value of the Settlements will likely exceed ***$763 million***.

The proposed Settlements are favorable resolutions for the Class that avoid the substantial risks and expense of continued litigation, including the risk of recovering less than the amounts provided by the Settlements, or nothing at all. The proposed Settlements resulted from arm's-length, good-faith negotiations between and among experienced counsel under the auspices of a respected and experienced Court-ordered mediator, the Honorable Edward A. Infante. They provide a fair, reasonable, and adequate resolution of this litigation, which will slash costs and reduce expenditure of resources, eliminate the risk of uncertain litigation outcomes, and prevent further delay in remedying the harms suffered by Class Members.

Class Counsel have also filed a separate motion for an award of attorneys' fees and costs, which should be granted along with final approval of the Class Settlements. Several attributes separate these Settlements from other large automotive settlements and fully support the reasonability of the fee request: (i) this case did not draft upon a government investigation or public notice of an alleged regulatory

violation by the Defendants (rather, Class Counsel independently investigated and developed the facts supporting the consumers' claims); (ii) the settlement of this case was not a foregone conclusion but was reached in the face of a continued and vigorous defense; (iii) the Settlements contain consumer benefits superior to other diesel emissions settlements which came before it; and (iv) the percentage fee requested (12.5% of the collective value of the Settlements) is reasonable under binding Third Circuit authority.

Now, the Parties respectfully request final approval of the proposed Settlements, final certification of the Settlement Class, an award of attorney's fees to Class Counsel, and an award of service fees to the Class Representatives. The notice campaign was robust. Notice of the proposed Settlements has been distributed to the Class in accordance with the notice plan previously approved by the Court. To date, the Settlements' straightforward claims process has resulted in over 33,766 claims. More claims are expected given that the claims period for current owners and lessees remains open until October 1, 2022.

Class Member reaction to the Settlement is overwhelmingly positive. There have been only 18 objections to the Settlements (and only two to the fee request) and Class Counsel understand that the number of timely opt outs is less than one percent (out of a 438,290 notice packets mailed), clearly indicating overwhelming support for the Settlements from the Class. As detailed below, while well-meaning, none of the objections raises serious concerns about the fundamental fairness of the Settlements or warrant the Court not approving it.

In sum, the Settlements before the Court represent real relief for consumers and an outstanding result for the Class that far exceeds all applicable requirements of law, including Rule 23(e)(2) and constitutional due process. The Court should grant final approval, overrule the objections, and enter judgment so Class Members can obtain relief expeditiously.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This litigation commenced with the filing of the initial complaint in February 2016. On April 7, 2016, the Court appointed Steve W. Berman of Hagens Berman Sobol Shapiro LLP and James E. Cecchi of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. as initial interim lead counsel. In addition, Christopher A. Seeger of Seeger Weiss LLP has served as counsel of record for Plaintiffs.

Unlike other diesel emissions fraud cases against Volkswagen ("*VW*") and Chrysler-Dodge-Jeep ("*FCA*")—cases that followed government action and settled—Plaintiffs here developed and supported every aspect of their case without the benefit of a government indictment or criminal or civil judgments or penalties against Mercedes. Plaintiffs' counsel retained experts, conducted testing, and completed a thorough and costly investigation before they filed their initial complaint and before there was any public awareness of a government investigation of Mercedes.

Also, unlike the *VW* and *FCA* cases, where government action spurred a relatively quick march to settlement, this case has been marked by protracted, vigorous litigation. The dockets before this Court and the Third Circuit reveal multiple rounds of motions to dismiss and to force arbitration, challenging appeals,

and numerous discovery disputes. The Court granted Mercedes' initial motion to dismiss, *In re Mercedes-Benz Emissions Litig.*, 2016 WL 7106020 (D.N.J. Dec. 6, 2016), resulting in the dismissal of this case for lack of Article III standing, which required Plaintiffs to replead and (successfully) re-litigate additional motions to dismiss. *See, e.g.*, *In re Mercedes-Benz Emissions Litig.*, 2019 WL 413541 (D.N.J. Feb. 1, 2019) (denying in part Mercedes' and Bosch LLC's motion to dismiss fourth amended complaint). Plaintiffs also needed to respond to multiple appellate efforts by Mercedes: (i) an unsuccessful request for interlocutory review of the order denying Mercedes' second motion to dismiss, *see In re Mercedes-Benz Emissions Litig.*, 2019 WL 2591158 (D.N.J. June 25, 2019), and (ii) Mercedes' appeal from the denial of a motion to compel arbitration for two Plaintiffs to the Third Circuit, which ordered further proceedings below on that issue. *In re Mercedes-Benz Emissions Litig.*, 797 F. App'x 695 (3d Cir. 2020). Mercedes and Bosch have denied, and continue to deny, Plaintiffs' material allegations and claims, and it is only through settlement that the Parties are avoiding long and protracted litigation.

In April 2019, the Court appointed as Special Master the Honorable Dennis Cavanaugh (Ret.) before whom the parties were engaged in intensive and vigorously disputed discovery. To foster the parties' pursuit of relevant evidence, the Special Master scheduled frequent case management conferences, decided many discovery disputes, and facilitated the advancement of discovery. *See, e.g.*, *In re Mercedes-Benz Emissions Litig.*, 2020 WL 487288 (D.N.J. Jan. 30, 2020); *In re Mercedes-Benz Emissions Litig.*, 2020 WL 103975 (D.N.J. Jan. 9, 2020); *In re Mercedes-Benz*

Emissions Litig., 2019 WL 5800270 (D.N.J. Nov. 7, 2019). Approximately twenty discovery motions were briefed. The disputes included the way Defendants would search for documents; the scope of custodians to be searched; the scope of Plaintiffs' discovery requests; and invasive searches of Plaintiffs' own documents. Plaintiffs served ninety-one Requests for Production on Mercedes and another fifty-nine requests on the Bosch defendants. Plaintiffs served subpoenas on eleven third parties. The Mercedes and the Bosch defendants produced approximately 43,920 documents comprising more than 331,000 pages, which Plaintiffs reviewed and coded. Declaration of Steve W. Berman in Support of Motion for Preliminary Approval [of Mercedes Settlement] (ECF No. 299-2,"Berman Decl. I"), ¶ 7. Plaintiffs' experts reviewed much of the technical discovery that was produced. And depositions were underway when the Parties reached the proposed Settlement. Plaintiffs took Rule 30(b)(6) depositions of MBUSA and Bosch LLC, respectively, while Defendants deposed five Plaintiffs. Berman Decl. I, ¶ 8.

The Settlements were reached only after extensive mediation efforts. Seven full-day and two half-day mediation sessions with the Mercedes Defendants were held with Judge Infante over the course of a year, and the mediation also entailed additional conference calls with Judge Infante and between the Parties. Berman Decl. I, ¶ 9. After the Mercedes Settlement was announced, Plaintiffs and the Bosch Defendants mediated with Judge Infante, followed by more calls between the Parties. Declaration of Steve W. Berman in Support of Motion for Preliminary Approval [of Bosch Settlement] (ECF No. 306-2,"Berman Decl. II"), ¶ 10. The Court preliminarily

approved the Mercedes Settlement on September 16, 2020 (*see* ECF No. 304) and the Bosch Settlement on October 21, 2020 (*see* ECF No. 308).

The timing of these Settlements is also crucial when assessing their value. The ongoing litigation and the Settlements occurred at a time of great global unrest and when the parties here and others across the nation face enormous pressure to seek early resolutions. Efforts to settle other cases have failed because companies have little or no money to fund any type of recovery, or they fear that economic recovery will be delayed. Still, Class Counsel continued fighting through the pandemic for every piece of consumer relief—a fight that could have gone south at any moment.

III. SUMMARY OF SETTLEMENT TERMS

A. The Settlement Class.

The Settlement Class is the same as the Class that the Court certified in its preliminary approval orders and includes all current and former owners or lessees of Subject Vehicles in the United States, including territories of the United States, who (1) on or before the Settlement Announcement Date owned or leased, and Registered, a Subject Vehicle, or (2) after the Settlement Announcement Date begin owning or leasing, and Register, a Subject Vehicle for which an AEM has not been installed. Subject Vehicles means a "Subject Vehicle" as defined in the Consent Decree filed by the U.S. Environmental Protection Agency and the California Air Resources Board,[1]

[1] *United States v. Daimler AG et al.*, Civ. No. 1:20-civ-02564, ECF No. 2-1 (D.D.C. filed Sept. 14, 2020) ("Consent Decree"), https://www.epa.gov/sites/production/files/2020-09/documents/daimleragandmercedesbenzusallc.pdf.

which includes the following Mercedes BlueTEC II diesel vehicles: 2014-16 E250, 2011-13 E350, 2009 GL320, 2010-16 GL350, 2016 GLE300d, 2016 GLE350d, 2013-15 GLK250, 2015 ML250, 2009 ML320, 2010-14 ML350, 2009 R320, 2010-12 R350, 2012-13 S350, 2014-16 4-cylinder Mercedes-Benz or Freightliner Sprinter, and 2010-16 6-cylinder Mercedes-Benz or Freightliner Sprinter. *See* ECF No. 304 at 1-2; ECF No. 308 at 1-2.

B. The Substantial Benefits to the Class.

On top of receiving AEMs to ensure Subject Vehicles meet their original certification standards and an Extended Modification Warranty under the Consent Decree, Class Members who submit Valid Claims are eligible to receive substantial cash compensation. Class Members and their monetary benefits generally fall into three categories:

1. Eligible Current Owners and Lessees whose Registered Subject Vehicle receives an AEM and who submit a Valid Claim will receive up to $3,590 ($3,290 from the Mercedes Settlement plus up to $300 from the Bosch Settlement) or, if an Eligible Former Owner or Eligible Former Lessee also submits a Valid Claim for that same vehicle, Eligible Current Owners and Lessees will receive up to $2,692.50 ($2,467.50 from the Mercedes Settlement plus up to $225 from the Bosch Settlement). Many Class Members will be current owners or lessees.
2. Eligible Former Owners and Former Lessees who submit a Valid Claim will receive up to up to $897.50 ($822.50 from the Mercedes Settlement plus up to $75 from the Bosch Settlement), which will be divided equally among the

Eligible Former Owners and Eligible Former Lessees who submit Valid Claims related to the same vehicle.

3. Eligible Post-Announcement Owners and Eligible Post-Announcement Lessees whose Registered Subject Vehicle receives an AEM and who submit a Valid Claim will receive up to $2,692.50 per Subject Vehicle ($2,467.50 from the Mercedes Settlement plus up to $225 from the Bosch Settlement).

Along with the payments described above, and as further described in the settlement agreements, in some cases, Eligible Current Owners/Lessees may receive additional payments for deferred AEM availability, late submissions of Emissions Modification Proposal Reports by Mercedes to the regulators, and any reclassification of Subject Vehicles to a lesser emissions standard. If an AEM for a Subject Vehicle is unavailable by October 1, 2022, Class Members who own or lease an affected Registered Subject Vehicle on that date will be eligible for a substantial payment pegged to the Owner/Lessee Payment in accordance with the Settlement Agreement, based on model year from 30% up to 80%. If, before the deadline, an AEM is unavailable, and no vehicle in that Emissions Modification Category can be re-registered in the Registered Subject Vehicle owner's state of residence because the AEM is unavailable, and the owner files a claim within 60 days of that deadline, Mercedes will offer to repurchase the Subject Vehicle for an amount equal to the value of the vehicle according to the Manheim Market Report.

On top of all of these benefits, if an AEM causes "Reduced Performance" of the Subject Vehicle, then Current Owners/Lessees will be eligible for a payment of $325.

If an AEM causes "Substantially Reduced Performance" of the Subject Vehicle, then Current Owners/Lessees will be eligible for a payment of $650. And if an AEM increases the frequency of refilling the diesel emission fluid, Current Owners/Lessees of the affected Subject Vehicle will be eligible to receive another $75. Given that there are an estimated 250,000 Subject Vehicles, the monetary benefits of the two Settlements likely exceed $763 million.[2/3]

Mercedes has also agreed to separately pay Attorneys' Fees and Costs and reasonable Class Representative Service Awards. After agreeing to the principal terms set forth in the Mercedes Settlement, Plaintiffs' Counsel and Mercedes' Counsel mediated the amount of Attorneys' Fees and Expenses that, following application to the Court and subject to Court approval, would be paid as the fee award and costs award to Plaintiffs' counsel in the Mercedes Settlement. On behalf of all plaintiffs' counsel, Class Counsel have applied for an award of Attorneys' Fees and Expenses in the amount of $80,200,000 in fees, plus up to $3,200,000 in expenses incurred before the Rule 23(e)(2) Fairness Hearing. *See* ECF No. 312. Mercedes has agreed not to

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[2] On top of these monetary benefits, each Subject Vehicle that receives an AEM will also receive an "Extended Modification Warranty" under the Consent Decree backing certain emissions-related components for a period equal to the greater of: (i) 10 years from date of initial sale or 120,000 miles on the odometer, whichever comes first; or (ii) 4 years or 48,000 miles from the date of installation of the Approved Emission Modification, whichever comes first. The warranty is transferable to subsequent purchasers and does not depend on submitting a claim or remaining in the Class. Details of the Extended Modification Warranty can be found at www.mbbluetecsettlement.com and www.mbbluetecupdate.mbusa.com.

[3] Of this amount, the Bosch Defendants' total contribution is up to $63.3 million on a claims-made basis, with the Mercedes Defendants contributing the balance on a claims-made basis.

oppose an application for these amounts. Class Counsel have also applied for an award of Attorneys' Fees of up to 25% of the actual amounts paid to Class members by Bosch under the Bosch Settlement. *See id.*; *see also* ECF No. 316.

IV. THE SETTLEMENTS WARRANT FINAL APPROVAL

To grant final approval of the Settlements, the Court must determine that the settlement agreements are "fair, reasonable, and adequate" under Rule 23(e)(2). The 2018 amendments to Rule 23 make clear that the Court should focus "on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the [settlements]." *See* Fed. R. Civ. P. 23(e)(2), 2018 Adv. Cmt. Notes. Accordingly, Plaintiffs analyze the settlements under the framework of Rule 23 and case law governing approval of class settlements, which are substantially similar and overlap. Regardless of the factors the Court employs, final approval is appropriate.

A. Notice to the Class Satisfied the Requirements of Rule 23 and Due Process.

Rule 23(b)(3) class actions must satisfy Rule 23(c)(2)'s notice provisions. Here, pursuant to the Court's preliminary approval orders, beginning on March 23, 2021, the Court-authorized Settlement Administrator, JND Class Action Administration ("JND"), caused the approved Notice and Claim Form to be sent to Class Members. JND mailed by first-class mail 438,290 unique notice packets to last known addresses reflected in state DMV registration records (after address updates were done through the National Change of Address database). Declaration of Jennifer M. Keough Regarding Notice and Claims ("Keough Decl."), ¶¶ 4-8. Of these notice package

mailings, 52,491 were returned as undeliverable. JND received forwarding addresses for, and remailed to, 7,668 of these Class Members. 44,823 notice packets were returned without forwarding address information. *Id.*, ¶ 8. Notice was also emailed to 174,958 unique email addresses (of these, 35,791 were returned as undeliverable). *Id.*, ¶ 9. JND also established a dedicated website, toll free number, email account, and post office box for Class Members to readily direct any questions, obtain additional copies of materials sent by the Settlement Administrator, and find instructions on how to submit a Claim. *Id.*, ¶¶ 14-19. The notice campaign was also substantively successful. To date, the Settlement Website has received 62,824 unique visitors, and JND has received 18,806 incoming calls and 3,461 emails about the Settlements. *Id.*, ¶¶ 17-19.

This notice program, which combines an individual notice to all Class Members who can be reasonably identified along with substantial web exposure, meets the requirements of Fed. R. Civ. P. 23, which calls for "the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 326-27 (3d Cir. 1998). As noted below, the notice program also satisfies the requirements of due process. *See In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 119 (D.N.J. 2002) ("In order to satisfy due process, notice to class members must be reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.").

Here, the Class has been given notice of the proposed Settlements, and their rights in connection with them, as well as the method and dates by which they may: (i) object to the Settlements and/or Class Counsel's requests for attorneys' fees and expenses, (ii) request exclusion from the Class, and (iii) submit a claim to be eligible to participate in the Settlements and receive a payment. Class Members have also been advised of the date of the Fairness Hearing at which they can be heard over any objection raised. For these reasons, the Court-approved notice program for the Settlements provided the best practicable notice of the Settlements, consistent with the requirements of Rule 23(c)(2)(B) and due process, to members of the Class.

B. The Settlements are Fair, Reasonable, and Adequate.

"[S]ettlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts . . . and preventing lawsuits." *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 401 (1977) (Powell, J., dissenting). In complex class action lawsuits such as this, the policy of favoring voluntary resolution through settlement is particularly strong. *See In re Pet Food Prods. Lib. Litig.*, 629 F.3d 333, 351 (3d Cir. 2010) ("overriding public interest in settling class action litigation"). The Third Circuit applies this "strong presumption in favor of voluntary settlement agreements," which is "especially strong in class actions and other complex cases . . . because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by federal courts." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 311 (3d Cir. 2011) (citing *Ehrnheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010)).

Approval of a settlement requires that the Court find that the settlement is "fair reasonable and adequate after considering whether:

> (A) The class representatives and class counsel have adequately represented the class;
>
> (B) The proposal was negotiated at arm's length;
>
> (C) The relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3)
>
> (D) the proposal treats class members equitably relative to each other."

Fed.R.Civ.P. 23(e)(2).

These factors are a blend of the factors formerly considered under *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975), and *In re Prudential Insurance Co. America Sales Practice Litigation*, 148 F.3d 283, 323-24 (3d Cir. 1998).[4] They are intended to

[4] Courts in the Third Circuit have traditionally employed a nine-factor analysis to assess the fairness, adequacy, and reasonableness of a proposed class action settlement: (i) the complexity, expense, and likely duration of the litigation; (ii) the reaction of the class to the settlement; (iii) the stage of the proceedings and the amount of discovery completed; (iv) the risks of establishing liability; (v) the risk of establishing damages; (vi) the risks of maintaining the class action through the trial; (vii) the ability of defendants to withstand a greater judgment; (viii) the range of reasonableness of the settlement fund in light of the best possible recovery; and (ix) the range of reasonableness of the settlement fund to a possible recovery in light of

focus the parties' and the Court's attention on a shorter list of factors relating to the propriety of a proposed class settlement. As stated by the Advisory Committee:

> A lengthy list of factors can take on an independent life, potentially distracting attention from the central concerns that inform the settlement-review process. A circuit's list might include a dozen or more separately articulated factors. Some of these factors—perhaps many—may not be relevant to a particular case or settlement proposal. Those that are relevant may be more or less important to the particular case. Yet counsel and courts may feel it necessary to address every factor on a given circuit's list in every case. The sheer number of factors can distract both the court and the parties from the central concerns that bear on review under Rule 23(e)(2).
>
> This amendment therefore directs the parties to present the settlement to the court in terms of a shorter list of core concerns, by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision on whether to approve the proposal.

Fed.R.Civ.P. 23, Advisory Committee Notes, 2018 Amendments, Subdivision (e)(2).

The Settlements are an outstanding resolution for the Class per the requirements of the new Rule 23.

1. Rule 23(e)(2)(A): The Class Representatives and Class Counsel have adequately represented the Class.

Rule 23(e)(2)(A) requires a Court to consider whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). Here, the proposed Class Representatives interests "are entirely aligned [with those of the proposed Class] in their interest in proving that [Defendants] misled them and share the common goal of obtaining redress for their

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all the attendant risks of litigation. *Girsh*, 521 F.2d at 157; *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 301 (3d Cir. 2005).

injuries." *In re: Volkswagen "Clean Diesel" Mktg., Sales Practices & Prod. Liab. Litig.*, 2016 WL 4010049, at *11 (N.D. Cal. July 26, 2016); *see also In re Chrysler-Dodge Ecodiesel Mktg., Sales Practices & Prods. Liab. Litig.*, 2019 WL 536661, at *6 (N.D. Cal. Feb. 11, 2019) (same). The Class Representatives vigorously prosecuted this litigation against Mercedes and Bosch because, as discussed below, their claims are typical of the absent Class Members. *E.g.*, *Damassia v. Duane Reade, Inc.*, 250 F.R.D. 152, 158 (S.D.N.Y. 2008) ("The fact that plaintiffs' claims are typical of the class is strong evidence that their interests are not antagonistic to those of the class; the same strategies that will vindicate plaintiffs' claims will vindicate those of the class."); *Emig v. Am. Tobacco Co.*, 184 F.R.D. 379, 387 (D. Kan. 1998) ("[a]n overlap exists in the typicality and adequacy of representation requirements because if typicality is not present, the class representatives do not have an incentive to vigorously prosecute class claims").

The Class Representatives were likewise actively engaged and understand their duties: they have all kept abreast of the litigation and aided in discovery, and many have submitted to depositions. There can be no reasoned argument that any of the Class Representatives have conflicts antagonistic to the Class, and the Court should conclude that they have adequately represented the Class.

Likewise, Plaintiffs' choice of counsel also underscores their adequacy. *See In re Cmty. Bank of N. Va.*, 622 F.3d 275, 292 (3d Cir. 2010) ("Realistically, for purposes of determining adequate representation, the performance of class counsel is intertwined with that of the class representative.") (citation and internal quotation

marks omitted). In retaining Carella Byrne, Hagens Berman, and Seeger Weiss, Plaintiffs have employed counsel who are qualified and experienced in complex class litigation and who have the resources, zeal, and successful record in class cases.[5] Their decision to settle after more than four years of hard-fought litigation and evaluation of the claims supports final approval. *See In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 543 (D.N.J. 1997) ("*Prudential I*") ("the Court credits the judgment of Plaintiffs' Counsel, all of whom are active, respected, and accomplished in this type of litigation."). There should be no genuine question that the proposed Class Representatives are adequate and that they and Class Counsel have adequately represented the Class. *See* ECF No. 304, ¶¶ 3(d),5-6; ECF No. 308 ¶¶ 3(d), 5-6.

2. Rule 23(e)(2)(B): The Settlements were negotiated at arm's length.

Under Rule 23(e)(2)(B), the Court considers whether the Settlements were "negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). "[T]he involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests." Here, the Settlements result from extensive arm's-length negotiations undertaken in good-faith by counsel for the Parties. As noted above, the Parties' negotiations involved many in person meetings and close participation of Judge Edward A. Infante (Ret.). *See In re Aetna UCR Litig.*, 2013 WL 4697994, at *11

[5] The fitness of these three firms to adequately represent the Class is also addressed below in connection with their qualifications for appointment as Class Counsel under Rule 23(g).

(D.N.J. Aug. 30, 2013) ("Sessions with a respected and experienced mediator, gave counsel on both sides ample opportunity to adequately assess the strengths of their respective positions and facilitated serious and informed negotiations."); *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *10 (D.N.J. Apr. 8, 2011) ("Participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's length and without collusion between the parties."); *Wilson v. EverBank*, 2016 WL 457011, at *6 (S.D. Fla. Feb. 3, 2016) (fact of mediator's involvement "weighs in favor of approval").

Throughout every stage of their negotiations, the Parties weighed the strengths and weaknesses of the Class' claims and the Mercedes and Bosch Defendants' defenses, including consideration of, among other issues, liability, and damages. The Settlements followed an extensive investigation as well as substantial discovery and motion practice. *See In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at *11 (D.N.J. May 14, 2012) ("Where this negotiation process follows meaningful discovery, the maturity and correctness of the settlement become all the more apparent."). When the Settlements were reached, Class Counsel were well-informed regarding their case and the likelihood of recovery. As a result, Plaintiffs and Class Counsel had an adequate basis for assessing the strengths of the Class's claims and the risks of continued litigation against when they entered into the Settlements. Foremost in our minds was the benefit of securing a certain resolution now, rather than facing the inevitable likelihood of years of appeals in the event of a favorable jury verdict.

Moreover, Class Counsel, firms with extensive experience in prosecuting complex consumer class actions and other complex litigation in this District and around the country, believe that the Settlements are in the best interests of the Class. Counsel's judgment is entitled to considerable weight. *See Varacallo v. Mass Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005) ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness."); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) (Courts have consistently given "'great weight' . . . to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation."). That the Settlements emerge from protracted, arm's-length negotiations between experienced and well-informed counsel proves that the process by which the Settlements were reached was fair and not the product of collusion. *See, e.g.*, *Glaberson v. Comcast Corp.*, 2014 WL 7008539, at *4 (E.D. Pa. Dec. 12, 2014) (a settlement is presumed to be fair "when the negotiations were at arm's length, there was sufficient discovery, and the proponents of the settlement are experienced in similar litigation"). The process culminating in the present Settlements strongly supports the Court's granting of approval of the Settlements.

3. Rule 23(e)(2)(C): The relief provided for the Class is adequate considering the totality of circumstances.

Rule 23(e)(2)(C) requires the Court to consider whether the relief provided for the Class is adequate by considering the "costs, risk, and delay of trial and appeal" and "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P.

23(e)(2)(C)(i)-(ii). We respectfully submit that the $763 million aggregate value of the Settlements speaks for itself. The Settlements provide substantial relief to Class Members, delivered through a clear claims process. The per-vehicle recovery, coupled with potential additional dollars based on AEM availability and engine performance after AEM installation, is substantial—up to $3,590 for Eligible Current Owners and Lessees, up to $2,692.50 for Eligible Current Owners and Lessees if an Eligible Former Owner or Eligible Former Lessee also submits a Valid Claim for that same vehicle, up to $897.50 for Eligible Former Owners and Former Lessees, and up to $2,692.50 for Eligible Post-Announcement Owners and Lessees. Plaintiffs believe their case is strong, but recognize that litigation is uncertain, making compromise of claims in exchange for the Settlements' certain, immediate, and substantial benefits an unquestionably reasonable choice. Indeed, the Settlements' benefits are substantial.[6] Class Counsel, who have collectively served as class counsel in hundreds of actions, fully endorse the Settlements as fair, reasonable, and adequate.

In determining the fairness of a settlement, Rule 23(e)(2)(C)(i) directs the Court to balance a proposed settlement against the enormous time and expense of achieving a potentially more favorable result through further litigation. *See McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 460 (D.N.J. 2008). Here, the inherent risks, time, and expense of taking the case to trial, obtaining a favorable judgment and protecting it on appeal support approval of the proposed Settlements. The array of

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[6] The Settlements also compare favorably with other recently approved diesel emissions class action settlements in the *VW* and *FCA* cases.

defense arguments on various issues that could narrow Plaintiffs' claims or certain segments of the Class include, among others: preemption; choice of law; variations in law; arbitration clause enforcement; and lack of damages. Defendants continue to deny Plaintiffs' claims and attack them. If the litigation went ahead, other issues, such as motions to exclude material components of Plaintiffs' evidence of liability and damages in expert reports could also undermine Plaintiffs' case. Nor has a litigation class been certified. Were the Court to certify one, Defendants would no doubt pursue a Rule 23(f) petition to the Third Circuit for immediate review. The risk of maintaining class action status through trial is real. *See Weiss v. Mercedes- Benz of N. Am.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995) (approving settlement that was the "result of an arm's length negotiation between two very capable parties" and where "Mercedes was prepared to contest this class action vigorously"). Indeed, given the Mercedes Defendants' and the Bosch Defendants' demonstrated willingness and ability to vigorously defend this case, there is absolutely no reason to believe that they would have simply capitulated in the face of an adverse jury verdict. To the contrary, they would have bonded the judgment and continued fighting in the Third Circuit. All of these considerations support approval of the Settlements rather than proceeding with uncertain litigation.

Rule 23(e)(2)(C)(ii) counsels the Court to consider "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." The method of distributing relief here is robust and effective, providing Class Members with the ability to easily file claims. A simple claim form

with instructions was included in the notice packages mailed to Class Members and remains available on the settlement website. The ease of the claims process is proven by the significant number of claims – 33,766 claims to date (out of a universe of 251,347 vehicles and as many as 438,290 potential Class Members). Keough Decl., ¶ 22. The claims period is still open, and so many more claims are expected to be filed.[7] *Id.*, ¶ 23. Further, filing a claim is unnecessary to receive an AEM and an Extended Modification Warranty. And under the terms of the Settlements, Class Members can obtain loaner vehicles for free (where available) when the implementation of an AEM will take three hours or longer to complete.

Rule 23(e)(2)(C)(iii) advises the Court to consider the terms of any proposed award of attorneys' fees, including the timing of payment. The Mercedes Settlement requires Court-awarded attorneys' fees and litigation expenses of up to $83,400,000 to be paid *separately*, without reducing Class recovery, and only after entry of the Final Approval Order. That is another valuable benefit to the Class, which will be relieved from having to pay common benefit fees out of its recovery. In the Bosch settlement, Class Counsel will apply for fees for 25% of the value of the claims made and paid on an ongoing basis as payments are made to Class members. As noted earlier, attorneys' fees and costs were not negotiated until settlements-in-principle

[7] The claims deadline for Eligible Former Owners/Lessees is the date of entry of the Final Approval Order. The claims deadline for Eligible Current Owners/Lessees and Eligible Post-Announcement Owners/Lessees is October 1, 2022, unless there are certain enumerated delays in AEM availability. *See* Mercedes Settlement Agreement, ¶¶ 2.10, 2.11.

were reached.[8]

4. Rule 23(e)(2)(D): The Settlement treats Class members equitably relative to each other.

Rule 23(e)(2)(D) requires the Court to consider whether the "proposal treats class members equitably relative to each other." This ensures there is no "inequitable treatment of some class members vis-à-vis others." Adv. Cmt. Note R. 23. All Class Members are treated equitably and will be paid the amount of their allowed claim based on a simple and equitable distribution formula. Eligible Current Owners/Lessees receive the full $3,290 payment from the Mercedes Settlement and the full $300 from the Bosch Settlement (less any attorneys' fees awarded) if no former owner or lessee submits a Valid Claim for the same vehicle. If an Eligible Former Owner or Lessee submits a Valid Claim for the same vehicle, the payment is split—$2,692.50 to the Eligible Current Owner/Lessee and $897.50 to the Eligible Former Owner/Lessee.

5. The Reaction of the Class to the Settlements.

The primary *Girsh* factor not encompassed by the amendments to Rule 23(e)(2) is the reaction of the Class to the settlement. To gauge whether members of the class support the settlement, "the number and vociferousness of the objectors" must be examined. *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 769, 812 (3d Cir. 1995). Generally, "silence constitutes tacit consent to the

[8] Rule 23(e)(2)(C)(iv) requires the Court to consider any agreement required to be identified under Rule 23(e)(3). The only agreements at issue are the two Settlement Agreements that were submitted to the Court in support of the two preliminary approval motions.

agreement." *Id.* (quotation omitted). A "paucity of protestors . . . militates in favor of the settlement." *See Bell Atl. Corp, v. Bolger*, 2 F.3d 1304, 1314 (3d Cir. 1993); *see also Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (objections by 29 members of class comprised of 281 "strongly favors settlement"); *Prudential I*, 962 F. Supp. at 537 (few negative responses to settlement favors approval); *Weiss*, 899 F. Supp. at 1301 (100 objections out of 30,000 class members weighs in favor of settlement).

Here, the reaction of the Class to both Settlements has been overwhelmingly positive. Over 14% of those to whom notice packets were sent have already filed claims, with many more claims expected given that the claims period will be open until October 1, 2022 for current vehicle owners and lessees. Further, opt out requests have been minimal, totaling less than one percent of those to whom notice packets were sent.[9] There are more than 250,000 Subject Vehicles, but because vehicles may go through second and third owners, the actual number of mailed Notices was 438,290. Although there are hundreds of thousands of members of the Settlement Class, there are *only 18 objections*.[10] *See* Appendix A (Table summarizing Objections). That amount represents a tiny fraction (approximately 0.00004%) of

[9] At least 10 days before the Fairness Hearing, the Settlement Administrator will file with the Court a list of those persons who have excluded themselves from the Settlements. Keough Decl., ¶ 25.

[10] At least three objectors Christian B. Schwartz, Gena Vennikandam, and Robert Kreps failed to provide proof of class membership, so they lack standing to object because they failed to establish membership in the class. *See Collins v. Quincy Bioscience, LLC*, 2020 WL 7135528, at *4 (S.D. Fla. Nov. 16, 2020); *In re Royal Dutch/Shell Transp. Sec. Litig.*, No. CIV.A. 04-374 JAP, 2008 WL 9447623, at *30 (D.N.J. Dec. 9, 2008).

those to whom notice packets were sent. Under *Girsh*, the positive reaction to the Settlements, infinitesimal percentage of objections, and high level of engagement is a powerful endorsement of the Settlements that strongly favors final approval. *See Yaeger v. Subaru of Am., Inc.*, 2016 WL 4541861, at *17 (D.N.J. Aug. 31, 2016) ("response of the class members has produced only about 28 objectors out of about 665,730 recipients, showing strong overall acceptance").[11]

The Settlements are more than just fair, reasonable, and adequate – they are an outstanding result for the Class and the environment. Still, no matter the strength of a settlement, "[s]ome class members will inevitably wish they could recover more." *In re Volkswagen*, 2016 WL 6248426, at *18. Here, 18 objections have been submitted and 17 – or around 94% – fall into this camp and envision ways in which a different settlement could have been even better.[12] While the overwhelming majority are well-meaning, all the objections are meritless, and none should alter the Court's preliminary approval conclusions or support denying final approval. Some suggest reimbursements for past repairs. Some suggest different warranty coverage after installation of the AEM. Some argue for more compensation. These results, however, would be difficult, if not impossible, to obtain in a successful verdict litigated

[11] *See also Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 321 (3d Cir. 2011) ("minimal number of objections and requests for exclusion are consistent with class settlements we have previously approved"); *Yaeger*, 2016 WL 4541861, at *7 n.5 ("There can be little doubt that the initial presumption [of fairness] applies here . . . [in part] because the proposed settlement drew only thirty-four objections.").

[12] Every Class Member had the option of opting out of the Settlements and pursuing his or her own case against Mercedes or Bosch. *Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *9 (D.N.J. Mar. 22, 2013).

to judgment and upheld on appeal. And no objector addresses the risks or uncertainty of continued litigation and appeals. *See Dickerson v. York Int'l Corp.*, 2017 WL 3601948, at *9 (M.D. Pa. Aug. 22, 2017) ("argument that settlement amount is unreasonable fundamentally misapprehends the bargained-for nature of the benefit provided: a settlement necessarily requires all parties to make calculated concessions. . . . These [negotiated] amounts were the result of intense and informed negotiations with the assistance of the mediator. In view of the risks of proving liability and causation, these awards are quite reasonable."); *In re Imprelis Herbicide Mktg., Sales Pracs. & Prod. Liab. Litig.*, 296 F.R.D. 351, 365–66 (E.D. Pa. 2013) ("These objections do not sufficiently appreciate the fact that this is a *settlement,* not an award that will necessarily make all of the claimants whole for any damages incurred. Indeed, the very nature of a 'settlement' is that it represents a compromise, not full compensation for all potential damages that could be awarded in a successful lawsuit.") (emphasis in original).[13]

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[13] *See also Seifi v. Mercedes-Benz USA, LLC*, No. 12-CV-05493 (THE), 2015 WL 12964340, at *2-3 (N.D. Cal. Aug. 18, 2015) ("The percentage of replacement costs reimbursed or to be paid by MBUSA for future repairs was determined by a vigorously-disputed and highly-negotiated schedule according to the number of miles driven or the amount of time the subject vehicles have been on the road. In negotiations over the portion of the replacement costs to be reimbursed/covered under the Settlement, plaintiffs faced real litigation risk from MBUSA's defenses. Plaintiffs acknowledge these challenges . . ., and in light of these risks, the Settlement's reimbursement and extended warranty schedules are reasonable and a fair compromise for the Class."); *Henderson*, 2013 WL 1192479, at *8-9 ("several objectors indicate their disappointment with the agreed-upon reimbursement rates or relief. . . . The objections submitted by Class Members do not show that the Settlement is unreasonable or unfair. 'This Court's role is to determine whether the proposed relief is fair, reasonable and adequate, not whether some other relief would be more lucrative to the Class. A settlement is, after all, not full relief but an acceptable

These objections present the sort of "'wish list' which would be impossible to grant and is hardly in the best interests of the class." *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 305 (N.D. Ga. 1993); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) ("Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.").

Settlements need not provide the maximum relief to be approved as fair and reasonable.[14] *See Oliver v. BMW of N. Am., LLC*, No. CV 17-12979 (CCC), 2021 WL 870662, at *5 (D.N.J. Mar. 8, 2021) (quoting *In re Baby Prod. Antitrust Litig.*, 708 F.3d 163, 173-74 (3d Cir. 2013)). None of these arguments or objections address the ultimate question: are these Settlements unfair, unreasonable, or inadequate? Accepting these "wish list" objections is like saying that the lack of these "wishes" renders the Settlements so deficient that it is better to vacate the Settlements and return to litigation than to allow the tens of thousands of Class Members who have

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compromise.' . . . 'Moreover, complaining that the settlement should be 'better'... is not a valid objection.'") (citations omitted).

[14] *See Skeen v. BMW of N. Am., LLC*, No. 2:13-CV-1531-WHW-CLW, 2016 WL 4033969, at *12 (D.N.J. July 26, 2016) (holding, as to owners of Class Vehicles who repaired or replaced failed engines" and who are not entitled to compensation for the engine repairs, "that settlements need not provide maximum relief to be reasonable and fair"); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Pracs. & Prod. Liab. Litig.*, No. 8:10ML 02151 JVS, 2013 WL 3224585, at *16 (C.D. Cal. June 17, 2013) ("it is entirely appropriate to structure as part of a settlement a customer support program that applies only to future claims. . . . the failure of the parties to include a term to compensate class members for past repairs does not render the proposed settlement unreasonable").

already submitted claims to receive the compensation and relief they provide now. Respectfully, these objections do not undermine the fairness, reasonableness, and adequacy of the Settlements and this "Court does not have the power to alter the terms of the proposed settlement." *Yaeger*, 2016 WL 4541861, at *17.

Broadly speaking, as Appendix A reveals, these objections fall into general categories. *See* Appendix A. Plaintiffs address these categories in greater detail below.

a. Objection that the Settlements Do Not Cover Past Repair Costs

Some objectors argue that the Settlements are insufficient because of frustration with maintenance and repairs their vehicles required. These objections miss the mark. The compensation and relief provided by the Settlements are designed to resolve the goals of the litigation – compensating consumers for their alleged overpayment damages incurred in purchasing or leasing a Class Vehicle. Routine maintenance and repairs are part and parcel of vehicle ownership generally and unrelated to the false advertising claims in this case. *See In re: Volkswagen*, 2016 WL 6248426, at *20-21. And Plaintiffs did not allege that the challenged emissions system led to hardware problems or engine defects that caused a need for repairs. In any case, the Settlements provide substantial benefits to Class Members on top of the AEM and robust extended warranty provided through the Consent Decree.

b. Objection that the Settlements Do Not Cover Potential Future Effects of the AEM

Ten objectors argue for more forward-looking relief. These concerns, while understandable, are unpersuasive because they are already addressed by the

Mercedes Settlement and by the extended warranty provided by the Consent Decree. These objectors appear to fail to understand that the Settlements offer the main features they seek – protection from hypothesized negative effects of the AEMs that have been or will be approved by the regulators[15] or any significant reduction in reliability or performance of the vehicle following installation of the AEM. First, *before* the EPA and CARB approve an AEM, it is subject to extensive testing to evaluate any adverse impact on Class Vehicles' reliability, durability, performance, average fuel economy, and other driving characteristics. Second, the advanced engineering being developed by the Mercedes Defendants, plus Class Counsel's continuing involvement, provides strong assurance of the robustness and effectiveness of the AEMs. Third, the Mercedes Settlement provides additional payments if, based on vehicle testing, there are specific performance impacts or an increase in DEF refill frequency following installation of the AEM. Fourth, the extended warranty provides coverage for parts installed as part of the AEM as well as for parts reasonably expected to be affected by the AEM (as set forth in the Consent Decree, Appendix A, para. 18), so if those parts fail unexpectedly they are covered. These protection and benefits are robust, and the fact that some objectors may believe they are insufficient is no reason not to grant final approval.

c. Objections that the Settlements Do Not Provide Sufficient Compensation

[15] Additionally, these objections merely speculate about potential future performance impacts of the AEM, but none of these objectors provides a factual basis for that speculation or claims to have experienced any negative performance effects. Indeed, one objector candidly noted that he has seen no change in fuel economy since the AEM was installed in his vehicle. *See* ECF No. 319.

Some objections argue that the Settlements do not adequately compensate them for the diminished value of their vehicles. No objector has demonstated that the Class Vehicles' market value has decreased, and the operative pleadings did not allege a diminished value damages theory. But even if they had, a "settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution.'" *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 317 (3d Cir. 1998) (citation omitted). As one objector concedes, "[t]he AEM's negative impact to the value of the vehicle is likely unknowable . . ." D.E. 319. Courts routinely reject arguments that class members' vehicles suffered diminished value without evidence of such diminished value, particularly when the compensation offered is substantial.[16]

Two objectors argue that the Settlements should provide a refund of vehicle purchase price. ECF Nos. 327, 334. Courts in similar diesel emission cases have rejected this argument because it misunderstands the alleged overpayment

[16] *See Seifi* 2015 WL 12964340, at *3 ("The diminished value objections . . . are overruled for lack of concrete evidence of a claim, and because '[w]hen a settlement is fair, reasonable, and adequate to the class as a whole [...] objections that apply only to an individual class member are insufficient to defeat the settlement.' . . . 'Without doubting the strength of their particular claims, diminution in value cases face significant obstacles regarding proof.") (citations omitted); *Asghari v. Volkswagen Grp. of Am., Inc.*, 2015 WL 12732462, at *26 (C.D. Cal. May 29, 2015) ("The court disagrees with the objectors' first argument—that the settlement is unfair because it does not compensate class members for the diminution in value of the vehicles attributable to the purported oil consumption defect. As plaintiffs' note in their response, diminution in value damages pose great difficulties in a class action context, particularly when considering the challenge of proving such damages on a classwide basis.").

damages.[17] Class Members' overpayment damages correlate not to the total price of the vehicle or the entire diesel premium, but to the portion that was not realized when purchasing or leasing the Class Vehicles originally. For this reason, the maximum amount recoverable at trial would be less than the amount sought by these objectors. But even more importantly, as this Court has recognized "'full compensation is not a prerequisite for a fair settlement.'" *O'Brien v. Brain Rsch. Labs, LLC*, No. CIV.A. 12-204, 2012 WL 3242365, at *15 (D.N.J. Aug. 9, 2012) (citation omitted); *see also Dickerson v. York Int'l Corp.*, 2017 WL 3601948, at *9 (M.D. Pa. Aug. 22, 2017) ("argument that settlement amount is unreasonable fundamentally misapprehends the bargained-for nature of the benefit provided: a settlement necessarily requires all parties to make calculated concessions. . . . These [negotiated] amounts were the result of intense and informed negotiations with the assistance of the mediator. In view of the risks of proving liability and causation, these awards are quite reasonable."); *In re Imprelis Herbicide Mktg., Sales Pracs. & Prod. Liab. Litig.*, 296 F.R.D. 351, 365–66 (E.D. Pa. 2013) ("These objections do not sufficiently appreciate the fact that this is a *settlement,* not an award that will necessarily make all of the claimants whole for any damages incurred. Indeed, the very nature of a 'settlement'

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[17] *See In re: Volkswagen "Clean Diesel" Mktg., Sales Pracs. & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2016 WL 6248426, at *17 (N.D. Cal. Oct. 25, 2016) ("Class Members could only be entitled to a full refund of purchase price if they returned their vehicles in the same condition they received it. Such a scenario is virtually inconceivable as it is highly unlikely Class Members never used their vehicles after purchasing them. Indeed, many Class Members received a great deal of use out of their vehicles over the years. Under such circumstances, courts have been unwilling to award plaintiffs the full purchase price as either restitution or damages."), *aff'd*, 895 F.3d 597 (9th Cir. 2018), 741 F. App'x 367 (9th Cir. 2018).

is that it represents a compromise, not full compensation for all potential damages that could be awarded in a successful lawsuit.") (emphasis in original.[18] The compensation offered here is substantial and "an examination of the monetary and non-monetary compensation that the settlement provides shows that the compromise provides a reasonable benefit to the class" that reflects a fair, reasonable, and adequate compromise of the claims. *Id.*

d. Objections to Attorney Fee

Two objectors raise concerns with the attorneys' fees, but neither evaluates the reasonableness of the requested fees based on the work performed by Class Counsel, their commitment, their experience, or any other factors, as the law requires. One objection seeks to provide more relief to the class by dividing the requested fees, giving one-half of the requested amount to Class Counsel and the other half to the Class. ECF No. 324. The other contends, with no basis, that this case was "frivolous and a hinderance to innovation" and that fees should not be awarded. ECF No. 320. Respectfully, Class Counsel fought tirelessly for over four years to litigate and settle this case, present it for approval, and prepare to administer the Settlements. These objectors "ignore[] the significant risks undertaken by counsel when they undert[oo]k

[18] *See also In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 218 (E.D. Pa. 2014) ("Although many of the remaining objectors express complaints that the settlement does not offer them sufficient monetary compensation, including for costs associated with necessary reinstallation of underlying house wrap or repainting of unaffected Siding to match any Siding replaced under the settlement, . .. their objections do not take into account the risks and costs that would ensue with further litigation of their claims. 'The value of the settlement to each class member represents a reasonable discount from the best possible judgment if they were to prevail after a trial.'") (citation omitted).

representation of [this] class action[] on a contingency basis." *Stevens v. SEI Invs. Co.*, No. CV 18-4205, 2020 WL 996418, at *11 (E.D. Pa. Feb. 28, 2020). Given these efforts and the absence of a meritorious objection to the requested fee and expense applications, for the reasons set forth below in the Attorney's Fee section, the Court should overrule these objections and approve the requested fee and expense applications.

V. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

The Court has already provisionally certified the Class for settlement purposes (see ECF No. 304, ¶ 2; ECF No. 308, ¶ 2) and nothing has changed to call that conclusion into question. Plaintiffs briefly address Rule 23(a) and (b) elements below and request that the Court now grant final class certification. The Supreme Court has long acknowledged the propriety of certifying a class solely for settlement purposes. *See, e.g.*, *Amchem Prods, Inc. v. Windsor*, 521 U.S. 591, 618 (1997). In conducting this task, a court's "dominant concern" is "whether a proposed class has sufficient unity so that the absent members can fairly be bound by the decisions of class representatives." *Id.* at 621. To be certified under Rule 23, a putative class must satisfy, by a preponderance of the evidence, each of the four requirements of Rule 23(a) as well as the requirements of one of the three subsections of Rule 23(b). *See, e.g.*, *Wragg v. Ortiz*, 2020 WL 2745247, at *27 (D.N.J. May 27, 2020). The Rule 23 elements for class certification are satisfied here.

A. The Rule 23(a) Requirements Are Satisfied.

1. Rule 23(a)(1) – Numerosity is present.

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[G]enerally, where the potential number of plaintiffs is likely to exceed forty members, the Rule 23(a) numerosity requirement will be met." *Martinez-Santiago v. Public Storage,* 312 FRD 380, 388 (D.N.J. 2015) (citing *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012)). With hundreds of thousands of Subject Vehicles included, the members of the proposed Class are so numerous as to make their joinder impractical. *See*, *e.g.*, *Wragg*, 2020 WL 2745247, at * 27 (numerosity "must be based on common sense") (citation and internal quotation marks omitted).

2. Rule 23(a)(2) – There are issues common to all Class Members.

Rule 23(a)(2) requires that there be "questions of law *or* fact common to the class," and that the class members "have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes,* 564 U.S. 338, 350, 369 (2011) (citation omitted and emphasis added). In other words, the class's claims must "depend upon a common contention ... capable of class-wide resolution." *In re Wellbutrin XL Antitrust Litig.*, 282 F.R.D. 126, 137 (E.D. Pa. 2011) (citing *Wal-Mart,* 564 U.S. at 350). "A contention is capable of class-wide resolution if determination of its truth or falsity will resolve an issue that is central to the validity the claims 'in one stroke.'" *Id.* (quoting *Wal-Mart,* 564 U.S. at 350).

The commonality inquiry focuses on the defendant's conduct. *Sullivan v. DB Invs., Inc*, 667 F.3d 273, 297 (3d Cir. 2011) ("commonality is informed by the

defendant's conduct as to all class members and any resulting injuries common to all class members"). Not all questions of fact and law need to be common if there are common questions at the heart of the case. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 530 (3d Cir. 2004) (quotation omitted); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions,* 148 F.3d 283, 310 (3d Cir. 1998). "For purposes of Rule 23(a)(2), even a single [common] question will do." *Wal-Mart,* 564 U.S. at 359 (brackets in original; citation omitted).

In provisionally certifying the Class, this Court appropriately found commonality. *See* ECF No. 304, ¶ 3(b); ECF No. 308, ¶ 3(b); *see also In re Volkswagen "Clean Diesel" Mktg., Sales Practices & Prods. Liab. Litig.,* 2016 WL 4010049, at *10 (N.D. Cal. July 26, 2016) (commonality satisfied for comparable diesel emissions settlement class); *In re Chrysler-Dodge Ecodiesel Mktg., Sales Practices & Prods. Liab. Litig.,* 2019 WL 536661, at *5 (same). The claims of all Class Members involve the same advertising, the same vehicles, the same emissions control technology and software, the same alleged defeat device, the same conduct which focuses on the Defendants and not individual Class embers, and so on. These issues are at the heart of the case and are enough to satisfy Rule 23(a)(2).

3. Rule 23(a)(3) – Typicality is satisfied.

Rule 23(a)(3) requires that a representative plaintiff's claims be "typical" of those of other class members. The Third Circuit has explained that "the named plaintiffs' claims must merely be 'typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class.'" *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 598 (3d Cir. 2009) (citation

omitted); *Johnston v. HBO Film Mgmt.*, 265 F.3d 178, 184 (3d Cir. 2001) (citation omitted). Rule 23(a)(3), however, "does *not* require that all putative class members share *identical* claims." *HBO,* 265 F.3d at 184 (emphasis added).

Under the permissive standards of this rule, representative claims are "typical" if they are reasonably coextensive with those of absent class members and they need not be identical. Indeed, when it is alleged that the defendant engaged in conduct common to all members of the class, "there is a strong presumption that the claims of the representative parties will be typical of the absent class members." *In re Merck & Co., Vytorin/Zetia Sec. Litig.*, No. 08-cv-2177, 2012 WL 4482041, at *4 (D.N.J., Sept. 25, 2012) (citation omitted). Likewise, "[w]hen a class includes purchasers of a variety of different products, a named plaintiff that purchases only one type of product satisfies the typicality requirement if the alleged misrepresentations or omissions apply uniformly across the different product types." *Marcus* 687 F.3d at 599; *see also Yaeger v. Subaru of Am., Inc.*, 2016 WL 4541861, at *6 (D.N.J. Aug. 31, 2016) (finding typicality where "plaintiffs allege that the class claims arise out of the same conduct of the defendants related to their design, manufacture, and sale of the class vehicles that suffered from an alleged oil consumption defect, and defendants' alleged failure to disclose that material fact").

The named Plaintiffs' claims, and those of absent members of the Class, arise from a common alleged course of conduct and under common legal theories. Plaintiffs contend that Mercedes conspired with the Bosch defendants to form an enterprise for unlawful purposes, thereby violating RICO. Plaintiffs allege that Mercedes engaged

in false advertising in violation of consumer protection laws and committed fraud by selling vehicles with alleged defeat devices that allegedly emit harmful pollutants at illegal high levels; not informing consumers of the alleged defeat devices or the excessive emissions; and making material misstatements and omissions in violation of RICO about the vehicles' performance, fuel-efficiency, and emissions, and whether the vehicles were environmentally friendly and met emissions limits under everyday driving conditions. Plaintiffs allege that their vehicles have the same alleged defeat devices as all other Class Vehicles and that they purchased or leased vehicles that emit excessive pollutants without knowing the truth about the vehicles' "real world" emissions. *See Volkswagen*, 2016 WL 4010049, at *11 (typicality satisfied for diesel emissions settlement class); *In re Chrysler-Dodge Ecodiesel Mktg., Sales Practices & Prods. Liab. Litig.*, 2019 WL 536661, at *5-6 (N.D. Cal. Feb. 11, 2019) (same). These claims are typical of the claims of every member of the Class. ECF No. 304, ¶ 3(c); ECF No. 308, ¶ 3(c).

4. Rule 23(a)(4) – Adequacy is satisfied.

The final requirement of Rule 23(a) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). In the Third Circuit, the relevant inquiries are (1) whether the named plaintiffs have any interests antagonistic with other class members and (2) whether the named plaintiffs' counsel are qualified, experienced, and able to conduct the proposed litigation. *In re*

Schering Plough Corp., 589 F.3d at 602.[19] The core analysis for the first prong is whether Plaintiffs have interests antagonistic to those of absent members of the Settlement Class. The second prong analyzes the capabilities and performance of Class Counsel based on factors set forth in Rule 23(g). *See Sheinberg v. Sorensen*, 606 F.3d 130, 132 (3d Cir. 2010). As shown above, adequacy is satisfied. *See also* ECF No. 304, ¶ 3(d); ECF No. 308, ¶ 3(d).

5. The proposed Class is ascertainable.

Although not specified in the text of Rule 23, courts, including this District, imply a prerequisite that the proposed class be ascertainable. *E.g.*, *Shelton v. Bledsoe*, 775 F.3d 554, 559 (3d Cir. 2015). "The ascertainability inquiry is two-fold, requiring a plaintiff to show that: (1) the class is 'defined with reference to objective criteria'; and (2) there is 'a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition.'" *Byrd v. Aaron's Inc.*, 784 F.3d 154, 163 (3d Cir. 2015) (citations omitted); *City Select Auto Sales Inc. v. BMW Bank of N. Am. Inc.*, 867 F.3d 434, 439 (3d Cir. 2017).

Here, the Class definition uses objective criteria that make class membership objectively verifiable, and there is a reliable and administratively feasible mechanism through which qualified Class Members have been identified: registration data

[19] "The adequacy of representation requirement tends to merge with the commonality and typicality criteria of Rule 23(a), which serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence. The adequacy heading also factors in competency and conflicts of class counsel." *Amchem Prods., Inc.*, 521 U.S. at 626 n.20 (citation and internal quotation marks omitted).

available from State DMV's and third-party vendors. *See* ECF No. 304, ¶ 4(c); ECF No. 308, ¶ 4(c).

B. As Required by Rule 23(b)(3), Common Issues Predominate and Class Treatment is Superior to a Multiplicity of Individual Lawsuits.

Under Rule 23(b)(3), a class should be certified when the court finds that common questions of law or fact predominate over individual issues and a class action would be superior to other methods of resolving the controversy. The predominance element "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods, Inc.,* 521 U.S. at 623. At its core, "[p]redominance is a question of efficiency." *Butler v. Sears, Roebuck & Co.,* 702 F.3d 359, 362 (7the Cir. 2012). The superiority component requires the court "to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative methods' of adjudication." *Prudential*, 148 F.3d at 316 (citation omitted). Here, the Class readily meets both requirements.

The predominance inquiry focuses on liability issues. *E.g.*, *In re Novo Nordisk Sec. Litig.*, 2020 WL 502176, at *8 (D.N.J. Jan. 31, 2020) ("In determining whether common questions predominate, courts have focused on the claims of liability against defendants.") (citing cases). The common questions discussed above with respect to the Rule 23(a)(2) commonality element are overarching and thus tower over issues relating to individual Class Members. Factual and legal questions aside, the salient evidence necessary to prove Plaintiffs' claims is common to both the Class Representatives and all Class Members—all would seek to prove that the Subject Vehicles have an emissions defeat device, that Defendants misled regulators and

consumers by concealing the emissions defeat device, and that Defendants' conduct was wrongful. Moreover, the necessary proof would be generalized; it changes little, if at all, whether there are dozens or half a million Class Members. In either instance, Plaintiffs would present the same evidence of Defendants' marketing, and the same evidence of alleged wrongdoing. *See Volkswagen*, 2016 WL 4010049, at *12; *see also In re Chrysler-Dodge Ecodiesel Mktg., Sales Practices & Prods. Liab. Litig.*, 2019 WL 536661, at *7. In other words, the Class's claims depend on the same factual circumstances, *In re Valeant Pharm. Int'l, Inc. Sec. Litig.*, 2020 WL 3166456, at *5 (D.N.J. June 15, 2020), and "the claims present common operative facts and common questions of law that predominate" over any factual variations. *See Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) ("When 'one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.'"). The Court has already found that common questions predominate as to Plaintiffs' claims. *See* ECF No. 304, ¶ 4(a); ECF No. 308, ¶ 4(a). The predominance test is thus satisfied.

Second, certification of the Class under Rule 23 is "superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R Civ. P. 23(b)(3). The Settlements afford benefits to Class Members who, absent a class settlement, may not have been aware of their legal rights or had too little an incentive to pursue an individual suit involving emissions defeat devices in their vehicles. The

presence of the alleged defeat device was never disclosed and is still contested by Mercedes and Bosch. The high cost of marshaling the evidence (expert, sophisticated electronic discovery, discovery in foreign languages, and so on) necessary to pursue the claims at issue dwarfs any individual consumer's potential recovery and the disparity in resources between individuals and well-funded, litigation-savvy defendants like Mercedes and Bosch. This Court has recognized that the existence of so-called "negative value" claims—"meaning it costs more to litigate than you would get if you won," *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 675 n.7 (2010) (citation and internal quotation marks omitted)—is typically "*the* most compelling rationale for finding superiority" of class treatment. *Reap v. Cont'l Cas. Co.*, 199 F.R.D. 536, 550 (D.N.J. 2001) (citation and internal quotation marks omitted; emphasis added).

Indeed, Class Counsel have already devoted significant time and resources to this litigation, including multiple rounds of pleadings, motions to dismiss, discovery briefing, depositions, document review, retaining experts, and engaging in other significant efforts on many other issues. It is inconceivable than an individual vehicle owner pursuing a purely economic loss case could or would invest the same resources. *Cf. Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004) ("[O]nly a lunatic or a fanatic sues for $30.").

Certification also serves the interest of judicial economy by avoiding multiple similar lawsuits and resolving claims affected hundreds of thousands of vehicles in one proceeding. Even a few duplicative individual suits would needlessly burden the

courts and risk inconsistent adjudications. *See In re Neurontin Antitrust Litig.,* 2011 WL 286118, at *11 (D.N.J. Jan. 25, 2011) ("The class action mechanism ... avoids the specter of inconsistent adjudications.") (citation and internal quotation marks omitted).

Thus, class action treatment is far superior to individual adjudication. Moreover, because this is a class certified only for settlement purposes, manageability concerns associated with a litigation class are irrelevant. *Amchem Prods, Inc*., 521 U.S. at 620. That said, were this a proposal for certification of a litigation class, there would be no serious manageability problems that would make thousands of individual actions a better alternative. *See In re Chrysler-Dodge Ecodiesel Mktg., Sales Practices & Prods. Liab. Litig.*, 2019 WL 536661, at *6 (superiority satisfied in comparable diesel emissions defeat device case). The Court recently found the superiority requirement satisfied for certification of the settlement Class. *See* ECF No. 304, ¶ 4(b); ECF No. 304, ¶ 4(b).

C. Proposed Class Counsel Satisfy Rule 23(g).

Under Rule 23(g), a court that certifies a class must appoint class counsel who is charged with fairly and adequately representing the interests of the Class. *See* Fed. R. Civ. P. 23(g). Rule 23(g) focuses on the qualifications of class counsel, complementing the requirement of Rule 23(a)(4) that the representative parties adequately represent the interests of the class members. *See Sheinberg v. Sorensen*, 606 F.3d 130, 132-3 (3d Cir. 2010) ("Although questions concerning the adequacy of class counsel were traditionally analyzed under the aegis of the adequate representation requirement of Rule 23(a)(4) of the Federal Rules of Civil Procedure,

those questions have, since 2003, been governed by Rule 23(g).”). Although a court may consider any factor concerning the proposed class counsel’s ability to “fairly and adequately represent the interest of the class,” Rule 23(g) specifically instructs a court to consider:

> (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A).

Here, the Court has already found that each firm satisfied Rule 23(g) and appointed the law firms of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., Hagens Berman Sobol Shapiro LLP, and Seeger Weiss LLP as Class Counsel for the settlement Class. ECF No. 304, ¶ 5; ECF No. 304, ¶ 5. Exactly the same considerations, extensive efforts, and in-depth knowledge of the subject area that supported appointment before weigh strongly in favor of finding Class Counsel adequate again.

VI. THE REQUESTED ATTORNEYS’ FEES AND EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

Class Counsel, on behalf of all Plaintiffs’ Counsel that performed authorized work, seek a fee award of $80,200,000 and reimbursement of up to $3,200,000 in out-of-pocket expenses from the settlement with Mercedes. The requested attorney’s fee amounts to 11.4% of the estimated and conservative, low-end value of $707 million. Class Counsel also see a fee award of up to $15,750,000 from the $63.3 million fund created by the separate settlement with the Bosch Defendants, which would

constitute 25% of the fund if claims are filed exhausting the fund. Taken together, Plaintiffs' fee request represents approximately 12.5% of the full potential value of the settlements.

On April 22, 2021, Class Counsel filed their Motion for Award of Attorneys' Fees and Costs and supporting memorandum. *See* ECF No. 312, the "Fee Motion." Plaintiffs incorporate by reference the Fee Motion. In sum, Plaintiffs' Fee Motion established the reasonability of the fee and expense request based on the size of the recovery and the number of persons benefitted; the skill and efficiency of Class Counsel; the complexity and duration of the litigation; the risk of non-payment; the significant time that Plaintiffs' Counsel devoted to the case; awards in similar cases; the lack of benefits attributable to others, including government agencies; the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement; the lodestar cross-check; and the lack of objections to the fee requests. *See* ECF No. 312 *passim*.

No party—nor for that matter, anyone—filed a brief in opposition to the Fee Motion. And only two Class Members objected to the requested fee.[20] Class Member David James opines that the lawsuit is frivolous and, without adding any specifics, summarily decries the fees as "exorbitant" and contends that a fee award here will encourage "predatory" lawsuits. ECF No. 320. Class Member Gena Vennikandam

[20] Niraj Gandhi objects to the request for attorneys' fees and costs without explaining the basis of the objection other than to link it to his objection to the settlements. ECF No. 332.

argues that the attorneys' fees requested by Class Counsel be divided in two to increase the fund available to the Class. ECF No. 324.

These two objections (out of 438,290 Class Members) offer no reasonable basis for rejecting Class Counsel's reasonable fee request. "As numerous district courts have held, the dearth of objections 'strongly supports approval of the requested fee.'" *Granillo v. FCA US LLC*, No. CV16153FLWDEA, 2019 WL 4052432, at *9 (D.N.J. Aug. 27, 2019) (citing cases). The requested fees—representing 11.4% of the estimated value of the Mercedes settlement and, separately, up to 25% of the estimated value of the Bosch settlement—are hardly excessive and are, instead, solidly within the range of fees awarded by courts in the Third Circuit in complex class action litigation. *See, e.g.*, *In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *29 (D.N.J. Nov. 15, 2016) (award percentages in the Third Circuit range from 19% to 45%) (citing *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995)); *Demmick v. Cellco P'ship*, 2015 WL 13646311, at *3 (D.N.J.May 1, 2015) (recognizing 33.33% as the common benchmark in the District, "which is the approximate median of the range recognized as acceptable by theThird Circuit") (citing cases); *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010) ("*Merck ERISA*") ("review of 289 settlements demonstrates 'average attorney's fees percentage [of] 31.71% with a median value that turns out to be one-third'") (quoting *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *15 (D.N.J. Nov.9, 2005)); *see also* Exhibit A to the Declaration of James E. Cecchi in Support of Motion for Attorneys' Fees and Costs

(ECF No. 313) (Professor Fitzpatrick empirical research finding that the normal range of fees in complex class actions is 30% to 35%).

Further, the requested fees, if awarded, would result in a multiplier of approximately 5.67%, which is well within the range of multipliers awarded within and outside the Third Circuit in analogous cases. *See, e.g.*, *In re Merry–Go–Round Enters.*, 244 B.R. 327 (Bankr. D. Md. 2000) (40% award for $71 million fund awarded, resulting in cross-check multiplier of 19.6); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 WL 1213926, at *12, 15-17 (E.D. Pa. May 19, 2005) (multiplier of 15.6 and fee of 20% of $100M settlement where "no prior government investigation" or finding of civil or criminal liability existed); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (approving multiplier of 8.3 and 20% fee); *In re Rite Aid Corp. Sec. Litig.,* 146 F. Supp. 2d 706, 736 n.44 (E.D. Pa. 2001) (fee of 25% of $193 million fund, which amounted to $48 million and represented a multiplier of 4.5–8.5, which court described as "handsome but unquestionably reasonable"); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587 (E.D. Pa. 2005) (25% of $126,800,000 fund awarded; multiplier of 6.96); *Weiss v. Mercedes-Benz of N. Am., Inc.*, 899 F. Supp. 1297, 1304 (D.N.J. 1995) (fee resulted in multiplier of 9.3 times hourly rate), *aff'd*, 66 F.3d 314 (3d Cir. 1995); *see also* 1 Alba Conte, ATTORNEY FEE AWARDS § 2.06, at 39 n.90 (2d ed. 1993) ("When a large common fund has been recovered and the hours are relatively small, some courts reach a reasonable fee determination based on large multiples of five or ten times the [lodestar].") (footnote omitted); *cf. In re Cendant*

Corp. PRIDES Litig., 243 F.3d 722, 732 (3d Cir. 2001) (5.7% of $341,500,000 settlement awarded, resulting in multiplier of 7).

Thus, controlling and persuasive jurisprudence demonstrates the reasonability of the fee request here, and the two objectors advance no cogent arguments or evidence demonstrating otherwise.[21] The Court should grant Class Counsel's fee and expense reimbursement request.

VII. THE COURT SHOULD APPROVE CLASS REPRESENTATIVE SERVICE AWARDS

Service awards for class representatives promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits. The efforts of the Class Representatives were instrumental in achieving the Settlements on behalf of the Class and justify the awards requested here. The Class Representatives came forward to prosecute this litigation to benefit the Class as a whole. They sought successfully to remedy a widespread wrong and have conferred valuable benefits upon their fellow Class Members. The Class Representatives provided a valuable service to the class by: (i) providing information and input in connection with the drafting of the complaints; (ii) overseeing the prosecution of the litigation; (iii) participating in discovery and, where applicable, preparing for their depositions; (iv) making their Class Vehicles available for inspection; (v) consulting

[21] As to Mr. James' contention that this case was somehow frivolous, we respectfully submit that the sheer size of the settlements—at over $763 million in value—proves otherwise, as does the Consent Decree, and the substantial injunctive and equitable relief offered under it.

with counsel during the litigation; and (vi) offering advice and direction at critical junctures, including the Settlement of the litigation.

A $2,500 incentive award for each of the Class Representatives recognizing their services to the Class (or $5,000 for certain representatives who had their depositions taken) is modest under the circumstances, and well in line with awards approved by federal courts in New Jersey and elsewhere. *Bernhard v. TD Bank, N.A.*, 2009 WL 3233541, at *2 (D.N.J. 2009) ("[C]ourts routinely approve incentive awards to compensate named plaintiffs for services they provided and the risks they incurred during the course of the class action litigation.") (quoting *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000)); *McGee*, 2009 WL 539893 at *18 (quoting *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002)) ("Incentive awards are 'not uncommon in class action litigation and particularly where ... a common fund has been created for the benefit of the entire class.' "); *In re Am. Investors Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 245 (E.D. Pa. 2009) (awarding representative plaintiffs incentive payments in the amounts of $10,500 and $5,000, for a total of $115,000, finding those amounts to be "reasonable compensation considering the extent of the named plaintiffs' involvement and the sacrifice of their anonymity."); *Bezio v. General Elec. Co.*, 655 F. Supp. 2d 162, 168 (N.D.N.Y. 2009) (incentive awards in the amount of $5,000 each are "within the range of awards found acceptable for class representatives."). The notice advised Class Members that Class Counsel would ask the Court to award each of the Class Representatives up to $5,000 for their work in

the litigation, and no Class Member objected. Plaintiffs and Class Counsel respectfully request that the incentive awards be approved.

VIII. CONCLUSION

For all these reasons, the Court should grant final approval of the proposed Settlements, overrule the objections, approve Class Counsel's reasonable request for an award of attorneys' fees and costs, approve the incentive awards to the Class Representatives, and enter the accompanying Final Approval Order.

Dated: June 21, 2021.

Respectfully submitted,

CARELLA BYRNE CECCHI
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Counsel for Plaintiffs and the Class

Appendix A

In re Mercedes-Benz Emissions Litigation

List of Settlement Objectors by Objection Category

No.	Name	Postmark / [Docket Entry]	Complied with Objection Procedures	Objects Due to Insufficient Compensation	Objects Due to Past Repair Costs Not Being Compensated	Objects Due to Potential Future Effects of the AEM	Objects Due to Attorney Fees
1	Smith, Greg	May 24 [D.E. 330]	✓	✓	✓		
2	Kreps, Robert	April 5 [D.E. 311, 317]		✓		✓	
3	Secaur, Robert	May 24 [D.E. 331]	✓	✓		✓	
4	Sayer, Lawrence Sayer, Susette	May 21 [D.E. 334]	✓	✓		✓	
5	Annibali, Steven Annibali, Deborah	May 21 [D.E. 327]		✓		✓	
6	Atanowsky, Andrew	May 15 [D.E. 329]	✓	✓		✓	
7	Ito, Victor	May 24 [D.E. 335]	✓	✓			
8	Vennikandam, Gena	May 21 [D.E. 324]		✓			✓
9	Schwartz, Christian	? (but rec'd May 25) [D.E. 325]		✓	✓		
10	Brown, Raymond	May 19 [D.E. 323]	✓		✓		
11	Syndevco Inc.	May 20	✓		✓		

No.	Name	Postmark / [Docket Entry]	Complied with Objection Procedures	Objects Due to Insufficient Compensation	Objects Due to Past Repair Costs Not Being Compensated	Objects Due to Potential Future Effects of the AEM	Objects Due to Attorney Fees
		[D.E. 322]					
12	Dinsmore, Stephen	May 14 [D.E. 321]	✓		✓	✓	
13	Obolewicz, Paul	April 20 [D.E. 318]	✓		✓		
14	Gandhi, Niraj	May 24 [D.E. 332]	✓			✓	
15	Melillo, Robert	May 14 [D.E. 328]	✓			✓	
16	Kehoe, Patrick	May 5 [D.E. 319]	✓			✓	
17	Cleveland, Dennis	May 24 [D.E. 333]	✓			✓	
18	James, David	May 5 [D.E. 320]	✓				✓

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE MERCEDES-BENZ EMISSIONS LITIGATION	Civil Action No. 2:16-CV-881 (KM)(ESK) **DECLARATION OF JENNIFER M. KEOUGH REGARDING NOTICE AND CLAIMS PROCESS**

I, Jennifer M. Keough, declare and state as follows:

INTRODUCTION

1. I am Chief Executive Officer of JND Legal Administration LLC ("JND"). As CEO of JND, I oversee all facets of our company's operations, including monitoring and implementing our notice and claims administration programs. This Declaration is based on my personal knowledge, as well as upon information provided to me by experienced JND employees and counsel for the Plaintiffs and Defendants ("Counsel"), and if called upon to do so, I could and would testify competently thereto.

2. This Declaration describes the implementation of the Notice Program,[1] as outlined in my Declaration Regarding Proposed Notice Program, dated September 30, 2020 (the "Initial Declaration"), and provides an update on the claims administration process. The Notice Program is ongoing, and was designed to inform Class Members of the proposed Settlements with

[1] All capitalized terms not defined herein have the meanings given to them in my Initial Declaration.

Mercedes Benz USA LLC and Daimler AG (the "Mercedes Settlement") and Robert Bosch GmbH and Robert Bosch LLC (the "Bosch Settlement" and, collectively, the "Settlements").

CAFA NOTICE

3. As set forth in my Declaration Regarding Notice Pursuant to Class Action Fairness Act of 2005, on September 23, 2020, JND mailed notice of the Mercedes Class Action Settlement to the United States Attorney General and to the appropriate State officials. In addition, on October 23, 2020, JND mailed notice of the Bosch Class Action Settlement to the United States Attorney General and to the appropriate State officials.

DIRECT NOTICE

A. Class Member Identification

4. In preparation for direct notice of Class Members, Defendants provided JND with a list of 251,347 eligible Vehicle Identification Numbers ("VINs"). JND staff used the VINs to work with a third party data aggregation service to acquire potential Class Members' contact information from the Departments of Motor Vehicles ("DMVs") for all current and former owners and lessees of Subject Vehicles identified as potential Class Members. JND also received Subject Vehicle registration information, including, but not limited to, registration date, year, make, and model of the Subject Vehicles.

5. JND promptly loaded the VIN and contact information into a case-specific database for the Settlements. A unique identification number ("Unique ID") was assigned to each Class Member to identify them throughout the administration process.

6. JND then reviewed the data provided in order to identify any undeliverable addresses and duplicate records. We also updated all addresses using the USPS' NCOA database.

Further, JND conducted a sophisticated email append process to obtain email addresses for as many potential Class Members as possible.

B. Direct Mail Notice

7. Commencing on March 23, 2021, JND mailed via first-class mail Notice Packets to 438,290 potential Class Members identified through DMV records.[2] The Notice Packets contained the following documents: (i) the Court-approved Short Form Notice, (ii) the AEM List, (iii) the Court-approved Claim Form, (iv) the Individual Release of Claims, and (v) a business return envelope.[3] As noted in my Initial Declaration, the Claim Form was prepopulated with each Class Member's name, address and VIN, where possible, in order to facilitate the claim filing process.

8. As of June 17, 2021, JND has tracked 7,668 Notice Packets that were forwarded by the USPS to an updated address. JND has also tracked 44,823 mailed Notice Packets that were returned as undeliverable by the USPS without a forwarding address. JND undertook advanced address research using skip trace databases to determine if we could obtain updated contact information for a person for whom the Notice Packet was returned as undeliverable without a forwarding address. If a better address was located, Notice Packets were promptly remailed to the updated address. Updated addresses were obtained for 16,038 Class Members, and JND remailed Notice Packets to them.

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[2] Of those Notice Packets, 1,881 were sent to entities that owned or leased 10 or more Subject Vehicles.

[3] For Eligible Current Owners and Lessees with Subject Vehicles for which an AEM was available, per the direction of Counsel, their Notice Packets also contained a Consumer Emission Modification Disclosure for their Subject Vehicle as required under the separate settlement among the Mercedes Defendants and federal and California state regulators.

C. Email Notice

9. The direct mail effort was supplemented by sending an email notice to all Class Members for whom JND obtained a valid email address through the append process noted above. The email notice included substantially the same language as the Short Form Notice and included the Class Member's Unique ID, which could be used to file their claim online through the Settlement Website. JND sent a total of 174,958 Email Notices, of which 35,791 emails bounced back and were not deliverable.

D. Reminder Notices

10. Working with Counsel, JND has prepared reminder notice postcards and emails, which will be sent to identified Eligible Former Owners and Eligible Former Lessees to remind them of the upcoming claim filing deadline. These reminder postcards and emails will be sent within several days of the filing of this Declaration to identified Eligible Former Owners and Lessees who have not submitted a claim, opted out of the Settlements or, with respect to the email reminders, unsubscribed from the email campaign.

11. JND will continue to confer with Counsel to determine further reminder notices that may be needed with respect to Eligible Current Owners and Eligible Current Lessees.

PRESS RELEASE

12. On March 29, 2021, JND caused a press release to be distributed to approximately 11,000 media outlets nationwide. An exact match of the press release was picked up 95 times with a potential audience of 99 million.

13. The press release, as distributed, is attached as **Exhibit A.**

SETTLEMENT WEBSITE AND OTHER CLASS MEMBER NOTICE

A. Settlement Website

14. On May 22, 2021, JND made available an interactive, case-specific Settlement Website, mbbluetecsettlement.com, which features a page with answers to frequently asked questions ("FAQs"), contact information for the Settlement Administrator, including an email contact form, Class Action Settlement deadlines, and links to important case documents, including the Long Form Notice, the Short Form Notice, the AEM List, the Claim Form, and the settlement agreements for the Mercedes Settlement and the Bosch Settlement. Each direct notice document is available on the Settlement Website in both English and Spanish.

15. In addition, the Settlement Website provides access to a VIN and AEM lookup feature, where people can utilize a link to input their VIN to see whether an AEM is available. The Settlement Website provides Class Members with information about how to schedule the installation. If their AEM is not available, they can register their contact information to receive an email update when the AEM becomes available.

16. The Settlement Website also features an online Claim Form ("OCF") with document upload capabilities for the submission of claims. If a user logs into the OCF with their Unique ID, they are able to view their name and contact information where possible, making the claim filing process as expeditious as possible. Additionally, as noted above, a Claim Form is posted on the Settlement Website for download for Class Members who prefer to submit a Claim Form by mail.

17. As of June 17, 2021, the Settlement Website has tracked a total of 62,824 unique users who registered 489,320 page views. JND will continue to update and maintain the Settlement Website throughout the settlement administration process.

B. Settlement Administrator Email Address

18. JND has established a dedicated email address, info@mbbluetecsettlement.com, to receive and respond to Class Member inquiries. As of June 17, 2021, JND has received 3,461 emails to the case email inbox.

C. Toll-free information Line

19. JND maintains a 24-hour, toll-free telephone line that Class Members can call to obtain information about the Settlements. During business hours, JND's call center is staffed with operators who are trained to answer questions about the Settlements using approved answers to FAQs. Additionally, JND coordinates with Mercedes Benz's Customer Assistance Center to best assist Class Members with their questions. As of June 17, 2021, JND has received 18,806 calls to the case telephone number.

D. Post Office Box

20. JND has established two separate post office boxes for this administration, one to receive Class Member correspondence and paper Claim Forms, and another solely to receive exclusion requests.

CLAIMS RECEIVED

21. Class Members can use their personal Unique ID to file a claim online through the Settlement Website or submit the Claim Form that was mailed to them. Class Members were also informed that they could request a mailed copy of a Claim Form through the Settlement Website or by sending a request by mail or email to the Settlement Administrator.

22. As of June 17, 2021, JND has received 33,766 Claim Forms, of which 18,779 were submitted electronically online and 14,987 were submitted via email or mail.

23. JND continues to receive and process Claim Form submissions and will continue to report to Counsel on the status of the claim intake and review. The claim filing deadline for Eligible Former Owners/Lessees is the date of entry of the Final Approval Order for the Mercedes Settlement. The claim filing deadline for Eligible Current Owners/Lessees is October 1, 2022, unless there are certain enumerated delays in AEM availability.

OBJECTIONS

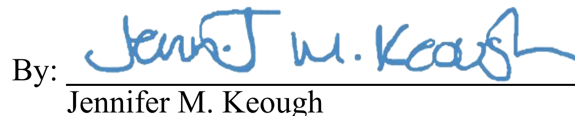
24. The Short Form Notice, Long Form Notice, and Email Notice (collectively, the "Notices") informed recipients that any Class Member who wanted to object to part or all of the proposed Settlements could do so by submitting a written statement on or before May 24, 2021. As of June 17, 2021, JND has received or is otherwise aware of 18 objections.

REQUESTS FOR EXCLUSION

25. The Notices stated that any Class Member who wanted to exclude themselves from the Settlements was required to send a letter to JND so that it was postmarked by May 24, 2021. Not later than 10 days before the date of the Fairness Hearing, JND will file with the Court a list of those persons who have excluded themselves from the Settlements.

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

Executed June 21, 2021, at Seattle, Washington.

By: 

Jennifer M. Keough

EXHIBIT A

Owners or Lessees of a Mercedes-Benz or Sprinter BlueTEC II Diesel Vehicle may be eligible for a CASH PAYMENT from Class Action Settlements

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NEWS PROVIDED BY
JND Legal Administration →
Mar 29, 2021, 09:05 ET

SEATTLE, March 29, 2021 /PRNewswire/ -- JND Legal Administration, the Court-appointed Settlement Administrator, reports that proposed Class Action Settlements have been reached in *In re Mercedes-Benz Emissions Litigation*, 16-cv-881 (KM) (ESK), pending in the United States District Court for the District of New Jersey. Under the Class Action Settlements, current owners and lessees can get cash payments of up to $3,590 or more, and former owners and lessees can get up to $897.50.

If you currently own or lease a Mercedes-Benz or Sprinter BlueTEC II diesel vehicle in the United States, including both Mercedes-Benz- and Freightliner-branded Sprinter diesel vehicles, you may be eligible for a cash payment. See below for a list of the eligible "Subject Vehicles." Cash payments are up to **$3,590** ($3,290 from the Mercedes Class Action Settlement, and up to $300 from the Bosch Class Action Settlement) if you get an "**Approved Emission Modification**" (AEM) installed in your vehicle (free of charge to you); or **$2,692.50** (once the AEM is installed, $2,467.50 from the Mercedes Class Action Settlement, and up to $225 from the Bosch Class Action Settlement) if a former owner or lessee submits a Valid Claim for the same vehicle. You may also be eligible for additional payments, depending on the vehicle you own or lease.

Former owners and lessees of Mercedes-Benz or Sprinter BlueTEC II diesel vehicles in the United States may be entitled to up to **$897.50** ($822.50 from the Mercedes Class Action Settlement, and up to $75 from the Bosch Class Action Settlement). Please visit mbbluetecsettlement.com for more details.

Current owners and lessees must have an AEM installed to receive the cash payments. Installation is available free of charge to you and you will receive an Extended Modification Warranty after the installation. AEMs are available **now** for certain Subject Vehicles. Visit mbbluetecsettlement.com, where you can access a link to type in your VIN or review a list of all Subject Vehicle models that are ready for the AEM installation. You may also call 1-877-313-0170 toll-free to find out whether an AEM is available for your Subject Vehicle. As AEMs for vehicles become available, owners and lessees of those vehicles will receive a mailed notice. Updates regarding the AEMs and the Class Action Settlements can be found at mbbluetecsettlement.com.

The settlement website, mbbluetecsettlement.com, will allow current and former vehicle owners/lessees to register for more information. Registration on the website alone does not constitute a Valid Claim for cash benefits. If you wish to claim a Class Member Payment, you must submit a Valid Claim by the applicable due date, even if you have registered on the website for updates. Please see below concerning the requirement to submit a Valid Claim to receive cash benefits.

WHO IS INCLUDED IN THE PROPOSED SETTLEMENTS?

If you purchased or leased and Registered a Subject Vehicle in the United States, you may be a Class Member and eligible for a cash payment, even if you no longer own or lease the Subject Vehicle. Subject Vehicles include the following Models/Model Years: E250 BlueTEC (2014-2016); E350 BlueTEC (2011-2013); GL320 BlueTEC (2009); GL350 BlueTEC (2010-2016); GLE300d (2016); GLE350d (2016); GLK250 BlueTEC (2013-2015); ML250 BlueTEC (2015); ML320 BlueTEC (2009); ML350 BlueTEC (2010-2014); R320 BlueTEC (2009); R350 BlueTEC (2010-2012); S350 BlueTEC (2012-2013); Mercedes-Benz or Freightliner Sprinter (4-cylinder) (2014-2016); and Mercedes-Benz or Freightliner Sprinter (6-cylinder) (2010-2016).

WHAT ARE MY OPTIONS?

If you are a Class Member, you may (1) submit a Valid Claim for payment; (2) do nothing (and get no payment); (3) exclude yourself from the Class ("opt out"); (4) object to the Class Action Settlements; and/or (5) go to a hearing about the fairness of the Class Action Settlements.

- If you do nothing, you will get no payment and you will give up your rights to sue Daimler AG and Mercedes-Benz USA, LLC (the "Mercedes Defendants") and Robert Bosch GmbH and Robert Bosch LLC (the "Bosch Defendants") about any of the claims in this case.
- If you exclude yourself ("opt out") from the Class, you will not be a member of the Class and you will not be eligible for a payment under the Class Action Settlements, but you will keep your right to sue against the Mercedes Defendants and Bosch Defendants about the claims in this case, and you can still have the AEM installed in your vehicle.
- If you object (i.e., tell the Court what you don't like about one of the settlements or both of them), you will stay in the Class. You must submit a Valid Claim to receive a cash payment, even if you object. If you object and the Court approves the Class Action Settlements, you will be bound by the settlements and give up your right to sue the Mercedes Defendants and the Bosch Defendants about any of the claims in this case.

The postmark deadline for objections and requests for exclusion is **May 24, 2021**. Please see the Long Form Notice posted at mbbluetecsettlement.com or call 1-877-313-0170 for complete instructions on how to file a claim, object, or exclude yourself, and other important information.

The Court will hold a Fairness Hearing on **July 12, 2021 at 10:30 a.m. Eastern Time**, at the United States District Court for the District of New Jersey, located at the Martin Luther King Building & United States Courthouse, 50 Walnut Street, Newark, NJ 07102. At the hearing, the Court will consider whether to approve the Class Action Settlements, payment of attorneys' fees and expenses, payments to Settlement Class Representatives, and related issues. Any attorneys' fees and costs or payments to Settlement Class Representatives will not reduce payments to Class Members under the Mercedes Class Action Settlement. Any fees and costs awarded by the Court to Class Counsel in connection with the Bosch Class Action Settlement will reduce individual payments to Class Members under that settlement by no more than 25%. The motions for fees, costs, and incentive awards will be available at mbbluetecsettlement.com after they are filed and before the Fairness Hearing. You may attend the Fairness Hearing, but you are not required to.

HOW CAN I GET A PAYMENT?

Current and former owners and lessees may be eligible for cash payments. To claim a cash payment, Class Members must submit a Valid Claim by the deadlines below and posted on the settlement website.

If you are a current owner or lessee of a Registered Subject Vehicle and have not opted-out from the Class, you can receive a payment by (1) having the AEM installed on your vehicle and (2) submitting a Valid Claim by **October 1, 2022**. Here are the steps to receive a payment:

1. Once an AEM for your vehicle is available, contact your preferred authorized dealership to schedule an appointment to have the AEM installed. AEMs are free of charge to you. Authorized Mercedes–Benz dealerships can be found at mbusa.com/en/dealers. Authorized Freightliner Sprinter dealerships can be found at freightlinersprinterusa.com/freightliner/shopping-tools/find-a-dealer.

2. AEMs are available **now** for the Subject Vehicles included on the AEM availability list at mbbluetecsettlement.com. As AEMs for other vehicles become available, owners and lessees of those vehicles will receive a mailed notice. Please continue to check mbbluetecsettlement.com for updated information. You may also call 1-877-313-0170 toll-free to find out whether an AEM is available for your Subject Vehicle.

3. Bring your vehicle to your appointment for installation of the AEM. **You must complete the AEM installation before you submit a claim**. Make sure to keep your repair order to submit with your claim, as well as receipts for any travel to and from the dealership for the AEM installation. If your appointment takes three hours or more and you are not offered a loaner vehicle, shuttle, or alternative form of transportation, you may be eligible to receive reimbursement up to $35 for travel expenses.

4. Submit a valid Claim Form and all required documents by **October 1, 2022** at mbbluetecsettlement.com or by mail (postmarked by October 1, 2022) to:

MB Blue Tec Settlement
c/o JND Legal Administration
PO Box 91310
Seattle, WA 98111

If you are a former owner or lessee of a Registered Subject Vehicle, you must submit a Valid Claim by **July 12, 2021, or by the date the Court finally approves the Mercedes Class Action Settlement (if after July 12, 2021)** at mbbluetecsettlement.com or by mail to the address listed directly above. Please visit mbbluetecsettlement.com for updates about the deadline to submit your claim.

Check mbbluetecsettlement.com often for information about the date of final Court approval of the Class Action Settlements and other updates.

HOW CAN I GET MORE INFORMATION?

Visit **mbbluetecsettlement.com** or call **1-877-313-0170** for more details about the Class Action Settlements, to register for updates, and to learn more about your rights and options.

SOURCE JND Legal Administration

Related Links

https://www.mbbluetecsettlement.com