UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: PORSCHE CARS NORTH AMERICA, INC. PLASTIC COOLANT TUBES PRODUCTS LIABILITY LITIGATION This Document Relates to: ALL ACTIONS	Case No. 2:11-md-2233 Judge Gregory L. Frost Magistrate Judge Preston-Deavers

PLAINTIFFS' APPLICATION FOR PAYMENT OF REASONABLE ATTORNEYS' FEES, REIMBURSEMENT OF COSTS AND EXPENSES, AND NAMED PLAINTIFFS' SERVICE PAYMENTS

Plaintiffs' Counsel have obtained benefits for the class of Porsche Cayenne owners with an estimated value of over $36 million. The benefit to the settlement class members is in cash, not in coupons. As part of the settlement, to the extent ordered by the Court, Porsche Cars North America, Inc. ("PCNA") has agreed to pay attorneys' fees of up to $4,500,000 plus a total of up to $250,000 to cover litigation costs and service payments to the Class Plaintiffs. The fees, costs and expenses, and service payments awarded by the Court will not diminish the benefit to the Class Members.

Plaintiffs respectfully apply to the Court for an Order awarding them reasonable attorneys' fees in the amount of $4,500,000, costs and expenses in the amount of $131,299.78, as well service payments of $5,000 for each of the 20 named Plaintiffs. A Memorandum in Support is below.

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MEMORANDUM IN SUPPORT

I. PRELIMINARY STATEMENT

As a result of Plaintiffs' Counsel's efforts over the past three years, the Settlement Class will receive substantial monetary compensation for the damages associated with the defective coolant tubes in Plaintiffs' Porsche Cayennes. If the Court approves the settlement, Porsche Cars North America, Inc. ("PCNA") will be required to provide direct and immediate cash benefits to the Settlement Class members valued at over $36 million.

Plaintiffs request that the Court grant them reasonable attorneys' fees in the amount of $4,500,000; $131,299.78 for costs and expenses incurred prosecuting the action; and service payments in the amount of $5,000 for each of the 20 named plaintiffs. PCNA agreed to pay these amounts only *after* the Parties reached a settlement for the Class. Indeed, it was only after the Settlement Agreement was fully signed that the Parties engaged in a fourth mediation with Thomas Rutter of ADR Options, on July 15, 2013, during which the requested fees were negotiated. Accordingly, there can be no question that the requested attorneys' fees were the result of arm's-length, hard-fought negotiation, and that there was no conflict between the interests of the Class and that of Plaintiffs' Counsel. Moreover, the fees, costs and expenses and service payments awarded by the Court will not diminish the benefit to the Class members.

Plaintiffs' Counsel have expended significant resources in this case, all on a contingent basis. As of January 15, 2014, Plaintiffs' Counsel have invested $3,487,089.75 in fees, representing 7,863 hours of work, and $131,299.78 in costs and expenses, without payment. Accordingly, under the lodestar approach, Plaintiffs' Counsel seek their lodestar and a modest multiplier of 1.29, which is fully warranted given the results in this case.

In accordance with Fed. R. Civ. P. 23(h)(1), Section 18 of the Class Notice, entitled "How will the lawyers be paid?", informs Class members that Plaintiffs' Counsel will seek an award of attorneys' fees of $4.5 million, and reimbursement of litigation expenses and service payments in an amount not to exceed $250,000. The Notice, as required by Rule 23(b)(2), also sets forth the procedure and deadline for any objection to either of the requests. The deadline to mail objections is February 10, 2014. As of the date of this Memorandum, no objection to the requested fees, expenses, or service payments has been filed or received by Class Counsel.

II. SUMMARY OF PROPOSED SETTLEMENT TERMS

As briefed in the parties' motion seeking preliminary approval of the settlement and fully incorporated here, the Settlement Agreement contains a reimbursement program that provides significant cash benefits to Settlement Class members. Based upon a vehicle's mileage at the time of replacement, PCNA has agreed to reimburse Settlement Class members who have already had their vehicles' plastic coolant tubes replaced, as well as reimburse Settlement Class members who have their coolant pipes replaced within a designated time in the future. In addition, PCNA has agreed to pay Settlement Class members an additional amount up to $500 for consequential damages suffered as a result of the coolant tube defect. All Settlement Class members who file a valid and timely claim will receive meaningful monetary benefits. Real money is changing hands, not coupons.

The proposed settlement provides for payments to original owners or owners of certified pre-owned Cayennes as follows:

Mileage at time of repair/replacement	% of Actual Invoice up to Cap	Cap Past Repairs Reimbursement	Cap Future Repairs Payment
0-60,000	100%	$1,800	$1,500
60,001-70,000	80%	$1,440	$1,200
70,001-80,000	60%	$1,080	$900
80,001-90,000	50%	$900	$750

90,001-120,000	30%	$540	$450
> 120,000	5%	$100	$100

Critically, all Settlement Class members who purchased new or certified pre-owned Cayennes are entitled to receive a benefit *regardless of the mileage on their vehicle at the time the coolant pipes are replaced*. Moreover, purchasers of used Cayennes are likewise covered by the settlement. Finally, the benefit received by *any* Settlement Class member is substantial and goes directly toward reimbursement of the cost of replacing the plastic coolant pipes; this is not a case involving an unlikely-to-be-used "coupon" with a nominal or minimal value.

Plaintiffs' Counsel's expert, Harvey Rosen, Ph.D., has used data provided by PCNA and an independent data collection company, R.L. Polk & Company, to value the settlement at $36,664,505, based upon 41,968 Cayennes (the number of Class Vehicles stipulated in Paragraph 23 of the Settlement Agreement).[1] Based on studies regarding average length of ownership, Dr. Rosen opined that approximately 25% of the Cayennes are used, and 75% remain with their original owner. Dr. Rosen also found, based upon a Class Member database maintained by Plaintiffs' Counsel, that approximately 50% of Cayenne owners had already replaced their coolant tubes. Dr. Rosen then estimated the number of Class Vehicles that would fall into each of the mileage categories of the Settlement, using Bureau of Motor Vehicle data appearing in the R.L. Polk & Company database. Utilizing this research, Dr. Rosen concluded that the cash benefit available to the Settlement Class members is reasonably estimated to be $36,664,505.[2]

[1] A copy of the Rosen Report containing this data is filed herewith.

[2] Because the cash benefit to the Settlement Class members will not be reduced by the proposed payment of fees, costs and, service payments, the settlement is worth over $41 million if the proposed amounts are awarded. *See Van Horn v. Nationwide Property and Casualty Ins. Co.*, 436 Fed. Appx. 496 (6th Cir. 2012); *Lowther v. AK Steel Corp.*, 2012 U.S Dist. LEXIS 181476 (S.D. Ohio).

III. LEGAL STANDARD

"The unique characteristics of class actions, both generally and on a case-by-case basis, give district courts broad discretion in their determination of an attorneys' fee award." *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 788 (N.D. Ohio 2010) (citing *Bowling v. Pfizer, Inc.*, 102 F.3d 777, 779 (6th Cir. 1996); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993); *In re Cardinal Health, Inc. Sec. Litig*., 528 F. Supp. 2d 752, 757 (S.D. Ohio 2007). "It is within the Court's discretion to set the amount of attorneys' fees so that they are reasonable, and the Sixth Circuit reviews such an award only for an abuse of discretion." *In re Cardinal Health*, 528 F. Supp. 2d at 757 (citing *In re Sulzer Orthopedics Inc.*, 398 F.3d 778, 780 (6th Cir. 2005)). "Rule 23(e) requires the Court to evaluate all class action settlements. Fed. R. Civ. P. 23(e). One aspect of this responsibility is to protect absent class members' interests; another is to ensure 'that counsel is fairly compensated for the amount of work done as well as for results achieved.'" *Lonardo*, 706 F. Supp. 2d at 788 (quoting *Rawlings*, 9 F.3d at 516).

The Sixth Circuit recognizes two methods to determine a reasonable award of attorneys' fees: 1) the lodestar approach, where the Court awards a reasonable value for the time attorneys have spent prosecuting the case, with or without a multiplier for good results; and 2) the "common fund," or "common benefit" approach, where the Court awards a percentage of the total benefit conferred upon the class. *See Rawlings*, 9 F.3d at 516-17; *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 532 (E.D. Mich. 2003).

In the Sixth Circuit, "attorneys' fees in class actions range from 20-50%" of the total value of the recovery. *Manners v. Am. Gen. Life Ins. Co.*, Case No. 3-98-0266, 1999 U.S. Dist. LEXIS 22880, at *88 (M.D. Tenn. Aug. 11, 1999). "Empirical studies show that *regardless of whether the percentage method or the lodestar method is used*, fee awards in class actions

average around one-third of the recovery." 4 Conte & Newberg, *Newberg on Class Actions*, § 14:6 at 551 (4th ed. 2002) (emphasis added); *see also Johnson v. Midwest Logistics Sys.*, No. 2:11-CV-1061, 2013 WL 2295880, at *6-7 (S.D. Ohio May 24, 2013) (awarding 33% of common fund for attorney fees and costs).

Whichever method is used, the Supreme Court has provided the following guidance:

> We emphasize, as we have before, that the determination of fees "should not result in a second major litigation." *Hensley [v. Eckerhart]*, 461 U.S. [424], at 437, 103 S.Ct. 1933 [(1983)]. The fee applicant (whether a plaintiff or a defendant) must, of course, submit appropriate documentation to meet "the burden of establishing entitlement to an award." *Ibid.* But trial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time. And appellate courts must give substantial deference to these determinations, in light of "the district court's superior understanding of the litigation." *Ibid.; see Webb v. Dyer County Bd. of Ed.*, 471 U.S. 234, 244, 105 S.Ct. 1923, 85 L.Ed.2d 233 (1985). We can hardly think of a sphere of judicial decisionmaking in which appellate micromanagement has less to recommend it.

Fox v. Vice, 131 S. Ct. 2205, 2216 (2011).

IV. ARGUMENT

A. Lodestar Evaluation Justifies Plaintiffs' Proposed Award of Attorneys' Fees

In this case, the lodestar and multiplier is the most appropriate approach for analyzing Plaintiffs' Counsel's request for attorneys' fees. "'[D]istrict courts have the discretion 'to select the more appropriate method for calculating attorney's fees in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them.'" *In re Telectronics Pacing Sys.*, 137 F. Supp. 2d 1029, 1041 (S.D. Ohio 2001) (quoting *Rawlings*, 9 F.3d at 516). The Supreme Court has confirmed that the lodestar approach is valuable for

several reasons: it produces an award on par with the fees an attorney would receive from a client billed by the hour in a similar suit; it permits ease in disbursement; and it provides an objective fee calculation. *See Perdue v. Kenny A. ex rel. Winn*, 599 U.S. 542, 551-52 (2010). These benefits result in curbing a trial judge's discretion, affording "meaningful judicial review," and providing "reasonably predictable results." *Id.* at 552.

Each of these reasons justifies use of the lodestar approach in this case.[3] Moreover, the Court can further ensure that the requested lodestar and multiplier are reasonable by engaging in a cross-check using the approximate anticipated value of the fund. As described below, that cross-check shows that Plaintiffs' requested lodestar and multiplier are reasonable.

1. Plaintiffs' requested fees are reasonable under the lodestar approach.

"The lodestar method necessitates that the court calculate the reasonable number of hours submitted multiplied by the attorneys' reasonable hourly rates." *Telectronics*, 137 F. Supp. 2d at 1041. Plaintiffs' Counsel have expended $3,487,089.75 in attorney time to prosecute this case from its inception through January 15, 2014 (plus a total cost amount of $131,299.78). These numbers are supported by Plaintiffs' Counsel's declarations and summaries as well as by the Court's own knowledge of the scope and extent of this litigation. *See* Declaration of Mark H. Troutman ¶ 4, Ex. 2; Declaration of Shennan Kavanagh ¶ 6; Declaration of Niall P. McCarthy ¶ 5, Ex. B; Declaration of Adam J. Levitt ¶ 5, Ex. B; Declaration of Fred T. Isquith ¶¶ 4, 6; Declaration of William E. Hoese ¶ 3, Ex. A; Declaration of Daniel A. Schlanger ¶ 8. After the lodestar is calculated and confirmed, it may be adjusted in order to "account for the risk undertaken by class counsel in assuming the litigation, the quality of the work performed, and

[3] Additionally, the lodestar approach is the more appropriate method in this case because this case involves statutory fee-shifting. *See Perdue*, 559 U.S. at 550-51 (adopting lodestar analysis in most situations where fee shifting is the appropriate remedy).

the public benefit achieved." *In re Telectronics*, 137 F. Supp. 2d at 1041 (citing *Rawlings*, 9 F.3d at 516).

A lodestar analysis in this case supports the attorneys' fees sought by Class Counsel. Plaintiffs' lodestar currently stands at $3,487.089.75. A $4,500,000 fee would result in only a 1.29 multiplier, which is well within the acceptable range of the cases decided by Ohio District Courts, especially given the excellent results achieved for the Class in this case.

a. The hours expended by Plaintiffs' Counsel are reasonable.

As described in the accompanying declarations of Plaintiffs' Counsel, all Plaintiffs' Counsel kept billing records that describe their efforts that resulted in the settlement. *See* Troutman Dec. ¶ 4, Ex. 2; Kavanagh Dec. ¶ 6; McCarthy Dec. ¶ 5, Ex. B; Levitt Dec. ¶ 5, Ex. B; Isquith Dec. ¶¶ 4, 6; Hoese Dec. ¶ 3, Ex. A; Schlanger Dec. ¶ 9. The Co-Lead firms' lawyers judiciously assigned various tasks in a balanced and efficient manner based upon relevant work already performed.[4]

The 7,863.4 hours expended by Plaintiffs' Counsel are fully reasonable in light of the substantial work Counsel engaged in. Among other significant litigation tasks and milestones on which Plaintiffs' Counsel expended time were the following:

- Pre-filing investigation and legal research;
- Drafting complaints;
- Pre-MDL law and motion (e.g., in the California litigation, Counsel opposed a Motion to Dismiss, and a Motion to Stay, prior to transfer; similarly, in New Jersey there was significant pre-MDL litigation, including opposition to a Motion to Dismiss and a contested Motion to Stay);

[4] Moreover, this Court has said that it is not in the business of, nor interested in, second-guessing or micro-managing any firm's business practices. *Citizens Against Pollution v. Ohio Power Co.*, 484 F. Supp. 2d 800, 814 (S.D. Ohio 2007).

- Filing of an ultimately successful MDL petition;
- Drafting a consolidated class action complaint;
- Fulfilling Rule 16 and 26 obligations;
- Drafting comprehensive discovery, including contested jurisdictional discovery;
- Reviewing over 10,000 documents obtained in discovery, including German-language documents;
- Extensive briefing that consisted of 400+ pages of briefing for PCNA's Fed. R. Civ. P. 12(b)(6) motion covering 32 causes of action on behalf of 20 Plaintiffs from 11 different states.
- Substantial meet and confer efforts, and the filing of a successful motion to compel regarding jurisdictional discovery.
- Extensive settlement discussions, including four days of mediation and negotiation of final settlement documents.

Given the breadth and intensity of Counsel's work over the course of the past three years, Counsel's 7,863.4 hours are fully reasonable.

b. The hourly rates of Plaintiffs' Counsel are reasonable.

In Multi District Litigation such as this, it is fully appropriate to review Counsel's hourly rates in relation to the venues in which their cases originated. *See, e.g., Lonardo,* 706 F. Supp. 2d at 794 (approving rates of up to $825 per hour in an MDL, finding that "although the rates listed above are high compared to the average attorney, based on this Court's knowledge of attorneys' fees in complex civil litigation and *multi-district litigation,* the requested rates are reasonable for this case considering the experience and expertise these particular lawyers have in this particular area of law.") (emphasis added). Moreover, in determining whether rates are reasonable, the Court must consider the rate charged, "for *similar services* by lawyers of

reasonably *comparable skill, experience and reputation*." *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984) (emphasis added).

Here the lawyers involved have substantial expertise not just in consumer protection litigation, but also in class actions and complex litigation. As described in the accompanying declarations, Plaintiffs' Counsel's rates[5] are within the range of rates of attorneys of comparable skill and experience in their home districts and for consumer class action lawyers with MDL and other relevant national experience. *See* Troutman Dec. ¶ 8; Kavanagh Dec. ¶ 8; McCarthy Dec. ¶¶ 7-8; Levitt Dec. ¶ 4; Isquith Dec. ¶¶ 4; Hoese Dec. ¶ 6; Schlanger Dec. ¶ 10.

c. The requested multiplier is modest, and fully warranted.

After the base lodestar is calculated, the figure is "typically, further multiplied by a 'multiplier' to account for the costs and risks that are inherent in advancing fees, the complexity of the case, and the size of the recovery.'" *Telectronics*, 137 F. Supp. 2d at 1041 (quoting Newberg on Class Actions, supra, at § 12.55). Here, the requested $4,500,000 represents a 1.29 multiplier, which is far smaller than multipliers routinely approved in the Sixth Circuit.

In the Sixth Circuit, courts typically analyze the following six "*Ramey* factors" to determine whether a multiplier is warranted:

> (a) the value of the benefits rendered to the class; (b) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (c) whether the services were undertaken on a contingent fee basis; (d) the value of the services on an hourly basis; (e) the complexity of the litigation; and (f) the professional skill and standing of all counsel.

[5] Courts are to use current, rather than historical, billing rates to compensate attorneys for a delay in payment. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283-84 (1989).

Lonardo v. Travelers Indem. Co., 706 F. Supp. 2d 766, 795 (N.D. Ohio 2010) (quoting *Sulzer*, 268 F. Supp. 2d at 930 (quoting *Telectronics*, 137 F. Supp. 2d at 1042)). Each of these six factors supports the requested multiplier, as described in the following sections.

i. The value of the benefit rendered for the class.

This Court has stated that the single most important factor regarding the reasonableness of fees is the result obtained. *See Citizens Against Pollution v. Ohio Power Co.*, 484 F. Supp. 2d 800 (S.D. Ohio 2007). The proposed settlement provides substantial cash benefits to Settlement Class members. In fact, the *minimum* amount available to a class member is $100, while the maximum is $1800. Based upon Plaintiffs' Counsel's efforts, Cayenne owners and lessees who were compelled to pay for the replacement of the coolant tubes receive direct monetary reimbursement, depending on mileage. Settlement Class members who have their coolant tubes replaced in the future pursuant to the settlement will be paid substantial sums toward the cost of replacement. As such, virtually *all* Cayenne owners or lessees are fairly compensated for the defects present in their vehicles through the Settlement Agreement.

Given the high quality of defense counsel, this exceptional outcome for the Settlement Class could not have been achieved without Plaintiffs' Counsel's skillful prosecution. In particular, Settlement Class members may have never pursued their claims because they were unaware of the defect, or assumed that they would not be entitled to reimbursement because their warranty had expired. Value to the class is substantial and evident.

ii. Society's stake in rewarding attorneys who produce such benefits.

Plaintiffs' request for an award of attorneys' fees ensures that Plaintiffs' Counsel and future counsel are encouraged to take such cases. As this Court has recognized, "[e]ncouraging qualified counsel to bring inherently difficult and risky but beneficial class action . . . benefits

society." *In re Cardizem*, 218 F.R.D. at 534. "Society has a stake in rewarding attorneys who achieve a result that the individual class members probably could not obtain on their own." *Kritzer v. Safelite Solutions, LLC*, Case No. 2:10-cv-0729, 2012 U.S. Dist. LEXIS 74994, at *29 (S.D. Ohio May 30, 2012); *see also In re Telectronics*, 137 F. Supp. 2d at 1043 ("[a]ttorneys who take on class action matters serve a benefit to society and the judicial process.").

In this case, Plaintiffs from several states asserted statutory and common law claims that are designed to broadly protect consumers and the public from deceptive practices by businesses. The result obtained by Plaintiffs' Counsel will inure to the benefit of all consumers, not just purchasers of the Class Vehicles. Given the decisions of the Court to date and the robust terms of this settlement, businesses will be understandably reluctant to engage in the kind of behavior alleged in this case. *See, e.g., Munger v. Deutsche Bank*, Case No. 1:11-CV-00585, 2011 U.S. Dist. LEXIS 77790, at *31 (N.D. Ohio July 18, 2011) (observing the broad remedial purposes of the Ohio Consumer Sales Practices Act); *Comm. on Children's Television v. Gen. Foods Corp.*, 35 Cal. 3d 197, 208 (Cal. 1983) ("section 17200 . . . demonstrates a clear design to protect consumers"). Moreover, the proposed settlement insures that far fewer of the vehicles containing this dangerous defect will be present on the road. Plaintiffs' Counsel is entitled to be fairly compensated for the benefits accruing to the Settlement Class and to society in general, and the risk taken to secure those results.

iii. Whether the services were undertaken on a contingent fee basis.

All Plaintiffs' Counsel accepted the consolidated cases on a contingent fee basis and advanced funds and time associated with the litigation. Through January 15, 2014, this Motion, Plaintiffs' Counsel expended approximately 7,863.4 hours to prosecute and settle this case, plus

they advanced over $131,299.78 in actual out-of-pocket costs and expenses. The total value of their hours plus costs and expenses is $3,618,389.53.

This factor "stands as a proxy for the risk that attorneys will not recover compensation for the work they put into a case." *In re Cardinal Health*, 528 F. Supp. 2d 752, 766 (S.D. Ohio 2007). As this Court has previously acknowledged, "some courts consider the risk of non-recovery as the most important factor in fee determination." *Kritzer*, 2012 U.S. Dist. LEXIS 74994, at *29 (citing *In re Cardinal Health*, 528 F. Supp. 2d at 766); *see also O' Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266 (E.D. Pa. 2003) (appropriate to pay attorneys several times their hourly fee because of risk of non-payment).

From the outset of this case, Defendants have contended that they did nothing wrong—that all engine parts ultimately break down and the plastic coolant pipes were no longer covered by its written warranty—and therefore they would ultimately prevail. Both Porsche entities have repeatedly asserted this position and have proved worthy adversaries. A positive outcome in this matter was by no means assured. Thus, the very substantial risk undertaken by Plaintiffs' Counsel serves as another factor to support a multiplier in this case.

iv. The complexity of the litigation.

There is no doubt that this litigation was complex, and some of Plaintiffs' legal claims either created or clarified law in their respective jurisdictions. Counsel for all parties engaged in extensive briefing that consisted of 400+ pages for PCNA's Fed. R. Civ. P. 12(b)(6) motion covering 32 causes of action on behalf of 20 Plaintiffs from 11 different states. The parties' dispute also concerned jurisdiction over a foreign entity, including significant discovery, which was vigorously defended by counsel for Defendants. This case presented a myriad of challenges rarely confronted in a typical consumer case. *See e.g., Citizens Against Pollution v. Ohio Power*

Co., 484 F. Supp. 2d 800, 814 (S.D. Ohio 2007) (recognizing the novelty and complexity of plaintiffs' claims as a factor in determining a reasonable fee award).

All parties spent significant time and resources presenting such complex issues to the Court in advocating their clients' interests. The quality of the proposed settlement reflects Plaintiffs' Counsel's ability to effectively frame and present difficult and complex issues, as well as Plaintiffs' Counsel's vigorous prosecution of the case.

v. The professional skill and standing of the attorneys involved.

Plaintiffs' Counsel are highly experienced consumer protection, complex litigation, and class action lawyers with national practices. Rather than spend the Court's time lauding their credentials, Plaintiffs' Counsel have attached firm resumes to their declarations in support of this application and/or preliminary approval to satisfy this portion of the Court's analysis.

However, it is also important to evaluate the quality of opposing counsel. "The ability of Co-Lead Counsel to negotiate a favorable settlement in the face of formidable legal opposition further evidences the reasonableness of the fee award requested." *In re Delphi Securities, Derivative & ERISA Litig.*, 248 F.R.D. 483, 504 (E.D. Mich. 2008). All of Defendants' law firms, spanning both coasts of the United States, are firms of the highest caliber with nationally recognized reputations. Nonetheless, Plaintiffs' Counsel was able to achieve a superb result for class members despite the inherent risks and the efforts of highly qualified defense counsel.

vi. The Court should reward Plaintiffs' Counsel's relatively prompt resolution of the class members' claims.

In addition to the *Ramey* factors described above, another factor—the relatively prompt settlement reached by Plaintiffs' Counsel—warrants the requested multiplier in this case. As described by several courts, the lodestar method can create "an unanticipated disincentive to

early settlements, [and] tempt lawyers to run up their hours." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F. 3d 96, 122 (2d Cir. 2005) (quoting case).

In this case, however, Plaintiffs' Counsel did not drag out the litigation in order to "run up their hours." Instead, Plaintiffs' Counsel worked diligently on parallel tracks—one towards settlement, and the other continued aggressive litigation. As a result, the significant, demonstrable monetary benefits afforded to the Settlement Class members by the settlement are available to them much more quickly than if Plaintiffs' Counsel had proceeded further with litigation. If this litigation had been extended, Counsel's lodestar would have increased; however, class members' benefits would have decreased as their Cayennes continued to add mileage and even went out of service. Accordingly, a multiplier is warranted based on achievement of an exceptionally favorable settlement at a relatively early stage of litigation. To do otherwise would create perverse incentives to unnecessarily extend litigation.

vii. Plaintiffs' Counsel will spend additional time in connection with approval of the settlement and claims administration.

A multiplier is further warranted because significant events remain that will cause further expenditure of time and out-of-pocket expenses, including, but not limited to:

- additional briefing and argument on attorneys' fees, costs, and service payments;
- a motion final approval that will address objections, if any;[6]
- resolution of disputed claims, if any, and,
- administrative tasks associated with the settlement and handling of issues as they arise in connection with Class members' claims.

[6] Further, if there are objections, there is risk of an appeal that will both require significant time and expense and could prevent prompt payment of the amounts awarded.

All of these tasks are necessary to conclude the case and will require Plaintiffs' Counsel to expend additional time, which will effectively increase the lodestar and reduce the multiplier. This should be considered when addressing the reasonableness of the requested multiplier.

viii. The requested multiplier is well within the range of multipliers awarded in the Sixth Circuit.

Lodestar multipliers well above the small multiplier requested by plaintiffs here have been regularly granted in Ohio's District Courts. In approving a 3.06 multiplier, one Southern District of Ohio case very recently held that "[t]his multiplier is very acceptable under the facts and circumstances of this case and especially in light of the extraordinary service rendered by counsel on behalf of the Class." *Lowther v. AK Steel Corp.*, Case No. 1:11-cv-877, 2012 U.S. Dist. LEXIS 181476, at *17 (S.D. Ohio Dec. 21, 2012) (citing *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007) (lodestar multiplier of six)). In reaching its conclusion, the *Lowther* case observed 12 other instances where multipliers far exceeding the multiplier requested by Plaintiffs in this case were granted. In a case factually similar to this case, the court upheld a multiplier cross-check of 2.95 to 6.08. *See O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266 (E.D. Pa. 2003).

In the *Connectivity Sys.* case, from this district, the Court approved a 2.39 multiplier when it conducted a cross-check of a common fund fee award. *Connectivity Sys.*, 2011 U.S. Dist. LEXIS 7829, at *35-36 (citing *Basile v. Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 640 F. Supp. 697 (S.D. Ohio 1986) and *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 903 (S.D. Ohio 2001)). The Court in the *Connectivity Sys.* case observed that the 2.39 multiplier it approved fell well within the 2.0 and 5.0 multipliers from the *Basile* and *Brotherton* cases, respectively. Two recent cases in the Northern District of Ohio have also approved sizeable multipliers. *See Physicians of Winter Haven LLC v. Steris*, Case No. 1:10 CV 264, 2012 U.S.

Dist. LEXIS 15581, at *27-29 (N.D. Ohio Feb. 6, 2012) (approving a 2.9 multiplier); *In re Oral Sodium Phosphate Solution-Based Prod.*, Case No. 1:09-SP-80000 (MDL Docket No. 2066), 2010 U.S. Dist. LEXIS 128371, at *28 (N.D. Ohio Dec. 6, 2010) (approving a 2.00 multiplier); *see also Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 Fed. Appx. 496, 500 (6th Cir. 2011) (affirming 1.2 multiplier in a class settlement where the District Court "did not believe that the class members received an especially good benefit . . . . Nevertheless, the court determined that a multiplier was appropriate given the contingent nature of the case and the complexity of a class action.").

2. The requested lodestar and multiplier are supported by a percentage of the fund cross-check

The Court may—but is not required to—"cross-check" the requested lodestar and multiplier figure using an abbreviated percentage of the fund analysis. Doing so here underscores the reasonableness of the requested fee.

As described above in Section II, Plaintiffs' Counsel's expert, Harvey Rosen, Ph.D., has valued the settlement at $36,664,505 million. Because the cash benefit to the Settlement Class members will not be reduced by the payment of fees, costs and expenses, or service payments, the settlement in total is worth over $41,400,000. Accordingly, the requested lodestar and multiplier of $4,500,000 represents only 11% of the projected total value of the settlement fund. This falls well below the 20%-50% range that is routinely approved in the Sixth Circuit. *See Lonardo*, 706 F. Supp. 2d at 803 (on a cross-check analysis, 26.4% "is well within the acceptable range for a fee award in a class action.").

Several recent decisions in Ohio federal court class action cases demonstrate the reasonableness of the requested fee as a percentage of the common fund, including:

- *Kritzer*, 2012 U.S. Dist. LEXIS 74994, at *31 (awarding 52% of common fund as attorneys' fees);

- *Rotuna v. West Customer Mgmt. Group, LLC*, Case No. 4:09CV1608, 2010 U.S. Dist. LEXIS 58912, at *22-23 (N.D. Ohio June 15, 2010) (awarding attorneys' fees of 33% of the total settlement fund);

- *Brent v. Midland Funding, LLC*, Case No. 3:11 CV 1332, 2011 U.S. Dist. LEXIS 98763, at *52-54 (N.D. Ohio Sept. 1, 2011) (approving award of attorneys' fees of 29% of the common fund);

- *Van Horn v. Nationwide Property and Casualty Inc. Co.*, Case No. 1:08-CV-605, 2010 U.S. Dist. LEXIS 42357, at *24 (N.D. Ohio April 30, 2010) (22% of the common fund) (affirmed on appeal *Van Horn v. Nationwide Property and Casualty Ins. Co.*, 436 Fed. Appx. 496 (6th Cir. 2012);

- *Bower v. Metlife*, Case No. 1:09-cv-351, 2012 U.S. Dist. LEXIS 149117, at *20-21 (S.D. Ohio Oct. 17, 2012) (20% of the common fund); and,

- *Connectivity Sys. v. Nat'l City Bank*, Case No. 2:08-cv-1119, 2011 U.S. Dist. LEXIS 7829, at *33 (S.D. Ohio Jan. 26, 2011) (citing cases approving attorneys' fees of 20%-50% of the common fund).

Reviewing the percentages of the common fund permitted by these cases, Plaintiffs' Counsel would be entitled to an award of fees even greater than the minimum award that they have requested. The requested lodestar and multiplier are thus eminently reasonable.

B. The Court Should Award Plaintiffs' Counsel Their Reasonable Costs and Expenses Incurred in Prosecuting This Case

In order to fully compensate Plaintiffs' Counsel, they are entitled to an award of all out-of-pocket costs and expenses incurred while prosecuting Plaintiffs' claims. *See New Eng. Health Care Emples. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 634-35 (W.D. Ky. 2006); *Bower*, 2012 U.S. Dist. LEXIS 149117, at *24-25. Plaintiffs' Counsel have set forth in their respective Declarations the categories and amounts of all costs and expenses for which they seek reimbursement to the Court. *See* Troutman Dec. ¶ 6, Ex. 3; Kavanagh Dec. ¶¶ 9-10; McCarthy

Dec. ¶¶ 10-11, Ex. C; Levitt Dec. ¶ 7, Ex. C; Isquith Dec. ¶ 7; Hoese Dec. ¶ 4, Ex. B; Schlanger Dec. ¶ 11. These costs and expenses are reasonable.

Plaintiffs' Counsel request reimbursement of the full amount of their reasonable and necessary litigation expenses, totaling $131,299.78. Given the nature of this litigation, these expenses are minimal compared to the benefits afforded Class members under the settlement. These expenses include costly, but essential, items such as comprehensive discovery, retention and work with expert witnesses, and the travel expenses associated with several days of mediation and in-court conferences.

C. The Court Should Approve Service Payments to Names Plaintiffs for Their Time and Service to the Settlement Class

Based upon the named Plaintiffs service and results for the other class members, this Court should award service payments in the amount of $5,000 to each of the 20 named Plaintiffs who filed the individual, consolidated lawsuits. District courts within the Sixth Circuit regularly award service payments in class actions. *See Hadix v. Johnson*, 322 F. 3d 895, 898 (6th Cir. 2003) (observing that courts view incentive awards as "efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class."); *Bower*, 2012 U.S. Dist. LEXIS 149117, at *25-26; *Bert v. AK Steel Corp.*, Case No. 1:02-cv-467, 2008 U.S. Dist. LEXIS 111711, at *10-11 (S.D. Ohio Oct. 23, 2008).

From the outset, the named Plaintiffs were aware of their fiduciary duties to the class and have acted to protect the interests of the class during the litigation and settlement stages of the case. They have been actively involved in the litigation and have been eager to participate to assist the class, including providing Plaintiffs' Counsel with information for initial disclosures, assisting Plaintiffs' Counsel with discovery requests, keeping apprised of the status of the case, and reviewing the settlement. All named Plaintiffs poured through their personal files to provide

maintenance and repair records. Some named Plaintiffs retained the parts replaced in their Cayennes and mailed them to Plaintiffs' Counsel to assist other class members. The Settlement Class has benefited from these individuals' actions because they have been afforded the opportunity to receive settlement benefits without having to contribute to the time and resources necessary to prosecute the case. *See* Troutman Dec. ¶¶ 10-12; Kavanagh Dec. ¶¶ 14-16; Levitt Dec. ¶¶ 10-11.

Service payments like the ones sought in this case are appropriate. *See, e.g., Johnson*, 2013 WL 2295880, at *5 (finding that $12,500 in service payments to the named plaintiffs were appropriate where the relief to settlement class members was not perfunctory). Moreover, the relief to the Settlement Class is significant in light of their claims and actual damages, and the award of service payments will not reduce the relief available to Settlement Class members. Modest and fair service payments promote public policy by encouraging individuals to participate as class representatives in class actions and by compensating them for their service to the class. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F. 3d 454, 463 (9th Cir. 2000); *see also* Manual for Complex Litig., § 21.62 n.971 (4th ed. 2004). Thus, each of the 20 Plaintiffs who served in this capacity should be awarded $5,000 for their service to reach the proposed settlement.

V. CONCLUSION

For all of these reasons, Plaintiffs respectfully request that the Court award the full $4.5 million in attorneys' fee based upon the excellent value of the settlement to class members. Plaintiffs' Counsel has effectively worked this case for their clients to reach this result and should be compensated, accordingly. In addition, the Court should award $131.299.78 to

Plaintiffs' Counsel to compensate them for out-of-pocket, unreimbursed expenses incurred in prosecuting the case, as well as a $5,000 service payment to each of the 20 named Plaintiffs.

Respectfully submitted,

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Plaintiffs' Executive Committee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed electronically filed via the Court's ECF system, on January 20, 2014. Notice of electronic filing will be sent to all parties by operation of the Court's electronic filing system. Parties not registered for electronic filing will receive a copy of this filing through First Class U.S. Mail. Parties may access this filing through the Court's system.

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