UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA ML 19-02905	Date	November 1, 2024
Title	In Re: ZF-TRW Airbag Control Units Products Liability Litigation		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE	
D. Torrez		Not Reported
Deputy Clerk		Court Reporter / Recorder
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
Not Present		Not Present

Proceedings: **(IN CHAMBERS) ORDER RE MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND DIRECTION OF NOTICE UNDER FED. R. CIV. P. 23(E) (DKT. 941)**

I. Introduction

On August 8, 2019, this multi-district litigation ("MDL") was established and transferred to this Court. Dkt. 1. The MDL, which includes 20 member cases, concerns airbag control units ("ACUs") that are allegedly defective because they contain a specific component part that is vulnerable to electrical overstress ("EOS"). The alleged defect ("Alleged Defect") can result in the failure of airbags in a vehicle to deploy during a collision.

On July 27, 2020, eight groups of defendants filed motions to dismiss, as well as a joint motion to dismiss. Those motions were heard on January 25, 2021, and were taken under submission. On February 9, 2022, an order issued (the "Order") granting the motions in part and denying the motions in part. Dkt. 396.

On May 26, 2022, a Consolidated Amended Class Action Complaint ("ACAC"), which is the operative one, was filed. Dkt. 477.

On August 2, 2024, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement (the "Motion"). Dkt. 941. Through the Motion, Plaintiffs seek an order granting preliminary approval of the settlement and directing notice to the class under Fed. R. Civ. P. 23(e)(1); appointing Lead Plaintiffs' Counsel as settlement class counsel; issuing a preliminary injunction pending final approval of the proposed settlement; and scheduling a final approval hearing. *Id.* at 36.

A hearing on the Motion was held on September 30, 2024. For the reasons stated in this Order, the Motion is **GRANTED**.

II. Background

A. The Parties

There are 53 plaintiffs named in the ACAC, who purchased or leased vehicles from the Vehicle

Manufacturer Defendants. Dkt. 477 ¶ 64. Three of those plaintiffs ("Mitsubishi Plaintiffs" or "Plaintiffs")[1] brought claims against Mitsubishi Motors Corporation and Mitsubishi Motors North America, Inc. (collectively, the "Mitsubishi Defendants" or "Mitsubishi"). Collectively, the Defendants named in the ACAC are companies from several different corporate groups: ZF, STMicro, Kia, Hyundai, Hyundai Mobis, Fiat Chrysler, Toyota, Honda and Mitsubishi. Dkt. 477 ¶ 23.

There are five groups of defendants that constitute the "Vehicle Manufacturer Defendants," which are alleged to be "companies that make and sell completed vehicles and their affiliates." *Id.* ¶ 41. The Mitsubishi Defendants constitute one such group. *Id.*

B. Substantive Allegations

It is alleged that the Mitsubishi Defendants, as well as other Vehicle Manufacturer Defendants, manufactured vehicles with defective Airbag Control Units ("ACUs"). *Id.* ¶¶ 6, 7, 9.

It is alleged that ACUs are connected by electrical wiring to crash sensors located on the front of vehicles. *Id.* ¶ 6. The crash sensors detect activity in the front of the vehicle and send corresponding electrical signals to the ACU, which receives and interprets these signals. *Id.* When certain thresholds are met, the ACU issues a command to the vehicle's safety system to deploy the airbags and tighten the seatbelts to protect passengers from an imminent collision. *Id.* Within the ACU, the application-specific integrated circuit ("ASIC") processes the signal from the crash sensors and activates the airbags and seatbelts. *Id.* ¶¶ 7, 10.

It is alleged that when an ACU malfunctions, it can cause a vehicle's airbags and seatbelts to fail to perform their function of restraining and protecting those inside a vehicle. *Id.* ¶ 6. One threat to the functionality of ACUs, as well as other automatic electronics, are large "transients." *Id.* ¶ 465. Transients are "short duration, high magnitude voltage peaks, commonly referred to as surges or bursts." *Id.* It is alleged that "[f]or decades, participants in the automotive industry -- including all the Defendants in this litigation -- have known that transients can be generated inside and outside a motor vehicle" and can cause damage to electrical equipment such as ACUs. *Id.* ¶ 466. Because transients threaten the ability of ACUs and ASICs to activate safety restraints in a collision, a properly designed ACU and ASIC can withstand transients. *Id.* ¶ 471. If an ACU is not protected from transients, it can experience electrical overstress ("EOS"). *Id.* ¶¶ 465–71.

It is alleged that the ACUs at issue in this action are defective (the "ACU Defect") because they contain a DS84 ASIC, which is more susceptible than competing microchips to damage from transients. *Id.* ¶¶ 7, 472–85. It is alleged that the DS84 ACU was commercially attractive to Defendants because it was less expensive, and was marked as a "cost effective ACU." *Id.* ¶ 567. Because of the alleged ACU defect, the vehicles that contain those ACUs are allegedly "less desirable and less valuable than vehicles with properly functioning [ACUs]." *Id.* ¶ 1479.

It is alleged that Defendants have known about the alleged defect for many years. It is alleged that the Suppliers and Vehicle Manufacturers conspired to conceal the ACU defect so that they could maximize profit. Dkt. 477-1 ¶¶ 1603–04, 1744–45, 1876–77, 2012–13, 2143–44. It is alleged that every Vehicle

[1] These Plaintiffs are Gaylynn Darling (Sanchez), Michael Nearing and John Sancomb. Dkt. 941 at 1 n. 1.

Manufacturer Defendant placed misleading statements about vehicle safety, airbags, and/or seatbelts on or in at least some of their group's Class Vehicles. Dkt. 477 ¶¶ 1129–62, 1218–54. It is also alleged that the Vehicle Manufacturer Defendants made misleading advertisements. *Id.* ¶¶ 1163–1217.

It is alleged that Defendants' fraudulent statements caused financial losses to Plaintiffs by causing them to pay more than they otherwise would have for their vehicles, or to purchase vehicles when they would not otherwise have done so. Dkt. 477-1 ¶¶ 1618–19, 1759–60, 1892–93, 2027–28, 2158–59.

III. Summary of Settlement Agreement and Notice

A. Class Definition

The settlement agreement between Plaintiffs and the Mitsubishi Defendants ("Settlement Agreement" or "Agreement") defines the Class as follows:

> all persons or entities who or which, on the date of the issuance of the Preliminary Approval Order, own/lease or previously owned/leased Mitsubishi Class Vehicles distributed for sale or lease in the United States or any of its territories or possessions. Excluded from this Class are: (a) Mitsubishi, its officers, directors, employees and outside counsel; its affiliates and affiliates' officers, directors and employees; its distributors and distributors' officers and directors; and Mitsubishi's Dealers and their officers and directors; (b) Settlement Class Counsel, Plaintiffs' counsel, and their employees; (c) judicial officers and their immediate family members and associated court staff assigned to this case; and (d) persons or entities who or which timely and properly exclude themselves from the Class.

Settlement Agreement, Dkt. 941-1, Ex. C § II.A.7.

"Mitsubishi Class Vehicles" are defined as "those Mitsubishi vehicles listed on Exhibit 2 that contain or contained ZF-TRW ACUs and were distributed for sale or lease in the United States or any of its territories or possessions." *Id.* § II.A.38. Exhibit 2 to the Settlement Agreement provides the following list:

Mitsubishi Class Vehicles

- 2013-2017 Mitsubishi Lancer;
- 2013-2015 Mitsubishi Lancer Evolution;
- 2013-2015 Mitsubishi Lancer Ralliart;
- 2013-2016 Mitsubishi Lancer Sportback; and
- 2013 Mitsubishi Outlander.

Id., Ex. 2.

The Settlement Agreement defines "Released Parties" as follows:

> Mitsubishi, and each of its past, present and future parents, predecessors, successors, spin-offs, assigns, holding companies, joint- ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, dealers, including the Mitsubishi Dealers, representatives, suppliers, vendors, advertisers, marketers, service providers, distributors and subdistributors, repairers, agents, attorneys, insurers, administrators and advisors. The Parties expressly acknowledge that each of the foregoing is included as a Released Party even though not identified by name herein. Notwithstanding the foregoing, "Released Parties" does not include the Excluded Parties.

Id. § II.A.31.

The Settlement Agreement defines "Excluded Parties" as: "other than the Released Parties, all defendants named in the Actions and each of their past, present, and future parents, predecessors, successors, spin-offs, assigns, distributors, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, affiliates, officers, directors, employees, associates, dealers, agents and related companies." *Id.* § II.A.16.

A. Relief to Class Members and Other Payments

The Settlement Agreement provides that the total Settlement Amount is $8,500,000. *Id.* § II.A.32.

1. Settlement Fund

The Settlement Agreement provides that the parties will establish a Qualified Settlement Fund ("QSF"), pursuant to Internal Revenue Code § 468B to be held by an escrow agent ("Escrow Agent"). *Id.* § III.A.1. The Agreement provides that certain notice and settlement administration costs accrued prior to final approval of the Settlement will be paid by Mitsubishi as they are accrued and invoiced. *Id.* § III.A.2. The Agreement provides that Mitsubishi will deposit $8,500,000, less those initial notice and settlement administration costs, into the QSF no later than one month prior to the date set by the Court for the Fairness Hearing, to fund the Settlement Fund. *Id.* § III.A.2. The Agreement provides that the QSF is to be used for the following purposes:

> (a) to pay valid and approved claims submitted by eligible Class Members; (b) to pay notice and related costs; (c) to pay for settlement and claims administration, including expenses associated with the Settlement Notice and Claims Administrator, taxes, fees, and related costs; (d) to pay Settlement Class Counsel's fees and expenses as the Court awards; (e) to make service award payments to the Mitsubishi Plaintiffs; and (f) to pay Taxes. The Settlement Fund may also be utilized for additional outreach and notice costs that the Parties jointly agree, after consulting with the Settlement Special Master, is necessary in furtherance of the terms of this Settlement.

Id.

a) Settlement Cash Benefits

The Settlement Agreement provides that, after deducting expenses for settlement and claims administration, and the fees and expenses of Settlement Class Counsel that are awarded by the Court, the remaining proceeds of the Settlement Amount will be allocated on a per-capita basis among all Mitsubishi Class Vehicles for which the Settlement Notice and Claims Administrator has received a valid Claim Form. *Id.* § III.B.1.

The Settlement Agreement provides that cash payments shall be up to $250 per Class Vehicle. *Id.* § III.A.2. It also provides that, if more than one Class Member submits a valid Claim Form for the same Mitsubishi Class Vehicle, the original owner who purchased that Mitsubishi Class Vehicle shall receive 60% of the funds allocated to that Mitsubishi Class Vehicle, and the remaining 40% will be distributed evenly to, or among the remaining Class Member(s) that submit a valid Claim Form on that Mitsubishi Class Vehicle. *Id.* § III.B.2.

b) Residual Distribution

The Settlement Agreement provides that the Settlement shall be non-reversionary, meaning that "no amount of the Settlement Amount will revert to Mitsubishi, unless the Court does not grant final approval of the Settlement as set forth in Section III.A.2." *Id.* § III.B.4. The Settlement Agreement also provides that "[i]f there are any unclaimed funds remaining from the Settlement Amount the Parties will attempt a second cash distribution of up to $750 to all Class Members who received a cash payment as part of the initial distribution, if economically feasible to do so." *Id.*

The Settlement Agreement provides that "[i]f it is not feasible and/or economically reasonable to attempt a second distribution to Class Members who already submitted a valid and timely Claim Form, or if the Settlement Amount is not exhausted after the second cash distribution, then the remaining Settlement Amount shall be distributed to *cy pres* recipients recommended by the Parties, subject to the Court's approval." *Id.* The Agreement states that the "Parties agree to work together to identify mutually agreeable *cy pres* candidates and will not unreasonably withhold approval of any candidates proposed by each other." *Id.*

c) Fees and Payments Deducted from Settlement Fund

(1) Class Representatives' Service Award

The Settlement Agreement does not state an amount that Plaintiffs will seek in service awards to Class Representatives, *i.e.*, the Mitsubishi Plaintiffs. The Agreement states that the Settlement Fund shall be used to make service award payments to the Mitsubishi Plaintiffs. *Id.* § III.A.2.

The briefing in support of the Motion states that Plaintiffs intend to seek service awards of up to $2500 for each of the three Mitsubishi Plaintiffs. Dkt. 941 at 18.

(2) Attorney's Fees Award

Similarly, the Settlement Agreement does not state an amount that Plaintiffs will seek in attorney's fees.

The declaration of co-lead counsel for Plaintiffs ("Co-Lead Counsel Declaration"), states that Settlement Class Counsel anticipate they will ask for a fee award of up to 30% of the $8.5 million Settlement Amount, which will also include reasonable expenses. Dkt. 941-1 ¶ 12.

(3) Third Party Administrator Costs

The Settlement Agreement provides that JND Legal Administration LLC ("JND") shall serve as the Settlement Notice Administrator and Claims Administrator, subject to approval by the Court. *Id.* § II.A.36. JND projects that the total cost of the notice and claims administration program will range "from approximately $447,000 to $712,000 based on settlement participation rates of 5–25%". Dkt. 941 at 18.

d) Inspection Program

The Agreement provides that if the subsequent motion for final approval of the settlement is granted, Mitsubishi shall institute the Settlement Inspection Program. Dkt. 941-1, Ex. C § III.D.1. The protocol for the Settlement Inspection Program is described in Exhibit 3 to the Settlement Agreement. Dkt. 941-1, Ex. 3. The Settlement Inspection Program will operate for ten years. *Id.* at 157. The Settlement Agreement provides that Mitsubishi will offer an inspection for Class Vehicles that are involved in a qualifying incident. *Id.* at 157–58. A qualifying incident is one in which a Class Vehicle has been involved in a frontal crash and "Mitsubishi has received notice of a personal injury or property damage incident in which a ZF-TRW airbag control unit ("ZF-TRW ACU"), seatbelt pretensioner, and/or airbag did not deploy;" or "Mitsubishi has received notice that the driver and/or passenger in any of the front seats of the Mitsubishi Class Vehicle allegedly died or suffered a Serious Injury in a frontal collision in which any of that person's Airbags or seatbelt pretensioners did not deploy." *Id.* at 157.

The Settlement Agreement provides that, upon receipt of notice of a Qualifying Incident involving a Class Vehicle, Mitsubishi shall make a good faith effort within 30 days to conduct an inspection and, if necessary, escalate the inspection to recover information related to the Airbag Control Unit. *Id.* at 1–2.

The Agreement provides that, to the extent that the inspection reveals that there is an electrical overstress condition, Mitsubishi will provide the current owner/lessee and Co-Lead Counsel with the photographs and other information related to the inspection. *Id.* at 2.

B. Notice and Payment Plan

1. In General

The Settlement Agreement provides a process for notifying Class Members of the settlement. *Id.* § IV. Notice will be disseminated to the Class through, *inter alia,* direct mailed notices, publication notice, social media and internet banner notifications, a Settlement website and Long Form Notice. *Id.* § IV.B–G.

The Settlement Notice Administrator shall be responsible for, without limitation:

> (a) printing, mailing, e-mailing, or arranging for the mailing or e-mailing of the direct mailed notices; (b) handling returned mail not delivered to Class Members; (c) attempting to obtain updated address information for any direct mailed notices returned without a forwarding address; (d) making any additional mailings required under the terms of this Agreement; (e) responding to requests for direct mailed notice or other documents; (f) receiving and maintaining on behalf of the Court any Class Member correspondence regarding requests for exclusion and/or objections to the Settlement; (g) forwarding written inquiries to Co-Lead Counsel or their designee for a response, if warranted; (h) establishing a post-office box for the receipt of any correspondence; (i) responding to requests from Co-Lead Counsel and/or Mitsubishi's Counsel; (j) establishing a website and toll-free voice response unit with message capabilities to which Class Members may refer for information about the Actions and the Settlement; (k) coordination with the Settlement Notice and Claims Administrator regarding the Settlement Claims Process and related administrative activities; and (l) otherwise implementing and/or assisting with the dissemination of the notice of the Settlement.

Id. § IV.J.1.

The declaration of Jennifer M. Keough, Chief Executive Officer, President and Co-Founder of JND Legal Administration LLC ("Keough Declaration") has also been submitted in support of the Motion. Dkt. 941-3. The Keough Declaration includes a description of the proposed notice program ("Notice Program Overview"). *Id.* at 6. The Notice Program is designed to reach "the vast majority of Settlement Class Members." *Id.* at 7.

The Notice Program Overview states that Defendants will provide a list of eligible VINs to JND. *Id.* at 8. It will then use the VINs to work with third-party data aggregation services to acquire potential Class Members' contact information from the Departments of Motor Vehicles for all current and previous owners and lessees of the Mitsubishi Class Vehicles. *Id.*

The Notice Program Overview states that, after receiving the contact and VIN information from the DMVs, JND will promptly load the information into a case-specific database for the Settlement. *Id.* The Notice Program Overview states that JND will send an Email Notice to all Class Members for whom a valid email address is obtained. *Id.* at 7. When an email is rejected for temporary reasons, such as the recipient's email address inbox being full, JND will attempt to re-send the email notice up to three additional times in an attempt to effect delivery. *Id.* at 10. After a third, unsuccessful re-send, the email will be considered undeliverable. *Id.* JND will mail a Postcard Notice to all such known Class Members as well as to those for whom no email address has been identified. *Id.* at 7–8.

The Notice Program Overview identifies additional methods of notice, including: reminder notices to stimulate claims; supplemental digital notice; an internet search campaign; a press release; a settlement website; and a toll-free number, dedicated P.O. Box and email address to receive and respond to Class Member Correspondence. *Id.* at 11–14.

A copy of the proposed notice to be sent to Class Members ("Proposed Notice") is attached to the Keough Declaration. *Id.*, Ex. B. The Proposed Notice summarizes the terms of the Settlement Agreement and the benefits to be provided to Class Members. *Id.* at 68–70. It identifies the Subject vehicles and informs potential Class Members that they may be eligible for the benefits described if

they "own, lease, or previously owned or leased a Subject Vehicle." *Id.* at 68. It directs Class Members to visit the settlement website to determine whether their vehicles are a part of the Class. *Id.* The Proposed Notice informs Class Members that Co-Lead Counsel intends to ask the Court to award an as-yet identified percentage of the settlement to "cover reasonable attorneys' fees and costs" and a service award for the Class Representatives. *Id.* at 70.

2. Opt-Outs and Objections

Class Members will be notified that they may participate, object to, or exclude themselves from the Settlement Agreement. *Id.* The Notice instructs Class Members who wish to object to or exclude themselves from the Settlement Agreement to visit the Settlement Website. *Id.*

The Settlement Agreement provides that Class Members who wish to be excluded from the Class must mail a written request for exclusion to the Settlement Notice and Claims Administrator at the address provided in the Long Form Notice. Dkt. 941-1, Ex. C § V.A. The Settlement Agreement provides that Class Members who wish to object must file a written objection with the Court, on or before a date ordered by the Court in the Preliminary Approval Order. *Id.*

C. Release of Claims

The Settlement Agreement provides for a general release of claims against Mitsubishi by Class Members. *Id.* § VII.B. It provides as follows:

> In consideration for the relief provided above, the Mitsubishi Plaintiffs and each Class Representative and Class Member, on behalf of themselves and any other legal or natural persons and entities who or which may claim by, through or under them, including their executors, administrators, heirs, assigns, predecessors and successors, agree to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, losses and damages and relief of any kind and/or type regarding the subject matter of the Actions, including, but not limited to, injunctive or declaratory relief compensatory, exemplary, statutory, punitive, restitutionary damages, civil penalties, and expert or attorneys' fees and costs, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or noncontingent, derivative, vicarious or direct, asserted or un-asserted, and whether based on federal, state or local law, statute, ordinance, rule, regulation, code, contract, tort, fraud or misrepresentation, common law, violations of any state's or territory's deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, or other laws, unjust enrichment, any breaches of express, implied or any other warranties, violations of any state's Lemon Laws, the Racketeer Influenced and Corrupt Organizations Act, or the Magnuson-Moss Warranty Act, or any other source, or any claims under the Trade Regulation Rule Concerning the Preservation of Consumers' Claims and Defenses 16. C.F.R. § 433.2, or any claim of any kind, in law or in equity, arising from, related to, connected with, and/or in any way involving the Actions.

Id.

The Settlement Agreement also provides that, notwithstanding this release, "Plaintiffs and Class Members are not releasing and are expressly reserving all rights relating to claims for personal injury, wrongful death, or actual physical property damage arising from an incident involving a Mitsubishi Class Vehicle, including the deployment or non-deployment of an airbag." *Id.* § VII.D. Additionally, the Agreement provides that "Plaintiffs and Class Members are not releasing and are expressly reserving all rights relating to claims against Excluded Parties, with the exception of" the released claims described above. *Id.* § VII.E. The Settlement Agreement also provides:

> Plaintiffs expressly understand and acknowledge, Mitsubishi Plaintiffs and Class Members will be deemed by the Final Approval Order and Final Judgment to acknowledge and waive Section 1542 of the Civil Code of the State of California . . . . Mitsubishi Plaintiffs and Class Members expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights.

Id. § VII.I.

D. CAFA Notice

The Settlement Agreement states that "[a]t the earliest practicable time, and no later than 10 days after the Parties file this Agreement with the Court, Mitsubishi shall send or cause to be sent to each appropriate state and federal official the materials specified in 28 U.S.C. § 1715 and otherwise comply with its terms."*Id.* § IV.H.1..

IV. Analysis

A. Class Certification

1. Legal Standards

The first step in considering whether preliminary approval of the Settlement Agreement should be granted is to determine whether a class can be certified. "[T]he Ninth Circuit has taught that a district court should not avoid its responsibility to conduct a rigorous analysis because certification is conditional: Conditional certification is not a means whereby the District Court can avoid deciding whether, at that time, the requirements of the Rule have been substantially met." *Arabian v. Sony Elecs., Inc.*, No. 05-CV-1741-WQH (NLS), 2007 WL 627977, at *2 n.3 (S.D. Cal. Feb. 22, 2007) (quoting *In re Hotel Tel. Charges*, 500 F.2d 86, 90 (9th Cir. 1974)). "When, as here, the parties have entered into a settlement agreement before the district court certifies the class, reviewing courts 'must pay undiluted, even heightened, attention to class certification requirements.' " *Staton v. Boeing Co.*, 327 F.3d 938, 952–53 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)).

That the parties have reached a settlement "is relevant to a class certification." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619 (1997). Consequently, when

> [c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial. But other specifications of the Rule—those designed to protect absentees by blocking unwarranted or overbroad class definitions—demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Id. at 620 (internal citations omitted). "In the context of a request for settlement-only class certification, the protection of absentee class members takes on heightened importance." *Gallego v. Northland Grp. Inc.*, 814 F.3d 123, 129 (2d Cir. 2016) (citing *Amchem*, 521 U.S. at 620).

The first step for class certification is to determine whether the proposed class meets each of the requirements of Fed. R. Civ. P. 23(a). *Dukes*, 564 U.S. at 350–51; *Hanon v. Dataproducts Corp*., 976 F.2d 497, 508 (9th Cir. 1992). These are: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. Fed. R. Civ. P. 23(a)(1)–(4). Further, "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc." *Dukes*, 564 U.S. at 350. If these four prerequisites are met, the proposed class must meet one of the requirements of Fed. R. Civ. P. 23(b). *Valentino v. Carter-Wallace, Inc*., 97 F.3d 1227, 1234 (9th Cir. 1996). Plaintiffs rely on Rule 23(b)(3). Dkt. 941 at 41–44. It provides, in relevant part, that a class proceeding "may be maintained" if "questions of law or fact common to class members predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b).

2. Application

a) Fed. R. Civ. P. 23(a) Requirements

(1) Numerosity

Rule 23(a)(1) requires that a class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). " '[I]mpracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (quoting *Advert. Specialty Nat'l Ass'n v. FTC*, 238 F.2d 108, 119 (1st Cir. 1956)). Although there is no specific numeric requirement, courts generally have found that a class of at least 40 members is sufficient. *See, e.g.*, *Rannis v. Recchia*, 380 F. App'x 646, 651 (9th Cir. 2010); *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009).

Plaintiffs state that the Class includes current and former owners and lessees of some 97,565 Class Vehicles. Dkt. 941 at 37. This is sufficient to satisfy the numerosity requirement.

(2) Commonality

Rule 23(a)(2) provides that a class may be certified only if "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality requires a showing that the "class members have suffered the same injury," *Dukes*, 564 U.S. at 350 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)), and "does not mean merely that they have all suffered a violation of the same provision of law," *Id.* The class claims must "depend upon a common contention" that is "of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* "Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule." *Hanlon*, 150 F.3d at 1019. In assessing commonality, "even a single common question will do." *Dukes*, 564 U.S. at 359 (internal quotation marks omitted). In general, the commonality element is satisfied where the action challenges "a system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005).

Plaintiffs state that their claims "all flow from Mitsubishi's common conduct of omitting material information about a safety defect in the Mitsubishi Class Vehicles and misrepresenting the effectiveness and reliability of these vehicles' safety features." Dkt. 941 at 38. The Motion states that "Courts routinely find commonality where, as here, the class claims arise from a defendant's uniform course of fraudulent conduct." *Id.* (citing *In re ZF-TRW ACUs I*, No. LA ML19-02905 JAK (MRWx), 2023 WL 6194109, at *11 (finding commonality satisfied for the Toyota settlement where "Plaintiffs have identified at least one common question as to whether [Defendants'] alleged omissions and uniform misrepresentations to Class Members were fraudulent")).

Plaintiffs have identified at least one common question: Whether Mitsubishi's alleged omissions and misrepresentations to Class Members were fraudulent. For this reason, the commonality requirement is satisfied.

(3) Typicality

The typicality requirement is met if the "representative claims are 'typical,'" *i.e.*, "if they are reasonably co-extensive with those of absent class members . . . ." *Hanlon*, 150 F.3d at 1020. Representative claims "need not be substantially identical." *Id.* The test for typicality is whether "other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon*, 976 F.2d at 508 (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985)). Like commonality, typicality is construed broadly. *Hanlon*, 150 F. 3d at 1020. The commonality and typicality requirements of Rule 23(a) tend to merge. *Dukes*, 564 U.S. at 349 n.5.

Plaintiffs allege that the same course of conduct injured the Mitsubishi Plaintiffs and other Class Members in the same manner. Dkt. 941 at 39. Each Class Member paid for a Mitsubishi Class Vehicle with an undisclosed defective DS84 ACU, and relied on Mitsubishi's misrepresentations about reliable safety features when they decided to purchase or lease their vehicles. *Id.* Thus, the typicality requirement is satisfied.

(4) Adequacy of Lead Plaintiffs and Class Counsel

Rule 23(a)(4) requires that the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020. "Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011). "Adequacy of representation also depends on the qualifications of counsel." *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996, 1007 (9th Cir. 2018) (citing *In re N. Dist. of Cal., Dalkon Shield IUD Prods. Liab. Litig.*, 693 F.2d 847, 855 (9th Cir. 1982), *abrogated on other grounds by Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227 (9th Cir. 1996)). "[T]he named representative's attorney [must] be qualified, experienced, and generally capable to conduct the litigation . . . ." *Id.* (quoting *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1323 (9th Cir. 1982), *vacated on other grounds* 459 U.S. 810 (1982)).

There is no evidence that the Class Representatives have interests that are antagonistic to those of other Class Members. In support of the Motion, it is argued that the Mitsubishi Plaintiffs are "entirely aligned [with the Class Members] in their interest in proving that [Defendants] misled them and share the common goal of obtained redress for their injuries." Dkt. 941 at 40 (citing *In re: Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2016 WL 4010049, at *11 (N.D. Cal. July 26, 2016) (*amended* July 29, 2016)).

There is also a contention that Class Counsel "have undertaken an enormous amount of work, effort, and expense throughout this MDL and in advancing the Mitsubishi Plaintiffs' claims." Dkt. 941 at 40. It is also argued that counsel "consistently devoted whatever resources were necessary to reach a successful outcome throughout the nearly five years since this consolidated litigation began." *Id.* at 40–41. It is also asserted that the amount of the proposed attorney's fees and service awards "are consistent with levels awarded in the Ninth Circuit," and, like the Mitsubishi Plaintiffs, Counsel also satisfy Rule 23(a)(4). *Id.* at 41.

For purposes of preliminary approval, the proposed award of attorney's fees and incentive awards for Plaintiffs appear reasonable. The proposed fee and incentive awards are not so disproportionate to the relief provided to the Class to warrant a finding that Plaintiffs and counsel are not adequate representatives. *Cf. Staton*, 327 F.3d at 975–78 (rejecting incentive awards to 29 class representatives of up to $50,000 each). Issues about the attorney's fees and incentive award are more appropriately addressed when considering whether the Settlement Agreement is reasonable and fair. *See id.* at 958 ("Although we later question whether the settlement agreement . . . was the result of disinterested representation, that question is better dealt with as part of the substantive review of the settlement than under the Rule 23[] inquiry. Otherwise, the preliminary class certification issue can subsume the substantive review of the class action settlement.").

For the foregoing reasons, the adequacy requirement is satisfied.

b) Rule 23(b)(3) Requirements

(1) Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods.*, 521 U.S. at 623. The predominance analysis assumes that the Rule 23(a)(2) commonality requirement has already been established, *Hanlon*, 150 F.3d at 1022, and "focuses on whether the 'common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication,' " *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 557 (9th Cir. 2019) (quoting *Hanlon*, 150 F.3d at 1022). "An individual question is one where 'members of a proposed class will need to present evidence that varies from member to member,' while a common question is one where 'the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof.' " *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quoting 2 William B. Rubenstein, *Newberg on Class Actions* § 4:50, at 196–97 (5th ed. 2012)). Where the issues of a case "require the separate adjudication of each class member's individual claim or defense, a Rule 23(b)(3) action would be inappropriate." *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001) (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1778 at 535–39 (3d ed. 2005)).

"Predominance is not, however, a matter of nose-counting. Rather, more important questions apt to drive the resolution of the litigation are given more weight in the predominance analysis over individualized questions which are of considerably less significance to the claims of the class." *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016) (internal citations omitted). "Therefore, even if just one common question predominates, 'the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately.' " *In re Hyundai*, 926 F.3d at 557–58 (quoting *Tyson Foods, Inc.*, 577 U.S. at 453–54).

Further, the requirements of Fed. R. Civ. P. 23(b)(3) "must be considered in light of the reason for which certification is sought—litigation or settlement . . . ." *Id.* at 558. A class may be certifiable for settlement even though it "may not be certifiable for litigation" where "the settlement obviates the need to litigate individualized issues that would make a trial unmanageable." *Id.*

As noted, Plaintiffs' claims arise from Mitsubishi's alleged course of conduct of manufacturing and selling vehicles containing defective ACUs, without disclosing the alleged defect to Class Members. Plaintiffs identify several questions that are common to all Class Members, including "when Defendants first learned of the ACU Defect, and whether Defendants' representations about the Class Vehicles' airbags and safety systems were misleading to reasonable consumers." Dkt. 941 at 42. Such questions do not turn on an assessment of individual facts. Whether Mitsubishi's actions were fraudulent is a question that is central to Plaintiffs' claims, and which is suitable for resolution on a classwide basis. For these reasons, the predominance requirement is satisfied.

(2) Superiority

Rule 23(b)(3) requires a showing that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). This issue is evaluated by considering the following factors: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of

concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *Id.*

The benefits of resolving the claims at issue in a class action outweigh the interest of any Class Member who could pursue and control an individual action. There are approximately 100,000 Class Vehicles covered by the Class definition. Plaintiffs assert that the maximum damages sought by each Class Member "are exceedingly small in comparison to the substantial cost of prosecuting individual claims, especially given the technical nature of the claims at issue." Dkt. 941 at 43. In light of the large number of Class Members and the cost of bringing individual claims in light of the modest, potential recoveries, it would be substantially less efficient for Class Members to pursue their claims on an individual basis. Further, Class Members may not have a strong incentive to pursue their claims individually. Nothing suggests that the management of this action has been, or will be, difficult. Moreover, that the parties have reached a settlement would obviate any potential management issues. For these reasons, the superiority requirement is satisfied.

* * *

For the foregoing reasons, it has been shown that the Class should be conditionally certified for the purpose of settlement.

B. Preliminary Approval of the Settlement Agreement

1. Legal Standards

Fed. R. Civ. P. 23(e) requires a two-step process in considering whether to approve the settlement of a class action. First, a court must make a preliminary determination whether the proposed settlement "is fundamentally fair, adequate, and reasonable." *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (quoting *Staton*, 327 F.3d at 952). In the second step, which occurs after preliminary approval, notification to class members, and the compilation of information as to any objections by class members, a court determines whether final approval of the settlement should be granted. *See, e.g.*, *Id.*

At the preliminary stage, "the settlement need only be *potentially* fair." *Id.* This is due, in part, to the policy preference for settlement, particularly in the context of complex class action litigation. *See Officers for Just. v. Civ. Serv. Comm'n of City and Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982) ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation . . . .").

As the Ninth Circuit has explained:

> [T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Id.

Notwithstanding this deference, "[w]here . . . the parties negotiate a settlement agreement before the class has been certified, 'settlement approval requires a higher standard of fairness and a more probing inquiry than may normally be required under Rule 23(e).'" *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019) (quoting *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012)). "Specifically, 'such [settlement] agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair.' " *Id.* at 1048–49 (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)). This scrutiny "is warranted 'to ensure that class representatives and their counsel do not secure a disproportionate benefit at the expense of the unnamed plaintiffs who class counsel had a duty to represent.'" *Id.* (quoting *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012)).

In evaluating fairness, a court must consider "the fairness of a settlement as a whole, rather than assessing its individual components." *Lane*, 696 F.3d at 818–19. A court is to consider and evaluate several factors as part of its assessment of a proposed settlement. The following non-exclusive factors, originally described in *Hanlon*, are among those that may be considered during both the preliminary and final approval processes:

> (1) the strength of the plaintiff's case;
> (2) the risk, expense, complexity, and likely duration of further litigation;
> (3) the amount offered in settlement;
> (4) the extent of discovery completed and the stage of the proceedings;
> (5) the experience and views of counsel;
> (6) any evidence of collusion between the parties; and
> (7) the reaction of the class members to the proposed settlement.

See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458–60 (9th Cir. 2000).

Each factor does not necessarily apply to every settlement, and other factors may be considered. For example, courts often assess whether the settlement is the product of arms-length negotiations. *See Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution."). As noted, in determining whether preliminary approval is warranted, a court is to decide whether the proposed settlement has the potential to be deemed fair, reasonable and adequate in the final approval process. *Acosta*, 243 F.R.D. at 386.

Amended Fed. R. Civ. P. 23(e) provides further guidance as to the requisite considerations in evaluating whether a proposed settlement is fair, reasonable and adequate. A court must consider whether:

> (A) the class representatives and Plaintiff's 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);[2] and
(D) the proposal treats class members equitably relative to each other.

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

The factors set forth in Fed. R. Civ. P. 23(e) distill the considerations historically used by federal courts to evaluate class action settlements. *See* Fed. R. Civ. P. 23(e) advisory committee's note to 2018 amendment. As the comments of the Advisory Committee explain, "[t]he goal of [the] amendment [was] not to displace any factor" that would have been relevant prior to the amendment, but rather to address inconsistent "vocabulary" that had arisen among the circuits and "to focus the court and the lawyers on the core concerns" of the fairness inquiry. *Id.*

2. Application

a) Whether the Class Representatives and Plaintiffs' Counsel Have Adequately Represented the Putative Class

As discussed above in connection with the issue of class certification, Plaintiffs and their counsel have adequately represented the Class. Counsel have prosecuted this case zealously since the litigation began in 2019. Dkt. 941 at 20–21. "The extent of the discovery conducted to date and the stage of the litigation are both indicators of [Class] Counsel's familiarity with the case and of Plaintiffs having enough information to make informed decisions." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008).

Plaintiffs state that their counsel has undertaken significant efforts to uncover the facts about the ACU Defect in the Mitsubishi Class Vehicles. Dkt. 941 at 21. This included the retention of technical experts as well as the pursuit of discovery, and "the continued investigation and refinement of the proposed Class's claims and liability theories, the fruits of which are detailed in two lengthy consolidated Complaints including the 1,300-page operative pleading." *Id.*

Plaintiffs' counsel opposed Mitsubishi's motion to dismiss, which was granted in part and denied in part. *Id.* at 14. Plaintiffs' counsel filed approximately 90 pages of extensive, consolidated opposition briefs in connection with that motion. *Id.* This procedural history supports the assertion that Class Counsel is very familiar with the underlying facts, and that Plaintiffs have sufficient basis to make an informed decision about settlement.

Further, it is also asserted that the Class Representatives have been actively engaged in the litigation; they have collected documents and provided them to counsel, worked with counsel to prepare

[2] Fed. R. Civ. P. 23(e)(3) provides that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal."

responses to interrogatories and assisted counsel in reviewing and evaluating the terms of the Settlement Agreement. *Id.* at 21.

This factor weighs in favor of granting preliminary approval of the Settlement Agreement.

b) Whether the Settlement Was Negotiated at Arm's Length

Courts evaluate the settlement process as well as the terms to which the parties have agreed to ensure that "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Rodriguez*, 563 F.3d at 965. (quoting *Hanlon*, 150 F.3d at 1027). Three factors may raise concerns of collusion: (1) "when counsel receive[s] a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded"; (2) "when the parties negotiate a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds"; and (3) "when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *In re Bluetooth Headset Prods.*, 654 F.3d at 947 (internal quotation marks and citations omitted).

There is no evidence of fraud, overreaching, or collusion between the parties. Counsel undertook "serious, informed, and arm's-length negotiations over nearly two years, which included multiple in-person negotiation sessions and still further remote sessions via videoconference and telephone." Dkt. 941 at 22. The in-person mediation sessions were overseen by Court-appointed Settlement Special Master Juneau. *Id.*

Juneau declares that "[t]hroughout the mediation process, the parties engaged in extensive adversarial negotiations over virtually every issue in the case." Dkt. 941-2 ¶ 6. Juneau also declares that the negotiations were lengthy, principled, exhaustive, informed and "sometimes difficult and contentious," and they involved "highly qualified attorneys with extensive experience and knowledge in class action law . . . ." *Id.* Juneau also states that "the outcome of these mediated negotiations is the result of a fair, thorough, and fully informed arms-length process between highly capable, experienced and informed parties and counsel." *Id.* ¶ 7.

Further, the Settlement Fund is non-reversionary. Dkt. 941 at 24. The Settlement Agreement provides that, unless it is economically unfeasible, each Mitsubishi Settlement Class Member who submits a valid and timely claim also stands to receive a potential second distribution of up to $750 from any unclaimed funds that remain after the eligible claims are paid. Dkt. 941-1, Ex. C § III.B.4. Only if such additional payments are not economically feasible to distribute, will any final balance be directed *cy pres* subject to Court approval. *Id.* This ensures that all the money secured by the Settlement will inure to the benefit of the Mitsubishi Settlement Class, and that none of the funds will revert to Mitsubishi. Dkt. 941 at 17.

Nor is there a clear-sailing provision in the Settlement Agreement. The Agreement states that "Mitsubishi and Co-Lead Counsel represent that they have not discussed the amount of fees and expenses to be paid prior to agreement on the terms of this Agreement." Dkt. 941-1, Ex. C § VIII.A. The Agreement also states that Mitsubishi reserves its right to oppose the anticipated motion for attorney's fees. *Id.* Thus, the parties have not allocated a disproportionate amount of the settlement to be paid to counsel.

For the foregoing reasons, this factor supports the Motion.

c) Whether the Relief Provided for the Class Is Adequate

(1) Strength of Plaintiffs' Claims, and the Costs, Risks and Delays of Trial and Appeal

It is "well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *Officers for Just.*, 688 F.2d at 628. "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625. "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys "R" Us-Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014); *see also Rodriguez*, 563 F.3d at 965 ("In reality, parties, counsel, mediators, and district judges naturally arrive at a reasonable range for settlement by considering the likelihood of a plaintiffs' or defense verdict, the potential recovery, and the chances of obtaining it, discounted to present value.").

The Settlement Agreement provides for a total Settlement Amount of $8,500,000 to compensate the Mitsubishi Settlement Class. Dkt. 941 at 14. It also provides important, non-monetary benefits in the "innovative Settlement Inspection Program to ensure investigation of relevant incidents for ten years ahead." *Id.*

Plaintiffs have identified significant risks of continued litigation. They note that "while Plaintiffs submit the operative ACAC states valid, cognizable claims, their federal RICO claim did not survive Mitsubishi's earlier pleading challenge." Dkt. 941 at 27. Litigation could continue for years, with large costs associated. By contrast, the Settlement provides Class Members with certain and timely relief.

These considerations support the conclusion that the Settlement Agreement is reasonable.

(2) The Effectiveness of Any Proposed Method of Distributing Relief to the Class

The proposed method of distributing relief to the class is fair and reasonable. The Notice Program, which is designed to reach "virtually all members of the class," should be effective. Dkt. 941-3 at 7.

Class Members may submit claims for cash compensation and the Class Vehicle inspection program using the same claim form. Dkt. 941-3, Ex. B. Claim forms will be made available to Class Members through a variety of means, including U.S. mail, email, the Internet and social media. Dkt. 941-3 at 6. Class Members may submit claim forms either electronically or by hard copy. *Id.* at 7.

Plaintiffs have submitted a copy of the claim form in connection with the Motion. Keough Decl., Dkt. 941-3, Ex. H. To claim compensation, Class Members need only submit basic documentation (*e.g.*, proof of ownership or lease) and only where such information is necessary to verify the claim. *Id.* The

Parties developed the streamlined claim form in consultation with the Settlement Notice and Claims Administrator. Dkt. 941 at 28. The proposed process for submitting claims is not excessively burdensome, and it should be effective in distributing relief to the Class. Therefore, this factor weighs in favor of the Motion.

(3) The Terms of Any Proposed Award of Attorney's Fees

As noted, the Settlement Agreement states that counsel did not discuss the amount of fees and expenses to be paid prior to consensus on the terms of what became the Settlement Agreement. Attorney's fees and expenses are to be paid from the Settlement Fund, which is non-reversionary. *Id.* This factor also supports the Motion.

d) Whether the Proposal Treats Putative Class Members Equitably Relative to Each Other

The Settlement Agreement provides that each Class member is subject to the same release and has an opportunity to submit a claim for cash compensation through a simple, streamlined claim form. Dkt. 941-1, Ex. C §§ III.C; VII. The Settlement Agreement provides that payments will be allocated on a per-capita basis to Mitsubishi Class Vehicles with valid claims. *Id.* § III.B.1. This method of distributing relief is fair and reasonable. Accordingly, this factor weighs in favor of the Motion.

* * *

A consideration of the applicable factors demonstrates that the Settlement is sufficiently fair, reasonable and adequate to warrant preliminary approval. Accordingly, the Motion is **GRANTED** as to the request that the Settlement be preliminarily approved.

C. Incentive Awards

1. Legal Standards

"[N]amed plaintiffs . . . are eligible for reasonable incentive payments." *Staton*, 327 F.3d at 977. To determine the reasonableness of incentive awards, the following factors may be considered:

> 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995).

2. Application

Plaintiffs intend to apply for service awards of up to $2500 for each of the three Mitsubishi Plaintiffs. Dkt. 941 at 18. Co-Lead Counsel estimate that each of the Mitsubishi Plaintiffs spent approximately

twenty-five hours on this litigation. Joint Declaration of Plaintiffs' Co-Lead Counsel, Dkt. 941-1 ¶ 34. If approved, this service award would result in an hourly rate of $100.

Co-Lead Counsel declare that each Class Representative has dedicated significant time over the past five years to further the interests of the Settlement Class. *Id.* ¶ 33. Their activities have included:

> "providing extensive factual information to assist counsel with drafting the complaints; regularly communicating with counsel to stay abreast of developments in this litigation; searching for relevant and responsive materials about their Class Vehicles, and providing those materials to counsel for production in discovery; conferring with counsel to prepare and finalize detailed responses to Interrogatories; working with counsel to review and evaluate the terms of the proposed Settlement Agreement; and expressing their continued willingness to protect the Class until the Settlement is approved and its administration completed."

Id.

Based on a consideration of Plaintiffs' active role in the litigation, the number of hours spent on the case, and the five-year period that it has been pending, incentive awards in the amount of $2500 are reasonable. This determination will be subject to de novo review in connection with a motion for final approval.

D. Attorney's Fees

1. Legal Standards

Attorney's fees and costs "may be awarded . . . where so authorized by law or the parties' agreement." *In re Bluetooth Headset Prods.*, 654 F.3d at 941. However, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *Id.* "If fees are unreasonably high, the likelihood is that the defendant obtained an economically beneficial concession with regard to the merits provisions, in the form of lower monetary payments to class members or less injunctive relief for the class than could otherwise have [been] obtained." *Staton*, 327 F.3d at 964. Thus, a district court must "assure itself that the fees awarded in the agreement were not unreasonably high, so as to ensure that the class members' interests were not compromised in favor of those of class counsel." *Id.* at 965.

District courts have discretion to choose between a lodestar method and the percentage method to evaluate the reasonableness of a request for an award of attorney's fees in a class action. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010). A court may also choose one method and then perform a cross-check with the other. *See, e.g.*, *Staton*, 327 F.3d at 973.

When using the percentage method, a court examines what percentage of the total recovery is allocated to attorney's fees. Usually, the Ninth Circuit applies a "benchmark award" of 25%. *Id.* at 968. However, awards that deviate from the benchmark have been approved. *See Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989) ("Ordinarily, . . . fee awards [in common fund cases] range from 20 percent to 30 percent of the fund created."); *Schroeder v. Envoy Air, Inc.*, No. CV-16-4911-MWF (KSx), 2019 WL 2000578, at *7 (C.D. Cal. May 6, 2019) (internal citations omitted) ("[T]he

'benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors,' " including " '(1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases.' ")

"The lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *In re Bluetooth Headset Prods.*, 654 F.3d at 941. After the lodestar amount is determined, a trial court "may adjust the lodestar upward or downward using a 'multiplier' based on factors not subsumed in the initial calculation of the lodestar." *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000). Such factors "'includ[e] the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.'" *Stetson v. Grissom*, 821 F.3d 1157, 1166–67 (9th Cir. 2016) (quoting *In re Bluetooth Headset Prods.*, 654 F.3d at 941–42).

2. Application

Plaintiffs have included an Anticipated Request for Attorneys' Fees and Expenses in the Joint Declaration by Plaintiffs' Co-Lead Counsel in Support of the Motion. Dkt. 941-1 ¶¶ 12–13. They state that Plaintiffs will file a motion for an award of attorney's fees, costs, and service awards at least four weeks before the objection/opt-out deadline. Dkt. 941 at 29. Plaintiffs anticipate that they will request an award of up to 30% of the $8.5 million Settlement Amount in attorney's fees and expenses*, i.e.,* an award of $2.55 million. Dkt. 941-1 ¶ 12.

Plaintiffs state that, as will be explained further in the forthcoming motion, an upward adjustment from the Ninth Circuit 25% benchmark award is warranted under the facts and history of this case, including the substantial amount of work by Settlement Class Counsel, and the favorable resolution of Plaintiffs' claims against Mitsubishi. *Id.* ¶ 13.

A preliminary statement as to fees has been submitted in connection with the Joint Declaration. *Id.* ¶¶ 18–19. This information is attached to the Joint Declaration in two spreadsheets: Exhibit A and Exhibit B. These spreadsheets present "a summary of the common benefit work performed by Participating Counsel authorized by Co-Lead Counsel to perform common benefit work under the Court's Order re Protocol for Common Benefit Work and Expenses" (the "Common Benefit Order" or the "CBO"). *Id.* ¶ 18. Exhibit A is organized by the 13 specific task categories set forth in the CBO, and lists the law firms, names, positions, numbers of hours worked, hourly rate and fees for each of the attorney and staff members who performed the common benefit work. *Id.* Exhibit B presents the same information, but organized by attorney/staff member, and includes a grand total of all the fees across all timekeepers and all law firms. *Id.* ¶ 19.

The CBO imposes limitations on the hourly rates for Participating Counsel as follows: $895/hour for partners; $350-$600/hour for associates; $415/hour for document review attorneys; and $175-275/hour for paralegals and assistants. *Id.* ¶ 20. The data summarized in these spreadsheets has not been fully audited, the figures are not final and it is anticipated that the data may change in the forthcoming motion for attorney's fees and expenses. *Id.* ¶ 22.

It is also stated that a substantial amount of future work will be required. It will include that necessary for the following: (1) seeking final approval of the Settlement; (2) representing the Plaintiffs in any appeal of the anticipated final approval; and (3) overseeing and assisting in the implementation of the Settlement Agreement throughout the Claims Period. *Id.* ¶ 27. Plaintiffs anticipate that collectively this work will require at least 350 hours, for a total additional lodestar of $233,333. *Id.*

a) Percentage Approach

As noted, Plaintiffs anticipate requesting an award of no more than 30% of the $8.5 million Settlement Amount. Dkt. 941 at 18. This results in a potential award of $2.55 million.

The Settlement Agreement also provides the additional, non-monetary benefit to Class Members in the form of the "innovative ten-year long Settlement Inspection Program," which will provide "technical investigation and follow-up for Mitsubishi Class Vehicles that experience potentially EOS-related malfunctions in the field." Dkt. 941 at 17.

This proposed request for a 30% award would exceed the 25% "benchmark award" in the Ninth Circuit. However, an award exceeding the benchmark is not *per se* unreasonable. An upward adjustment from the benchmark may be warranted in light of the results achieved, the risks of litigation, non-monetary benefits conferred by the litigation, customary fees in similar cases, the contingent nature of the fee, the burden carried by counsel, or the reasonable expectations of counsel. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002). Such an adjustment may be warranted here, where favorable results were achieved for the Class, additional non-monetary benefits will be conferred and counsel have undertaken significant risks in pursuing this litigation. Counsel has not yet submitted a formal request as to fees, However, based on the current information, a 30% recovery award is within the range of what is reasonable under the circumstances.

b) Lodestar Cross-Check

Plaintiffs' counsel have submitted tables containing their rates and hours worked to date. *See* Dkt. 947-1, Exs. A–B. They also qualify that, because time entries are still being audited, the requested lodestar submitted in connection with the forthcoming motion for an award of attorney's fees will likely increase. Dkt. 941-1 ¶ 22.

The total lodestar to date (using the capped billing rates) is $52,307,497. *Id.* ¶ 23. The total lodestar applying each timekeeper's standard hourly rates is $58,186,721.50. *Id.* From these figures, counsel have subtracted the lodestar previously allocated to the Toyota settlement ($11,520,547.22 with capped rates, and $12,800,004.84 with market rates). *Id.* The remaining amount, using the capped and reduced hourly rates set by the Court in the CBO, is $40,786,949.78. *Id.* The total adjusted lodestar with each timekeeper's standard and routinely Court-approved hourly rates is $45,386,716.66, for a reduction of approximately 10% ($4.6 million) from the market-rate fees of participating counsel. *Id.*

Counsel explains that "[i]n complex, multi-defendant litigation like this, in which work is performed to advance multiple claims both collectively and specifically, it is common for counsel to apportion a percentage of the total lodestar attributable to a particular settling Defendant, because it is not

practicable to disaggregate the common benefit work across each individual defendant." *Id.* ¶ 24. For that reason, Counsel estimates the lodestar attributable to the Mitsubishi Plaintiffs' claims. *Id.* Counsel used this methodology to arrive at a fee apportionment in the previous settlement with Toyota in this litigation and in other MDLs with multiple defendants and claims, including *In re Volkswagen "Clean Diesel"* (N.D. Cal.). *Id.*

Co-Lead Counsel have estimated that 70% of the work is attributable to the six Vehicle Manufacturer Defendants, with the other 30% attributable to the two Supplier Defendants. *Id.* ¶ 25. Within the amount allocated to the Vehicle Manufacturer Defendants, Plaintiffs estimate that approximately 4% is reasonably assigned to the claims against the Mitsubishi Defendants. *Id.* ¶ 26. Counsel states that this apportionment is supported by the following: (1) the size and scale of the Mitsubishi Class, which concerns approximately 100,000 of the 15 million Class Vehicles at issue in this MDL; (2) efforts in responding to joint pleading challenges to the Consolidated Complaint by the Mitsubishi Defendants and others; (3) the discovery, investigative and expert work that advanced the Mitsubishi Plaintiffs' claims to this favorable resolution; and (4) the focused time and efforts to negotiate the proposed Settlement terms with Mitsubishi over the course of nearly two years. *Id.*

Counsel states that, in addition to the extensive common benefit work performed to date, significantly more work will be required. *Id.* ¶ 27. As noted, it is estimated that an additional $233,333 in the lodestar amount will arise due to work to finalize and implement the Settlement. *Id.*

Based on the foregoing estimates and calculations, Plaintiffs estimate that the lodestar at issue for purposes of the forthcoming attorney's fees request, using the applicable CBO rate caps, will be approximately $1,142,034.59. *Id.* ¶ 28. They estimate that the final lodestar, including the anticipated future work, is expected to be $1,375,367.59. *Id.*

(1) Whether the Rates Claimed are Reasonable

As noted, the rates that may be charged by Class Counsel are capped by the Order re Protocol for Common Benefit Work and Expenses ("CBO Order"). Dkt. 111. That order was without prejudice to a review "of the reasonableness of any fee request even if its bases comply with this Order, including as to hourly rates." *Id.* at 1. Plaintiffs state that, for many timekeepers, the Court-capped hourly rates fall well below their standard and customary rates. Dkt. 941 ¶ 20.

Plaintiffs' use of the Court-capped hourly rates provides support for the reasonableness of the rates claimed. However, they have not provided any additional evidence to support the reasonableness of the hourly rates, as is ordinarily required. The rates claimed appear reasonable, but Plaintiffs shall provide evidence supporting their reasonableness in connection with the anticipated attorney's fees motion.

(2) Whether the Hours Charged Are Reasonable

Plaintiffs' Counsel have provided tables showing the hours worked to date on this matter. Those tables reflect that Plaintiffs' Counsel have worked a total of 99,392.4 hours on this matter. *See* Dkt. 941-1, Ex. A. That work was spread across 13 different categories. *Id.* As noted above, these tables include hours worked as to the claims against all Defendants in this matter. Plaintiffs have estimated that

$1,142,034.59 of the total lodestar to date of $52,307,497 is attributable to work with respect to the claims against the Mitsubishi Defendants.

The hours charged appear generally reasonable. However, because the information submitted presently is not final, this issue is subject to de novo review in connection with the anticipated motion for final approval.

c) Conclusion on Attorney's Fees

The evidence submitted in connection with Plaintiffs' Motion for Preliminary Approval shows that, to date, the amount of attorney's fees submitted by Plaintiffs' counsel are within a reasonable range. However, in connection with any motion for final approval of the settlement, Plaintiffs' Counsel shall submit more detailed evidence in support the claimed hourly rate for each attorney, as well as additional evidence and explanation to support the calculation of the total value of the recovery to the Class. Plaintiffs' Counsel shall also provide the final time charts discussed above. For purposes of Preliminary Approval, an attorney's fee award in the range of $2,300,000 to $2,550,000 is approved.

E. Appointment of Class Representative and Class Counsel

For the reasons stated above, Plaintiffs' counsel and the Mitsubishi Plaintiffs have been adequate representatives of the Class. Therefore, the Mitsubishi Plaintiffs are approved as Class Representatives, and Co-Lead Counsel and the members of the Plaintiffs' Steering Committee are approved as Class Counsel. Class Counsel includes the following entities: Baron & Budd, P.C. and Lieff Cabraser Heimann & Bernstein, LLP.

F. Appointment of a Settlement Administrator

Plaintiffs do not expressly request the appointment of a settlement administrator. However, they state that "[t]he parties selected JND Settlement Administration as the Settlement Notice Administrator based on its extensive experience in administering large-scale notice programs in complex class and automotive cases." Dkt. 941 at 18. The Keough Declaration describes Jennifer M. Keough's extensive experience and credentials relevant to administering notice of the Settlement. *See* Dkt. 941-3. Keough states that JND has administered hundreds of class action settlements and Keough, as as the CEO and President, is involved in all facets of JND's operations, including monitoring the implementation of notice and claims administration programs. *Id.* ¶ 1. Based on the evidence provided, JND appears to be an appropriate administrator.

JND projects that total costs of administration of the Notice Program will range from approximately $447,000 to $712,000 based on settlement participation rates of 5–25%. Dkt. 941 at 18. Plaintiffs state that they believe this cost is "reasonable and necessary given the size of the Class associated with nearly 100,000 vehicles, and the proportional costs to send notice and administer claims." *Id.*

JND is approved as Settlement Notice Administrator. In connection with any motion for final approval, Plaintiffs shall submit evidence supporting the amount requested for settlement administration costs.

G. Proposed Notice

1. Legal Standards

Rule 23(e)(1)(B) requires that a court "direct notice in a reasonable manner to all class members who would be bound by" a proposed class settlement. Fed. R. Civ. P. 23(e)(1)(B). Notice is satisfactory if it " 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.' " *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)).

2. Application

As stated, the Notice Program includes a Long Form Notice, Publication Notice, Direct Mailed notice, supplemental email notice and a comprehensive Settlement website that are each clear and complete. Dkt. 941 at 45. It is anticipated that the direct notice effort alone will reach "virtually all [Settlement] Class Members" and the "supplemental digital effort, internet search campaign, and distribution of a press release to over 5,000 media outlets nationwide will further enhance that reach." Dkt. 941-3 ¶ 48.

Accordingly, the Proposed Notice satisfies the requirements of Rule 23(e)(1)(B). Thus, the Proposed Notice and the Notice Program are approved.

Notice must commence no later than November 11, 2024. The Settlement Notice and Claims Administrator, through data aggregators or otherwise, is hereby authorized to request, obtain and utilize vehicle registration information from the Department of Motor Vehicles for all 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and all other United States territories and/or possessions for the purposes of providing the identity of and contact information for purchasers and lessees of Mitsubishi Class Vehicles. Vehicle registration information includes, but is not limited to, owner/lessee name and address information, registration date, year, make and model of the vehicle.

V. Conclusion

For the reasons stated in this Order, the Motion is **GRANTED**.

The following schedule is adopted:

EVENT	DEADLINES
Initial Class Notice to be Disseminated	No later than November 11, 2024
Direct Mail Notice to be Substantially Completed	No later than January 27, 2025
Plaintiffs' Motion, Memorandum of Law and Other Materials in Support of their Requested Award of Attorney's Fees, Reimbursement of Expenses, and Request for Class Representatives' Service Awards to be Filed with the Court	No later than January 27, 2025

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA ML 19-02905	Date	November 1, 2024
Title	In Re: ZF-TRW Airbag Control Units Products Liability Litigation		

Plaintiffs' Motion for Final Approval, Memoranda of Law, and Other Materials in Support of Final Approval to be Filed with the Court	No later than January 27, 2025
Deadline for Receipt by the Clerk of All Objections Filed and/or Mailed by Class Members	February 27, 2025
Postmark Deadline for Class Members to Mail their Request to Exclude Themselves (Opt-Out) to Settlement Notice Administrator	February 27, 2025
Opposition Memoranda to Final Approval and Fee/Expense Motion	February 27, 2025
Deadline for filing Notice of Intent to Appear at Hearing on Motion for Final Approval by Class Members and/or their Personal Attorneys	March 17, 2025
Reply Memoranda in Support of Final Approval and Fee/Expense Motion	March 20, 2025
Hearing on Motion for Final Approval	April 7, 2025

IT IS SO ORDERED.

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Initials of Preparer DT