

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Christine Powell, *et al.*, individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:19-cv-19114-MJS

Motion Date: April 21, 2025

**PLAINTIFFS' UNOPPOSED
MOTION FOR ATTORNEY'S
FEES, EXPENSES, AND CLASS
REPRESENTATIVE SERVICE
AWARDS**

PLEASE TAKE NOTICE that on April 21, 2025, at 10:00 a.m., or as soon thereafter as the matter can be heard, Plaintiffs Jeffrey Barr, Arnold Milstein, Allan Zaback, and Brittany Funk (“Plaintiffs”), individually and on behalf of all others similarly situated, will move this Court before Hon. Matthew J. Skahill, U.S.M.J., pursuant to Federal Rule of Civil Procedure 23 to enter the proposed Order Granting Plaintiffs’ Unopposed Motion for Attorneys’ Fees, Expenses, and Service Awards, awarding (1) attorneys’ fees and reimbursement of expenses in the amount of \$7.25 million to Class Counsel; and (2) service awards of \$5,000 to each of the four Plaintiffs as the named Class Representatives.

In support of this motion, Plaintiffs rely upon the accompanying Memorandum of Law and the authorities cited therein; the declarations of Peter A. Muhic, Russell D. Paul, and Edwin J. Kilpela, Jr., individually and jointly as Class Counsel, and the declarations of additional counsel submitted herewith; the

Settlement Agreement and Release; the proposed Order, submitted herewith; and all files, records, and proceedings in this matter.

Dated: January 16, 2025

Respectfully submitted,

By: /s/Peter A. Muhic

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**PLAINTIFFS' BRIEF IN SUPPORT OF UNOPPOSED MOTION FOR
APPROVAL OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES,
AND CLASS REPRESENTATIVE SERVICE AWARDS**

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3 Herbert Newberg & Alba Conte, *Newberg on Class Actions*, (3d ed. 1992)
§14.03 at 14-529

I. INTRODUCTION

After dedicating thousands of hours and incurring significant expenses litigating this case on a wholly contingent basis since October 18, 2019, and successfully negotiating a settlement that creates substantial benefits for the past and present owners and lessees of more than 1.4 million Settlement Class Vehicles, Plaintiffs¹ seek to recover reasonable attorneys' fees and expenses of \$7,250,000, and move for service awards of \$5,000 for each of the four named Class Representatives for their valuable service on behalf of the class. The attorneys' fees and expenses were proposed by an experienced mediator at the conclusion of a months-long mediation process that resulted in a nationwide Settlement that resolves Plaintiffs' allegations that the Settlement Class Vehicles (model year 2019-2022 Subaru Ascent vehicles, model year 2019-2022 Subaru Forester vehicles, model year 2020-2022 Subaru Legacy vehicles, and model year 2020- 2022 Subaru Outback vehicles) had a defect that caused the windshields to unreasonably crack. Importantly, in accordance with the mediators' proposal, all attorneys' fees, expenses, and service awards will be paid separately by Defendants and will "not reduce or otherwise have any effect on the benefits made available to the Settlement Class". ECF No. 148, §§ N ¶ 1, 3.

The proposed Settlement resolves this class action in which Plaintiffs claim that the windshields in the Settlement Class Vehicles, which were manufactured,

¹ The named Plaintiffs who are Parties to the Settlement Agreement, individually and as representatives of the Settlement Class, are Jeffrey Barr, Arnold Milstein, Allan Zaback, and Brittany Funk (collectively, "Plaintiffs" or "Class Representatives").

imported and/or distributed for sale or lease in the United States by Defendants, are unreasonably susceptible to cracking after suffering a minor chip or impact.

Plaintiffs have vigorously pursued claims in this action under theories of breach of warranty and statutory and common law fraud. If approved, the proposed Settlement will end litigation now spanning over five years, which involved significant motion practice, thirteen depositions, the production and review of tens of thousands of pages of documents, third party subpoenas, written discovery, and additional formal and informal discovery, as well as multiple protracted arm's length mediation sessions between the Parties with a highly respected and experienced class action mediator, Rodney Max of Upchurch Watson White & Max Mediation Group.

In exchange for the release of claims described herein, Settlement Class Members will receive immediate and valuable benefits, including an extended warranty on their windshields and monetary reimbursement for paid out-of-pocket expenses for qualifying covered repairs. Since the Court's Order Granting Preliminary Approval of Class Action Settlement (ECF No. 155) ("Preliminary Approval Order"), the proposed Settlement has been diligently implemented. Pursuant to the Notice Plan set forth in the Preliminary Approval Order. On December 17, 2024, JND Legal Administration ("JND"), the Settlement Administrator, mailed the Court-approved short-form notice of the proposed Settlement to Settlement Class Members. Declaration of Marcia A. Uhrig, Vice President of JND Legal Administration ("Uhrig Dec."), ¶ 8, attached as Exhibit 1 to Plaintiffs' Brief in Support of Unopposed Motion for Final Approval of Class Action Settlement.

The Settlement Website (which, among other things, made the long-form notice and Settlement Agreement available for review) and toll-free telephone assistance line went live the same date. Class Counsel has worked closely with Defendants and JND to ensure timely and proper implementation of the Notice Plan, and to respond to inquiries from Settlement Class Members. Declaration of Settlement Class Counsel (“Counsel Dec.”), attached as Exhibit 2 to Plaintiffs’ Brief in Support of Unopposed Motion for Final Approval of Class Action Settlement, ¶¶ 19, 29.

The proposed Settlement has been very well received by the 1,939,269 Settlement Class Members. To date, there have been only 40 opt-out requests (.0020% of the Settlement Class) and 3 purported objections (.0001% of the Settlement Class).² Uhrig Dec., ¶¶ 19, 21. This demonstrates quite clearly that the Settlement Class overwhelmingly favors the Settlement.

The proposed Settlement provides substantial benefits to the Settlement Class, is fair, reasonable, and adequate, and comports in all respects with Rule 23. As discussed below, given the amount of work performed by Plaintiffs’ Counsel, the outstanding result achieved, and other applicable factors, the Court should find that the fee and expense requests are reasonable and should be approved. The service awards requested by Plaintiffs are also within the range of those awards approved by this Court and are warranted to recognize the time and effort Plaintiffs committed

² The deadline for timely objections to, and requests for exclusion from, the Settlement is February 15, 2025. On or before March 14, 2025, or as otherwise ordered by the Court, the Parties will file a supplemental pleading to update the Court and address any objections or requests for exclusion.

to this case, which was indispensable to its successful resolution. *See, e.g., Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *19 (D.N.J. Mar. 22, 2013) (approving incentive awards of \$5,000-\$6,000). Accordingly, this Court should grant the instant motion and approve the requested amounts.

II. FACTUAL BACKGROUND AND SETTLEMENT PROCESS

A. The Litigation

This nationwide action arose out of widespread complaints of unreasonable windshield failures in certain model Subaru vehicles. Class Counsel spoke with numerous vehicle owners and examined photographs and voluminous NHTSA vehicle owner questionnaires and other reports, and conducted a technical review of issues and careful analysis of relevant caselaw before filing suit. *See* Counsel Dec. ¶ 5. Thereafter, Class Counsel interviewed many other putative Class Members, reviewed vehicle repair records, analyzed prior Technical Service Bulletins, analyzed symptoms of the alleged defect in the vehicles, reviewed Subaru owners' and warranty manuals, researched publicly available documents and monitored online discussions to determine the extent to which the alleged defect affected the putative Class, as well as Subaru's alleged knowledge. *Id.* at ¶¶ 4, 6.

The initial class action complaint in this action was filed on October 18, 2019 by Christine Powell. ECF 1. Plaintiff Powell filed an amended complaint on October 24, 2019. ECF No. 5. On November 12, 2019, Plaintiff Powell and additional plaintiffs filed a second amended complaint on behalf of a putative nationwide class and certain state sub-classes which included additional class vehicles. ECF No. 12. Subsequently, after additional lawsuits were filed, this Court consolidated the cases

into this Action. ECF No. 25. Thereafter, on February 6, 2020, sixteen named plaintiffs filed a consolidated class action complaint. ECF 27.

On March 6, 2020, Defendants filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). ECF No. 32. On April 29, 2020, a later filed action, *Zaback v. Subaru of America, Inc.*, 1:20-cv-02845 (D.N.J), was consolidated into the Action. ECF No. 38. On May 13, 2020, Defendants filed a supplemental motion to dismiss the *Zaback* claims. ECF 43. On May 28, 2020, after extensive research and effort, Plaintiffs filed a comprehensive brief in opposition to Defendants' motion to dismiss and supplemental motion to dismiss. ECF No. 50. On June 15, 2020, Defendants filed a reply in support of their motions to dismiss. ECF No. 53. On August 7, 2020, Plaintiffs submitted supplemental authority in opposition to the motions to dismiss. ECF No. 58. The Court entered an Opinion and Order on November 24, 2020 dismissing certain claims and upholding all other claims. ECF Nos. 64, 65. On December 23, 2020, Plaintiffs filed an amended complaint conforming their claims to the Court's ruling on the motions to dismiss. ECF No. 69.

Thereafter, the parties negotiated a Confidentiality Order to govern the exchange of materials, which was entered on December 28, 2020. ECF No. 71. On January 18, 2021, Defendants filed their Answer to the operative amended complaint. ECF No. 73. The Parties then proceeded with substantial discovery which initially required the identification and negotiation of appropriate custodians and search terms for electronically stored information, followed by the exchange of written interrogatories and document requests to all Plaintiffs and all Defendants.

Substantial meet and confer sessions followed, as well as conferences with the Court, as the Parties debated the contours of discovery. Ultimately, over 16,000 documents were produced by Defendants, including significant numbers of documents from SBR which were in Japanese and had to be translated into English. Counsel Dec., ¶¶ 8-9.

In addition to written discovery and documents requests exchanged between the Parties, Plaintiffs also served multiple subpoenas upon third parties, and received and reviewed substantial volumes of documents received in response from Safelite Group, Inc. and several manufacturers of automobile windshields concerning the testing, manufacturing and repair of windshields. *Id.* at ¶ 10. Plaintiffs also served a subpoena for documents upon the former President of the Subaru National Retailer Advisory Board, Wally Sommer, and took the deposition of Mr. Sommer. In addition, Plaintiffs deposed SOA's former National Service Operations Manager and current Parts Collection Center Manager, Craig Jeffries, on multiple days. Meanwhile, Subaru deposed eleven Plaintiffs about their experiences. *Id.* at ¶¶ 10-11; Counsel Dec., ¶ 9.

B. Settlement Negotiations

After substantial preparation for the Rule 30(b)(6) deposition of Defendants' corporate designee in December 2022, which also resulted in the production of additional highly relevant documents, and in light of the substantial information that previously had been obtained and reviewed during the litigation—including the depositions of Plaintiffs—the Parties began to explore prospects for resolution. All the while, Defendants continued to produce additional documents responsive to

Plaintiffs' discovery requests.

On March 31, 2023, this Court stayed the case so that the Parties could participate in formal arm's length mediation sessions with Rodney Max, while also directing Subaru to continue producing additional discovery requested by Plaintiffs to aid the mediation process. ECF. No. 127. Thereafter, beginning in April 2023 and continuing for several months, the Parties attended multiple in-person mediation sessions, followed up by numerous additional settlement discussions among counsel regarding data and information being produced and reviewed, as well as numerous additional telephonic meetings with Mr. Max. Counsel Dec., ¶ 13. At all times, the settlement negotiations were at arm's length and often spirited. Counsel Dec., ¶ 13. The Parties kept the Court informed of their settlement discussions through regularly scheduled status conferences.

During the course of settlement negotiations, the Parties exchanged confidential engineering/testing information subject to the Confidentiality Order regarding the design of the subject windshields in the Settlement Class Vehicles and Subaru's investigation of product improvements. Counsel Dec., ¶¶ 14-15. Plaintiffs conferred with expert consultants regarding the information. *Id.* The Parties continued their negotiations over the course of many months, exchanging additional information related to the windshield investigation, including warranty and testing data. Based on the formal and informal discovery exchanged, Class Counsel gained a thorough understanding of the strengths and weaknesses of Plaintiffs' claims. *Id.* ¶ 15.

On November 3, 2023, the Parties advised the Court that they had reached an

agreement in principle as to all material terms of the Settlement. It was only after the Parties had reached an agreement as to all substantive terms of the Settlement that they then engaged in mediated efforts as to reasonable attorneys' fees and reimbursement of litigation expenses. Counsel Dec., ¶ 17. Ultimately, Mr. Max made a mediator's proposal, which the Parties agreed to. "The Parties agree[d] that Class Counsel may apply to the Court for an award of reasonable attorneys' fees and expenses, inclusive of costs up to, but not to exceed, the total combined Attorneys' fees and expenses, inclusive of costs up to, but not to exceed, the total combined sum of \$7,250,000 ("seven million, two hundred fifty thousand dollars"), which was the amount set forth in the mediator's proposal." Counsel Dec., ¶ 36; ECF No. 148, § N, ¶ 1. In addition, the Parties "agreed that Defendants will not oppose Plaintiffs' request, made as part of the Fee and Expense Application, that Defendants separately pay Service Awards of \$5,000 to each of the named Plaintiffs Jeffrey Barr, Arnold Milstein, Allan Zaback, and Brittany Funk, who have served as putative Representative Plaintiffs in the Action." *Id.* at § N, ¶ 2.

Due to the complexity of the Settlement, and to ensure the fairness of all aspects of the Settlement claims process, the Parties expended considerable resources and efforts over the ensuing months confirming certain data and technical issues concerning the windshields and the Settlement Class Vehicles, and drafting appropriate language for the Settlement Agreement and Notice, as well as working with the proposed Settlement Administrator and Subaru to insure the Settlement could be properly, fairly and timely implemented. *Id.* at ¶ 19. All the terms of the Settlement Agreement are the result of extensive, adversarial, and arm's-length

negotiations between experienced counsel for both sides. *Id.* at ¶¶ 13-16 The Settlement is set forth in complete and final form in the Settlement Agreement. *Id.* at ¶ 16.

On April 12, 2024, Plaintiffs moved for preliminary approval of the proposed Settlement. On October 3, 2024, this Court granted Preliminary Approval of the Settlement, and certified a Settlement Class consisting of:

All natural persons who are residents of the continental United States, Alaska, or Hawaii, currently or previously owning or leasing a Settlement Class Vehicle originally purchased or leased in the continental United States, Alaska, or Hawaii.

ECF. No. 155 at 23.³

III. MATERIAL TERMS OF THE PROPOSED SETTLEMENT

As described below, the Settlement provides for significant extended warranty protection and reimbursement of previous out-of-pocket repair expenses related to

³ Excluded from the Settlement Class are (a) all Judges who presided over the Action and their spouses; (b) all current employees, officers, directors of Defendants and their immediate family members; (c) any affiliate, parent, or subsidiary of Defendants and any entity in which Defendants have a controlling interest; (d) used car dealers; (e) anyone who purchased a Settlement Class Vehicle solely for resale; (f) anyone who purchased a Settlement Class Vehicle with a salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a result of a total loss; (g) issuers of extended vehicle warranties and service contracts; (h) any Settlement Class Member who, prior to the date of the Settlement Agreement, settled with and released Defendants or any Released Parties from any Released Claims; (i) any Settlement Class Member filing a timely and proper Request for Exclusion from the Settlement Class. ECF. No. 155 at 23-24.

the alleged defect in the Settlement Class Vehicles, in exchange for a release of claims for the purported defect.

A. Extended Warranty With Free Post-Countermeasure Replacement Windshield for Class Vehicles

Pursuant to the Settlement, effective three business days following the deadline for Settlement Class Members to submit Claims for Reimbursement of expenses covered by the Settlement, SOA will extend its New Vehicle Limited Warranty to cover Qualifying Cracks in Settlement Class Vehicles for a period of eight years or 100,000 miles, whichever occurs first, from the In-Service Date of the Settlement Class Vehicle. This Settlement Extended Warranty provides a one-time replacement of a pre-countermeasure windshield with a post-countermeasure windshield, at which time the Settlement Extended Warranty shall expire. The new windshield will be manufactured with a revised process that substantially reduces the likelihood of a crack/damage occurring to a windshield from a minor impact and residual stress. ECF No. 149, at ¶ 3.

The Settlement Extended Warranty will cover 100% of all parts and labor costs associated with the replacement of the windshield due to a Qualifying Crack—i.e., one that displays the signs of cracking due to excessive residual stress in the glass, rather than from substantial impact—performed by an Authorized Subaru Dealer, and includes the recalibration of the Eyesight® driver assistance system. This is a savings of over \$1,100 on average, per person, who gets a replacement

windshield under the warranty. Counsel Dec., ¶ 22. This relief directly addresses the alleged defect and claims asserted in this case. In the course of negotiating the Settlement, Class Counsel consulted with a valuation expert who estimated the value of this extended warranty relief to be a minimum of \$52.6 million, and depending on the actual claim scenario, could exceed \$100 million or more. *Id.* Further, the Settlement Extended Warranty is transferable among owners/lessees during its coverage period.

B. Reimbursement of Out-of-Pocket Expenses

The Settlement provides for a fair, equitable, and straightforward claims process for Settlement Class Members. Under the Settlement, Subaru agrees to reimburse former and current owners and lessees of Settlement Class Vehicles for unreimbursed out-of-pocket expenses for replacing or repairing windshields that suffered damage due to the alleged residual stress. Additionally, the Parties dedicated substantial time and efforts devising a fair process for Settlement Class Members to show that their loss was caused by the alleged defect as opposed to impact damage that would have caused a cracked windshield regardless of any alleged defect. Counsel Dec., ¶¶ 25-26.

To qualify for reimbursement, claimants must first provide sufficient Proof of Repair Expense, which shows evidence the claimant paid for a windshield replacement in a Settlement Class Vehicle. Next, there are two alternative ways or

tiers in which Settlement Class Members can submit proof that their vehicle experienced a Qualifying Crack.⁴ Under Tier 1, claimants who provide Proof of Repair Expense and a photograph of the windshield before a repair was performed which shows that their windshield experienced a Qualifying Crack will be entitled to the following substantial monetary recovery, which is intended to reimburse the Claimants not only for their out-of-pocket losses, but also for the inconveniences they suffered in having to repair or replace their windshield on one or more occasions: (a) One prior repair with a photo of a Qualifying Crack entitles the

⁴ The Parties recognized that the integrity of certain aspects of the claims process in this Action were susceptible to potential abuse or fraudulent claims and therefore took steps to ensure that Settlement Class Members receive reimbursement for expenses associated with Qualifying Cracks but not for damage that is not reasonably associated with the alleged defect in the windshields. Accordingly, certain portions of the Settlement Agreement and the Declaration of John Gray identifying the precise nature and physical description of the Qualifying Crack have been redacted on the public docket until the deadline for submitting Claims Forms for Reimbursement ends. This measure was taken to prevent the technical details from being used to support a Claim for reimbursement involving damage to a windshield where the damage was not indicative of a crack caused by the alleged defect. *See* Class Counsel Dec., at ¶ 23. To ensure that all potential Settlement Class Members have an opportunity to review the unredacted version of the Settlement Agreement and the Exhibits thereto before the deadline to seek exclusion from this Settlement, the unredacted versions of Plaintiffs' Memorandum of Law in Support of Preliminary Approval, along with the Settlement Agreement, and the Exhibits thereto are being filed on the public docket three business days following the deadline for submitting Claims and Claim Forms. ECF No. 148, at § E. 3. The Settlement Administrator also will post the unredacted version of the Settlement Agreement and the Exhibits thereto on the Settlement Website three business days following the deadline for submitting Claims and Claim Forms. *Id.* at § E. 4. Any Settlement Class Member who submitted a Claim prior to the unredacted version of the Agreement being filed on the public docket may, after the unredacted version is filed, submit a Request for Exclusion prior to the deadline for such submissions, and such Request for Exclusion will take priority. *Id.* at § E. 3.

Settlement Class member to **reimbursement of 125%** of the costs incurred repairing or replacing the windshield; (b) Two prior repairs with photos of the Qualifying Crack entitles the Settlement Class member to **reimbursement of 150%** of the costs incurred repairing or replacing the windshield (c) Three or more repairs with photos of Qualifying Cracks entitles the Settlement Class member to **reimbursement of 200%** of the total costs incurred repairing or replacing the windshield. There is no limit on the total amount of the Tier 1 claims to be paid by Subaru.

Under Tier 2, Claimants who do not have photographic proof of the damage suffered to their windshields still have the ability to obtain a significant monetary recovery upon completing a Claims Form Photo Questionnaire. This claims process was extensively negotiated and carefully crafted to balance the ability of a claimant to submit proof of a Qualifying Crack against Subaru's interest in not paying for damages not caused by the alleged defect. Counsel Dec., ¶¶ 23. In this process, Claimants with Proof of Repair Expense but without contemporaneous photographs are able to submit their claim via the Settlement Website and are asked to select a photograph from an array of six photographs that most closely resembles the damage they experienced with their windshield. Six photographs, drawn from a pool of photographs carefully curated by the Parties that show damaged windshields caused either by residual stress (*i.e.*, a Qualifying Crack) or by substantial impact from an object, are randomly displayed on the Settlement Website when the Claim is being

submitted. *Id.* at ¶ 26. In picking the photograph that most closely resembles the damage they suffered, Claimants who select a photograph depicting a Qualifying Crack will be entitled to recover 100% of the actual cost incurred for that repair. These claimants must attest under oath to the absence of any photographic evidence of the damage they experienced and that the photograph they selected most closely resembles the damage their vehicle experienced.

The total payment for Tier 2 claims is subject to a conditional \$2 million limit (“Tier 2 Collar”). Based on historical claims and warranty data maintained by Subaru, the Parties believe that the total value of Tier 2 claims will be below \$2 million. Class Counsel Dec, ¶ 27. If the sum of honored Tier 2 claims does not exceed \$2 million, Subaru will pay 100% of each honored claim. ECF No. 148, at § G. 2(e)(ii)(3)(a). Should the sum exceed \$2 million, the reimbursement for each honored claim will be proportionally reduced using the formula:
$$\text{Reduced Amount} = \text{Original Claim Amount} \times \left(\frac{\text{Payment Collar}}{\text{Total Honored Claims Sum}} \right).$$
 Id. at § G. 2(e)(ii)(3)(b). In the unexpected event that the volume and dollar amount of claims accepted for Tier 2 payment are of such amount that claimants would receive less than 30% of the approved reimbursement amount submitted, the Parties, with the inclusion of the Settlement Administrator, shall meet and confer to determine why the claims so substantially exceeded projections, and whether there is evidence that the claims process was tainted by fraudulent claims. In such situation, the Parties

agree that as part of the meet and confer process, Subaru may be required to engage social media or other appropriate experts at their own expense to ascertain the existence and extent of fraudulent claims. The Parties will work in good faith to insure that, absent clear evidence of fraud, Defendants will supplement the funds available to pay the valid and approved Tier 2 claims such that no successful claimant will receive less than 25% of their approved out of pocket losses submitted. *Id.* at § G. 2(e)(ii)(3)(c).

Claimants who do not meet the requirements of Tier 1 or Tier 2 will not be eligible for reimbursement of past expenses, but they will remain entitled to the benefits of the Extended Warranty going forward. *Id.* at § G. 2(e)(ii)(3)(f). As of January 15, 2025, 12,897 claims have been submitted. Under the Agreement, they will be evaluated by JND after the Effective Date of the Settlement. Uhrig Dec. ¶ 17; ECF No. 148 § H.

C. Release of Claims/Liability

In consideration of the Settlement benefits, Defendants and their related entities and affiliates (the “Released Parties,” as defined in the Agreement, ECF No. 148, ¶ 23.) will receive a release of claims and potential claims related to alleged defects in the windshields of the Settlement Class Vehicles, including the claims that were or could have been asserted in the litigation (the “Released Claims,” as defined in the Agreement, *Id.* at ¶ 22). The scope of the release properly reflects the issues,

allegations and claims in this case, and specifically excludes claims for death, personal injuries, and property damage (other than damage to the Settlement Class Vehicle). *Id.*

D. Notice, Claim Submission and Administration

The Court provisionally appointed JND as the Settlement Administrator. ECF No. 155 at 23. Notice was disseminated to Settlement Class Members pursuant to the Notice Plan as described in the Settlement Agreement (ECF No. 148, § I, ¶2), and approved by this Court. *See* ECF 155 at 21-22; Uhrig Decl., ¶¶ 3-10. Pursuant to the Notice Plan, JND mailed the short-form notice to approximately 1,939,269 Settlement Class Members on December 17, 2024 via first class mail. *Id.* at ¶ 8. The Notice Plan was designed to be the best practicable notice under the circumstances and comport with all due process requirements. Indeed, the Court determined that “the proposed notice program satisfies both Rule 23 and due process requirements.” ECF No. 155 at 22.

Pursuant to the Notice Plan, Settlement Class Members were located based on the Settlement Class Vehicles’ VINs and using the services of Polk/IHS/Markit to acquire contact information for current and former owners and lessees of the Settlement Class Vehicles based on vehicle registration information from the state Departments of Motor Vehicles (“DMVs”) for all fifty states and U.S. Territories. ECF 148, § I. 2(a)(ii).; Uhrig Decl., ¶ 5. JND performed address research using the

United States Postal Service (“USPS”) National Change of Address (“NCOA”)⁵ database to obtain the most current mailing address information for potential Settlement Class Members. *Id.* ¶ 7.

For any Class Notice that was returned as undeliverable after mailing, JND re-mailed notices for those returned pieces for which forwarding addresses were provided. *Id.* ¶ 10. In the cases in which no forwarding address was provided, JND conducted an advanced address search (skip trace) in an attempt to find a current address, and, where such address was available, mailed Class Notice to the newly obtained address. *Id.*

In addition to the mailed Class Notice, on December 17, 2024, JND also established a dedicated Settlement Website, www.subaruwindshieldsettlement.com, which includes details about the lawsuit, the Settlement and its benefits, and the Settlement Class Members’ legal rights and options; instructions on how and when to submit a claim for reimbursement; instructions on how to contact JND by e-mail, mail or (toll-free) telephone; copies of the Long-form Class Notice, the Settlement Agreement, Motions and Orders relating to the Preliminary and Final Approval processes, and all submissions and documents relating thereto; important dates pertaining to the Settlement including the procedures and deadlines to opt-out of or object to the Settlement, the procedure and deadline to submit a claim for reimbursement, and the date, place and time of the Final Fairness Hearing; and answers to Frequently Asked Questions (FAQs). ECF 148, §I, ¶ 2(a)(vi); Uhrig Dec.,

⁵ The NCOA database is the official USPS technology product that makes changes of address information available to mailers to help reduce undeliverable mail pieces.

¶ 11. As of January 15, 2025, the Settlement website has tracked 61,103 unique users with 295,015 page views. *Id.* at ¶ 12.

A long-form Notice, substantially in the form attached as Exhibit A to the Settlement Agreement (ECF No. 148, Ex. A), which provides more comprehensive information about the Settlement, has been available on the Settlement Website since December 17, 2024. Uhrig Dec., ¶ 11. The long-form Notice is detailed and complies with Rule 23(c)(2)(B). It clearly and concisely states in plain, easily understood language the nature of the action; the Settlement Class definition; the class claims, issues and/or defendant's positions; the Settlement terms and benefits available under the Settlement; Class Counsel's requested fee/expense award, and/or the Plaintiffs' requested service awards; the claim submission process including details and instructions regarding how and when to submit a Claim for reimbursement and the required proof/documentation for a Claim; the release of claims under the Settlement; the manner of and deadline by which Settlement Class Members may object to the Settlement; the manner of and deadline by which a Settlement Class Member may request to be excluded from the Settlement; the binding effect of the Settlement and release upon Settlement Class Members that do not timely and properly exclude themselves from the Settlement; the procedure by which Settlement Class Members may, if they so wish, appear at the final fairness hearing individually and/or through counsel; how to contact the Settlement Administrator (through the dedicated toll-free number, email or by mail) with any questions about the settlement or requests for assistance, the identities of and contact information for Class Counsel; and other important information about the Settlement and the

Settlement Class Members' rights. *See* ECF No. 148, Ex. A.

In the Preliminary Approval order, this Court found that the notice forms “fairly, accurately, and neutrally describe the claims and parties in the litigation as well as the terms of the proposed settlement and the identity of the parties entitled to participate in it.” ECF No. 155 at 22 (quoting, *Udeen*, 2019 WL 4894568, at *7 (quoting *Shapiro*, 2018 WL 3158812, at *7)).

Pursuant to the terms of the Settlement Agreement and the Preliminary Approval Order, Settlement Class Members have until February 15, 2025 to mail an objection or mail/submit online an opt-out request. Settlement Class Members have until January 31, 2025 to submit reimbursement claims. To date, there have been only 40 opt-out requests (.0020% of the Settlement Class) and 3 purported objections (.0001% of the Settlement Class). Uhrig Dec., ¶¶ 19, 21.

Upon final approval of the Settlement, for each complete claim that is approved, the Settlement Administrator will mail a reimbursement check to the Settlement Class Member within 60 days after the Effective Date of the Settlement. ECF No. 148 § H. 1. A. The Settlement provides that if a claim and/or its supporting documentation is incomplete or deficient, or qualifies for less than the full amount of the reimbursement sought by the Settlement Class Member, the Settlement Administrator, within 60 days after the Effective Date of the Settlement, will mail the Settlement Class Member a letter or notice outlining the deficiencies and allowing the Class Member to initiate a Second Review of the Settlement Administrator's decision within 30 days upon receipt of the Claim Decision and Option Selection Form. *Id.* at § H. 1(b). If a Second Review is requested, it will be conducted

independently and will not involve consultation with the employee who made the initial determination. *Id.* at § H. 2(d). Defendants shall bear all costs of the Second Review. *Id.* at § H. 2(h).

E. Proposed Class Counsel Fees, Litigation Expenses, and Representative Plaintiff Service Awards

After the Parties agreed upon all material terms of the Settlement, the Parties engaged in a subsequent mediation with Mr. Max in regard to the issues of Representative Plaintiff service awards and Class Counsel's reasonable attorneys' fees and expenses. Class Counsel Dec, ¶¶ 13, 17. Pursuant to a mediator's proposal, which the Parties agreed to, Defendants agreed to not oppose (a) Class Counsel's request for attorneys' fees and expenses in the combined aggregate amount of up to and not exceeding \$7.25 million, and (b) service awards of \$5,000 to each of the four Class Representative Plaintiffs. Class Counsel Dec., attached as Exhibit 2 to Plaintiffs' Brief in Support of Unopposed Motion for Final Approval of Class Action Settlement, ¶ 36. Significantly, the payments for reasonable fees/expenses and for the Representative Plaintiffs, up to the amounts agreed by the Parties, will not reduce or otherwise have any effect on the benefits the Settlement Class Members will receive under the Settlement. *Id.* The requested attorneys' fees and expenses and Representative Plaintiff Service Awards were expressly included in the short-form notice mailed to over 1.9 million Class members, in the long-form notice available on the Settlement Website, and clearly stated in the FAQ section on the website. No objections have been filed by anyone based on the amount of attorneys' fees/expenses or service awards. *Id.*

IV. ARGUMENT

Pursuant to the Settlement Agreement, Class Counsel seek a combined fee and expense award of \$7,250,000. Plaintiffs also seek approval of \$5,000 service awards for each of the four Plaintiff Class Representatives. The requested awards are reasonable in light of the work performed and the results achieved in this case, and are consistent with awards approved by other courts in this District. The Settlement is the result of the dedicated efforts of Class Counsel involving a case with complex issues of fact and law. Moreover, the requested fees, expenses, and service awards will be paid separately from the benefits made available to the Settlement Class, resulting in no reduction of the amounts available to Settlement Class Members via reimbursement. ECF No. 148, §§ N ¶ 1, 3.

A. Legal Standard

Courts “may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement,” where a settlement is obtained for the class. Fed. R. Civ. P. 23(h). “The awarding of fees is within the discretion of the Court, so long as the Court employs the proper legal standards, follows the proper procedures, and makes findings of fact that are not clearly erroneous.” *In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at *15 (D.N.J. May 14, 2012) (citing *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 727 (3d Cir. 2001)). When awarding fees in a class action settlement, the Court is “required to clearly articulate

the reasons that support its fee determination.” *Henderson*, 2013 WL 1192479, at *14 (citations omitted). Here, by negotiating the fee at arm’s length, the Parties followed the Supreme Court’s directive that “[i]deally, of course, litigants will settle the amount of a fee.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Further, courts in this Circuit “routinely approve incentive awards” to named plaintiffs. *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000).

In class action settlements, attorneys’ fees are assessed either through the percentage-of-recovery method or through the lodestar method. *Granillo v. FCA US LLC*, 2019 WL 4052432, at *3 (D.N.J. Aug. 27, 2019) (quoting *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006)). Which of these two methodologies to use is “within the district court’s sound discretion.” *Charles v. Goodyear Tire & Rubber Co.*, 976 F. Supp. 321, 324 (D.N.J. 1997). Here, where there is no common fund, the lodestar method is typically used to assess fees. *See, e.g., Phillips v. Philadelphia Hous. Auth.*, 2005 WL 1899504, at *3 (E.D. Pa. Aug. 8, 2005) (utilizing lodestar method when there was no common fund); *Talone v. Am. Osteopathic Ass’n*, 2018 WL 6318371, at *16 (D.N.J. Dec. 3, 2018) (same).

The Court should apply the lodestar method to determine a reasonable fee because the fees and expenses will be paid in addition to the benefits provided directly to the Settlement Class. “Here, the settlement benefits are not derived from a set pool of funds, and no specific monetary figure has been set aside to provide

relief to the Class Members.” *Granillo*, 2019 WL 4052432, at *3.⁶ When applying this method, the Court “determines an attorney’s lodestar by multiplying the number of hours he or she reasonably worked on a client’s case by a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer.” *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). The Court “is not required to engage in this analysis with mathematical precision or ‘bean-counting’” and “may rely on summaries submitted by the attorneys” without “scrutiniz[ing] every billing record.” *Henderson*, 2013 WL 1192479, at *15 (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306- 07 (3d Cir. 2005)); see *Fox v. Vice*, 563 U.S. 826, 838 (2011) (“[T]rial courts need not, and indeed should not, become green-eyeshade accountants.”)

To evaluate the reasonableness of the fee, the district court is to consider ten factors, most of which were first identified in *Gunter*: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted

⁶ As such, it is common for the lodestar method to be used by Courts in class action settlement against automobile manufacturers where settlement benefits are not derived by a common fund. *Id.*; e.g., *Skeen v. BMW of N. Am., LLC*, 2016 WL 4033969, at *18 (D.N.J. July 26, 2016); *Henderson*, 2013 WL 1192479, at *16; *Gray v. BMW of N. Am., LLC*, 2017 WL 3638771, at *6 (D.N.J. Aug. 24, 2017).

to the case by plaintiffs' counsel; (7) the awards in similar cases; (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigation; (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained; and (10) any innovative terms of settlement. *Halley v. Honeywell Int'l, Inc.*, 861 F.3d 481, 496 (3d Cir. 2017) (citing *Gunter*, 223 F.3d at 195, n.1, and *In re Diet Drugs*, 582 F.3d 524, 541 (3d Cir. 2009)).

These factors are not considered exhaustive, nor should they be applied formulaically. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 301-02. The district court has discretion to award fees, so long as it applies the correct legal standard and procedures and makes findings of fact that are not clearly erroneous. *See In re Cendant Corp. PRIDES Litig.*, 243 F.3d at 727.

B. The Court Should Approve the Fee Award Mediated and Agreed to by the Parties.

“In a certified class action, the court may award reasonable attorney’s fees and . . . costs that are authorized by law or by the parties' agreement.” Fed. R. Civ. P. 23(h). Here, at the conclusion of the mediation with Mr. Max, after all substantive terms for the Class had been agreed upon, the parties agreed to the mediator’s proposal that Defendants would not oppose Plaintiffs’ motion requiring Defendants

to pay a total of \$7,250,000 for Plaintiffs' Counsel's fees and litigation expenses, and \$5,000 to each of the four Class Representatives, separate and apart from the benefits provided to Settlement Class Members. ECF No. 148, § N ¶¶ 1-3.

Courts generally prefer that litigants agree to a fee award. See *Hensley*, 461 U.S. at 437. ("Ideally, of course, litigants will settle the amount of the fee."); *In re Ford Motor Co. Spark Plug Engine Prod. Liab. Litig.*, 2016 WL 6909078, at *9 (N.D. Ohio Jan. 26, 2016) ("Negotiated and agreed-upon attorneys' fees as part of a class action settlement are encouraged as an 'ideal' toward which the parties should strive."). Where, as here, the fee award is to be paid separately by the defendant rather than as a reduction to a common fund, the "Court's fiduciary role in overseeing the award is greatly reduced, because there is no potential conflict of interest between attorneys and class members." *Rossi v. Proctor & Gamble Co.*, 2013 WL 5523098, at *9 (D.N.J. Oct. 3, 2013); accord *Granillo*, at *2 ("[O]ne important consideration in this Court's analysis is the . . . provision that any awards of attorneys' fees and costs is wholly separate and apart from the relief provided for the Settlement Class; thus relief will not be reduced by an award of the fees."); *Haas*, 2019 WL 413530, at *9 ("[T]he amount of attorneys' fees was negotiated as a separate aspect of the settlement agreement, which further supports reasonableness.").

(1) Counsel's Lodestar Amount Is Reasonable

Plaintiffs' Counsel's lodestar plus expenses is \$473,808.22. Counsel Decl. ¶¶ 37, 40.⁷ Counsel billed their time at their actual billing rates contemporaneously charged to hourly clients and those rates are consistent with the hourly rates routinely approved in this Circuit in complex class action litigation. *Id.* at ¶ 39. See *Maldonano v. Houstoun*, 256 F.3d 181, 184-85 (3d Cir. 2001) (finding an attorney's usual billing rate to be a starting point for assessing reasonableness); *Loughner v. Univ. of Pittsburgh*, 260 F.3d 173, 180 (3d Cir. 2001) ("The court 'should assess the experience and skill of the prevailing party's attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.'") (quoting *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir.1990)). The first step is to ascertain the appropriate hourly rate, based on the attorneys' customary billing rate and the "prevailing market rates" in the relevant community. See *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *17 (D.N.J. Mar. 26, 2010). The rates of \$475 to \$1,050 per hour noted for the attorneys working on this matter are within the ranges of rates approved by other courts in this Circuit. See *Cunningham v. Wawa, Inc.*, 2021 WL 1626482,

⁷ See also, Declaration of Edwin J. Kilpela, Jr., Wade Kilpela Slade LLP, attached as Exhibit 1; Declaration of Peter A. Muhic, Muhic Law LLC, attached as Exhibit 2; Declaration of Russell D. Paul, Berger Montague PC, attached as Exhibit 3; Declaration of Kimberly A. Justice, Freed Kanner London & Millen, LLC, attached as Exhibit 4; Declaration of Cody Padgett, Capstone Law APC, attached as Exhibit 5.

at *8 (E.D. Pa. Apr. 21, 2021) (approving hourly rates of \$235 to \$975); *In re Imprelis Herbicide Mktg., Sales Practices & Prod. Liab. Litig.*, 296 F.R.D. 351, 370 (E.D. Pa. 2013) (approving fee request where hourly rates peaked at \$1,200 and several attorneys' rates were at or above \$900). These rates are consistent with rates approved in numerous class action cases throughout the country. *See, e.g., Murphy, et al v. Toyota Motor Corp., et al.*, No. 4:21-cv-00178 (E.D. Tex. Nov. 19, 2024), Doc. No 150 (approving fees where Plaintiffs' Counsel's hourly rates range from \$615 to \$1,175 for partners, \$375 to \$725 for associates, \$385 to \$1,000 for counsel and \$125 to \$400 for paralegals); *Zakikhani v. Hyundai Motor Co.*, 2023 WL 4544774, at *9 (C.D. Cal. May 5, 2023) (approving rates in automotive defect class action similar to Plaintiffs' Counsel's rates here).

The second step considers whether the billable time was reasonably expended. *Id.* "Time expended is considered 'reasonable' if the work performed was 'useful and of a type ordinarily necessary to secure the final result obtained from the litigation.'" *Saini v. BMW of N. Am., LLC*, 2015 WL 2448846, at *15 (D.N.J. May 21, 2015) (quoting *Public Interest Research Group of N.J., Inc. v. Windall*, 51 F.3d 1179, 1188 (3d Cir. 1995)). The Class Counsel Declaration recounts the time and expenses incurred by Class Counsel, and other firms or attorneys directed by them, and indicates that the professional time devoted to this case was reasonable. Class Counsel Dec. ¶¶ 37-40. As discussed *supra*, and in the accompanying declaration of

Class Counsel, this matter involved significant work both pre-litigation, at the pleadings stage, during discovery, and during the negotiations that led to the resolution of this matter. *Id.* at ¶¶ 4, 6-15; *see e.g., McLennan v. LG Electronics USA, Inc.*, 2012 WL 686020, at *10 (D.N.J. Mar. 2, 2012) (time spent investigating the case, responding to class members, working with experts, opposing motion to dismiss, and negotiating and crafting settlement was compensable).

As of January 14, 2025, Plaintiffs' Counsel have already devoted 6083.5 hours of contingent work litigating this matter and have expended \$48,731.97 in costs/expenses. Counsel Dec. ¶¶ 37-38. The requested fee amount of \$7,250,000 is merely a 1.53 multiplier of Class Counsel's actual lodestar plus expenses of \$4,737,808.22.⁸ *See Saini v. BMW of N. Am., LLC*, 2015 WL 2448846, at *15 (D.N.J. May 21, 2015) ("The lodestar multiplier is then obtained by dividing the proposed fee award by the lodestar amount."). The multiplier will decrease over time as Class Counsel continue to perform additional work on behalf of the Settlement Class, including supervising the ongoing administration of the Settlement claims process, responding to class member inquiries, providing supplemental updates to this Court and preparing for and appearing at the upcoming hearing regarding final

⁸ The lodestar figure is "presumptively reasonable" when it is calculated based on a reasonable hourly rate as applied to a reasonable number of hours expended. *Planned Parenthood of Cent. N.J. v. Attorney Gen. of N.J.*, 297 F.3d 253, 265 n.5 (3d Cir. 2002) (citations omitted).

approval of the Settlement, as well as responding to additional inquiries from Class Members and working with JND and counsel for Defendants in regard to any administration issues that might arise after the Effective Date.⁹

Courts routinely find that a multiplier of up to four is fair and reasonable in complex class action cases. *See Boone v. City of Phila.*, 668 F. Supp. 2d 693, 714 (E.D. Pa. 2009); *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 341(3rd Cir. 1998) (quoting 3 Herbert Newberg & Alba Conte, *Newberg on Class Actions*, §14.03 at 14-5 (3d ed. 1992)). The Third Circuit has observed that it has “approved a multiplier of 2.99 in a relatively simple case.” *Milliron v. T-Mobile USA, Inc.*, 423 Fed. Appx. 131, 135 (3d Cir. 2011) (citing *Cendant PRIDES*, 243 F.3d at 742)¹⁰; *see also In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *8 (D.N.J. May 31, 2012) (finding a multiplier of 1.6 “is an amount commonly approved by courts of this Circuit”); *McLennan*, 2012 WL 686020, at *10 (finding a multiplier of 2.93 appropriate where, inter alia, “[c]lass counsel prosecuted this matter on a wholly contingent basis, which placed at risk their own resources, with no guarantee of recovery”); *McCoy v. Health Net, Inc.*,

⁹ Class Counsel estimate they will spend a minimum of an additional 250 hours, and likely more, on these items. Counsel Dec. ¶ 41.

¹⁰ The Third Circuit has also said of the Cendant PRIDES fee award, “we approved of a lodestar multiplier of 2.99 in *Cendant PRIDES*, in a case we stated ‘was neither legally nor factually complex.’ The case lasted only four months, ‘discovery was virtually nonexistent,’ and counsel spent an estimated total of 5,600 hours on the case.” *In re AT&T Corp. Secs. Litig.*, 455 F.d 160, 173 (3d Cir. 2006).

569 F. Supp. 2d 448,479 (D.N.J. 2008) (finding a multiplier of almost 2.3 to be reasonable); *see also, infra*, pp. 34-35 (collecting cases). As such, the 1.53 multiplier here is reasonable and should be approved.

(2) The Percentage of Recovery Method Cross-Check Also Supports the Requested Fee

“Regardless of the method chosen, [the Third Circuit has] suggested it is sensible for a court to use a second method of fee approval to cross-check its initial fee calculation.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 300. In lodestar cases, courts often apply the percentage-of-recovery method to “cross-check” the reasonableness of the fee. *See, e.g., Granillo*, 2019 WL 4052432, at *8 (applying lodestar method before conducting a cross-checking “using the percentage of recovery method”); *In re Philips*, 2012 WL 1677244, at *17 (same).

Because the monetary recovery portion of the Settlement involves a claims submission process, the deadline for submitting claims for reimbursement has not yet expired, and it is not yet known how many claims will be submitted or the amounts and validity of such claims, a definitive valuation of this Settlement cannot be made. However, given that there are 1,460,035 Settlement Class Vehicles, Plaintiffs’ warranty valuation consultant estimated the value of the warranty and reimbursement relief to exceed \$52.5 million, with the potential that the total relief could exceed \$100 million in value depending on less conservative claims scenarios. Class Counsel Dec., ¶ 22. Thus, even with the most conservative valuation of \$52.5

million, the total fees and expenses requested would equal just 13.8% of the settlement value. And again, the payment of these fees and expenses is not reducing any amount made available to the Class. Accordingly, under this cross-check, the requested fees and expenses are reasonable.

C. The *Gunter* Factors Support the Requested Fee

The *Gunter* factors also support Class Counsel's fee request as reasonable.

1. The Benefit to the Class Is Significant

The most important factor in assessing fees is the benefit provided to the class. See *Huffman v. Prudential Ins. Co. of Am.*, 2019 WL 1499475, at *7 (E.D. Pa. Apr. 5, 2019) (citation omitted); *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106, at *18 (D.N.J. Aug. 26, 2011). The total relief made available is the proper measure for evaluating the value of a settlement. See *Alin v. Honda Motor Co.*, 2012 WL 8751045, *19 (D.N.J. Apr. 13, 2012) (court held that the value should be based on the benefits made available to class members, and concluded that "even though the [replacement offered by the new warranty] payout will likely be far less than the maximum permissible, the fact remains that there is no cap on the size of the available fund in this case and full participation represents a ceiling on the value of the fund available to class members."); Here, Plaintiffs negotiated a settlement with robust warranty and reimbursement relief for Settlement Class Members, valued

conservatively by Plaintiffs consultant at over \$52.5 million. This is a significant benefit to the Class.

2. There Are No Objections to the Requested Fee/Expenses

Pursuant to the Court's Preliminary Approval Order, the deadline to make an objection or request an exclusion is February 15, 2025. ECF No. 155. Although the time period for filing objections has not yet expired, to date, there have been no objections to the proposed fee and expense award, which was included in the short-form and long-form notices, and described in the FAQs on the Settlement Website. Class Counsel Dec., ¶ 36.¹¹ Accordingly, the fact that no objections to attorneys' fees or service awards have been filed to date supports the requested fee and incentive award. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir. 1995) (finding that "silence constitutes tacit consent" to the requested award); *see also In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 435 (D.N.J. 2004) ("[T]he Court concludes that the lack of a significant number of objections is strong evidence that the fees request is reasonable."). The reaction of the Class thus weighs strongly in favor of settlement.

¹¹ There have been 3 objections that raised individual issues about the relief/claims process. Any objections will be addressed in a supplemental filing by Plaintiffs on or before March 15, 2025.

3. Class Counsel Are Efficient and Highly Skilled

Courts measure the skill and efficiency of class counsel “by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and performance and qualify of opposing counsel.” *In re Viropharma Inc. Secur. Litig.*, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016) (quoting *In re Computron Software, Inc.*, 6 F. Supp. 2d 313, 323 (D.N.J. 1998)).

Based on the credentials of Class Counsel, the Court concluded in granting preliminary approval that Class Counsel has “extensive experience in multi-state class actions and other complex litigation, including numerous class actions involving motor vehicle products liability claims[,] ... has also been involved in this litigation since its early stages [citation omitted] and throughout this time, has demonstrated a thorough knowledge of the applicable law... has invested a significant amount of time and resources in investigating the claims at issue, engaging in formal discovery, reviewing test results, consulting with technical experts, and negotiating the terms of the settlement through a lengthy formal mediation process.” ECF 155 at 10-11; *See* ECF Nos. 146-2, 146-3. Without the experience of Class Counsel, it is doubtful that the successful settlement of this matter could have been achieved, or that this outcome would have been resolved so

efficiently.

Further, Defendants retained a nationally renowned law firm with a reputation for skilled and vigorous advocacy in the defense of complex civil cases. To obtain any recovery at all, Class Counsel had to overcome legal opposition of the highest quality. As such, this factor weighs in favor of approval of the fee award.

4. The Complexity, Expense and Duration of Automotive Defect Litigation

This factor weighs “the probable costs, in both time and money, of continued litigation.” *See In re General Motors*, 55 F.3d at 812 (quoting *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 801 (3d Cir. 1974)). Resolution of automotive defect class action cases often comes after years of intense litigation. *See Granillo*, at *10 (resolution after four years of litigation); *Skeen v. BMW of North America, LLC*, No. 13-1531 (WHW), 216 WL 4033969 at *24-25 (D.N.J. July 26, 2016) (three years of litigation). In contrast, Class Counsel here have efficiently secured relief for the Class that is available now, and not simply the “speculative promise of a larger payment years from now.” *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *16. As such, this factor weighs in favor of reasonableness.

5. The Risk of Nonpayment for Class Counsel’s Efforts Was High

“Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval.” *In re Schering-Plough Corp.*

Enhance ERISA Litig., 2012 WL 1964451, at *7. At the outset of this case, Class Counsel faced substantial risk that the lawsuit would produce little or no fees for their efforts. As such, this factor weighs strongly in favor of the reasonability of the fee award, as courts of this District routinely hold. *See Granillo*, 2019 WL 4052432, at *10 (“Class Counsel undertook this case on a purely contingent basis and faced a risk of receiving no compensation at all if the litigation was unsuccessful.”).

6. Class Counsel Has Devoted Significant Time to the Cases

Plaintiffs’ Counsel has already devoted 6083.5 hours to prosecuting this case. Class Counsel Dec., ¶ 37, without any guarantee of recovery. As such, this factor weighs in favor of approving the fee request.

7. The Requested Fee Is Consistent with Awards in Similar Cases

In reviewing awards in similar cases, the Court must “(1) compare the actual award requested to other awards in comparable settlements; and (2) ensure that the award is consistent with what an attorney would have received if the fee were negotiated on the open market.” *Saini*, 2015 WL 2448846, at *18. The first of this analysis—a review of attorneys’ fees in similar class actions—demonstrates that the fee request here is manifestly reasonable. *See, e.g., Murphy, et al v. Toyota Motor Corp., et al.*, No. 4:21-cv-00178 (E.D. Tex., November 19, 2024), Doc. No 150 (awarding \$13,250,000 in fees; 17.1% of the value of the settlement, excluding

recall; 1.93 multiplier over counsel's submitted lodestar). *Cheng v. Toyota Motor Corp.*, 20-cv-00629 (E.D.N.Y. Dec. 20, 2022) (awarding \$28.5 million in fees and \$384,000 in expenses resulting in a 3.4 multiplier on counsel's lodestar that included anticipated future work); *Warner, et al. v. Toyota Motor Sales, U.S.A., Inc.*, 2:15-cv-02171 (C.D. Cal. May 21, 2017) (awarding \$9.75 million in fees resulting in a 2.92 multiplier); *Henderson*, 2013 WL 1192479, at *18 (\$3,000,000 in attorneys' fees where settlement provided warranty extensions and reimbursements); *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 171, 191 (D. Mass. 2015) (valuing relief at \$101,148,498 and awarding \$15,468,000 in fees, which is equivalent to 15.3% of the benefits conferred and two times the lodestar multiplier in suit involving claims of engine damage due to oil deposits in 480,000 vehicles); *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 609 (D.N.J. 2010) *rev'd and remanded sub nom. Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170 (3d Cir. 2012) (awarding attorneys' fees of \$9,207,248.19 based on 13.3% of the benefit conferred, which consisted of repair reimbursements and service work in connection with water leakage problems affecting 3 million vehicles); *O'Keefe v. Mercedes-Benz*, 214 F.R.D. 266, 304 (E.D. Pa. 2003) (\$4,896,783.00 in fees justified in class action involving allegedly defectively design rear lift-gate latch).

The second part of the analysis looks at whether the fee request reflects the "market price for attorney services." *Saini*, 2015 WL 2448846, at *19. For fees

calculated by the lodestar method, the Court analyzes whether “the hourly billing a rates are consistent with hourly rates routinely approved by this Court in complex class action litigation.” *Id.* As stated above, Class Counsel’s rates are entirely consistent with the rates approved in other cases. Class Counsel Dec., ¶ 37. As such, this factor weighs in favor of approving the fee request.

8. The Entire Settlement Value Is the Result of Class Counsel’s Efforts

The value and benefits of the entire settlement have been secured through the efforts of Class Counsel. Such benefits are not attributable “to the efforts of other groups, such as government agencies conducting investigations.” *In re AT&T Corp.*, 455 F.3d 160, 165 (3rd Cir. 2006). Class Counsel were the only ones investigating the claims at issue in this case and initiated and actively litigated this action. They were not “aided by the efforts of any governmental group.” *Id.* at 173. Instead, “the entire value of the benefit accruing to class members is properly attributable to the efforts of class counsel.” *Id.* As such, this factor weighs in favor of approval.

9. The Requested Fee Is Commensurate with Customary Percentages in Private Litigation

If Class Counsel had agreed to litigate on behalf of the individual, the customary contingency fee would be between thirty and forty percent of the recovery. *See Wallace v. Powell*, 288 F.R.D. 347, 375 (“In private contingency fee case, attorneys routinely negotiate agreements for between thirty percent (30%) and

forty percent (40%) of the recovery.”) (citing cases). Further, where, as here, Class Counsel has sought approval of the fee by the class representatives at the time of the attorney’s retention, it will support approval. Class Counsel Dec., ¶ 35; *See, e.g., Devlin v. Ferrandino & Son, Inc.*, 2016 WL 7178338, at *9 (E.D. Pa. Dec. 9, 2016). Nevertheless, Class Counsel is seeking fees to be paid directly and separately by Defendants and is not claiming a portion of any funds available to the Class.

10. The Innovation of the Terms of the Settlement

Class Counsel were very innovative in negotiating a means for Class Members who incurred a damaged windshield in the past to be able to submit a claim for reimbursement despite having no photographic proof of the damage. Class Counsel Dec., ¶ 26; Uhrig Dec., ¶16. This was accomplished by way of the “Tier 2” claims procedure. Such innovation supports approval of the requested fee. *See, e.g., In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. 2d 442, 483-85 (E.D. Pa. 2008) (“[W]e cannot deny that the Settlement Agreement provisions . . . were indeed innovative at the time they were drafted and have already served as models for other cases. . .”); *In re AT&T Sec. Litig.*, 455 F.3d 160, 165-66 (3d Cir. 2006) (approving fees and noting that “innovative terms of settlement” are a factor in examining class counsel fees and costs); *Monteleone v. Nutro Co.*, No. 14-801 (ES) (JAD), 2016 U.S. Dist. LEXIS 85154, *18-19 (D.N.J. Jun. 30, 2016) (noting that innovation supports fee award because “[t]he Settlement terms give Settlement Class Members multiple

options”).

D. The Court Should Approve Plaintiffs’ Counsel’s Expenses

There is little question that “[c]ounsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.” *Careccio v. BMW of N. Am. LLC*, 2010 WL 1752347, at *7 (D.N.J. Apr. 29, 2010) (quoting *In re Safety Components Int’l, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001)).

In this case, Plaintiffs’ Counsel incurred \$48,731.97 in reasonable and necessary expenses incurred in prosecuting this case for the common benefit of Class Members. Class Counsel Dec., ¶ 37. Defendants agreed to pay such expenses separately from the class relief. ECF No. 148, § N ¶ 1. Plaintiffs’ Counsel advanced these necessary out-of-pocket costs without assurance that they would ever be repaid. The requested amount is reasonable and should be approved. *See, e.g., In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *19 (approving expenses that were “adequately documented and reasonably and appropriately incurred in the prosecution of the case.”); *In re Datatec Sys. Sec. Litig* 2007 WL 4225828, at *9 (D.N.J. Nov. 28, 2007) (approving legitimate litigation costs).

E. The Court Should Approve Plaintiffs’ Service Awards

Plaintiffs also request that the Court approve the payment of a service award to each Settlement Class Representative in the amount of \$5,000. Courts routinely

approve incentive awards to class representatives because they: “(1) ... have conferred a benefit on all class members by their willingness to bring the litigation; 2)... should be rewarded for taking action that is in the public interest; and 3) public policy favors compensation for class representatives for taking on risks of litigation on behalf of absent class members.” *Sullivan v. DB Investments, Inc.*, 2008 WL 8747721, at *37 (D.N.J. May 22, 2008).

Here, the Plaintiffs spent a significant amount of their own time litigating this matter for the benefit of the absent members of the Settlement Class and should be compensated for their contributions. Class Counsel Dec. ¶¶ 4, 8, 11. The amount requested is similar to amounts awarded by this Court to class representatives in other class action settlements involving automotive manufacturers. *See Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *23- 24 (D.N.J. Apr. 8, 2011) (approving incentive award payments of \$10,000 to each of the named plaintiffs); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. at 125 (approving incentive awards totaling \$85,000 – which amounted to \$5,000 to each of the class representatives); *Henderson*, 2013 WL 1192479, at *19 (approving incentive awards between \$5,000 to \$6,000 each of six class representatives). Thus, the requested service awards should be approved.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant

their Motion and award total fees and expenses of \$7,250,000 to Class Counsel, as well as service awards of \$5,000 to each Settlement Class Representative.

Dated: January 16, 2025

Respectfully submitted,

/s/ Peter A. Muhic
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*Attorneys for Plaintiffs and the Proposed
Class*

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CHRISTINE POWELL, *et al.*, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:19-CV-19114-MJS

**DECLARATION OF EDWIN J. KILPELA, JR. IN SUPPORT OF PLAINTIFFS’
MOTION FOR ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES ON
BEHALF OF WADE KILPELA SLADE LLP AND LYNCH CARPENTER LLP**

I, Edwin J. Kilpela, Jr., declare as follows:

1. I am a partner at the law firm of Wade Kilpela Slade LLP. Formerly, and for the initial portion of this matter, I was a partner at Lynch Carpenter LLP (together, with Wade Kilpela Slade, the “Firms”). I make this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees and Reimbursement of Expenses. I have personal knowledge of the information stated within this declaration and, if necessary, I could and would competently testify to this information.

2. Throughout the duration of the litigation of this matter, my Firms actively participated in the pursuit of the Plaintiffs’ claims and I have been appointed as Class Counsel by this Court.

3. Attached as Exhibit A is a billing summary of my Firms’ total hours and lodestar at current billing rates, from matter inception through today. The total number of hours worked by my Firm’s attorneys and professional staff during that period was 1,509.2 hours with a corresponding lodestar of \$1,192,825.00.

4. Exhibit A was prepared using accurate, daily time records that are maintained by my Firms. The current hourly rates provided for my Firms' attorneys are the same as our usual and customary hourly rates charged in similar complex class action litigation.

5. The tasks undertaken by my Firms include as follows: (a) initial analysis of this matter and discussions with potential plaintiffs, including individuals who eventually served as the Class Representatives; (b) factual investigation and analysis in connection with drafting the initial complaint as well as the consolidated complaint; (c) participation in conferences with co-counsel to discuss case management and litigation strategy; (d) drafting and editing pleadings for class certification, including conducting research of applicable law in connection with the motion for class certification; (e) drafting discovery requests; (f) reviewing documents produced by Defendants and/or third-parties; (g) responding to Defendants' discovery requests, including working with Plaintiffs to search for documents, and attending meet and confer conferences with Defendants, (h) reviewing Plaintiffs' documents for production to Defendants; (i); working with experts for purposes of determining damages and liability for purposes of class certification and settlement; (j) preparing for depositions of Defendants executives; (k) preparing class representatives for deposition and defending those depositions; and (l) negotiating and drafting the settlement agreement and approval papers.

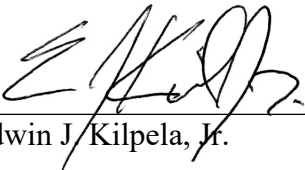
6. Attached as Exhibit B is a summary of the expenses my Firms have incurred from matter inception to January 15, 2025 by category. My Firm's total expenses is \$6,237.47. These expenses have yet to be reimbursed.

7. The expenses in this declaration are reflected in my Firms' accounting records. Exhibit B was assembled and prepared by my staff and reviewed by me. The expenses were prepared from receipts, check records, and other source materials. These are accurate records of

the expenses. The expenses reflect the costs and charges incurred for work performed throughout this litigation. If requested, I could provide receipts or other supporting records for each expense included on Exhibit B. The amount of my Firm's expenses is reasonable, and was necessary for the efficient and effective prosecution of this matter. I believe that the expenses submitted are of a type normally charged to and paid by fee-paying clients.

8. In addition to the expenses incurred by my Firms, a litigation fund was established in 2022 to centralize the payment of discovery, expert and mediation expenses in this litigation. Lynch Carpenter and Freed Kanner London & Millen LLC contributed \$15,000.00 each and Berger Montague PC contributed \$10,000.00 to the fund. The expenses paid by the fund are summarized in Exhibit C. \$10,024.95 was spent on litigation support vendors (discovery platform costs), \$12,897.50 was spent on experts, and \$1,713.92 was spent on deposition transcripts, and \$12,984.41 was spent on mediator fees. After the deduction of a small amount of service fees (less than \$100 in the aggregate) related to the maintenance of the bank account, \$2,267.06 remains in the fund, which will be distributed to the above-listed firms on a pro-rata basis after final approval.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of January 2025 in Pittsburgh, PA.



Edwin J. Kilpela, Jr.

EXHIBIT A

Name	Title	Current Billing Rate	Hours Billed	Lodestar
Edwin J. Kilpela, Jr.	Partner	\$950	668.9	\$635,455.00
Katrina Carroll	Partner	\$950	4.7	\$4,465.00
Elizabeth Pollock-Avery	Partner	\$900	55.3	\$49,770.00
Kristy Graham	Of Counsel	\$750	62.9	\$47,175.00
James McGraw	Associate	\$650	0.8	\$520.00
Mathew Brady	Associate	\$650	660.2	\$429,130.00
James LaMarca	Associate	\$650	12.2	\$7,930.00
Ken Held	Associate	\$650	16.6	\$10,790.00
Jon Romanishin	Paralegal	\$275	1.1	\$302.50
Daniel Hart	Paralegal	\$275	2	\$550
Brittany Hargenrader	Paralegal	\$275	24.5	\$6,737.50
TOTAL			1,509.2	\$1,192,825.00

EXHIBIT B

EXPENSE	AMOUNT
Copying	\$0
Outside Printing	\$0
Telephone	\$0
Online Research	\$0
Delivery services/messengers	\$0
Postage	\$0
Local Travel	\$0
Out-of-town Travel (yellow)	\$1,789.37
Meals	\$257.25
Court/filing Fees	\$401.70
Deposition transcripts	\$483.15
Litigation support vendors	\$3,306.00
Experts	\$0
Private investigators	\$0
Arbitrators/mediators	\$0
Other professionals	\$0
Other	\$0
TOTAL	\$6,237.47

EXHIBIT C

<u>Expense</u>	<u>Amount</u>
Deposition Transcripts	\$1,713.92
Litigation Support Vendoes (yellow)	\$10,024.95
Experts	\$12,897.50
Arbitrators/Mediators	\$12,984.41
TOTAL:	\$37,620.78

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Christine Powell, *et al.*, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:19-cv-19114-MJS

**DECLARATION OF PETER A. MUHIC IN SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

I, Peter A. Muhic, declare as follows:

1. I am a partner at the law firm of Muhic Law LLC, and a former partner or shareholder of Miller Law Firm, P.C., Berger Montague, P.C., and LeVan Muhic Stapleton LLC (hereinafter "Firms"). I make this declaration in support of Plaintiffs' Unopposed Motion for Attorneys' Fees and Reimbursement of Expenses. I have personal knowledge of the information stated within this declaration and, if necessary, I could and would competently testify to this information.

2. Throughout the duration of the litigation of this matter, my Firms and/or I actively participated in the pursuit of the Plaintiffs' claims as Interim Co-Lead Class Counsel.

3. Attached as Exhibit A is a billing summary of my Firms' total hours and lodestar at current billing rates, from matter inception through January 16, 2025. The total number of hours worked by my Firms during that period was 2,243.8 hours with a corresponding lodestar of \$1,719,254.25.

4. Exhibit A was prepared using accurate, daily time records that are maintained by my Firms. The current hourly rates provided for my Firm's attorneys are the same as our usual and customary hourly rates charged in similar complex class action litigation.

5. The tasks undertaken by my Firms include as follows: (a) factual and legal investigation and analysis in connection with drafting the initial complaint, as well as the amended complaint and consolidated complaints; (b) developing the litigation strategy, representing Plaintiffs at all Court hearings and conferences, and participation in conferences with co-counsel to discuss case management and litigation strategy, and to direct work of other firms; (c) drafting pleadings, including oppositions to motions to dismiss, Confidentiality Order, ESI protocol, and discovery requests, and leading meet and confer conferences with defense counsel about discovery; (d) reviewing documents produced by Defendants and/or third-parties; (e) responding to Defendants' discovery requests, including working with Plaintiffs to search for documents; (f) reviewing Plaintiffs' documents for production to Defendants; (g) deposing Wally Sommer and Defendants' executives; (h) engaging and consulting with experts for purposes of determining damages and liability for purposes of preparing for class certification, and then settlement; (i) attending vehicle inspections; (j) preparing class representatives for deposition; (k) attending and participating in all mediation sessions and conferences, and negotiating terms of settlement; (l) drafting the settlement agreement and approval papers, and working with JND in developing the Settlement Website; (m) responding to Class Member inquiries about the settlement; (n) represent Plaintiffs in Final Fairness hearing.

6. Attached as Exhibit B is a summary of the expenses my Firms have incurred from matter inception through January 16, 2025 by category. My Firms' total expenses are \$2,316.30. These expenses have yet to be reimbursed.

7. The expenses in this declaration are reflected in my Firms' accounting records. Exhibit B was assembled and prepared by my staff and reviewed by me. The expenses were prepared from receipts, check records, and other source materials. These are accurate records of the expenses. The expenses reflect the costs and charges incurred for work performed throughout this litigation. If requested, I could provide receipts or other supporting records for each expense included on Exhibit B. The amount of my Firms' expenses is reasonable, and was necessary for the efficient and effective prosecution of this matter. I believe that the expenses submitted are of a type normally charged to and paid by fee-paying clients.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16TH day of January, 2025.



PETER A. MUHIC

EXHIBIT A

Muhic Law LLC	Title	Current Billing Rate	Hours Billed	Lodestar
Peter A. Muhic	Partner	\$950	436.6	\$414,770
The Miller Law Firm PC	Title	Current Billing Rate	Hours Billed	Lodestar
Peter A. Muhic	Partner	\$950	288.6	\$274,170
Brian Saxe	Partner	\$850	.4	\$340
Cody Saules	Counsel	\$385	126.7	\$48,779.50
Craig Dickinson	Associate	\$475	57.6	\$27,360.00
Dennis Lienhardt	Partner	\$759	1.7	\$1,275.00
Devon Allard	Partner	\$850	8.65	\$7,352.50
Eva Skoczylas	Legal Assistant	\$295	.85	\$250.75
E. Powell Miller	Partner	\$1050	.20	\$210
Licia Bates	Legal Assistant	\$295	.80	\$236
Mark Talenti	Counsel	\$385	447.9	\$172,441.50
Nancy Decker	Counsel	\$600	90.10	\$54,060.00
Rick Decker	Associate	\$675	7.5	\$5,062.5
TOTAL				\$591,537.75

Berger Montague PC	Title	Curent Billing Rate	Hours Billed	Lodestar
Peter A. Muhic	Shareholder	\$950	280.5	\$266,475
Amey Park	Associate	\$755	60.10	\$45,375.50
Caitlyn Wolfinger	Paralegal	\$445	25.10	\$11,169
Natalie Lesser	Sr.Associate	\$710	.2	\$142
TOTAL				\$323,161.50
LeVan Muhic Stapleton LLC	Title	Current Billing Rate	Hours Billed	Lodestar
Peter A. Muhic	Partner	\$950	410.3	\$389,785
			TOTAL	\$1,719,254.25

EXHIBIT B

EXPENSE	AMOUNT
Copying	
Outside Printing	
Telephone	
Online Research	
Delivery services/messengers	
Postage	\$80.85
Local Travel	
Out-of-town Travel	\$450.45
Meals	
Court/filing Fees	\$510
Deposition transcripts	
Litigation support vendors	\$1,275
Experts	
Private investigators	
Arbitrators/mediators	
Other professionals	
Other	
TOTAL	\$2,316.30

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Christine Powell, *et al.*, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:19-cv-19114-MJS

**DECLARATION OF RUSSELL D. PAUL IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES ON BEHALF OF
BERGER MONTAGUE PC**

I, Russell D. Paul, declare as follows:

1. I am a partner at the law firm of Berger Montague PC (hereinafter "Firm"). I make this declaration in support of Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Expenses. I have personal knowledge of the information stated within this declaration and, if necessary, I could and would competently testify to this information.

2. Throughout the duration of the litigation of this matter, my Firm actively participated in the pursuit of the Plaintiffs' claims as Interim Co-Lead Class Counsel.

3. Attached as Exhibit A is a billing summary of my Firm's total¹ hours and lodestar at current billing rates, from matter inception through. The total number of hours worked by my

¹ My Firm's total hours, lodestar, and expenses herein represent such figures for work completed under my supervision. Interim Co-Lead Counsel Peter A. Muhic was also a shareholder at my Firm, Berger Montague PC, for a period of this action. The hours, lodestar, and expenses attributed to and supervised by Attorney Muhic while at Berger Montague, PC, are separately accounted for in Attorney Muhic's declaration, submitted simultaneously herewith.

Firm's attorneys and professional staff during that period was 990.70 hours with a corresponding lodestar of \$793,731.00.

4. Exhibit A was prepared using accurate, daily time records that are maintained by my Firm. The current hourly rates provided for my Firm's attorneys are the same as our usual and customary hourly rates charged in similar complex class action litigation.

5. The tasks undertaken by my Firm include as follows: (a) a factual investigation and analysis in connection with drafting the consolidated complaint; (b) participation in conferences with co-counsel to discuss case management and litigation strategy; (c) drafting discovery requests; (d) reviewing documents produced by Defendants and/or third-parties; (e) responding to Defendants' discovery requests, including working with Plaintiffs to search for documents, and attending meet and confer conferences with Defendants, (f) reviewing Plaintiffs' documents for production to Defendants; (g); working with experts for purposes of determining damages and liability for purposes of class certification and settlement; (h) preparing for depositions of Defendants' executives; (i) preparing class representatives for deposition; (j) and negotiating and drafting the settlement agreement and approval papers.

6. Attached as Exhibit B is a summary of the expenses my Firm has incurred from matter inception to January 13, 2025 by category. My Firm's total expenses is \$16,287.03. These expenses have yet to be reimbursed.

7. The expenses in this declaration are reflected in my Firm's accounting records. Exhibit B was assembled and prepared by my staff and reviewed by me. The expenses were prepared from receipts, check records, and other source materials. These are accurate records of the expenses. The expenses reflect the costs and charges incurred for work performed throughout this litigation. If requested, I could provide receipts or other supporting records for each expense

included on Exhibit B. The amount of my Firm's expenses is reasonable, and was necessary for the efficient and effective prosecution of this matter. I believe that the expenses submitted are of a type normally charged to and paid by fee-paying clients.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of January, 2025 in Philadelphia, Pennsylvania.

/s/ Russell D. Paul
Russell D. Paul

EXHIBIT A

Name	Title	Current Billing Rate	Hours Billed	Lodestar
Carson, Shanon	Executive Shareholder	\$1,225	5.90	7,227.50
Paul, Russell	Shareholder	\$1,075	290.00	311,750.00
Twersky, Martin	Former Shareholder	\$925	3.00	2,775.00
Caplan, Zachary	Shareholder	\$925	5.50	5,087.50
Osterwise, Jeff	Senior Counsel	\$815	0.70	570.50
Gertner, Abigail Jade	Former Senior Counsel	\$785	18.80	14,758.00
Park, Amey J	Associate	\$755	194.90	147,149.50
Antoniou, Alexandra Margaret	Counsel	\$730	352.00	256,960.00
Lesser, Natalie	Senior Counsel	\$710	6.80	4,828.00
Hamner, Peter H	Counsel	\$700	2.30	1,610.00
Trask, Amanda	Former Senior Counsel	\$685	1.90	1,301.50
Lechtzin, Eric	Former Shareholder	\$680	2.20	1,496.00
York, Mary	Paralegal	\$470	0.30	141.00
Filbert, David	Paralegal	\$470	1.10	517.00
Gebo, Rachel	Intake Coordinator	\$460	1.90	874.00
Wolfinger, Caitlin A	Paralegal	\$445	33.40	14,863.00

Barnes, Colleen A	Former Paralegal	\$340	2.00	680.00
Stock, Martin A	Legal Intake Analyst	\$340	6.50	2,210.00
Lee, Minsoo	Former Paralegal	\$330	30.60	10,098.00
Giovanetti, Donna	Legal Assistant	\$305	7.30	2,226.50
Mucollari, Dionis	Former Legal Intake Analyst	\$280	23.60	6,608.00
TOTAL			990.70	\$793,731.00

EXHIBIT B

EXPENSE	AMOUNT
Postage / Fed-Ex	\$227.44
E-Discovery Hosting	\$6,878.64
Court/filing Fees	\$1,495
Process Server	\$520
Transcripts	\$7,165.95
TOTAL	\$16,287.03

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Christine Powell, *et al.*, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:19-cv-19114-MJS

**DECLARATION OF KIMBERLY A. JUSTICE IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR ATTORNEYS’ FEES AND REIMBURSEMENT OF
EXPENSES ON BEHALF OF FREED KANNER LONDON & MILLEN LLC**

I, Kimberly A. Justice, declare as follows:

1. I am a Partner at the law firm of Freed Kanner London & Millen LLC (hereinafter “Firm”). I make this declaration in support of Plaintiffs’ Unopposed Motion for Attorneys’ Fees and Reimbursement of Expenses. I have personal knowledge of the information stated within this declaration and, if necessary, I could and would competently testify to this information.

2. Throughout the duration of the litigation of this matter, my Firm actively participated in the pursuit of the Plaintiffs’ claims at the request of Class Counsel.

3. Attached as Exhibit A is a billing summary of my Firm’s total hours and lodestar at current billing rates, from matter inception through December 31, 2024. The total number of hours worked by my Firm’s attorneys and professional staff during that period was 534.40 hours with a corresponding lodestar of \$497,846.00.

4. Exhibit A was prepared using accurate, daily time records that are maintained by my Firm. The current hourly rates provided for my Firm’s attorneys are the same as our usual and

customary hourly rates charged in similar complex class action litigation and have been approved by courts across the country. In addition, my Firm's hourly rates have been approved by Fortune 500 corporate clients who have retained my Firm in complex antitrust direct-action litigation.

5. The tasks undertaken by my Firm include as follows: (a) a thorough factual investigation and analysis in connection with drafting the consolidated complaint; (b) participation in conferences with co-counsel to discuss case management and litigation strategy; (c) researching and drafting motion to dismiss opposition briefing; (d) drafting discovery requests; (e) reviewing documents produced by Defendants and/or third-parties; (f) responding to Defendants' discovery requests, including working with Plaintiffs to search for documents, and attending meet and confer conferences with Defendants; (g) reviewing Plaintiffs' documents for production to Defendants; (h) preparing Plaintiffs for deposition; (i) defending Plaintiff Milstein's deposition; and (j) preparing for mediation.

6. Attached as Exhibit B is a summary of the expenses my Firm has incurred from matter inception to January 15, 2025 by category. My Firm's total expenses are \$18,492.43. These expenses have yet to be reimbursed.

7. The expenses in this declaration are reflected in my Firm's accounting records. Exhibit B was assembled and prepared by my staff and reviewed by me. The expenses were prepared from receipts, check records, and other source materials. These are accurate records of the expenses. The expenses reflect the costs and charges incurred for work performed throughout this litigation. If requested, I could provide receipts or other supporting records for each expense included on Exhibit B. The amount of my Firm's expenses is reasonable, and was necessary for the efficient and effective prosecution of this matter. I believe that the expenses submitted are of a type normally charged to and paid by fee-paying clients.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of January 2025 in Conshohocken, Pennsylvania.

A handwritten signature in black ink, reading "Kimberly A. Justice". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Kimberly A. Justice

EXHIBIT A

Name	Title	Current Billing Rate	Hours Billed	Lodestar
Brian M. Hogan	Partner	\$725.00	19.50	\$14,137.50
D. Patrick Huyett	Associate	\$550.00	100.70	\$55,385.00
Jonathan M. Jagher	Partner	\$975.00	130.40	\$127,140.00
Kimberly A. Justice	Partner	\$1,065.00	180.00	\$191,700.00
Steven A. Kanner	Partner	\$1,175.00	39.10	\$45,942.50
Douglas A. Millen	Partner	\$1,055.00	4.30	\$4,536.50
Danielle A. Millikan	Paralegal	\$280.00	3.90	\$1,092.00
Robert J. Wozniak	Partner	\$1,025.00	56.50	\$57,912.50
TOTAL			534.40	\$497,846.00

EXHIBIT B

EXPENSE	AMOUNT
Postage	\$35.44
Travel	\$236.96
Meals	\$249.13
Court/filing Fees (including New Jersey Annual Attorney Registration Fees)	\$1,868.64
Litigation Support Services	\$1,102.26
Litigation Fund Contributions	\$15,000.00
TOTAL	\$18,492.43

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Christine Powell, *et al.*, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:19-cv-19114-MJS

**DECLARATION OF CODY PADGETT IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES ON BEHALF OF
CAPSTONE LAW APC**

I, Cody Padgett, declare as follows:

1. I am a Senior Counsel at the law firm of Capstone Law APC (hereinafter "Firm").

I make this declaration in support of Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Expenses. I have personal knowledge of the information stated within this declaration and, if necessary, I could and would competently testify to this information.

2. Throughout the duration of the litigation of this matter, my Firm actively participated in the pursuit of the Plaintiffs' claims at the request of Class Counsel.

3. Attached as Exhibit A is a billing summary of my Firm's total hours and lodestar at current billing rates, from matter inception through the present. The total number of hours worked by my Firm's attorneys during that period was 805.4 hours with a corresponding lodestar of \$485,420.

4. Exhibit A was prepared using accurate, daily time records that are maintained by my Firm. The current hourly rates provided for my Firm's attorneys are the same as our usual and customary hourly rates charged in similar complex class action litigation.

5. The tasks undertaken by my Firm include as follows: (a) a factual investigation and analysis in connection with drafting the consolidated complaint; (b) participation in conferences with co-counsel to discuss case management and litigation strategy (c) reviewing documents produced by Defendants and/or third-parties; (d) responding to Defendants' discovery requests, including working with Plaintiffs to search for documents; (e) reviewing Plaintiffs' documents for production to Defendants; and (f) preparing class representatives for deposition.

6. Attached as Exhibit B is a summary of the expenses my Firm has incurred from matter inception to the present by category. My Firm's total expenses is \$5,398.74. These expenses have yet to be reimbursed.

7. The expenses in this declaration are reflected in my Firm's accounting records. Exhibit B was assembled and prepared by my staff and reviewed by me. The expenses were prepared from receipts, check records, and other source materials. These are accurate records of the expenses. The expenses reflect the costs and charges incurred for work performed throughout this litigation. If requested, I could provide receipts or other supporting records for each expense included on Exhibit B. The amount of my Firm's expenses is reasonable, and was necessary for the efficient and effective prosecution of this matter. I believe that the expenses submitted are of a type normally charged to and paid by fee-paying clients.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of January 2025 in Los Angeles, California.



CODY PADGETT

EXHIBIT A

Name	Title	Current Billing Rate	Hours Billed	Lodestar
Stephanie Saxton	Attorney	\$700	186	\$130,200.00
Tarek Zohdy	Fmr. Senior Counsel	\$675	227.3	\$153,427.50
Cody Padgett	Senior Counsel	\$600	117.1	\$70,260.00
Nate Kiyam	Associate	\$500	36.3	\$18,150.00
Laura Goolsby	Fmr. Associate	\$475	238.7	\$113,382.50
Total			805.4	\$485,420.00

EXHIBIT B

EXPENSE	AMOUNT
Postage	\$18.01
Deposition transcripts	\$1,841.45
E-Discovery hosting	\$3,539.28
TOTAL	\$5,398.74

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CHRISTINE POWELL, *et al.*,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:19-cv-19114-MJS

**[PROPOSED] ORDER
GRANTING PLAINTIFFS'
UNOPPOSED MOTION FOR
ATTORNEYS' FEES,
REIMBURSEMENT OF
EXPENSES, AND SERVICE
AWARDS**

THIS MATTER having come before the Court on Plaintiffs' Unopposed Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards filed on January 16, 2025; and

The Court having reviewed Plaintiffs' moving papers, including Plaintiffs' brief and supporting declarations, as well as the case file; and

Good cause having been shown, for the reasons expressed herein and as further set forth in the Court's Final Approval Order approving the parties' Settlement Agreement;

**IT IS ON THIS ____ DAY OF _____, 2025, HEREBY
ORDERED, ADJUDGED AND DECREED:**

1. Terms capitalized in this Order have the same meanings as those used in the Settlement Agreement.

2. The Notice Plan adequately and reasonably afforded Settlement Class Members the opportunity to respond to Plaintiffs' Motion for Attorneys' Fees,

Expenses, and Service Awards. The Court has considered and rejected any objections timely and properly submitted.

3. The Settlement confers substantial benefits on the Settlement Class Members.

4. Plaintiffs have submitted the joint Declaration of Peter A. Muhic, Russell D. Paul, and Edwin J. Kilpela, Jr., as Class Counsel in connection with Plaintiffs' Unopposed Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards that adequately documents Class Counsel's vigorous and effective pursuit of the claims of Plaintiffs and the Settlement Class before this Court.

5. The Court finds the attorneys' fees and expenses in the amount of \$7.25 million to Class Counsel to be fair and reasonable and, in a matter of this level of complexity, consistent with the range of attorneys' fees awarded in this District and in the Third Circuit Court of Appeals using a hybrid approach combining the lodestar method and the percentage-of-recovery method. The Court finds that the expenses reported to the Court to date were necessary, reasonable, and proper in the pursuit of this Litigation. The Court further finds that under the terms of the Settlement, the award of attorneys' fees and expenses will not reduce or otherwise have any effect on the benefits made available to the Settlement Class.

6. The Court, therefore, grants attorneys' fees and expenses in the amount of \$7,250,000. Defendants shall pay the attorneys' fees and expenses in the time and manner specified in the Settlement Agreement.

7. The Court finds that Plaintiffs Jeffrey Barr, Arnold Milstein, Allan Zaback, and Brittany Funk devoted substantial time and energy to their duties as

Class Representatives. The Court further finds that under the terms of the Settlement, the payment of service awards will not reduce any benefits made available to the Settlement Class. The Court therefore grants service awards in the amount of \$5,000 to each of these Plaintiffs as the named Class Representatives for their contributions in this case. Defendants shall pay the service awards in the time and manner specified in the Settlement Agreement

IT IS SO ORDERED.

Hon. Matthew J. Skahill
United States Magistrate Judge