William S. Callaway et al. v. Mercedes-Benz USA, LLC et al.
8:14-cv-02011-JVS-DFM

Order Regarding Motion for Final Settlement Approval

Plaintiff William S. Callaway ("Callaway"), on behalf of himself and all others similarly situated, filed a motion for final approval of the class action settlement with Defendant Mercedes-Benz USA, LLC ("Mercedes").[1] (Mot., Docket No. 228-1; Ntc. of Errata, Docket No. 230-2.) Callaway also filed a motion for attorneys' fees, costs, and an incentive award. (Mot., Docket No. 219-1.) Mercedes did not oppose either motion.

For the following reasons, the Court **grants** the motion for final approval and **grants** the motion for attorneys' fees, costs, and an incentive award.

I. BACKGROUND

In this lawsuit, Callaway alleges that Mercedes failed to disclose a seat heater defect in certain Mercedes automobiles. (See Second Amended Complaint ("SAC"), Docket No. 44 at 1.) Callaway alleges that the seat heaters in Mercedes vehicles "have been known to spark, smoke, overheat and/or catch on fire when used in a foreseeable manner and as directed." (Id.) Mercedes has denied and continues to deny these allegations. (Mot., Docket No. 230-2 at 1.) The parties resolved this dispute after extensive legal briefing by both parties related to Callaway's Motion for Class Certification, depositions of the parties' experts, the close of fact discovery, and after the Court issued rulings denying Mercedes' motion to dismiss and granting in part and denying in part Mercedes' motion for summary judgment . (Id.) The parties reached the Settlement after extensive, arms-length negotiations and four mediation sessions with the Honorable Layn Phillips (Ret.). (Id.)

A. Summary of the Settlement

[1] The Court notes that four individuals objected to the Settlement. (Azari Decl., Docket No. 227, Attach. 4.) Two of the Objectors object in general terms and do not provide the basis for their objections. (Id.) Accordingly, without any substantive basis for the objections, the Court is unable to evaluate these Objectors' concerns. With regards to the other two Objectors, the Court addresses their concerns as relevant throughout the Order.

1. The Settlement Class

Pursuant to the Settlement Agreement, the proposed class consists of all current and former owners and lessees of Mercedes-Benz model year 2000-2007 M-Class, model year 2006-2007 R-Class, and model year 2007 GL-Class vehicles (the "Subject Vehicles") with original-equipment seat heaters who purchased or leased their vehicle in the United States. (Mot., Docket No. 230-2 at 8-9.) This Class covers approximately 270,000 vehicles. (Frank Decl., Docket No. 228-2 ¶ 12.) However, the number of Class Members will be larger because the Class includes current and former owners who experienced the seat heater defect. (Id.; Mot., Docket No. 230-2 at 9.) Those excluded from the Settlement Class include:

> a) Persons who have settled with, released, or otherwise had claims adjudicated on the merits against [Mercedes] that are substantially similar to those alleged in this matter;
> b) Former owners and lessees whose SUV Class Vehicle did not experience a seat heater malfunction during the time they owned or leased their SUV Class Vehicle;
> c) Employees of [Mercedes];
> d) Insurers or other providers of extended service contracts or warranties for the vehicles owned by Settlement Class Members; and
> e) The Honorable James V. Selna and the Honorable Douglas F. McCormick, and members of their respective families.

(Mot., Docket No. 230-2 at 9.)

2. The Settlement Terms

The Settlement provides three benefits to the Settlement Class at their option: (1) a free bypass wire repair for current owners; (2) an extended warranty on seat heaters; and (3) reimbursement for past repairs. (Id. at 9-11.)

i. *Free Repair for Current Owners*

Class Members who selected this option will receive a free bypass wire repair procedure at a Mercedes authorized, independently owned and operated dealership of their choice. (Id. at 9.) The repair procedure will be covered by Mercedes' standard two-year parts warranty. (Id.) The total value of this free

repair for the Class is $75,600,000. (Id. at 9-10.)

ii. *Extended Warranty on Seat Heaters*

Class Members who did not select the bypass wire repair procedure will automatically receive a two-year extended warranty on future seat heater repairs performed at a Mercedes dealership, to the extent the repair is made to address an issue alleged in this lawsuit, subject to certain mileage limitations. (Id. at 10.)

iii. *Reimbursement for Past Repairs*

Current and former owners or lessees who previously paid for seat heater repairs caused by the alleged defect will receive reimbursement for any costs they paid for the repairs up to a maximum amount of $1,000 per repair. (Id. at 10.) Based on Mercedes' records and representations, the outer limit for the cost of this repair in the past was approximately $1,000. (Id.)

iv. *Attorneys' Fees, Incentive Awards, and Administration Costs*

The Settlement provides that Mercedes will separately pay for any attorneys' fees and costs awarded by the Court to Class Counsel, so long as the amount of attorneys' fees does not exceed $5,662,387.50 and the amount of costs does not exceed $584,085.21. (Id. at 11.) Mercedes will also separately pay for any incentive award approved by the Court for Callaway, so long as the amount does not exceed $10,000. (Id.) Mercedes will be solely responsible for the notice and claims administration costs. (Id.) Mercedes' payments of these amounts will not in any way reduce the total benefits available to the Class. (Id.)

v. *Release*

In exchange for the Settlement benefits, all Class Members who did not timely opt-out will release all claims against Mercedes and its related entities which are "on account of or related to claims that the seat heaters in the Subject Vehicles are inadequate or of poor or insufficient quality or defective, due to wear or otherwise, which were alleged or could have been alleged as to the Subject Vehicles in the Litigation or in similar actions." (Id.) However, this release expressly excludes claims for personal injury or wrongful death. (Id.)

B. Preliminary Approval

On November 29, 2017, the Court (1) granted preliminary approval of the Settlement; (2) appointed Epiq Systems Class Action and Claims Solutions ("Epiq") as the Claims Administrator; (3) approved the form and manner for notice; (4) approved Jason M. Frank and Scott H. Sims of Frank Sims & Stolper LLP ("FSS"), Eric F. Yuhl and Colin A. Yuhl of Yuhl Carr LLP ("YC"), and Patrick M. McNicholas of McNicholas & McNicholas, LLP ("M&M") as Class Counsel; and (5) scheduled a hearing for final approval. (Order, Docket No. 221.)

C. Notice

Since receiving preliminary approval, the Court-approved notice plan was successfully executed by Epiq. (Mot., Docket No. 230-2 at 2; Azari Decl., Docket No. 227 ¶¶ 6-9.) Direct notice of the Settlement was mailed to all current and former owners and lessees of the Subject Vehicles. (Mot., Docket No. 230-2 at 2.) Approximately 96.5% of these notices were successfully delivered to the potential Class Members. (Id.)

D. Objections/Exclusions

According to the Court's preliminary approval order, all objections or requests for exclusion needed to be received by January 12, 2018. (Order, Docket No. 221 at 13.) The Class consists of at least 270,000 members.[2] (Mot., Docket No, 230-2 at 2.) Forty-one individuals filed a request for exclusion, which amounts to approximately 0.015% of the Class. (Id.; Docket No. 231-1.) Additionally, four individuals objected to the Settlement, but it is unclear whether one of these individuals is actually a Class Member. (Mot., Docket No. 230-2 at 2; Azari Decl., Docket No. 227, Attach. 4.)

II. DISCUSSION

A. Class Certification

[2] Because the Class includes former owners and lessees of the Subject Vehicles who paid for past repairs, the Class size is likely larger than 270,000—the number of Subject Vehicles. (Mot., Docket No. 230-2 at 2 n.1.)

Rule 23(a) imposes four prerequisites for a class action: (1) the class is so numerous that a joinder of all members is impracticable (numerosity); (2) there are questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality); and (4) the representative parties will fairly and adequately protect the interests of the class (adequacy). Fed. R. Civ. P. 23(a); United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO v. ConocoPhillips Co., 593 F.3d 802, 806 (9th Cir. 2010).

Under Rule 23(b), a plaintiff must show (1) that common factual and legal issues predominate over individual questions and (2) that a class action is the best method to resolve the class claims. Fed. R. Civ. P. 23(b)(3). There are several relevant factors to consider during this analysis: (1) the class members' interest in individually controlling the prosecution or defense of separate actions, (2) the extent and nature of any litigation concerning the controversy already begun by or against class members, (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, and (4) the likely difficulties in managing a class action. Id. 23(b)(3)(A)-(D).

The Court preliminarily certified the proposed Class in its prior order. (Order, Docket No. 221.) Nothing has changed in the interim that would warrant a deviation from the Court's prior ruling. Therefore, for the reasons specified in its preliminary approval order, the Court certifies the Settlement Class for final approval of the Settlement.

B. Approval of Class Settlement

Rule 23(e) requires court approval for class-action settlements. Fed. R. Civ. P. 23(e). A court considers several factors to determine whether a proposed settlement is fair, adequate, and reasonable. These include:

> (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class

members to the proposed settlement.

In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011) (quoting Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004)).

The Court analyzes the applicable factors, and it finds that the proposed Settlement is fair, adequate, and reasonable.

1. Strength of Callaway's Case and the Risk, Expense, Complexity, and Likely Duration of Further Litigation

"An important consideration in judging the reasonableness of a settlement is the strength of the plaintiffs' case on the merits balanced against the amount offered in the settlement." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004) (citation omitted). However, "a proposed settlement is not to be judged against a speculative measure of what might have been awarded in a judgment in favor of the class." Id.; see also Officers for Justice v. Civil Serv. Comm'n of the City and Cty. of San Francisco, 688 F.2d 615, 625 (9th Cir.1982) ("Neither the trial court nor [the appellate court] is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements."). A second relevant factor "is the risk of continued litigation balanced against the certainty and immediacy of recovery from the Settlement." Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 489 (E.D. Cal. 2010).

These factors support final settlement approval. First, the strength of Callaway's case supports final approval. Although Callaway maintains a belief in the merits of his claims, Callaway recognizes that there are substantial risks involved in continuing this litigation. (Mot., Docket No. 230-2 at 15.) Mercedes vigorously disputes that the seat heaters in the Subject Vehicles are defective or present a safety concern. (Id.) Mercedes also vigorously disputes that it had any duty to disclose the seat heater problem, or that it had prior knowledge of the defect during the class period. (Id. at 15-16.) Additionally, even if Callaway was able to prove the existence of the alleged defect and that Mercedes had a duty to disclose it, Mercedes disputes that the alleged defect causes Callaway and the Class Members any damages. (Id. at 16.) Mercedes also claims that only a small percentage of the Subject Vehicles ever experienced the alleged problem, and that

any problem is only the result of ordinary wear and tear. (Id.) Furthermore, Mercedes notes that the National Highway Traffic Safety Administration investigated this alleged problem twice before and did not take any action against Mercedes. (Id.)

Second, the litigation's risk, expense, and duration favor approval. Callaway and the Class risk failing to prove that Mercedes is liable, and even if they prove liability, they risk recovering only a small amount of damages. (Id.) Additionally, Callaway and the Class would face a hotly contested trial on the merits, and most likely an appeal if they prevailed. (Id.) Further, Callaway contends that the additional expert and case-related costs that would be necessary for trial would likely exceed $200,000. (Id.)

Accordingly, these factors weigh in favor of final approval.

2. Risk of Maintaining Class Action Status Throughout the Trial

The Settlement is for a nationwide class. (Id. at 17.) Therefore, there is a risk that variations in state law could later result in decertification due to manageability issues if the case were to proceed to trial. (Id.) Accordingly, this factor weighs in favor of final approval.

3. Amount Offered in Settlement

"In assessing the consideration obtained by the class members in a class action settlement, 'it is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness.'" Nat'l Rural Telecomms., 221 F.R.D. at 527 (quoting Officers for Justice, 688 F.2d at 628). "In this regard, it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the class members at trial." Id. (citing Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998)).

Here, the amount offered in settlement also strongly favors final approval. The Settlement provides for a free bypass wire repair for current owners, which is valued at approximately $75,600,000. (Mot., Docket No. 230-2 at 9; Pinsonneault Decl., Docket No. 219-6 ¶ 12.) This value was calculated by multiplying the number of Subject Vehicles covered by the Settlement, approximately 270,000, by

the retail value of the repair procedure, $280. (Mot., Docket No. 230-2 at 10; Pinsonneault Decl., Docket No. 219-6 ¶ 12.) Class Members who did not select the bypass wire repair procedure will automatically receive the two-year extended warranty. (Mot., Docket No. 230-2 at 10.) Additionally, current and former owners or lessees who previously paid for seat heater repairs caused by the alleged defect will received reimbursement for any costs they paid for the repairs up to a maximum amount of $1,000 per repair. (Id.) The value of this reimbursement option is approximately $10,054,000. (Id.) Thus, the total benefits made available to the Class, not including the value of the extended warranty coverage because a Class Member only gets the extended warranty as an automatic alternative if he or she does not submit a claim for the repair procedure, exceeds $85 million.

Furthermore, the limited release also supports final approval. The release does not cover claims for personal injuries or wrongful death, and only relates to claims concerning the seat heater. (Mot., Docket No. 230-2 at 17.) Moreover, Class Members were given the opportunity to opt-out of the Settlement Class. (Id. at 20.)

Two individuals objected to the amount offered in settlement. The Court will address each of their objections in turn.

First, Objector Joy Douglass ("Douglass") argues that the settlement should:

> 1. Replace defective seat heater(s) at No cost to the customer.
> 2. Provide a Warranty for work performed. Warranty should be equivalent to a new car warranty; no charge.
> 3. Repair or replace affected seat cover(s) and cushion(s).
> 4. If not satisfied , allow right to sue [Mercedes] and others.

(Azari Decl., Docket No. 227, Attach. 4 (emphasis omitted).)

In response, Callaway contends that the current Settlement effectively provides these benefits. (Mot., Docket No. 230-2 at 20.) Callaway points out that the bypass wire repair procedure cures the defect at issue and is covered by Mercedes' standard warranty. (Id.) Callaway contends that "[t]his is the equivalent of replacing the defective seat heater with a warranty for the work performed." (Id.) Additionally, Callaway points out that the Settlement

compensates Class Members for the cost of repairing and replacing damaged seat cushions and covers, so long as the repairs are made prior to the effective date of the Settlement. (Id.) Further, Callaway argues that Class Members were free to opt out and sue Mercedes if they were not satisfied with the benefits of the Settlement. (Id.) The Court agrees.

The Settlement effectively includes the benefits Objector Douglass states should have been included. To the extent Objector Douglass is claiming that the Settlement could have been more favorable, the Court notes that a Settlement may be acceptable even if it amounts to only a fraction of the potential benefits recoverable by Class Members at trial. See Nat'l Rural Telecomms., 221 F.R.D. at 527.

Second, Objector Mattie Herd ("Herd") filed an objection to the proposed Settlement. (Obj., Docket No. 224.) With respect to the Settlement benefits, Herd argues that the reimbursement option does not provide "full reimbursement" because there is a $1,000 limit per repair. (Id. at 3.) Additionally, Herd argues that the Settlement does not essentially provide a recall because the recall benefit expires 60 days after the effective date. (Id.)

In response, Callaway argues that the $1,000 limit was chosen because, according to the discovery produced by Mercedes, this was the outer bound of the reasonable cost for the repair during the Class period. (Mot., Docket No. 230-2 at 22-23.) Callaway argues that $1,000 is therefore equivalent to a full reimbursement for most Class Members. (Id. at 23.) Additionally, Callaway argues that while the Settlement does provide a 60-day window to schedule the bypass wire repair, this is a reasonable compromise for an important benefit. (Id.) The Court agrees. "[T]he very essence of a settlement is compromise[.]" Officers for Justice, 688 F.2d at 624. "As the 'offspring of compromise,' settlement agreements will necessarily reflect the interests of both parties to the settlement, including those of the defendant." Lane v. Facebook, Inc., 696 F.3d 811, 821 (quoting Hanlon v. Chrysler Corp., 150 F.3d 1011, 1027 (9th Cir. 1998)). While the Settlement may not have achieved the absolute maximum relief available under the law, this is unsurprising because settlements are the product of compromise.

After consideration of the arguments raised by the Objectors, the Court nonetheless finds that the amount offered in settlement is fair, adequate, and reasonable. Accordingly, the Court finds that this factor weighs in favor of

approval.

4. Extent of Discovery Completed and the Stage of the Proceedings

"A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case. The more the discovery completed, the more likely it is that the parties have a clear view of the strengths and weaknesses of their cases." In re Toys R Us-Delaware, Inc.-Fair & Accurate Credit Transactions Act (FACTA) Litig., 295 F.R.D. 438, 454 (C.D. Cal. 2014) (internal quotation marks and citations omitted). Likewise, mediation suggests that the parties know their relative strengths and weaknesses. See id. at 455.

Here, the parties have litigated this case for over three years and conducted extensive discovery. The parties resolved this dispute after extensive legal briefing by both parties related to Callaway's Motion for Class Certification, depositions of the parties' experts, the close of fact discovery, and after the Court issued rulings denying Mercedes' motion to dismiss and granting in part and denying in part Mercedes' motion for summary judgment. (Mot., Docket No. 230-2 at 1, 17.) Additionally, the parties reached the Settlement after extensive, arms-length negotiations and four mediation sessions with Judge Phillips. (Id. at 1.) Such negotiates further suggest that the Settlement is fair, adequate, and reasonable. Accordingly, the Court finds that this factor weighs in favor of approval.

5. Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." In re Pac. Enters. Sec. Litig., 47 F.3d 373, 378 (9th Cir. 1995). Class Counsel have extensive experience in class action litigation and in products liability litigation, suggesting that they are well-positioned to assess the risks of continued litigation and benefits obtained by the Settlement. (Mot., Docket No. 230-2 at 18.) Therefore, given Class Counsel's experience in handling similar matters and the extent of discovery and motion practice completed, the Court finds that Class Counsel's belief that the Settlement is fair, reasonable, and in the best interests of the Class should be given significant weight. See Vasquez, 266 F.R.D. at 490 ("Here, class counsel understood the complex risks and benefits of any

settlement and concluded that the proposed Settlement was a just, fair, and certain result. This factor weighs in favor of approval."). Accordingly, the Court finds that this factor weighs in favor of final approval.

6. Presence of a Governmental Participant

No governmental entity is present in this litigation. Pursuant to the Class Action Fairness Act ("CAFA"), the U.S. Attorney and all 50 State Attorneys General were notified of the Settlement. (Mot., Docket No. 230-2 at 19.) No government agency has voiced a concern. (Id.) Accordingly, this factor does not apply in this case. See In re Toys R Us-Delaware, 295 F.R.D. at 455 (factor does not apply in absence of government participant).

7. Reaction of the Class Members to the Proposed Settlement

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." Nat'l Rural Telecomms., 221 F.R.D. at 529 (citations omitted); see also Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 448 (E.D. Cal. 2013) ("Where a settlement agreement enjoys overwhelming support from the class, this lends weight to a finding that the settlement agreement is fair, adequate, and reasonable.").

Following the Court's preliminary approval of the proposed Settlement, Epiq mailed notice via first class mail to 647,843 potential Class Members. (Azari Decl., Docket No. 227 ¶¶ 8, 12-21.) The mailed notice effort reached approximately 96.5% of all Class Members. (Id. ¶¶ 9, 21.) On September 22, 2017, a website was also created for the Settlement, from which Class Members were able to obtain detailed information about the case and review and download documents related to the Settlement. (Id. ¶ 22.)

Of the approximately 270,000 Class Members, only four objections were received, which amounts to less than .0015% of the Class. (Mot., Docket No. 230-2 at 19.) Additionally, only 41 people filed requests for exclusion, which amounts to approximately 0.015% of the Class. (Id.) The small number of objections and requests for exclusion weighs in favor of final approval. Moreover, there have been 5,138 claims for the bypass wire repair procedure, 1,215 claims for reimbursement for past repairs, and 265,000 Class Members will be receiving the

automatic extended warranty. (Id.) Thus, the Court finds that the overall reaction by Class Members to the Settlement has been positive, as there is a moderate though reasonable claims rate and a low number of objectors and exclusions. See Churchill, 361 F.3d at 577 (affirming district court's approval of settlement where 500 of 90,000 class members opted out (.56%) and 45 class members objected to the settlement (.05%)). Accordingly, this factor weighs in favor of approval.

Overall, the weight of the factors supports the Court's conclusion that the proposed settlement is fair, reasonable, and adequate.

C. Notice

Rule 23(c)(2)(B) requires that the Court "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Similarly, Rule 23(e)(1) requires that a proposed settlement may only be approved after notice is directed in a reasonable manner to all class members who would be bound by the agreement. Fed. R. Civ. P. 23(e)(1).

In its preliminary approval order, the Court approved the plan for sending notice to potential Class Members. (Order, Docket No. 221 at 3.) As stated above, Epiq mailed notice via first class mail to 647,843 potential Class Members. (Azari Decl., Docket No. 227 ¶¶ 8, 12-21.) The mailed notice effort reached approximately 96.5% of all Class Members. (Id. ¶¶ 9, 21.) Additionally, on September 22, 2017, a website was created for the Settlement, from which Class Members were able to obtain detailed information about the case and to review and download documents related to the Settlement. (Id. ¶ 22.)

Objector Herd argues that the notice provided to the Class was not fair, adequate, and reasonable. (Obj., Docket No. 224 at 2.) First, Herd argues that the notice should have provided information "regarding either the number of class members or the aggregate estimated damages suffered by the class for the damages set forth in the prayer for relief in the second amended class action complaint." (Id.) Herd contends that because this information was not provided to Class Members, they "can not evaluate the difference between the proposed settlement's value, based on an estimated take rate and the value of the estimated aggregated damages." (Id. at 2-3.) Second, Herd argues that the notice provided "[did] not inform class members of the value of the in kind relief (i.e. the value of the repair)

that the Mercedes defendants will provide to class members who file claims." (Id. at 3.) Herd contends that as a result, Class Members "can not compare and evaluate the difference between the monetary value of their damages and the value of the in kind relief." (Id.)

"Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." Rodriguez v. West Publ'g Corp., 563 F.3d 948, 962 (9th Cir. 2009) (internal quotation marks and citation omitted). "Settlement notices are supposed to present information about a proposed settlement neutrally, simply, and understandably[.]" Id. "That standard does not require detailed analysis of the statutes or causes of action forming the basis for the plaintiff class's claims, and it does not require an estimate of the potential value of those claims." Lane, 696 F.3d at 826. The notice approved by the Court and implemented by Epiq satisfies this standard. As Callaway points out, "[i]f Herd desired additional information to evaluate the Settlement, she had ample opportunity to obtain such information by contacting Class Counsel or the Class Administrator, or by reading the pleadings on the Settlement Website[.]" (Mot., Docket No. 230-2 at 22.)

Accordingly, the Court finds that the notice to the Settlement Class was fair, adequate, and reasonable.

D. Attorneys' Fees and Costs

1. Fees

Class Counsel seeks an award of attorneys' fees in the amount of $5,662,387.50. (Mot., Docket No. 219-1 at 2.) The amount of attorneys' fees requested was determined by Judge Phillips in a contested evidentiary procedure that occurred after the parties reached an agreement on the Settlement terms for the Class. (Mot., Docket No. 230-2 at 3.) The parties essentially participated in an arbitration, with both parties agreeing in advance that Judge Phillips' decision would be binding on them regardless of the outcome. (Id. at 8.) The parties agreed to a "clear sailing" provision, whereby Mercedes would not object to Class Counsel's application for fees, and Judge Phillips determined that the amount of fees should be $5,662,387.50. (Id.) The fees will be separately paid by Mercedes, and will not reduce the benefits to the class. (Id.)

A court may award reasonable attorneys' fees and costs in certified class actions where they are authorized by law or by the parties' agreement. Fed. R. Civ. P. 23(h). Even when parties have agreed to a fee award, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable." In re Bluetooth, 654 F.3d at 941. A district court may apply the lodestar method to determine appropriate attorneys' fees. Staton v. Boeing Co., 327 F.3d 938, 967 (9th Cir. 2003). This requires multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate for the relevant market and the lawyers's experience levels. In re Bluetooth, 654 F.3d at 941.

Class counsel calculated its lodestar amount at approximately $3,431,570, comprised of 1,448 hours spent at FSS ($1,204,690), 1,179 hours spent at Eagan Avenatti, LLP, the firm at which the attorneys at FSS worked prior to forming FSS, ($989,155), 946.9 hours spent at YC ($918,727.80), and 449 hours spend at M&M ($445,132), for a total of approximately 4,023 hours spend on this litigation. (Frank Decl., Docket No. 219-2 ¶ 39; Yuhl Decl., Docket No. 219-3 ¶ 10; McNicholas Decl., Docket No. 219-4 ¶ 9.)

First, the Court examines whether the number of hours Class Counsel expended on the litigation was reasonable. Class Counsel spent a total of approximately 4,023 hours on this litigation over the course of three years, which included extensive motion practice, depositions of the parties' experts, the close of fact discovery, and multiple rounds of mediation. (Mot., Docket No. 219-1 at 1; Mot., Docket No. 230-2 at 1.) While the Court finds the number of hours incurred by Class Counsel high, it is within the range of reasonableness. Additionally, since the filing of its fee application, Class Counsel has spent additional time responding to telephone calls from Class Members and assisting in the claims process. (Mot., Docket No. 230-2 at 3 n.3.)

Second, the Court considers whether Class Counsel's hourly rates are reasonable. Objector Herd argues that Class Counsel's hourly rates are "somewhat high." (Obj., Docket No. 224 at 3-4.) The hourly rates for the FSS partners who worked on this case are between $900 and $850 per hour, the hourly rates for the YC partners who worked on this case are between $1,000 and $600 per hour, the hourly rate for the M&M partner who worked on this case is $1,000 per hour, and the hourly rates for other M&M attorneys who worked on this case are between $250 and $700 per hour. (Frank Decl., Docket No. 219-2 ¶ 39; Yuhl Decl., Docket

No. 219-2 ¶ 12; McNicholas Decl., Docket No. 219-4 ¶ 11.) Class Counsel's declarations show that the attorneys are experienced and successful litigators. (Frank Decl., Docket No. 219-2 ¶¶ 2-7, 39; Yuhl Decl., Docket No. 219-2 ¶¶ 2-7, 12; McNicholas Decl., Docket No. 219-4 ¶¶ 3-6, 11.) And, other courts have approved the attorneys' current or similar past rates. (Id.) Additionally, Objector Herd's contention that the rates are "somewhat high" is based exclusively on the Laffey Matrix adjusted for the Los Angeles market. (Obj., Docket No. 224 at 4.) However, the Ninth Circuit has rejected the use of the Laffey Matrix to determine reasonable hourly rates in California. See Prison Legal News v. Schwarzenegger, 608 F.3d 446, 454 (9th Cir. 2010). Therefore, the Court finds Class Counsel's hourly rates high, but within the range of what is reasonable and commensurate with prevailing market rates in Southern California.

Finally, several other factors support the fee award here. The parties negotiated the fee in mediation and it was decided upon by Judge Phillips after a contested evidentiary hearing. See Feuer v. Thompson, No. 10-CV-00279 YGR, 2013 WL 2950667, at *4 (N.D. Cal. June 14, 2013) (stating that a negotiated fee agreement is subject to less judicial scrutiny than a disputed fee request). The Court gives particular weight to Judge Phillips' assessment in light of his experience as a federal district judge and his extensive and sophisticated experience as a mediator. Additionally, attorneys are entitled to a larger fee award when their compensation is contingent in nature. See Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1048-50 (9th Cir. 2002); see also In re Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008). "It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for . . . contingency cases." In re Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1299 (9th Cir. 1994). This ensures competent representation for plaintiffs who may not otherwise be able to afford it. Id. Here, Class Counsel faced significant risk from contingent fee litigation because they expended significant time and money without guaranteed payment. (Mot., Docket No. 219-1 at 16; Frank Decl., Docket No. 219-2 ¶ 39; Yuhl Decl., Docket No. 219-2 ¶ 12; McNicholas Decl., Docket No. 219-4 ¶ 11.)

Applying the reasonable hourly rates that Class Counsel is seeking to the number of hours reasonably billed, Class Counsel's lodestar calculation is $3,431,570.30. (Mot., Docket No. 219-1 at 16.) "After determining the lodestar, the Court divides the total fees sought by the lodestar to arrive at the multiplier."

Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245, 265 (N.D. Cal. 2015). "The purpose of this multiplier is to account for the risk Class Counsel assumes when they take on contingent-fee cases." Hopkins v. Stryker Sales Corp., No. 11-CV-02786-LHK, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013). "If the multiplier falls within an acceptable range, it further supports the conclusion that the fees sought are, in fact, reasonable." Bellinghausen, 306 F.R.D. at 265. In determining whether a multiplier is appropriate, the court considers the following factors:

> (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

Vizcaino, 142 F. Supp. 2d at 1306 (citing Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975)). "Multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases." Hopkins, 2013 WL 496358, at *4; see also Vizcaino, 290 F.3d at 1051 n.6 (finding that, in approximately 83 percent of the cases surveyed by the Court, the multiplier was between 1.0 and 4.0).

Here, based on the lodestar amount of $3,431,570.30, the lodestar multiplier is 1.65 ($5,662,387.50/$3,431,570.30). In light of the results achieved, the duration of the case, the contingent nature of Class Counsel's fee arraignment, and the skill required to conduct this litigation, the Court believes that a multiplier of 1.65 is appropriate. See Vizcaino, 290 F.3d at 1051 n.6.

In sum, the Court finds that the proposed fee is reasonable.[3]

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[3] In the Ninth Circuit, the benchmark for fee awards in common fund cases is 25% of the common fund. In re Bluetooth, 654 F.3d at 942 ("Where a settlement produces a common fund for the benefit of the entire class, . . . courts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award[.]"). While this is not a common fund case, the Court

2. Costs

Class Counsel incurred $648,644.41 in case-related costs. (Mot., Docket No. 219-1 at 19.) Pursuant to the Settlement decided upon in mediation, however, Class Counsel has agreed to limit its reimbursement request to $584,085.20. (Id.) "Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters." In re Omnivision Techs., 559 F. Supp. 2d at 1048. Class Counsel contend that these costs would normally be charged to a fee-paying client and provide adequate documentation of these expenses in expense ledgers accompanying their declarations. (Mot., Docket No. 219-1 at 19; Frank Decl., Docket No. 219-2, Exhibits A-B; Yuhl Decl., Docket No. 219-2, Exhibit B; McNicholas Decl., Docket No. 219-4, Exhibit B.) Therefore, the Court awards $584,085.20 for reimbursement of reasonable expenses.

3. Class Representative Incentive Award

Courts have the discretion to issue incentive awards to class representatives. Rodriguez v. West Publ'g Corp., 563 F.3d 948, 958-59 (9th Cir. 2009) ("Incentive awards are fairly typical in class action cases."). The awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." Id.

Pursuant to the Settlement, Representative Plaintiff Callaway seeks an incentive award of $10,000. (Mot., Docket No. 219-1 at 2.) Numerous courts in the Ninth Circuit have approved similar or higher incentive awards where "the class representative has demonstrated a strong commitment to the class." Garner v. State Farm Mut. Auto. Ins. Co., No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) (collecting cases). Here, Callaway "provided his Subject Vehicle to the experts for inspection, which, pursuant to an agreement of the parties, was disassembled and placed in storage for over two years." (Mot., Docket No. 219-1 at 20; Callaway Decl., Docket No. 219-5 ¶ 3.) Additionally, Callaway consistently communicated with his counsel about the status of the case.

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notes that the attorneys' fees sought amount to just 6.7% of the estimated overall value of the Settlement ($5,662,387.50/$85,000,000), which lends support to the requested fee award. (Mot., Docket No. 219-1 at 2.)

(Callaway Decl., Docket No. 219-5 ¶ 4.) Further, he was deposed and involved in responding to written discovery and gathering responsive documents. (Mot., Docket No. 219-1 at 21; Callaway Decl., Docket No. 219-5 ¶ 4.) He estimates that he spent 75 hours performing his duties as a class representative. (Mot., Docket No. 219-1 at 21; Callaway Decl., Docket No. 219-5 ¶ 4.) Based on Callaway's time, effort, and dedication to this matter as the class representative, the Court finds that the incentive award is reasonable.

III. CONCLUSION

For the foregoing reasons, the Court **grants** the motion for final approval and **grants** the motion for attorneys' fees. The Court awards a $10,000 incentive payment to Representative Plaintiff Callaway. The Court also awards $5,66,387.50 in attorneys' fees and $584,085.21 in costs.

IT IS SO ORDERED.