

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

JEREMY RAYMO, et al., individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

FCA US LLC, a Delaware corporation,
and CUMMINS INC., an Indiana
corporation,

Defendants.

Case No. 2:17-cv-12168

Hon. Terrence G. Berg

Mag. Judge Stephanie Dawkins Davis

**PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEY'S FEES,
EXPENSES, AND INCENTIVE AWARDS**

Plaintiffs, by and through Class Counsel Hagens Berman Sobol Shapiro LLP, Carella, Byrne, Cecchi, Brody & Agnello P.C., Seeger Weiss LLP, and The Miller Law Firm, P.C., respectfully move the Court for an Order:

1. Awarding Class Counsel \$1,800,000.00 in attorney's fees;
2. Awarding Class Counsel \$325,299.52 as reimbursement for the reasonable costs and expenses of pursuing this litigation and obtaining settlement; and
3. Granting Service Awards of \$5,000.00 to each Plaintiff.

In support of this Motion, Plaintiffs have contemporaneously filed a Memorandum of Law, with exhibits thereto. In accordance with L.R. 7.1(a), Plaintiffs' counsel sought and obtained the concurrence of counsel for Defendants FCA US and Cummins in the relief sought by this Motion.

For the reasons set forth in the Memorandum of Law, Plaintiffs respectfully request that the Court grant their Unopposed Motion and enter the [Proposed] Order submitted to the Court.

DATED: July 8, 2024

Respectfully submitted,

By: /s/ Steve W. Berman

Steve W. Berman

Jerrold C. Patterson

Garth Wojtanowicz

HAGENS BERMAN SOBOL SHAPIRO LLP

1301 Second Avenue, Suite 2000

Seattle, WA 98101

Telephone: (206) 623-7292

Email: steve@hbsslaw.com

Email: jerrodp@hbsslaw.com

Email: garthw@hbsslaw.com

E. Powell Miller (P39487)

Dennis A. Lienhardt (P81118)

THE MILLER LAW FIRM PC

950 W. University Dr., Ste. 300

Rochester, MI 48307

Telephone: (248) 841-2200

Email: epm@millerlawpc.com

Email: dal@millerlawpc.com

Christopher A. Seeger

Christopher Ayers

SEEGER WEISS LLP

77 Water Street

New York, NY 10005

Telephone: (212) 584-0700

Email: cseeger@seegerweiss.com

Email: cayers@seegerweiss.com

James E. Cecchi
Zachary Jacobs
CARELLA, BYRNE, CECCHI,
BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 994-1700
Email: JCecchi@carellabyrne.com
Email: ZJacobs@carellabyrne.com

Attorneys for Plaintiffs

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**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT
OF UNOPPOSED MOTION FOR ATTORNEY'S FEES,
EXPENSES, AND SERVICE AWARDS**

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STATEMENT OF ISSUES PRESENTED

1. Whether the Court should approve Class Counsel's request for an award of attorney's fees of \$1,800,000.00 for their efforts in securing a \$6 million cash payment benefiting the Settlement Class, where such award constitutes 30% of the Settlement Fund?

Suggested Answer: **Yes.**

2. Whether the Court should approve Class Counsel's request for an award of costs and expenses in the amount of \$325,299.52, where such costs were reasonably incurred and contributed to the successful prosecution and settlement of the matter?

Suggested Answer: **Yes.**

3. Whether the Court should approve Class Counsel's request for service awards of \$5,000 to the Class Representatives rewarding their efforts, time, and energy expended for the benefit of the Settlement Class?

Suggested Answer: **Yes.**

**STATEMENT OF CONTROLLING OR
MOST IMPORTANT AUTHORITY**

In re Auto. Parts Antitrust Litig.,
2022 WL 4385345 (E.D. Mich. Sept. 22, 2022)

In re Cardizem CD Antitrust Litig.,
218 F.R.D. 508 (E.D. Mich. 2003)

Daoust v. Maru Rest., LLC,
2019 WL 2866490 (E.D. Mich. July 3, 2019)

Ramey v. Cincinnati Enquirer, Inc.,
508 F.2d 1188 (6th Cir. 1974)

Plaintiffs, by and through Class Counsel Hagens Berman Sobol Shapiro LLP, Carella, Byrne, Cecchi, Brody & Agnello P.C., Seeger Weiss LLP, and The Miller Law Firm, P.C., respectfully move the Court for an Order, pursuant to Rules 23(e) and 23(h) of the Federal Rules of Civil Procedure, for an award of attorney's fees in the amount of \$1,800,000, costs in the amount of \$325,299.52, and service awards of \$5,000 to each Plaintiff.

I. INTRODUCTION

Class Counsel, after years of investigation, litigation, and extensive arm's-length negotiations, have secured a Proposed Settlement for Plaintiffs and the Class that will resolve all outstanding claims in this matter while bringing exceptional relief to a Class of over 33,000 2013 to 2015 Dodge Ram 2500 and 3500 truck purchasers. The Proposed Settlement, if approved by the Court, will resolve this case in its entirety in exchange for direct payments to consumers in the sixteen states with claims that survived Defendants' motions to dismiss.¹ The payments will be meaningful and are expected to exceed \$100 per Class Vehicle after the award of fees, costs, and incentive awards. The relief is exceptional because it will not require Class Members to submit claim forms or clear administrative hurdles: rather, checks will be mailed directly to Class Members using FCA's purchase and lease records.

¹ The states are Alabama, Colorado, Florida, Georgia, Idaho, Kentucky, Michigan, Mississippi, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Utah, Virginia, and Washington.

Class Counsel secured the settlement through years of hard-fought negotiations informed by settlement discovery and independent expert analysis. Class Counsel's efforts included early direct settlement discussions with both Defendants, including the exchange of settlement discovery sufficient to allow the parties to assess the claims and the settlement value of the case, which information was supplemented with independent expert analysis conducted on Plaintiffs' vehicles to test the asserted theories. The direct negotiations were followed by formal mediations resulting first in a partial settlement with Defendant Cummins, and then after further extensive negotiations and a second mediation, the global settlement currently before the Court. By any measure, the Proposed Settlement represents an excellent result. It provides meaningful benefits to the Settlement Class while avoiding the substantial risks and delays of continued litigation.

As detailed below and in the accompanying declarations, Class Counsel vigorously pursued this litigation from its outset, and were fully prepared to continue down the path towards trial. Among their efforts, Class Counsel: (i) conducted a thorough legal and factual investigation into the Settlement Class's claims; (ii) researched and drafted the original and amended complaint; (iii) engaged in settlement fact discovery, including the review and analysis of documents produced by Defendants and production of relevant Plaintiff documents; (iv) employed experts to conduct independent testing of Plaintiffs' vehicles; and (v) engaged in numerous

and hard-fought settlement negotiations under the supervision of experienced mediators Judge Morton Denlow (Ret.) and Thomas McNeill. Class Counsel's fee request of \$1.8 million (30% of the settlement fund) is eminently reasonable and appropriate within this District as discussed below.² In addition, Class Counsel have expended \$325,299.52 in costs and expenses in litigating this matter, including costs and expenses for retaining experts, mediation fees, and other expenditures necessary for the resolution of the case.

For the reasons discussed herein, the requested award of fees, costs, and expenses, is fair and reasonable, particularly considering the favorable benefits obtained for the Settlement Class. Finally, the requests for service awards to Plaintiffs for the time and effort that they dedicated to this litigation on behalf of the Settlement Class are likewise reasonable and appropriate.

II. THE REQUESTED FEE AWARD IS REASONABLE AND SHOULD BE APPROVED

A. The requested fee is reasonable under the percentage of the fund method.

Courts strongly encourage negotiated fee awards in class action settlements. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee."). It is thus well established that attorneys who create a common fund

² Class Counsel will continue to devote resources to the Action through the completion of the settlement administration process.

for the benefit of a class are entitled to compensation for their services “from the fund as a whole.” *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (explaining that “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole”). This rule “is based on the equitable notion that those who have benefited from litigation should share in its costs.” *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007). “In deciding fee levels in common fund cases” such as the instant matter, courts must “do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.” *Id.* at 692 (citation omitted).

Courts in the Sixth Circuit reviewing attorney fee requests in class action settlements have available “two methods for calculating attorney’s fees: the lodestar and the percentage-of-the-fund” methods. *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 F. App’x 496, 498 (6th Cir. 2011). The percentage of fund method “is preferred in this district because it eliminates disputes about the reasonableness of rates and hours, conserves judicial resources, and aligns the interests of class counsel and the class members.” *In re Auto. Parts Antitrust Litig.*, 2022 WL 4385345, at *1 (E.D. Mich. Sept. 22, 2022) (collecting cases). The percentage of the fund method also better aligns Class Counsel’s interests with those of the Settlement Class because it bases the fee on the results the lawyers achieve for their clients and avoids some of

the problems the lodestar crosscheck method can foster (such as encouraging counsel to delay resolution of the case when an early resolution may be in their clients' best interests). *See Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944, at *29 (M.D. Tenn. Aug. 11, 1999) (noting that the percentage-of-the-fund method provides "a strong incentive to plaintiffs' counsel to obtain the maximum possible recovery in the shortest time possible under the circumstances"); *N.Y. State Teachers' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 243 (E.D. Mich. 2016) (explaining that "the percentage of the fund method more accurately reflects the results achieved" than the lodestar-times-multiplier method). And it is also simpler to apply. *See Hillson v. Kelly Servs. Inc.*, 2017 WL 3446596, at *2 (E.D. Mich. Aug. 11, 2017) (stating that "[t]he percentage-of-recovery approach is easy to calculate" and "establishes reasonable expectations on the part of plaintiffs' attorneys.") (citation omitted).

The court in *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 747 (S.D. Tex. 2008), cited approvingly to the *Third Circuit Task Force Report on the Selection of Class Counsel*, 208 F.R.D. 340, 421 (2002), which explained that the lodestar method has multiple significant drawbacks, including encouraging lawyers to expend excessive hours, engaging in duplicative and unjustified work, inflating normal billing rates, and creating a disincentive for early settlement of cases. *Id.*

Judge Edmunds has previously held:

The lodestar method should arguably be avoided in situations where such a common fund exists because it does not adequately acknowledge (1) the result achieved or (2) the special skill of the attorney(s) in obtaining that result. Courts and commentators have been skeptical of applying the formula in common fund cases.... [M]any courts have strayed from using lodestar in common fund cases and moved towards the percentage of the fund method which allows for a more accurate approximation of a reasonable award for fees.

In re Cardizem CD Antitrust Litig., 218 F.R.D. 508, 532 (E.D. Mich. 2003) (quoting *Fournier v. PFS Invs., Inc.*, 997 F. Supp. 828, 831-32 (E.D. Mich. 1998)).

For these reasons, the “trend” among district courts of the Sixth Circuit is to use the percentage-of-the-fund method to award fees to class counsel in cases where, as here, the settlement requires the defendant to establish a non-reversionary settlement fund for the class’s benefit. *See In re Delphi Corp. Sec., Derivative & “ERISA” Litig.*, 248 F.R.D. 483, 502 (E.D. Mich. 2008) (noting that “the Sixth Circuit has observed a ‘trend towards adoption of a percentage of the fund method in common fund cases’”); *In re Cardizem*, 218 F.R.D. at 532 (“This Court’s decision to apply the percentage-of-the-fund method is consistent with the majority trend[.]”); *Bowling v. Pfizer*, 922 F. Supp. 1261, 1278-79 (S.D. Ohio 1996), *aff’d*, 102 F.3d 777 (6th Cir. 1996) (noting that the preferred method in common fund cases has been to award a reasonable percentage of the fund); *In re Se. Milk Antitrust Litig.*, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013) (finding the percentage of the fund approach appropriate where

“a substantial common fund has been established for the benefit of class members through the efforts of class counsel”).

Under the percentage of the fund method, the requested fee of \$1,800,000 (30% of the Settlement Fund) is reasonable and appropriate. The Settlement Agreement itself contemplates a fee award using the percentage of fund method, stating that Class Counsel may seek an award of Attorney’s Fees “not to exceed 30% of the Settlement Fund.” *See* ECF No. 107-2, PageID.8186.

A fee request of 30% is certainly appropriate within the Sixth Circuit. In fact, courts in this District and others within the Sixth Circuit commonly award class counsel 30-35% (or more) in attorney’s fees. *See Pratt v. KSE Sportsman Media, Inc.*, 2024 WL 113755, at *1 (E.D. Mich. Jan. 10, 2024) (awarding 35% of common fund for attorney’s fees); *see also Schreiber v. Mayo Found. for Med. Educ. & Rsch.*, No. 2:22-cv-188, ECF No. 79 (W.D. Mich. May 29, 2024) (approving 35% fee award in the amount of \$18,375,000); *Kain v. The Economist Newspaper NA, Inc.*, 2023 WL 2541318 (E.D. Mich. Mar. 16, 2023) (same); *Moeller v. The Week Publications, Inc.*, 2023 WL 6628014 (E.D. Mich. Oct. 11, 2023 (same); *Zilinsky v. LeafFilter North, LLC*, 2023 WL 2696554 at *6-7 (S.D. Ohio. March 29, 2023) (awarding 33.3% of \$5.2 million common fund in consumer fraud case using percentage of fund method); *Thomsen v. Morley Co., Inc.*, 2023 WL 3437802, at *2 (E.D. Mich. May 12, 2023) (awarding 33% of \$4.3 million common fund in data breach case); *Martin v. Trott*

Law, P.C., 2018 WL 4679626, at *6 (E.D. Mich. Sept. 28, 2018) (awarding 33.33% of \$7.5 million fund in FDCPA case); *Sheean v. Convergent Outsourcing, Inc.*, 2019 WL 6039921, at *3 (E.D. Mich. Nov. 14, 2019) (awarding 33.3% of \$3.750 million fund in TCPA case). As the preceding examples show, the 30% fee award sought here is well in line with awards granted in cases of similar size and complexity and with common settlement funds of a similar size.

Class Counsel's supporting declarations include details on the work performed in prosecuting this case, the hours Class Counsel expended, and the specific expenses incurred. *See* Joint Decl. ¶¶ 13-22; Exs. 1-4 (Berman, Miller, Cecchi, and Seeger Declarations).

B. The *Ramey* factors for assessing fee awards support Class Counsel's fee request.

In reviewing the reasonableness of a fee request, the Sixth Circuit instructs district courts to consider the following six "*Ramey*" factors:

- 1) the value of the benefit rendered to the [class],
- 2) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others,
- 3) whether the services were undertaken on a contingent fee basis,
- 4) the value of the services on an hourly basis,
- 5) the complexity of the litigation, and
- 6) the professional skill and standing of counsel involved on both sides.

Ramey v. Cincinnati Enquirer, Inc., 508 F.2d 1188, 1194-97 (6th Cir. 1974). Each of the *Ramey* factors confirms that the requested \$1,800,000 fee is fair and reasonable.

1. The value of the benefit rendered to the Settlement Class Supports the Requested fee.

The benefit of the settlement for the class is “widely regard[ed]” “as the most important [factor].” *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 764 (S.D. Ohio 2007); *see also In re DPL Inc., Sec. Litig.*, 307 F. Supp. 2d 947, 951 (S.D. Ohio 2004) (“Herein, the award of attorneys’ fees must be driven by the results obtained by Plaintiffs’ counsel”). Here, the benefit to the Settlement Class is direct and simple to measure because the Settlement provides for a \$6 million cash payment (non-reversionary) to benefit of Settlement Class Members. After deducting notice and administration costs and the requested Fees, Costs, and Service Awards, Settlement Class Members will *automatically* be mailed a check for approximately \$100 per Class Vehicle, with no administrative or other burdens to recovery.

This benefit to Class Members is substantial and indeed *extraordinary* when considered in light of the fate of similar cases in this District (and before this Court) asserting claims stemming from diesel emissions. *See In re Duramax Diesel Litig.*, 681 F. Supp. 3d 767 (E.D. Mich. 2023) (dismissing state law claims on preemption grounds); *Counts v. Gen. Motors, LLC*, 606 F. Supp. 3d 678 (E.D. Mich. 2022) (same); *Bledsoe v. FCA US LLC*, 2024 WL 445334 (E.D. Mich. Jan. 26, 2024) (same). In each of these cases, the plaintiffs’ state law claims based on alleged inadequacies in the vehicles’ emissions systems (like the claims here) were dismissed outright on implied preemption grounds. Yet, despite the fact that the same counsel represented

FCA and Cummins in *Bledsoe*, Class Counsel secured a meaningful recovery for the Class here and have avoided the substantial risk posed by the preemption theory applied in those cases.

And although the heightened preemption risk arose while this case was pending, it was clear from the outset that this case presented significant challenges. Plaintiffs' claims were based upon alleged damages stemming from a "Washcoat Defect" that all parties agreed had already been fixed. Thus, Washcoat Defect damages depended on the heavily disputed theory that increased vehicle emissions between when the Defendants knew about the defect and when they actually fixed it constituted an overpayment or other measurable loss. Plaintiffs' claims were also based upon allegations of a "Flash Defect" resulting from the washcoat recall that reduced the trucks' fuel economy and resulted in increased fuel costs; these claims were based in substantial part upon analyses of Plaintiffs' vehicles conducted by experts at Class Counsel's expense. Thus, the Flash Defect claim depended upon untested expert analysis that was not explicitly supported by the fact of the recall to fix the Washcoat Defect, or by any regulatory agency finding.

Significantly, despite broad participation by plaintiffs' law firms in emissions-related lawsuits around the country, no other firms filed similar cases or competed with Class Counsel for control of this case, indicating that the market judged this to be a high-risk case. Competition for control is brisk when lawyers think cases have

significant potential to generate large recoveries and significant attorney’s fees. *See In re Synthroid Mktg. Litig.*, 325 F.3d 974, 979 (7th Cir. 2003). Thus, as Judge Easterbrook once observed: “Lack of competition not only implies a higher fee but also suggests that most members of the . . . bar saw this litigation as too risky for their practices.” *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013). That is exactly the circumstance here. Other attorneys and firms chose to pass on offering representation to the Settlement Class in this case because they either failed to identify the existence of class members’ claims in the first place or found pursuing those claims not worth the risk—in either case, firmly establishing that Class Counsel would have been able to obtain the requested fee of 30% of the Settlement Fund in an *ex ante* negotiation with the Settlement Class.

2. The contingent nature of Class Counsel’s representation supports the fee request.

“Whether counsel’s services were undertaken on [a] contingent fee basis is another factor for the Court to consider in evaluating a fee request.” *Delphi*, 248 F.R.D. at 503-04. Indeed, courts in this Circuit recognize that the attorneys’ contingent risk “counsels in favor of a generous fee.” *In re F&M Distribs., Inc. Sec. Litig.*, 1999 U.S. Dist. LEXIS 11090, at *18 (E.D. Mich. June 29, 1999) (noting importance that counsel “undertook this case on a contingent fee basis, which required them to fund all of the significant litigation costs while facing the risk of a rejection [of their] clients’ claims”); *Stanley v. U.S. Steel Co.*, 2009 WL 4646647, at *3 (E.D.

Mich. Dec. 8, 2009) (“A contingency fee arrangement often justifies an increase in the award of attorneys’ fees”).

Class Counsel have received no compensation during the seven years this Action has been pending and incurred out-of-pocket expenses of \$325,299.52. Joint Decl. ¶ 22. And additional further work in connection with the Settlement and claims administration will still be required until the Settlement is fully administered.

Moreover, any fee award to Class Counsel has always been at risk and completely contingent on the result achieved and on this Court’s discretion in awarding fees and expenses. What is more, unlike defense counsel—who typically receive payment on a timely basis whether they win or lose—Class Counsel sustained the entire risk that they would have to fund the expenses of this Action and that, unless Class Counsel succeeded, they would not be entitled to any compensation whatsoever. *See Delphi*, 248 F.R.D. at 503-04 (granting fee request where class counsel “prosecuted this action entirely on a contingent basis, knowing that it possibly could last for four or five years, require the expenditure of thousands of attorney hours and millions of dollars in expenses and ultimately result in a loss at summary judgment or at trial”). Indeed, given the nature of the allegations at issue, involving thousands of vehicles and a defect that is the result of complex design and engineering decisions that Defendants have more insight into and technical resources to defend,

the risk that this case could have been dismissed or the claims significantly reduced in scope was far more real than in many other class actions.

3. Society's stake in rewarding attorneys who litigate contingent class action matters supports the fee request.

Courts also consider “society’s stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others.” *In re Cardizem*, 218 F.R.D. at 533. Courts in this circuit consistently recognize that “[a]ttorneys who take on class action matters serve a benefit to society and the judicial process by enabling such small claimants to pool their claims and resources.” *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001).

Here, Class Counsel litigated this case for more than seven years on a fully contingent basis. Rewarding Class Counsel for the risk incurred and the substantial benefit they achieved for the Settlement Class furthers the public policy of incentivizing suits that are simply not practicable to bring on an individual basis. This is especially the case here given the significant size and geographic diversity of the class, the technical nature of the claims at issue, and the financial relief being provided to nearly 34,000 Class Members. As individuals, these Class Members lack the resources to take on sophisticated litigants like FCA and Cummins. Class Counsel was willing to make the investment required to combine the Class’s claims and ensure that they would be properly shepherded through the judicial process.

4. The complexity of the litigation supports the fee request.

The complexity of the litigation is also a significant factor to be considered in determining the reasonableness of an attorney's fee award. *See Delphi*, 248 F.R.D. at 504. As the Court is aware, this case involved a number of complex and disputed questions of law and fact that placed the ultimate outcome of the case in doubt. Indeed, Plaintiffs faced significant risks of prevailing on any: (1) motions to dismiss; (2) class certification; (3) motion for summary judgment, including on preemption issues; (4) challenges to expert testimony; and (5) the difficulties of prevailing at trial. Indeed, Defendants would be able to rely on solid body of caselaw whereby manufacturers have prevailed in emission cases like this one. *See Counts, Duramax, Bledsoe, supra*.

In short, with nearly 34,000 vehicles at issue and alleged defects implicating deeply technical details relating to diesel emissions control and systems programming, there is little question that this litigation is extremely complex, technical, and detailed.

5. The professional skill and standing of counsel involved on both sides supports the fee request.

Finally, courts in the Sixth Circuit evaluate the professional skill and standing of counsel in determining the reasonableness of a fee request. *See Cardizem*, 218 F.R.D. at 533. Here, the skill and standing of counsel for all parties was of the highest caliber. Class Counsel's respective firms have national standing and extensive experience in litigating complex class actions. Class Counsel prosecuted the case

vigorously, provided high quality legal services, and achieved a great result for the Settlement Class. This is especially evidenced by the fact that Defendants foresaw sufficient risk in proceeding forward with its arguments against Class Counsel that it forewent the various pre-trial opportunities it otherwise had to challenge Plaintiffs' claims and instead saw class-wide resolution as the safest route of proceeding in defending the action.

The quality of opposing counsel is also important in evaluating the services rendered by Class Counsel. *See Delphi*, 248 F.R.D. at 504. FCA and Cummins, both large and successful corporations, have the resources and knowledge to select and hire attorneys from among the best available. FCA was represented by very skilled attorneys from the nationwide firm of Thompson Coburn, LLP,³ which has a well-deserved reputation for exceptional advocacy in the defense of complex civil cases such as this matter. Likewise, Cummins was represented by Foley & Lardner, a firm of equally high standing that has successfully represented Cummins in many other similar lawsuits. *See In re Adelpia Commc'ns Corp. Sec. & Derivative Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels'")

³ Representation was later passed on to Klein Thomas Lee & Fresard, but the primary attorneys working on the case, including Stephen A. D'Aunoy, remained the same after the change in firms.

work”). In the face of this formidable opposition, Class Counsel were able to persuade Defendants to settle this case on terms favorable to the Settlement Class.

6. The value of Class Counsel’s services performed on an hourly basis is reasonable.

Finally, as discussed above, the percentage of the fund method, not the lodestar method, is the appropriate method for computing a reasonable fee award in this case. Thus, the only potential use for counsel’s lodestar in this case would be to “cross-check” that amount with the fees requested by counsel as a percentage of the fund. Even then, however, courts throughout the Sixth Circuit note that a cross-check of counsel’s lodestar is “not required.” *Arp v. Hohla & Wyss Enters., LLC*, 2020 WL 6498956, at *7 (S.D. Ohio Nov. 5, 2020); *Friske v. Bonnier Corp.*, 2019 WL 5265324, at *1 (E.D. Mich. Oct. 17, 2019); *Love v. Gannett Co. Inc.*, 2021 WL 4352800, at *6 (W.D. Ky. Sept. 24, 2021) (a “cross-check isn’t required”) (citing *Van Horn*, 436 F. App’x at 501); *Est. of McConnell v. EUBA Corp.*, 2021 WL 1966062, at *6 (S.D. Ohio May 17, 2021) (in considering the *Ramey* factors, “a lodestar cross-check” is “not required”). Rather, where the percentage of the fund method is used to compute counsel’s fee, a lodestar cross-check is optional and entirely discretionary. *See Van Horn*, 436 F. App’x at 501 (finding that district courts have complete discretion when deciding to calculate attorneys’ fees based on the percentage-of-the-fund or lodestar methods, and thus a cross-check analysis is optional). *Delphi*, 248 F.R.D. at 503 (applying percentage-of-the-fund method in awarding fees in common-

fund settlement, without addressing the *Ramey* factor pertaining to “the value of the services on an hourly basis”); *Fournier*, 997 F. Supp. at 832-33; *Arp*, 2020 WL 6498956, at *7-8.

In this case, like in *Delphi*, *Fournier*, and *Arp*, the circumstances giving rise to the Settlement demonstrate that there is no need to “cross-check” the requested fees (30% of the Settlement Fund) with the lodestar value of the time Class Counsel expended in the prosecution of this case. The “total benefit” to the Class is the entire Settlement Fund—\$6 million.

That being said, Class Counsel’s supporting declarations include the hours expended on the prosecution of this case in the event the Court desires that information. *See* Joint Decl., ¶¶ 13-22; Exs. 1-4 (Berman, Miller, Cecchi, and Seeger Declarations).

III. CLASS COUNSEL’S LITIGATION EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

Class Counsel incurred a total of \$325,299.52 in costs and expenses litigating this matter. Joint Decl. ¶¶ 21-22. As is routine in cases such as this one, “class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and settlement, including expenses incurred in connection with document production, consulting with experts and consultants, travel and other litigation-related expenses.” *New England Health Care Emps. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 634-35 (W.D. Ky. 2006); *see also In re Se.*

Milk, 2013 WL 2155387, at *7 (noting “[e]xpense awards are customary” in common fund cases).

Here, Class Counsel’s expenses were necessary for the prosecution and successful settlement of the litigation. The vast majority of costs incurred consisted of independent experts who analyzed Plaintiffs’ vehicles and the alleged defects, and mediation fees for the experienced mediators who oversaw the Parties’ settlement efforts. Joint Decl. ¶ 22. The other costs are typical of those incurred in any litigation and include the costs of legal research, document copying and database management, and similar expenses. These costs were relatively small for a litigation of this complexity and were entirely reasonable under the circumstances.

IV. CLASS REPRESENTATIVES SHOULD BE GRANTED SERVICE AWARDS

As this Court has recognized, “service awards are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs.” *Daoust v. Maru Rest., LLC*, 2019 WL 2866490, at *6 (E.D. Mich. July 3, 2019).

Here, Class Counsel seeks incentive awards of \$5,000 in connection with their representation of the Settlement Class. Numerous courts, including this Court, have approved similar awards to reimburse named plaintiffs and proposed class representatives for their time and effort on behalf of a class. *See, e.g., Daoust*, 2019

WL 2866490, at *6 (awarding service award of \$5,000); *Arp*, 2020 WL 6498956, at *8 (approving \$10,000 service award because “[i]t is important to compensate the work and additional risk that a class representative takes on”); *Persad v. Ford Motor Co.*, 2021 WL 6198059, at *2 (E.D. Mich. Dec. 30, 2021) (awarding an aggregate of \$30,000 in service awards to the three plaintiffs for “the time and effort expended in assisting the prosecution of this litigation and the risks incurred by becoming a litigant”).

Plaintiffs dedicated their personal time to the prosecution of the Action on behalf of the Settlement Class. In particular, Plaintiffs reviewed significant pleadings and briefs; communicated regularly with Class Counsel regarding the issues in the case, significant case developments, and litigation strategy; searched for and gathered documents in support of their claims and anticipated defenses by Defendant for production as part of the settlement negotiation process; made their vehicles available and installed devices in their vehicles (and later returned those devices) to gather data for review and analysis by Plaintiffs’ expert; and participated in reviewing and approving both the initial partial Settlement with Cummins, and the current global settlement with both Cummins and FCA. Given the numerous states being represented by Plaintiffs, and the size of the class that their combined efforts were able to achieve a settlement on behalf of, and the significant expenditure of time and energy by each of the Class Representatives (including permitting data to be gathered regarding their

vehicles' performance for expert analysis benefitting the entire class), the modest service awards being sought here are reasonable and justified.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) award reasonable attorney's fees in the amount of \$1,800,000 to Class Counsel, to be paid out of the Settlement Fund following final approval; (2) award the reasonable costs of litigation in the amount of \$325,299.52, to be paid out of the Settlement Fund following final approval; and (3) award \$5,000 as an incentive award to each Class Representative, to be paid out of the Settlement Fund following final approval.

DATED: July 8, 2024

Respectfully submitted,

By: /s/ Steve W. Berman
Steve W. Berman
Jerrod C. Patterson
Garth Wojtanowicz
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
Email: steve@hbsslaw.com
Email: jerrodp@hbsslaw.com
Email: garthw@hbsslaw.com

E. Powell Miller (P39487)
Dennis A. Lienhardt (P81118)
THE MILLER LAW FIRM PC
950 W. University Dr., Ste. 300
Rochester, MI 48307
Telephone: (248) 841-2200
Email: epm@millerlawpc.com
Email: dal@millerlawpc.com

Christopher A. Seeger
Christopher Ayers
SEEGER WEISS LLP
77 Water Street
New York, NY 10005
Telephone: (212) 584-0700
Email: cseeger@seegerweiss.com
Email: cayers@seegerweiss.com

James E. Cecchi
Zachary Jacobs
CARELLA, BYRNE, CECCHI,
BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 994-1700
Email: JCecchi@carellabyrne.com
Email: ZJacobs@carellabyrne.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 8, 2024, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

By: /s/ Steve W. Berman
Steve W. Berman

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

JEREMY RAYMO, et al., individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

FCA US LLC, a Delaware corporation,
and CUMMINS INC., an Indiana
corporation,

Defendants.

Case No. 2:17-cv-12168

Hon. Terrence G. Berg

Mag. Judge Stephanie Dawkins Davis

**INDEX OF EXHIBITS IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEY'S FEES,
EXPENSES, AND INCENTIVE AWARDS**

Ex.	Description
	Joint Declaration of Steve W. Berman, E. Powell Miller, James E. Cecchi, and Christopher A. Seeger
1	Declaration of Steve W. Berman
2	Declaration of E. Powell Miller
3	Declaration of James E. Cecchi
4	Declaration of Christopher A. Seeger

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JEREMY RAYMO, et al., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

FCA US LLC, a Delaware corporation,
and CUMMINS INC., an Indiana
corporation,

Defendants.

Case No.: 2:17-cv-12168

Hon. Terrence G. Berg

Mag. Judge Stephanie Dawkins Davis

**JOINT DECLARATION OF STEVE W. BERMAN, E. POWELL MILLER,
JAMES E. CECCHI, AND CHRISTOPHER A. SEEGER IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEY'S FEES,
EXPENSES, AND INCENTIVE AWARDS**

We, Steve W. Berman, E. Powell Miller, James E. Cecchi, and Christopher A. Seeger, declare as follows pursuant to 28 U.S.C. § 1746:

1. We, Steve W. Berman, E. Powell Miller, James E. Cecchi, and Christopher A. Seeger (collectively, "Co-Lead Counsel"), are partners of the law firms of Hagens Berman Sobol Shapiro, LLP ("Hagens Berman"), The Miller Law Firm, P.C. ("Miller Law"), Carella, Byrne, Cecchi, Brody and Agnello, P.C. ("Carella Byrne"), and Seeger Weiss, LLP ("Seeger Weiss"), respectively.

2. Co-Lead Counsel respectfully submit this Declaration on behalf of Plaintiffs in support of Plaintiffs' Unopposed Motion for Attorney's Fees, Expenses,

and Incentive Awards. Co-Lead Counsel have personal knowledge of the facts stated herein.

3. Co-Lead Counsel are experienced and skilled firms that have a successful track record in complex class actions in this District and throughout the country. The firm resumes and selected attorney profiles of Co-Lead Counsel and attorneys who contributed significantly to this case are found at ECF Nos. 107-6–107-9.

4. Plaintiffs, Cummins Inc. (“Cummins”), and FCA US LLC (“FCA US”) (collectively, the “Parties”) have reached a proposed Settlement resolving all allegations that model year 2013 through 2015 Dodge Ram 2500 and 3500 trucks sold between November 26, 2014, and July 13, 2016, were manufactured, marketed, sold, and leased with a defect that caused these vehicles to emit excessive amounts of pollutants (the “Washcoat Defect”) and contained a separate defect (the “Flash Defect”) that decreased the trucks’ fuel economy, that FCA sold these vehicles knowing of these Defects, and that these defects would be material to a reasonable consumer.

5. When Plaintiffs filed their Class Action Complaint (ECF No. 1, PageID.1) in July 2017, Co-Lead Counsel anticipated spending thousands of hours litigating the complex claims in this matter against one of the largest automotive manufacturers in the world with no guarantee of success. We understood that

prosecution of this litigation would require that other work be foregone, there was significant uncertainty surrounding the applicable legal and factual issues, and there would be significant opposition from a defendant with substantial resources and asserted legal defenses.

6. After filing the original complaint, Co-Lead counsel continued to investigate the claims and allegations, and conducted additional testing and analysis through the services of automotive emissions systems experts. On October 4, 2018, Plaintiffs filed their First Amended Class Action Complaint (ECF No. 17, PageID.2469, “FAC”). Defendants then filed motions to dismiss the FAC, which were fully briefed and argued. The Court entered its Order Granting in Part and Denying in Part Defendants’ Motions to Dismiss (ECF No. 50, PageID.6322, “MTD Order”) on July 30, 2020. The MTD Order dismissed without prejudice (1) Plaintiffs’ claims against FCA US and Cummins for violations of the RICO and MMWA statutes; (2) Plaintiffs’ state law claims for breach of contract in all states; (3) Plaintiffs’ claims for unjust enrichment asserted under the laws of California and Texas; (4) Plaintiffs’ claims for fraudulent omission in all states; and (5) Plaintiffs’ claims for violations of state consumer protection statutes in all states. The MTD Order preserved claims for unjust enrichment under Alabama, Colorado, Florida, Georgia, Idaho, Kentucky, Michigan, Mississippi, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Utah, Virginia, and Washington state law, and preserved

Plaintiffs' state law claims against FCA US and Cummins for affirmative representations to the extent they did not rest on alleged misrepresentations found in the MTD Order to be non-actionable.

7. Following the narrowing of the case through the Court's MTD Order, Co-Lead counsel began direct settlement discussions with counsel for defendants. As part of these direct discussions, the parties agreed to exchange informal discovery on certain agreed topics in order to facilitate meaningful settlement negotiations. As part of that settlement discovery, FCA US and Cummins provided Plaintiffs with documents and information concerning the nature, discovery, and timing of the alleged Washcoat and Flash Defects, the number of vehicles in the proposed classes, and other information bearing on potential damages for the alleged defects. Plaintiffs provided documents and information concerning the purchase, use, and maintenance of their trucks, including information regarding the installation of flash updates potentially associated with the alleged Flash Defect.

8. After these direct settlement discussions and exchange of information failed to yield a successful settlement, the Parties engaged in formal mediation with Judge Morton Denlow (Ret.), which included the exchange of formal mediation briefs, pre-mediation submissions and meetings, and numerous follow-up negotiations via email and telephone. As a result of these efforts, on October 3, 2022, Plaintiffs filed a motion seeking preliminary approval of a partial settlement between

Plaintiffs and Cummins. ECF No. 72, PageID.7168. Defendant FCA opposed the settlement (ECF No. 74, PageID.7456), and after further briefing and oral argument, the Court issued an Order granting preliminary approval on September 30, 2023. ECF No. 97, PageID.8072. However, following preliminary approval and before notice to the Class, the Parties discovered that the original list of Class vehicles was generated in error, and the true number of Class vehicles was not 17,705 as previously reported, but 33,918 vehicles. When informed of this error on December 4, 2023, the Court instructed the Parties to engage in further settlement negotiations.

9. The parties then engaged in a second round of formal mediation, employing the services of experienced mediatory Thomas McNeill. After exchanging a second round of mediation statements and engaging in numerous telephone, video, and email negotiations, the parties successfully reached the global settlement currently before the Court. The settlement provides for a \$6 million settlement fund benefitting the nearly 34,000 Class Members, estimated to result in the issuance of checks directly to Class Members of approximately \$100.00 per Class Vehicle. In the estimation of Co-Lead Counsel, the benefits the Class Members will receive as a result of this Settlement are eminently fair, reasonable, and adequate in light of the significant risks posed by continued litigation.

10. Co-Lead Counsel makes its recommendation of the Settlement based upon the investigation and evaluation of the facts and law relating to all of the

matters alleged in the pleadings, including among other things: (i) the substantial and immediate benefits available to Plaintiffs and the Settlement Class; (ii) the attendant risks and uncertainty of litigation, especially in complex actions such as this; (iii) the difficulties and delays inherent in such litigation; and (iv) the desirability of consummating a settlement promptly to provide effective relief to Plaintiffs and the Settlement Class.

11. While Plaintiffs and their counsel strongly believe in the merits of the cases, Plaintiffs would have faced numerous risks and significant expense if the litigation had continued, including motion to dismiss briefing, extensive and costly fact and expert discovery, class certification and summary judgment briefing, and then, if Plaintiffs had survived the prior stages, a jury trial, and potentially a subsequent appeal of a favorable verdict.

12. The Settlement avoids the risk and potentially years of delay continued litigation would have posed and simultaneously provides benefits for Plaintiffs and the Settlement Class that are immediate, certain, and substantial.

13. Co-Lead Counsel seeks the award of attorney's fees in the amount of 30% of the Settlement Fund, as permitted by the Settlement Agreement. In the experience of Co-Lead Counsel, and as reflected in the cases cited in Plaintiffs' Motion, an award of 30% of the Settlement Fund in a complex class action case like

this one is fair, reasonable, and well within the range of fee awards routinely granted by courts in this district.

14. As detailed in the Fee and Expense Motion, Class Counsel, in total, have devoted over 2786.9 hours, with a resulting lodestar of \$2,324,090.50, to the investigation, prosecution, and resolution of the Action. The fee sought by Class Counsel is thus actually *less* than the reasonable value of the services rendered on behalf of Plaintiffs and the Class and represents a 23% *discount* from the base lodestar. The fee request is therefore clearly reasonable given the risks inherent to this litigation, Class Counsel's efforts, and the relief achieved for the Class Members. In addition, Class Counsel have expended \$325,299.52 in costs and expenses in litigating this matter, including costs and expenses for retaining experts, mediation fees, and other expenditures necessary for the resolution of the case.

15. Class Counsel's Fee and Expense request is fully justified given the facts of this case. Class Counsel have devoted substantial time and advanced the funds necessary to prosecute this case with no assurance of compensation or repayment. To date, none of the firms that have assisted in the prosecution of this Action have been paid for their efforts. Instead, their compensation has been entirely contingent upon obtaining a recovery.

16. During the course of this Action, Class Counsel have: (i) conducted a thorough investigation into the Class's claims; (ii) drafted a detailed complaint and

amended complaint based on Counsel's research and investigation including expert analysis; (iii) engaged in extensive discovery throughout the mediation process, including the review of Defendants' documents and gathering and production of Plaintiffs' documents; (iv) consulted with independent experts to explore the factual bases for Plaintiffs' claims and theories; (v) engaged in arm's-length negotiations with Defendant, including multiple mediations under the supervision of experienced mediators; (vi) retained and communicated with the Settlement Administrator regarding providing adequate Notice to Class Members; and (vii) prepared preliminary and final approval motions in support of the Class Settlement. Moreover, Class Counsel will continue to perform legal work on behalf of the Class, through the Fairness Hearing and beyond, as additional resources will be expended working with the Settlement Administrator to ensure the smooth administration of the Settlement.

17. Class Counsel's efforts have required a substantial investment of time. Class Counsel have necessarily expended thousands of hours over more than seven years of litigation. As detailed below, the substantial amount of time (and resulting lodestar) devoted to this Action clearly supports Class Counsel's fee request.

18. As summarized in the table below, Co-Lead Counsel devoted over 2,762.90 hours to the prosecution and resolution of the Action, resulting in a lodestar of \$2,324,090.50.

Firm	Total Hours	Lodestar
Hagens Berman	1,811.10	\$1,442,030.00
Miller Law	231.70	\$175,528.50
Carella Byrne	574.4	\$541,192.50
Seeger Weiss	169.70	\$165,339.50
TOTAL	2,786.90	\$2,324,090.50

19. The declarations attached hereto as Exhibits 1–4 detail the time spent by the partners, other attorneys, and professional support staff of Hagens Berman, Miller Law, Carella Byrne, and Seeger Weiss who were involved in this litigation, and the lodestar calculation based on those firms’ current billing rates. The schedules were prepared from contemporaneous, daily time records regularly prepared and maintained by the firms, which are available at the request of the Court for review in camera.

20. The hourly rates for the partners, other attorneys, and professional support staff of Hagens Berman, Miller Law, Carella Byrne, and Seeger Weiss included in Exhibits 1–4 are the same as those which have been used in the lodestar cross checks accepted by courts in other class litigation.

21. In addition to the award of attorney’s fees, Class Counsel request the reimbursement of expenses reasonably incurred in the successful prosecution and

settlement of this matter in the amount of \$325,299.52. Reimbursement of such expenses was fully contingent on a successful outcome in this case.

22. The vast majority of the expenses were for Plaintiffs' independent experts who conducted extensive analysis into the Defect as well as the third-party mediators who supervised the multi-year mediation and negotiation process. Specifically, the costs for Plaintiffs' experts total \$299,696.67, or 92 percent of the total expenses, and the costs for the mediators total \$15,169.92, or 4.6 percent of the total expenses. The remaining expenses consist of categories such as filing fees, legal research, and copying charges, as shown below.

Description of Cost	Cost Incurred
Printing / Transcripts	\$5,069.10
Expert Fees	\$299,696.67
Filing Fees	\$400.00
PACER / Database / Legal Research	\$2,560.04
Process Server Fees	\$272.45
Mediation Fees	\$14,782.84
Postage / Shipping	\$605.77
Travel	\$672.34
TOTAL	\$325,299.52

23. Class Counsel also seek Service Awards of \$5,000 for each Class Representative for their work in representing the Class in the Action, for an aggregate incentive award total of \$85,000. Each of the Plaintiffs has been committed to pursuing the Class's claims since they became involved in the Action in 2017.

24. Class Counsel has spent hours consulting with each of the Class Representatives about the claims, issues, developments, and strategies, and provided copies of significant documents and filings for review, and each Class Representative has provided documents and information provided to Defendants as settlement discovery to assist in the settlement of this case. Moreover, the Class Representatives assisted in the investigation and analysis of the claims in this matter by making their vehicles available and permitting the installation of (and later returning) devices in their vehicles to gather data regarding their use and performance, which data was made available to Plaintiffs' experts for analysis. Moreover, each of the Class Representatives has actively participated in the settlement process, including reviewing and considering both the initial partial settlement with Cummins and the later global settlement with both Defendants. Thus, despite the lack of formal depositions in this case, the Class Representatives have played active, important, and time-consuming roles in the successful settlement

of this case, and their incentive awards are justified in light of their efforts on behalf of the Class.

25. Based on the additional explanation and legal authorities set forth in the Fee Motion, Co-Lead Counsel respectfully submit that Class Counsel's Fee and Expense Motion be granted.

We declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed on: July 8, 2024

/s/ Steve W. Berman

STEVE W. BERMAN

Executed on: July 8, 2024

/s/ E. Powell Miller

E. POWELL MILLER

Executed on: July 8, 2024

/s/ James E. Cecchi

JAMES E. CECCHI

Executed on: July 8, 2024

/s/ Christopher A. Seeger

CHRISTOPHER A. SEEGER

EXHIBIT 1

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JEREMY RAYMO, et al., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

FCA US LLC, a Delaware corporation,
and CUMMINS INC., an Indiana
corporation,

Defendants.

Case No.: 2:17-cv-12168

Hon. Terrence G. Berg

Mag. Judge Stephanie Dawkins Davis

**DECLARATION OF STEVE W. BERMAN IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEY'S FEES,
EXPENSES, AND INCENTIVE AWARDS**

I, Steve W. Berman, declare as follows:

1. I am the managing partner of the law firm Hagens Berman Sobol Shapiro LLP, attorneys for Plaintiffs in the above-captioned action. I submit this declaration in support of Plaintiffs' Unopposed Motion for Attorney's Fees, Expenses, and Incentive Awards, and I could and would competently testify to the matters stated in this Declaration based on my personal knowledge or discussions with counsel in my firm.

2. Hagens Berman has extensive experience prosecuting class action cases, including cases involving claims arising out of alleged automobile defects and

deficiencies. Hagens Berman's qualifications as well as the backgrounds of the principal attorneys working on this case were previously filed in this matter. *See* ECF No. 107-6, PageID.8239-73.

3. During the pendency of this litigation, my firm carefully coordinated activities with the other Class Counsel firms to avoid engaging in duplicative or unnecessary work.

4. During the litigation, Hagens Berman, in conjunction and coordination with the other Class Counsel firms, performed work that was essential to the successful prosecution and settlement of this matter, including but not limited to:

- a. Legal analysis of the claims;
- b. Preparation of the original and amended complaints in this matter;
- c. Drafting legal briefs and memoranda, including papers in opposition to Defendants' motions to dismiss Plaintiffs' claims under Rule 12(b)(6);
- d. Retaining and working with experts to assist in the investigation of the claims and potential claims in this matter, and the nature and extent of possible damages;
- e. Engaging in settlement-related discovery with the defendants in this matter, including gathering and producing documents and information from the named Plaintiffs, and reviewing and analyzing

documents and information produced by defendants for purposes of settlement negotiations;

- f. Drafting mediation statements, communicating with mediators, participating in multiple mediation sessions with two separate mediators, and engaging in extensive arm's-length negotiations with counsel for the Defendants leading to the proposed settlement of the claims in this matter;
- g. Preparation of motions and supporting papers seeking approval of the proposed settlement of this matter;
- h. Communicating regularly with Plaintiffs and class members;
- i. Preparation of the class notice and coordinating with the Settlement Administrator to disseminate Class Notice in accordance with the Court's instructions.

5. As summarized below, Hagens Berman has devoted 1,811.10 hours to date to the prosecution and resolution of this matter, resulting in a lodestar of \$1,442,030.00, calculated based on Hagen's Berman's currently hourly rates, which range from (i) \$800 per hour to \$1,350 per hour for partners; (ii) \$500 per hour to \$525 per hour for counsel, associates, staff attorneys, and project attorneys; and (iii) \$175 per hour to \$425 per hour for paralegals and law clerks.

Timekeeper	Role	Rate	Hours	Amount Billed
Steve Berman	Partner	\$1350.00	113.5	\$153,225.00
Garth Wojtanowicz	Partner	\$800.00	827.10	\$661,680.00
Jerrod Patterson	Partner	\$800.00	477.40	\$381,920.00
Chris O'Hara	Partner	\$800.00	114.10	\$91,280.00
Elaine Byszewski	Partner	\$1,100.00	59.50	\$65,450.00
Rob Carey	Partner	\$1,00.00	2.50	\$2,500.00
Sophia Chao	Attorney	\$500.00	9.60	\$4,800.00
Anthea Grivas	Associate	\$525.00	.30	\$157.50
Nicolle Huerta	Paralegal	\$400.00	128.00	\$51,200.00
Jennifer Conte	Paralegal	\$400.00	12.40	\$4,960.00
Carrie Flexer	Paralegal	\$425.00	23.80	\$10,115.00
Robert Haegele	Paralegal	\$400.00	.90	\$360.00
Sharon Johnson	Paralegal	\$250.00	.20	\$50.00
Radha Kerzan	Paralegal	\$350.00	4.60	\$1,610.00
Chan Lovell	Paralegal	\$300.00	1.90	\$570.00
Joseph Salonga	Paralegal	\$400.00	10.60	\$4,240.00
Jessica Stevens	Paralegal	\$250.00	4.90	\$1,225.00
William Stevens	Paralegal	\$400.00	.40	\$160.00

Shelby Taylor	Paralegal	\$350.00	17.90	\$6,265.00
Heidi Waggoner	Admin.	\$175.00	1.50	\$262.50
TOTAL			1811.10	\$1,442,030.00

6. Hagens Berman's regularly prepared and maintained files contemporaneously documenting time spent, including the tasks performed. Supporting records are available at the request of the Court for review in camera.

7. Hagens Berman advanced expenses in prosecuting this litigation. They are the type of expenses typically billed by attorneys to paying clients in the marketplace and include costs incurred for research, filing fees, expert fees, mediation fees, and travel expenses. All of these expenses were reasonable and necessary for the prosecution of this litigation. Supporting records are available at the request of the Court for review in camera.

8. The expenses incurred and paid by Hagens Berman in the prosecution of this litigation are summarized as follows:

Description of Cost	Cost Incurred
Printing / Transcripts	\$2,774.85
Expert Fees	\$299,696.67
Filing Fees	\$400.00

PACER / Database / Legal Research	\$1,781.02
Process Server Fees	\$99.00
Mediation Fees	\$14,782.84
Postage / Shipping	\$524.04
Travel	\$672.34
TOTAL	\$321,971.07

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

DATED: July 8, 2024
at Seattle, Washington

/s/ Steve W. Berman
STEVE W. BERMAN

EXHIBIT 2

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JEREMY RAYMO, et al., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

FCA US LLC, a Delaware corporation,
and CUMMINS INC., an Indiana
corporation,

Defendants.

Case No.: 2:17-cv-12168

Hon. Terrence G. Berg

Mag. Judge Stephanie Dawkins Davis

**DECLARATION OF E. POWELL MILLER IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEY'S FEES,
EXPENSES, AND INCENTIVE AWARDS**

I, E. Powell Miller, declare as follows:

1. I am the founding partner and CEO of The Miller Law Firm PC, one of the firms appointed as Class Counsel in the above-captioned action. I submit this declaration in support of Plaintiffs' Unopposed Motion for Attorney's Fees, Expenses, and Incentive Awards, and I could and would competently testify to the matters stated in this Declaration based on my personal knowledge or discussions with counsel in my firm.

2. The Miller Law Firm has extensive experience prosecuting class action cases, including cases involving claims arising out of alleged automobile defects and

deficiencies. The Miller Law Firm's qualifications were previously filed in this matter. *See* ECF No. 107-9, PageID.8287-303.

3. During the pendency of this litigation, my firm carefully coordinated activities with the other Class Counsel firms to avoid engaging in duplicative or unnecessary work.

4. During the litigation, The Miller Law Firm, in conjunction and coordination with the other Class Counsel firms, performed work that was essential to the successful prosecution and settlement of this matter, including but not limited to:

- a. Legal analysis of the claims;
- b. Preparation of the original and amended complaints in this matter;
- c. Drafting legal briefs and memoranda, including papers in opposition to Defendants' motions to dismiss Plaintiffs' claims under Rule 12(b)(6);
- d. Retaining and working with experts to assist in the investigation of the claims and potential claims in this matter, and the nature and extent of possible damages;
- e. Engaging in settlement-related discovery with the defendants in this matter, including gathering and producing documents and information from the named Plaintiffs, and reviewing and analyzing

documents and information produced by defendants for purposes of settlement negotiations;

- f. Drafting mediation statements, communicating with mediators, participating in multiple mediation sessions with two separate mediators, and engaging in extensive arms-length negotiations with counsel for the Defendants leading to the proposed settlement of the claims in this matter;
- g. Preparation of motions and supporting papers seeking approval of the proposed settlement of this matter;
- h. Communicating with class members;
- i. Preparation of the class notice, and coordinating with the Settlement Administrator to disseminate Class Notice in accordance with the Court's instructions.

5. As summarized below, The Miller Law Firm has devoted 231.70 hours to date to the prosecution and resolution of this matter, resulting in a lodestar of \$175,528.50. Lodestar has been calculated based on The Miller Law Firm's hourly rates, which range from (i) \$750 per hour to \$1,050 per hour for partners; (ii) \$385 per hour to \$775 per hour for counsel, associates, staff attorneys, and project attorneys; and (iii) \$275 per hour for paralegals and law clerks. The time spent by

each attorney and staff member of The Miller Law Firm who have worked on this case is summarized in the following table:

Timekeeper	Role	Rate	Hours	Amount Billed
E. Powell Miller	Partner	\$1,050.00	32.50	\$34,125.00
Sharon Almonrode	Partner	\$995.00	57.50	\$57,411.50
Emily Hughes	Partner	\$875.00	39.20	\$34,300.00
Dennis Lienhardt	Partner	\$750.00	36.00	\$27,000.00
Gregory Mitchell	Associate	\$775.00	1.40	\$1,085.00
William Kalas	Associate	\$465.00	34.80	\$16,182.00
Jessica Connan	Associate	\$385.00	6.50	\$2,502.50
Amy Davis	Paralegal	\$275.00	3.00	\$825.00
Licia Bates	Paralegal	\$275.00	23.30	\$6,407.50
Danelle Vanderbeke	Paralegal	\$275.00	3.80	\$1,045.00
TOTAL			231.70	\$175,528.50

6. The Miller Law Firm regularly prepared and maintained files contemporaneously documenting time spent, including the tasks performed. Supporting records are available at the request of the Court for review *in camera*.

7. The Miller Law Firm also advanced expenses in prosecuting this litigation. They are the type of expenses typically billed by attorneys to paying

clients in the marketplace and include costs incurred for research, filing fees, expert fees, mediation fees, and travel expenses. All of these expenses were reasonable and necessary for the prosecution of this litigation. Supporting records are available at the request of the Court for review *in camera*.

8. The expenses incurred and paid by The Miller Law Firm in the prosecution of this litigation are summarized as follows:

Description of Cost	Cost Incurred
Printing / Transcripts	\$2,294.25
PACER / Database / Legal Research	\$284.82
Postage / Shipping	\$20.21
TOTAL	\$2,599.28

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

DATED: July 8, 2024
at Rochester, Michigan

/s/ E. Powell Miller
E. POWELL MILLER

EXHIBIT 3

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JEREMY RAYMO, et al., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

FCA US LLC, a Delaware corporation,
and CUMMINS INC., an Indiana
corporation,

Defendants.

Case No.: 2:17-cv-12168

Hon. Terrence G. Berg

Mag. Judge Stephanie Dawkins Davis

**DECLARATION OF JAMES E. CECCHI IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEY'S FEES,
EXPENSES, AND INCENTIVE AWARDS**

I, James E. Cecchi, declare as follows:

1. I am a partner at the law firm Carella, Byrne, Cecchi, Brody & Agnello, P.C., one of the firms appointed as Class Counsel in the above-captioned action. I submit this declaration in support of Plaintiffs' Unopposed Motion for Attorney's Fees, Expenses, and Incentive Awards, and I could and would competently testify to the matters stated in this Declaration based on my personal knowledge or discussions with counsel in my firm.

2. Carella Byrne has extensive experience prosecuting class action cases, including cases involving claims arising out of alleged automobile defects and

deficiencies. Carella Byrne's qualifications were previously filed in this matter. *See* ECF No. 107-7, PageID.8274-76.

3. During the pendency of this litigation, my firm carefully coordinated activities with the other Class Counsel firms to avoid engaging in duplicative or unnecessary work.

4. During the litigation, Carella Byrne, in conjunction and coordination with the other Class Counsel firms, performed work that was essential to the successful prosecution and settlement of this matter, including but not limited to:

- a. Legal analysis of the claims;
- b. Preparation of the original and amended complaints in this matter;
- c. Drafting legal briefs and memoranda, including papers in opposition to Defendants' motions to dismiss Plaintiffs' claims under Rule 12(b)(6);
- d. Retaining and working with experts to assist in the investigation of the claims and potential claims in this matter, and the nature and extent of possible damages;
- e. Engaging in settlement-related discovery with the defendants in this matter, including gathering and producing documents and information from the named Plaintiffs, and reviewing and analyzing

documents and information produced by defendants for purposes of settlement negotiations;

- f. Drafting mediation statements, communicating with mediators, participating in multiple mediation sessions with two separate mediators, and engaging in extensive arms-length negotiations with counsel for the Defendants leading to the proposed settlement of the claims in this matter;
- g. Preparation of motions and supporting papers seeking approval of the proposed settlement of this matter;
- h. Communicating with class members;
- i. Preparation of the class notice, and coordinating with the Settlement Administrator to disseminate Class Notice in accordance with the Court's instructions.

5. As summarized below, Carella Byrne has devoted 574.40 hours to date to the prosecution and resolution of this matter, resulting in a lodestar of \$541,192.50.

Timekeeper	Role	Rate	Hours	Amount Billed
Cecchi, James	Partner	114.70	\$1,300.00	\$149,110.00
Taylor, Lindsey	Partner	0.30	\$950.00	\$285.00

Ecklund, Donald	Partner	0.40	\$975.00	\$390.00
Bower, Zach	Partner	2.20	\$950.00	\$2,090.00
Bartlett, Caroline	Partner	5.50	\$975.00	\$5,362.50
Innes, Michael	Partner	10.50	\$950.00	\$9,975.00
Cooper, Kevin	Partner	0.20	\$750.00	\$50.00
O'Brien, James	Counsel	113.60	\$950.00	\$107,920.00
Jacobs, Zach	Associate	254.90	\$950.00	\$242,155.00
Makhail, Mark	Associate	18.10	\$550.00	\$9,955.00
Steele, Jordan	Associate	1.50	\$600.00	\$900.00
O'Toole, Brian	Associate	2.90	\$600.00	\$1,740.00
Viera, Clara	Paralegal	7.80	\$225.00	\$1,755.00
Caraballo, Luis	Paralegal	2.90	\$225.00	\$652.50
Houser, Nancy	Paralegal	0.80	\$225.00	\$180.00
Tempesta, Laura	Paralegal	24.30	\$225.00	\$5,467.50

Falduto, Jeff	Paralegal	2.30	\$225.00	\$517.50
Rago, Mary Ellen	Paralegal	1.50	\$225.00	\$337.50
Kinneary, Kristen	Paralegal	1.10	\$225.00	\$247.50
MaClane, Dylan	Paralegal	8.90	\$225.00	\$2,002.50
TOTAL		574.4		\$541,192.50

6. Carella Byrne regularly prepared and maintained files contemporaneously documenting time spent, including the tasks performed. Supporting records are available at the request of the Court for review *in camera*.

7. Carella Byrne also advanced expenses in prosecuting this litigation. They are the type of expenses typically billed by attorneys to paying clients in the marketplace and include costs incurred for research, filing fees, expert fees, mediation fees, and travel expenses. All of these expenses were reasonable and necessary for the prosecution of this litigation. Supporting records are available at the request of the Court for review *in camera*.

8. The expenses incurred and paid by Carella Byrne in the prosecution of this litigation are summarized as follows:

Description of Cost	Cost Incurred
PACER / Database / Legal Research	\$494.20
Postage / Shipping	\$61.52
TOTAL	\$555.72

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

DATED: July 8, 2024
at Roseland, New Jersey

/s/ James E. Cecchi
JAMES E. CECCHI

EXHIBIT 4

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JEREMY RAYMO, et al., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

FCA US LLC, a Delaware corporation,
and CUMMINS INC., an Indiana
corporation,

Defendants.

Case No.: 2:17-cv-12168

Hon. Terrence G. Berg

Mag. Judge Stephanie Dawkins Davis

**DECLARATION OF CHRISTOPHER A. SEEGER IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEY'S FEES,
EXPENSES, AND INCENTIVE AWARDS**

I, Christopher A. Seeger, declare as follows:

1. I am a partner at the law firm Seeger Weiss LLP, one of the firms appointed as Class Counsel in the above-captioned action. I submit this declaration in support of Plaintiffs' Unopposed Motion for Attorney's Fees, Expenses, and Incentive Awards, and I could and would competently testify to the matters stated in this Declaration based on my personal knowledge or discussions with counsel in my firm.

2. Seeger Weiss has extensive experience prosecuting class action cases, including cases involving claims arising out of alleged automobile defects and

deficiencies. Seeger Weiss's qualifications were previously filed in this matter. *See* ECF No. 107-8, PageID.8277-86.

3. During the pendency of this litigation, my firm carefully coordinated activities with the other Class Counsel firms to avoid engaging in duplicative or unnecessary work.

4. During the litigation, Seeger Weiss, in conjunction and coordination with the other Class Counsel firms, performed work that was essential to the successful prosecution and settlement of this matter, including but not limited to:

- a. Legal analysis of the claims;
- b. Preparation of the original and amended complaints in this matter;
- c. Drafting legal briefs and memoranda, including papers in opposition to Defendants' motions to dismiss Plaintiffs' claims under Rule 12(b)(6);
- d. Retaining and working with experts to assist in the investigation of the claims and potential claims in this matter, and the nature and extent of possible damages;
- e. Engaging in settlement-related discovery with the defendants in this matter, including gathering and producing documents and information from the named Plaintiffs, and reviewing and analyzing

documents and information produced by defendants for purposes of settlement negotiations;

- f. Drafting mediation statements, communicating with mediators, participating in multiple mediation sessions with two separate mediators, and engaging in extensive arms-length negotiations with counsel for the Defendants leading to the proposed settlement of the claims in this matter;
- g. Preparation of motions and supporting papers seeking approval of the proposed settlement of this matter;
- h. Communicating with class members;
- i. Preparation of the class notice and coordinating with the Settlement Administrator to disseminate Class Notice in accordance with the Court's instructions.

5. As summarized below, Seeger Weiss has devoted 145.70 hours to date to the prosecution and resolution of this matter, resulting in a lodestar of \$139,539.50. Lodestar has been calculated based on Seeger Weiss's hourly rates in place at the time the services were performed, which range from (i) \$975.00 per hour to \$1,395.00 per hour for partners; (ii) and \$395.00 per hour for paralegals and analysts. The time spent by each Seeger Weiss attorney and staff member who have worked on this case is summarized in the following table:

Timekeeper	Role	Rate	Hours	Amount Billed
Christopher Seeger	Partner	\$1,395.00	1.00	\$1,395.00
Christopher Ayers	Partner	\$1,075.00	69.40	\$74,605.00
Jennifer Scullion	Partner	\$1,275.00	4.1	\$5,227.50
Oneil Bryan	Analyst	\$395.00	9.9	\$3,910.50
Sabrina Tyjer	Paralegal	\$395.00	5.2	\$2,054.00
Scott George	Partner	\$975.00	79.6	\$77,610.00
Shauna Itri	Partner	\$1,075.00	0.5	\$537.50
TOTAL			145.70	\$165,339.50

6. Seeger Weiss regularly prepared and maintained files contemporaneously documenting time spent, including the tasks performed. Supporting records are available at the request of the Court for review *in camera*.

7. Seeger Weiss also advanced expenses in prosecuting this litigation. They are the type of expenses typically billed by attorneys to paying clients in the marketplace and include costs incurred for research, filing fees, expert fees, mediation fees, and travel expenses. All of these expenses were reasonable and necessary for the prosecution of this litigation. Supporting records are available at the request of the Court for review *in camera*.

8. The expenses incurred and paid by Seeger Weiss in the prosecution of this litigation are summarized as follows:

Description of Cost	Cost Incurred
Process Server Fees	\$173.45
TOTAL	\$173.45

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

DATED: June 8, 2024
at Seattle, Washington

/s/ Christopher A. Seeger
CHRISTOPHER A. SEEGER