

1 Joseph J. Tabacco, Jr. (Bar No. 75484)
Todd A. Seaver (Bar No. 271067)
2 Matthew D. Pearson (Bar No. 235339)
BERMAN TABACCO
3 425 California Street, Suite 2300
San Francisco, CA 94104
4 Telephone: (415) 433-3200
Facsimile: (415) 433-6382
5 Email: jtabacco@bermantabacco.com
tseaver@bermantabacco.com
6 mpearson@bermantabacco.com

7 *Attorneys for Plaintiffs*

8 *[Additional Counsel on Signature Page]*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**
UNLIMITED JURISDICTION

11 COORDINATION PROCEEDING SPECIAL)
TITLE (Cal. R. Ct. 1550(b)))

Judicial Council Coordination
Proceeding Nos. No. 4298 and 4303

12)
13 AUTOMOBILE ANTITRUST CASES I, II)

CJC-03-004298 and CJC-03-004303

CLASS ACTION

14 _____)
15 This document relates to:)
16 All Actions)

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF SETTLEMENT WITH
FORD CANADA**

17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
Date: October 5, 2022

Time: 10:00 a.m.

Dept: 306

Judge: Honorable Anne-Christine Massullo

Date Complaint Filed: October 6, 2003
(Consolidated Amended Class Action
Complaint)

TABLE OF CONTENTS

	<u>PAGE</u>
1	
2	
3	I. INTRODUCTION6
4	II. BACKGROUND7
5	A. Case Origins.....7
6	B. Coordinated Discovery8
7	C. Class Certification in this Action.....8
8	D. Summary Judgment Proceedings and Appeal.....9
9	E. Renewed Proceedings and Appeal of <i>Res Judicata</i> Order.....10
10	F. Renewed Proceedings and Preparation for Trial10
11	G. Mediation Efforts Overseen by Judge Infante11
12	H. Prior Settlements.....13
13	I. Key Settlement Terms.....14
14	J. Preliminary Approval and Notice to the Class14
15	III. LEGAL STANDARD.....16
16	IV. ARGUMENT16
17	A. The Settlement Is Fair, Adequate, and Reasonable16
18	1. The Settlement Is a Product of Arm’s-Length Negotiations17
19	2. Sufficient Investigation and Discovery Occurred to Allow Counsel and the Court to Intelligently Determine the Settlement Is Fair.....18
20	3. The Settlement Provides Substantial Monetary Relief to Class Members19
21	4. Settlement Is Appropriate in Light of the Strength of Plaintiffs’ Case and the Risk of Further Litigation21
22	5. The Experience and Views of Counsel Support Final Approval22
23	B. The Court-Approved Notice Plan Comported with Due Process22
24	C. The Reaction of Class Members Favors Final Approval.....23
25	D. The Proposed Plan of Allocation Is Fair and Appropriate.....24
26	
27	
28	

V. CONCLUSION.....25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

PAGE

Cases

7-Eleven Owners for Fair Franchising v. Southland Corp.,
85 Cal. App. 4th 1135 (2000) 19, 21, 22

Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.,
455 F.2d 101 (7th Cir. 1972) 19

Behrens v. Wometco Enters.,
118 F.R.D. 534, 543 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990) 20

California v. Levi Strauss & Co.,
41 Cal. 3d 460 (1986) 16

Cellphone Termination Fee Cases,
180 Cal. App. 4th 1110 (2009) 16

City of Detroit v. Grinnell Corp., 356 F. Supp. 1380 (S.D.N.Y. 1972), *aff'd in part and rev'd*
in part on other grounds,
495 F.2d 448 (2d Cir. 1974) 20

Dunk v. Ford Motor Co.,
48 Cal. App. 4th 1794 (1996), *as modified* (Sept. 30, 1996) 17, 23

Ebarle v. Lifelock, Inc.,
No. 15-cv-00258-HSG, 2016 WL 234364 (N.D. Cal. Jan. 20, 2016) 22

In re Auto. Antitrust Cases I & II,
1 Cal. App. 5th 127 (2016) 10

In re Bluetooth Headset Prods. Liability Litig.,
654 F.3d 935 (9th Cir. 2011) 17

In re Currency Conversion Fee Antitrust Litig.,
No. 01 MDL 1409, 2006 WL 3247396 (S.D.N.Y. Nov. 8, 2006) 20

In re Domestic Air Transp. Antitrust Litig.,
148 F.R.D. 297 (N.D. Ga. 1993) 20

In re Four Seasons Sec. Laws Litig.,
58 F.R.D. 19 (W.D. Okla. 1972) 20

In re LinkedIn User Priv. Litig.,
309 F.R.D. 573 (N.D. Cal. 2015) 22

In re Omnivision Techs., Inc.,
559 F. Supp. 2d 1036 (N.D. Cal. 2008) 20

In re Toys R Us Antitrust Litig.,
191 F.R.D. 347 (E.D.N.Y. 2000) 17

1	<i>In re: Cathode Ray Tube (CRT) Antitrust Litig.,</i> No. C-07-5944 JST, 2016 WL 3648478 (N.D. Cal. July 7, 2016)	20
2	<i>Jimenez v. Allstate Ins. Co.,</i> No. LA CV10-08486 JAK (FFMx), 2021 WL 4316961 (C.D. Cal. Sept. 16, 2021)	23
3		
4	<i>Kullar v. Foot Locker Retail, Inc.,</i> 168 Cal. App. 4th 116 (2008)	18
5	<i>Linder v. Thrifty Oil Co.,</i> 23 Cal. 4th 429 (2000)	16
6		
7	<i>Mallick v. Super. Ct.,</i> 89 Cal. App. 3d 434 (1979)	16
8	<i>Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.,</i> 221 F.R.D. 523 (C.D. Cal. 2004)	22, 23
9		
10	<i>Newman v. Stein,</i> 464 F.2d 689 (2d Cir. 1972)	20
11	<i>Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of San Francisco,</i> 688 F.2d 6158 (9th Cir. 1982)	19
12		
13	<i>Roos v. Honeywell Int'l, Inc.,</i> 241 Cal. App. 4th 1472 (2015), <i>disapproved on other grounds by Hernandez v Restoration</i> <i>Hardware, Inc.</i> , 4 Cal. 5th 260 (2018)	16
14		
15	<i>Wershba v. Apple Computer, Inc.,</i> 91 Cal. App. 4th 224 (2001), <i>disapproved on other grounds by Hernandez v Restoration</i> <i>Hardware, Inc.</i> , 4 Cal. 5th 260 (2018)	passim
16		
17	Statutes	
18	Code of Civil Procedure § 382.....	15, 23
19	Rules	
20	California Rule of Court 3.766	15, 22, 23
21	California Rule of Court 3.769	15, 23
22	California Rule of Court 3.769(c)-(f).....	16
23	California Rule of Court 3.769(g).....	16
24	California Rule of Court 3.769(h).....	7
25	Docketed	
26	<i>In Re New Motor Vehicles Canadian Export Antitrust Litigation,</i> MDL No. 1532 (D. Me.).....	7, 8, 13
27		
28		

1 **I. INTRODUCTION**

2 Plaintiffs submit this memorandum in support of their motion for final approval of the proposed
3 Settlement Agreement between Plaintiffs and Defendant Ford Motor Company of Canada, Limited
4 (“Ford Canada”), which this Court preliminarily approved on June 23, 2022.

5 Final approval is warranted here because the Settlement Agreement is fair, reasonable, and
6 adequate. Following twenty years of litigation, the Settlement¹ provides for an all-cash payment by
7 Ford Canada of \$82,000,000 (the “Settlement Fund”) for the benefit of the same Class that was
8 certified in 2009. Consequently, the Release of claims provided to Ford Canada in exchange for the
9 Settlement Fund is on behalf of that same certified Class. The Settlement also comes on the eve of trial,
10 after a long and hard-fought litigation that involved demurrers, extensive fact and expert discovery,
11 class certification, and multiple rounds of complex summary judgment briefing, as well as two separate
12 remands from the California Court of Appeal. That is on top of the very substantial coordinated
13 litigation that was centered in federal court in the District of Maine and also the coordinated litigations
14 that were brought in numerous other state Courts around the United States. The Settlement here—in the
15 only Court left with live claims against Ford Canada—represents a valuable result for the Class both in
16 absolute terms and when balanced against the risks and rewards Plaintiffs face in litigating the case
17 through trial. In sum, the relevant factors weigh heavily in favor of final approval.

18 On June 23, 2022, this Court granted Plaintiffs’ motion for preliminary approval of the
19 Settlement, holding that “[t]he Settlement is within the range for which final approval may be granted.”
20 Order Preliminarily Approving Settlement with Ford Canada (“Order”) at 2. In the same Order, the
21 Court approved a Notice plan that has since begun implementation. *See* Declaration of Eric Schachter
22 of A.B. Data Regarding Current Status of Notice Efforts (“Schachter Decl.”), filed herewith, ¶¶ 2-14 &
23 Exs. A & B.

24
25
26 ¹ Unless otherwise indicated, capitalized terms have the same definitions as provided in the March 30,
27 2022 Settlement Agreement between Plaintiffs and Ford Canada, attached as Ex. A to the
28 accompanying Declaration of Todd A. Seaver (“Seaver Decl.” or “Seaver Declaration”).

1 By this motion, Plaintiffs therefore respectfully request that the Court: (1) grant final approval
2 of the proposed Settlement Agreement, (2) enter final judgment as between Plaintiffs and Ford Canada
3 pursuant to California Rule of Court 3.769(h), and (3) retain continuing jurisdiction over the
4 enforcement and implementation of the Settlement Agreement pursuant to California Rule of Court
5 3.769(h) and California Code of Civil Procedure section 664.6.

6 **II. BACKGROUND**

7 **A. Case Origins**

8 This Action was filed in the spring of 2003, bringing Cartwright Act claims on behalf of persons
9 and businesses in California who purchased or leased a new motor vehicle manufactured or distributed
10 by several of the largest auto manufacturers. *See Consolidated Amended Class Action Complaint*
11 *(Oct. 6, 2003)*. Plaintiffs allege the Defendants conspired to artificially maintain supracompetitive
12 prices for new motor vehicles sold or leased in the United States, including in California, by agreeing to
13 prevent the export into the United States of new, lower-priced vehicles sold by the Defendants in
14 Canada. *Id.*

15 Lawsuits involving similar allegations against Defendants were filed in various federal and state
16 courts around the country. Numerous federal cases were consolidated in a federal multidistrict
17 proceeding in 2003, entitled *In Re New Motor Vehicles Canadian Export Antitrust Litigation*, MDL
18 No. 1532 (D. Me.) (the “MDL Action”) and assigned to Judge Brock Hornby sitting in Portland, Maine.
19 *Seaver Decl.* ¶ 6.

20 Because of the extraordinarily long litigation history of this Action and indeed all of the
21 coordinated cases in both state and federal court, Plaintiffs set out the detailed record of litigation
22 events in the accompanying *Seaver Declaration*. For the sake of expediency, Plaintiffs incorporate the
23 *Seaver Declaration* by reference and focus instead on the facts that overwhelmingly compel final
24 approval of this Settlement. Below, Plaintiffs provide a synopsis of salient facts and particularly
25 auspicious litigation events leading up to the eve of trial and ultimately resulting in this Settlement.

1 **B. Coordinated Discovery**

2 Discovery in this Action, including expert discovery, was coordinated with the MDL Action and
3 the actions filed in various state courts. Fact discovery was completed in April 2007. Class Counsel in
4 this Action took an active role in the coordinated discovery in the MDL Action, pursuant to this Court’s
5 Joint Coordination Order entered in June 2004. *See* Seaver Decl. ¶¶ 8-11. Coordinated fact and expert
6 discovery—which initially involved the six largest automobile manufacturers in the world, including
7 their United States, Canadian, and in some cases Japanese corporate parents, subsidiaries and
8 affiliates—included:

- 9 • Depositions of over 130 witnesses;
- 10 • Review of over a million pages of documents produced after nearly ten months of meet
11 and confer sessions;
- 12 • Extensive discovery of transaction data and pricing data, including vehicle incentives;
- 13 • Multiple sets of interrogatories propounded by Plaintiffs and Defendants, including
14 Plaintiffs’ expansive responses to Defendants’ contention interrogatories (Plaintiffs’
15 responses totaled over 1,800 pages);
- 16 • Hundreds of requests for admission;
- 17 • Cross-border discovery through letters rogatory litigated and enforced in Canada; and
- 18 • Expert discovery involving reports from nearly over a dozen economic and industry
19 experts, and depositions of those experts.

20 Seaver Decl. ¶¶ 10-50. Coordinated discovery also included motions to compel adjudicated in the MDL
21 Action via the Coordination Order. *See id.* ¶ 14.

22 **C. Class Certification in this Action**

23 On September 12, 2008, Plaintiffs in this Action filed a renewed class certification motion with
24 the Court.² Plaintiffs sought to certify a class of all persons and entities residing in California who
25 purchased or leased a new motor vehicle manufactured or distributed by a Defendant, from an

26 _____
27 ² Plaintiffs’ original class certification motion was filed in 2005, but the Court deferred consideration
28 of the class certification issue until coordinated discovery could be completed in the MDL Action.

1 authorized dealer located in California, during the period January 1, 2001 through April 30, 2003. After
2 several rounds of briefing, the Court granted that motion on May 19, 2009. Seaver Decl. ¶ 53. The
3 Class certified by this Court is defined as:

4 All persons and entities residing in California on the date notice is first
5 published, who purchased or leased a new motor vehicle manufactured or
6 distributed by a defendant, from an authorized dealer located in California,
7 during the period January 1, 2001 through April 30, 2003, for their own use.
8 Excluded from the class are the defendants; the officers, directors or
9 employees of any defendant; any entity in which any defendant has a
controlling interest; the affiliates, legal representatives, attorneys, heirs or
assigns of any defendant; any governmental entity; any judge, justice, or
judicial officer presiding over this matter, and the members of their
immediate families and judicial staffs.

10 Order Granting Pls.’ Mot. for Class Certification (May 19, 2009), at ¶1 (attached as Ex. E to the Seaver
11 Decl.).

12 **D. Summary Judgment Proceedings and Appeal**

13 In January 2010, Defendants Ford Motor Company and Ford Canada (collectively, “Ford”);
14 General Motors of Canada, Ltd. (“GM Canada”); American Honda Motor Co. Inc. and Honda Canada
15 Inc. (collectively, “Honda”); and Nissan North America, Inc. (“Nissan”) each filed separate motions for
16 summary judgment on Plaintiffs’ evidence of conspiracy, as well as joint motions for summary
17 judgment on Plaintiffs’ evidence of antitrust impact and to exclude the testimony of Plaintiffs’ expert,
18 Professor Robert E. Hall, Ph.D. (“Prof. Hall”). Plaintiffs opposed these motions in March 2010, and
19 Defendants replied in April 2010. Seaver Decl. ¶¶ 56-60.

20 Following multiple full-day hearings and oral argument in early 2011 on Defendants’
21 conspiracy motions, the Court granted summary judgment for Honda and Nissan on March 8, 2011. *Id.*
22 ¶¶ 61-62. The Court, however, tentatively denied the summary judgment motions submitted by GM
23 Canada and Ford. The Court then directed Plaintiffs to submit a summary of their conspiracy evidence
24 and allowed the remaining Defendants, Ford and GM Canada, to file evidentiary objections thereto.
25 The Court also ordered Plaintiffs to restate their objections to Ford’s and GM Canada’s evidence in
26 support of their summary judgment motions. Thereafter, the Court held more full-day hearings and oral
27 argument. *Id.* ¶¶ 61, 63-64.

1 While the summary judgment motions of Ford and GM Canada were pending, Plaintiffs entered
2 a settlement agreement with GM Canada, leaving Ford Canada and Ford Motor Company as the only
3 remaining defendants. Seaver Decl. ¶ 65.

4 In November 2011, the Court issued its order on Ford Canada and Ford Motor Company’s
5 motion for summary judgment on the element of conspiracy. The Court granted the motion and
6 thereafter entered judgment in favor of both Ford entities. Plaintiffs appealed. *Id.* ¶¶ 65, 68.

7 After extensive appellate briefing, in a landmark decision concerning the Cartwright Act’s
8 standard of proof of a horizontal conspiracy, the Court of Appeal affirmed the summary judgment in
9 favor of Ford Motor Company, but reversed the summary judgment in favor of Ford Canada and
10 remanded the matter to this Court for further proceedings. Seaver Decl. ¶¶ 69-72; *In re Auto. Antitrust*
11 *Cases I & II*, 1 Cal. App. 5th 127, 172-73 (2016).

12 **E. Renewed Proceedings and Appeal of *Res Judicata* Order**

13 Once back before this Court, the parties engaged in further motion practice in 2017. Plaintiffs
14 and Ford Canada supplemented their 2010 briefing on Ford Canada’s pending motion for summary
15 judgment on the element of injury-in-fact, or “impact.” After a hearing on Ford Canada’s motion, the
16 Court denied the motion. Seaver Decl. ¶¶ 75-78.

17 Contemporaneously, Ford Canada moved for entry of judgment in its favor on *res judicata*
18 (claim preclusion) and collateral estoppel (issue preclusion) grounds, asserting that the MDL Court’s
19 grant of summary judgment in favor of Ford Canada on the element of impact precluded Plaintiffs’
20 Cartwright Act claim before this Court. The Court granted this motion, finding no issue preclusion but
21 holding the Action was barred on *res judicata* grounds. Plaintiffs appealed. *Id.* ¶¶ 79-80, 88.

22 The Court of Appeal again agreed with Plaintiffs and reversed the Court’s *res judicata* order,
23 affirmed on issue preclusion, and remanded the case to this Court for further proceedings. *Id.* ¶¶ 88, 90-
24 91.

25 **F. Renewed Proceedings and Preparation for Trial**

26 Once back from the second appeal, on December 10, 2020, the Court set the start of trial for
27 February 7, 2022. *Id.* ¶ 92. Trial preparation involved the designation of a new testifying expert
28

1 economist for Plaintiffs and the addition of an additional expert for Ford Canada, renewed expert
2 disclosures and expert depositions, the depositions of two additional Ford fact witnesses who were not
3 previously disclosed, designation of dozens of trial witnesses and hundreds of trial exhibits, designation
4 and counter-designation of deposition testimony for the scores of witnesses who would not appear in-
5 person at trial, preparation of a jury questionnaire, jury verdict forms and competing jury instructions,
6 and other matters. Seaver Decl. ¶¶ 93-108. Because of the passage of time and his age, Plaintiffs could
7 not call their previously-designated economist, Prof. Hall. Instead they had to bring on a new testifying
8 expert economist, Dr. Janet Netz, from the University of California, Berkeley (“Dr. Netz”). Dr. Netz,
9 with the assistance of Plaintiffs’ counsel, undertook the very substantial job of educating herself about
10 the facts of the case, was deposed about her opinions, and was preparing to testify at trial when the
11 Settlement with Ford Canada was reached. *Id.* ¶¶ 97-99.

12 In the run-up to the start of trial, the parties also briefed and argued—and the Court ruled
13 upon—a host of important motions, including a motion to modify the Class, a motion for summary
14 adjudication, a motion for judgment on the pleadings, *Sargon* motions to exclude expert testimony, and
15 a number of motions *in limine*. *Id.* ¶¶ 93-96, 101-102.

16 By the time the parties reached this Settlement, the parties had briefed, and the Court had ruled
17 upon, nearly every outstanding legal and factual issue that could be decided prior to trial.

18 **G. Mediation Efforts Overseen by Judge Infante**

19 This Settlement is the result of several months of mediation with Ford Canada under the
20 supervision and guidance of the Honorable Edward A. Infante (Ret.), a highly experienced mediator
21 and former federal magistrate judge with decades of experience mediating complex class actions.
22 Seaver Decl. ¶ 109.

23 The parties held their first mediation session before Judge Infante on June 22, 2021. *Id.* ¶ 113.
24 Prior to this first session, the parties each prepared, exchanged, and presented to Judge Infante detailed
25 and comprehensive mediation briefs setting forth the factual background, the key issues, the parties’
26 respective views of the evidence and the law, and other relevant matters. *Id.* Plaintiffs were represented
27 by experienced counsel from Plaintiffs’ Steering Committee, who have litigated this Action from day
28

1 one. Decl. of Joseph J. Tabacco, Jr. in Supp. of Pls.’ Mot. for Preliminary Approval of Class Action
2 Settlement (Apr. 6, 2022) (attached as Ex. T to the Seaver Decl.), ¶¶1-2, 6 & Ex. A. Ford Canada was
3 represented by highly experienced counsel at O’Melveny & Myers LLP and a senior in-house attorney
4 at Ford. *Id.* ¶ 5. The first mediation session, however, proved to be unsuccessful and no resolution was
5 reached at that time. *Id.* ¶ 6.

6 The parties held a second mediation session before Judge Infante on January 14, 2022. This
7 mediation session came after the parties had spent the intervening months intensely preparing for trial.
8 By the time of this second mediation session, the parties had disclosed and deposed experts, exchanged
9 witness and exhibit lists, briefed and argued motions *in limine*, briefed and argued *Sargon* motions to
10 exclude expert testimony, compiled and exchanged deposition testimony designations and counter-
11 designations from dozens of witnesses, and drafted, exchanged, and filed proposed jury instructions.
12 The parties also briefed and argued a motion for summary adjudication made by Ford Canada and a
13 motion for judgment on the pleadings made by Plaintiffs. Nearly every conceivable legal and factual
14 issue can could be resolved prior to trial had been resolved. Seaver Decl. Ex. T ¶¶ 7-8.

15 In advance of the January 14, 2022 mediation session, the parties prepared and presented to
16 Judge Infante confidential letters updating him on the proceedings and their current respective views of
17 the case. The same attorneys and Ford representative from the prior session attended this session as
18 well. Intense negotiations lasted nearly the full day, with the parties narrowing their differences but
19 unable to reach agreement. At that point, the parties agreed to hear a mediator’s proposal from
20 Judge Infante, and each side accepted that proposal. The parties drafted and signed a term sheet that day
21 reflecting the agreement-in-principle, which provided for payment by Ford Canada of \$82 million for
22 the benefit of the Class. Seaver Decl. Ex. T ¶ 8.

23 The agreement in principle was subject to approval by the Board of Directors of Ford Canada as
24 well as the Board of Directors of Ford Motor Company. On February 1, 2022, Ford Canada
25 communicated that it had received approval from both Boards to negotiate a final settlement consistent
26 with the agreement in principle, subject to an acceptable written settlement agreement. Seaver Decl. Ex.
27 T ¶¶ 8-9.

1 The parties spent the next few weeks negotiating the written settlement agreement. The parties
2 reached an impasse on the language of several provisions in the agreement. These disagreements
3 required a further mediation session before Judge Infante, which took place on February 28, 2022. With
4 Judge Infante’s assistance, the parties were able to resolve the remaining issues and reach agreement on
5 language for the settlement agreement that is now before the Court for final approval. Seaver Decl. Ex.
6 T ¶ 10.

7 This Court has also had the benefit of the Declaration of Judge Infante, dated March 24, 2022
8 and filed in connection with Plaintiffs’ motion for preliminary approval of this Settlement. Therein,
9 Judge Infante attests to the rigorous and arm’s-length negotiations by highly experienced counsel fully
10 versed in the facts and the risks they faced at the imminent trial, which finally resulted in the Settlement
11 now before the Court. Decl. of Edward A. Infante in Supp. of Pls.’ Mot. for Preliminary Approval of
12 Class Action Settlement (Mar. 24, 2022) (“Infante Decl.”), ¶¶ 4-12 (attached as Seaver Decl. Ex. K).

13 **H. Prior Settlements**

14 Before the present Settlement, three prior settlements had been reached in this Action and the
15 related MDL Action. In February 2006, defendant Toyota Motor Sales, U.S.A. (“Toyota”) agreed to
16 pay \$35 million to settle this Action, the MDL action, and the related actions in other state courts. In
17 September 2006, the Canadian Automobile Dealers Association (“CADA”) agreed to settle for
18 \$700,000 and cooperation. The MDL court approved the requested fee of 13.2% of the settlement fund,
19 in the amount of \$4.92 million and reimbursement of expenses of \$6,270,000. Seaver Decl. ¶¶ 17-19 &
20 Ex. L.

21 In late April 2011, while the summary judgment motions of Ford and GM Canada remained
22 pending in this Action, Plaintiffs and GM Canada agreed to settle this Action and four other related
23 state court actions for an all-cash payment of \$20.15 million. The Court approved the settlement,
24 attorneys’ fees of \$6,709,950 and reimbursement of expenses of \$5.2 million were awarded, and the net
25 settlement funds were distributed to eligible claimants. Seaver Decl. ¶¶ 120-21 & Ex. D.

1 **I. Key Settlement Terms**

2 The Settlement, if approved, will entirely resolve the Action. Ford Canada is the last remaining
3 defendant, and this Action is the last remaining case among the MDL and other state court actions.
4 Ford Canada has agreed to pay \$82 million in cash in exchange for a Release from the Class, which is
5 identical to the litigation class certified by the Court in 2009. *See* Seaver Decl. Ex. A (Settlement
6 Agreement). The \$82 million has been deposited in an interest-bearing Escrow Account and held in that
7 account pursuant to the Order of this Court.

8 Once the Settlement is final, distribution to the Class can be made. The Settlement Agreement
9 contains the salient features of the plan of allocation. *See* Seaver Decl. Ex. A (Settlement Agreement),
10 at ¶21. Claim amounts will be determined on a weighted *pro rata* basis. The claim amounts will be
11 based on the amount of damages associated with each claimant’s vehicle, as estimated by Plaintiffs’
12 experts, Dr. Netz and Prof. Hall, which will vary by make, model, and the month and year of purchase.³
13 In exchange for this Settlement, Plaintiffs will dismiss all claims asserted against Ford Canada and
14 grant releases, as set forth more fully in the Settlement Agreement. Under the express terms of the
15 Settlement Agreement, Ford Canada is not permitted any reversion of the settlement funds.

16 The proposed Settlement with Ford Canada is the result of extensive, good-faith negotiations,
17 after substantial investigation and legal analysis, and is fair, reasonable, and adequate. Class Counsel
18 respectfully submit that the Settlement with Ford Canada is in the best interest of the Class and should
19 be finally approved.

20 **J. Preliminary Approval and Notice to the Class**

21 On June 23, 2022, this Court entered an Order preliminarily approving the Settlement
22 Agreement, ruling as follows:

23 The Settlement is within the range for which final approval may be granted,
24 such that notice should be given to the Class. Furthermore, the Settlement

25 ³ The Court-approved Long-Form Notice at Appendix A describes in detail the plan of allocation and
26 informs Class Members exactly how recognized claim amounts will be calculated. *See* Ex. A to the
27 Decl. of Eric Schachter of A. B. Data in Supp. of Pls.’ Mot. For Prelim. Approval of Settlement (Apr.
28 6, 2022) (“Schachter Prelim. Approval Decl.”)

1 appears to be the product of arm's-length and informed negotiations
2 between experienced and knowledgeable counsel who have actively
3 prosecuted and contested this litigation. The Settlement between Plaintiffs
4 and Ford Canada is preliminarily approved.

5 Order at 2, ¶2.

6 In the same Order, the Court approved the proposed form and manner of Notice to the Class,
7 ruling as follows:

8 The Notice Plan meets the requirements of due process and constitutes the
9 best notice practicable under the circumstances and constitutes valid, due,
10 and sufficient notice to Class Members, complying fully with the
11 requirements of Code of Civil Procedure § 382, California Rules of Court,
12 rules 3.766 and 3.769, the California and United States Constitutions, and
13 any other applicable law.

14 *Id.* at 2-3, ¶5.

15 Plaintiffs have complied with, and are complying with, the Notice plan approved by the Court.
16 Schachter Decl. ¶¶2-14 & Ex. A-B. On August 1, 2022, the Notice and Claims Administrator (“A.B.
17 Data”) mailed 3,515 Short-Form Notices to Class Members. *Id.* ¶¶3-4. On August 10, 2022, A.B. Data
18 received 5,429,171 records containing Class Member contact information from IHS Markit’s Class
19 Action and Litigation Services team (“IHS Markit”). A.B. Data is currently ingesting and preparing
20 this data for mailing and anticipates they will complete mailing the Short-Form Notice to these
21 addressees by August 24, 2022. *Id.* ¶5. The IHS Markit data contained email information and, upon
22 complete of processing the data, A.B. Data will email the Short-Form Notice to all valid email
23 addresses in accordance with the Notice Plan. *Id.* ¶5. In addition, the Short-Form Notice will be
24 published in 21 different regional California newspapers on August 21, 2022 and one time in *People*
25 magazine, and a press release will be issued during the week of August 15, 2022. *Id.* ¶¶9-10. To
26 supplement these efforts, a digital media campaign consisting of targeted digital banner and newsfeed
27 ads placed on websites and applications across multiple devices, including desktop, tablet, and mobile
28 devices was implemented and as of August 11, 2022, A.B. Data has served a total of 53,445,223
impressions. *Id.* ¶¶7-8 & Ex. B.

1 On June 28, 2022, A.B. Data created an initial Settlement website,
2 www.CalCarsSettlement.com, which contained the Long-Form Notice, relevant Court Orders and
3 general information about the Settlement. Schachter Decl. ¶12. The website was updated on August 1,
4 2022 to include a summary of the case, important dates, online claim filing, the Long-Form Notice in
5 English and Spanish, and relevant Court Orders. *Id.* ¶13. A.B. Data also established a case-specific toll
6 free number ((877)354-3833) to answer Class Member questions. *Id.* ¶11.

7 **III. LEGAL STANDARD**

8 The California Rules of Court set forth a two-step process for evaluating a class action
9 settlement for court approval. First, “the court preliminarily approves the settlement and the class
10 members are notified as directed by the court.” *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
11 1110, 1118 (2009) (citing Cal. Ct. R. 3.769(c)-(f)). Second, “the court conducts a final approval hearing
12 to inquire into the fairness of the proposed settlement.” *Id.* (citing Cal. Ct. R. 3.769(g)). “A trial court
13 may approve only a settlement of a class action that is fair, adequate, and reasonable.” *Roos v.*
14 *Honeywell Int’l, Inc.*, 241 Cal. App. 4th 1472, 1482 (2015), *disapproved on other grounds by*
15 *Hernandez v Restoration Hardware, Inc.*, 4 Cal. 5th 260, 269 (2018).

16 The decision to approve or reject a proposed settlement is committed to the trial court’s sound
17 discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001), *disapproved on*
18 *other grounds by Hernandez*, 4 Cal. 5th at 269. The Court has broad powers to determine whether a
19 proposed class action settlement is fair, reasonable and adequate. *Mallick v. Super. Ct.*,
20 89 Cal. App. 3d 434, 438 (1979). “Public policy generally favors the compromise of complex class
21 action litigation.” *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1117-18. *See also Linder v.*
22 *Thrifty Oil Co.*, 23 Cal. 4th 429, 434 (2000) (same); *California v. Levi Strauss & Co.*, 41 Cal. 3d 460,
23 471 (1986) (same).

24 **IV. ARGUMENT**

25 **A. The Settlement Is Fair, Adequate, and Reasonable**

26 Courts consider several factors in making the fairness determination at final approval,
27 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
28

1 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
2 extent of discovery completed and the stage of the proceedings, [and] the experience and views of
3 counsel.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996), *as modified* (Sept. 30, 1996).
4 Generally, settlement agreements are presumed fair when: “(1) the settlement is reached through
5 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court
6 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
7 is small.” *Id.* at 1802. This list “is not exclusive and the court is free to engage in a balancing and
8 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at 245.

9 The Settlement meets all of these criteria for final approval.

10 **1. The Settlement Is a Product of Arm’s-Length Negotiations**

11 A factor giving rise to a presumption of fairness of a settlement is whether it is reached through
12 arm’s-length bargaining. *Wershba*, 91 Cal. App. 4th at 245. The assistance of a mediator during
13 settlement supports a finding of fairness. *See, e.g., In re Bluetooth Headset Prods. Liability Litig.*,
14 654 F.3d 935, 948 (9th Cir. 2011) (noting that the “presence of a neutral mediator . . . weigh[s] in favor
15 of a finding of non-collusiveness”).

16 The Settlement here is the result of extensive arm’s-length negotiations between experienced
17 antitrust class action attorneys deeply familiar with the fact and legal issues of this case. Plaintiffs and
18 Ford Canada are both represented by respected counsel with decades of experience litigating complex
19 antitrust class actions. Seaver Decl. Ex. T ¶¶ 2-13 & Ex. A; Infante Decl. ¶¶ 4-12. The negotiations
20 took place over a period of several months, requiring three separate mediation sessions, with each side
21 holding firm and the parties reaching agreement just three weeks prior to the start of trial, when each
22 accepted a mediator’s proposal to bridge the final gap in the parties’ negotiating positions. *Id.*

23 The negotiations that resulted in the Settlement also took place under the guidance of an
24 experienced mediator. Judge Infante is a retired federal magistrate judge and one of the nation’s
25 preeminent mediators in complex, high-stakes litigation such as this one. Infante Decl. ¶ 2.
26 Judge Infante’s active role in the settlement negotiations substantiates the non-collusive nature of the
27 settlement negotiations. *See In re Toys R Us Antitrust Litig.*, 191 F.R.D. 347, 352 (E.D.N.Y. 2000)

1 (finding an antitrust class action settlement agreement a product of arm's-length negotiation in part
2 because it was reached with "the assistance of a highly experienced neutral mediator with a background
3 in antitrust law, retired federal judge Charles B. Renfrew"). As Judge Infante observed, counsel for the
4 parties were zealous advocates for their clients and there was no hint of collusion. Infante Decl. ¶ 12.

5
6 **2. Sufficient Investigation and Discovery Occurred to Allow Counsel and the Court to Intelligently Determine the Settlement Is Fair**

7 The status of discovery at the time the Settlement was reached also weighs in favor of final
8 approval. This requirement exists so that parties can provide the court with "a meaningful and
9 substantiated explanation of the manner in which the factual and legal issues have been evaluated."
10 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 132-33 (2008).

11 Here, thorough investigation, pre-trial discovery, and preparation for trial itself allowed Class
12 Counsel to reach Settlement with clear view of the factual and legal issues. The Settlement was reached
13 after twenty years of hard-fought litigation that produced a vast evidentiary record, including over 130
14 depositions, review of over a million pages of documents, scores of interrogatories, hundreds of
15 requests for admission, and cross-border discovery of third parties in Canada through letters rogatory.
16 Seaver Decl. ¶¶ 10-36. The parties engaged in extensive expert discovery involving over a dozen
17 economic expert reports that were thoroughly examined and responded to, and the parties took multiple
18 expert depositions. *Id.* ¶¶ 37-50.

19 Beyond discovery, the parties litigated nearly every substantive legal issue possible, including
20 litigating Defendants' demurrers, Plaintiffs' class certification motion, Defendants' motions for
21 summary judgment on the element of conspiracy and subsequent appeal, Ford Canada's *res judicata*
22 motion and subsequent appeal, Plaintiffs' motion for judgment on the pleadings, Ford Canada's motion
23 to modify the Class, the parties *Sargon* motions to exclude expert testimony, motions for summary
24 adjudication on the element of impact, and others. Seaver Decl. ¶¶ 7, 51-102.

25 Finally, in leading up to trial, the parties renewed expert disclosures pursuant to California
26 procedural law, deposed experts who would appear at trial, designated hundreds of trial exhibits, filed
27
28

1 witness lists, culled and exchanged extensive deposition designations and counter-designations, and
2 drafted jury instructions. Seaver Decl. ¶¶ 99-100, 103-108.

3 In short, no stone was left unturned over the twenty years of this litigation, allowing Class
4 Counsel to make fully informed decisions when negotiating the settlement. Courts have approved
5 settlements in far less extensive circumstances. *See, e.g., 7-Eleven Owners for Fair Franchising v.*
6 *Southland Corp.*, 85 Cal. App. 4th 1135, 1152 (2000) (affirming class action settlement that “came only
7 after some four and a half years of litigation, including voluminous discovery and many motions filed
8 and argued by both sides”).

9 3. The Settlement Provides Substantial Monetary Relief to Class Members

10 The monetary value of a settlement is among the most important factors to consider in
11 determining whether a settlement falls within the range of possible approval. *7-Eleven*, 85 Cal. App.
12 4th at 1152. “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
13 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all
14 of the circumstances.” *Wershba*, 91 Cal. App. 4th at 250. Settlements providing for narrower relief than
15 could be obtained at trial can be fair and reasonable because “the public interest may indeed be served
16 by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Id.*
17 (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)).
18 *See also Officers for Just. v. Civ. Serv. Comm’n of City & Cnty. of San Francisco*, 688 F.2d 615, 628
19 (9th Cir. 1982) (“It is well-settled law that a cash settlement amounting to only a fraction of the
20 potential recovery will not per se render the settlement inadequate or unfair.”).

21 The Settlement here provides substantial monetary recovery for the Class. The \$82 million
22 Settlement reached with Ford Canada is significantly larger than the three prior settlements reached in
23 this Action. Plaintiffs earlier settled with Toyota for \$35 million, General Motors of Canada for \$20.15
24 million, and the Canadian Automobile Dealers’ Association for \$700,000, for a total of \$55.85 million.
25 Seaver Decl. ¶¶ 117-20. Those prior settlements covered not only California new vehicle consumers,
26 but those in more than twenty states for the Toyota and CADA settlements, and five states for the
27
28

1 General Motors Canada settlement. The Ford Canada settlement is significantly larger than these three
2 settlements *combined*, and is for the sole benefit of the California Class.

3 Moreover, the \$82 million settlement represents a strong value when compared to what
4 Plaintiffs could have achieved at trial. Plaintiffs' experts, Dr. Netz and Prof. Hall, completed a trial-
5 ready damages analysis, which was presented to the Court and relied upon by Plaintiffs in the course of
6 the litigation. The damages analysis found that, in Plaintiffs' view, Ford Canada was facing single
7 damages of \$543 million, which could be trebled under the Cartwright Act.⁴ The Settlement therefore
8 represents 15.1% of single damages. Courts routinely approve settlements that amount to a portion of
9 the claimed damages. *See, e.g., In re Currency Conversion Fee Antitrust Litig.*, No. 01 MDL 1409,
10 2006 WL 3247396, at *6 (S.D.N.Y. Nov. 8, 2006) (approving settlement for "roughly 10-15%" of the
11 allegedly illegal fees collected from the class); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,
12 1042 (N.D. Cal. 2008) (approving settlement in which class received payments in excess of 6% of
13 potential damages); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL
14 3648478, at *7 (N.D. Cal. July 7, 2016) (noting settlement for 20% of single damages is "without
15 question a good recovery and firmly in line with the recoveries in other case").⁵

18
19 ⁴ This damage estimate includes damages attributable to purchases of Honda and Nissan vehicles in
20 addition to purchases of Ford, GM, Chrysler, and Toyota vehicles. This estimate does not account for
21 two set-offs: (1) a set-off for at least a portion of the \$55.85 million from the prior settlements with
22 Toyota, CADA, and GM Canada; and (2) a potential set-off of the estimated increase in the prices
23 received by Class Members for trade-ins of their used cars during the class period. The set-offs, if
24 applied, would have resulted in lower damages recoverable at trial. Certain of these issues were hotly
contested during the litigation. If Honda and Nissan vehicles were not included in the Class (Ford
Canada's position), damages would have been lower. If damages were required to be set-off due to
inflated trade-in values, as Ford Canada may have asserted, damages would have been lower. How a
jury would have decided these issues was uncertain at the time the settlement was reached.

25 ⁵ *See also, e.g., In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 325 (N.D. Ga. 1993);
26 *Behrens v. Wometco Enters.*, 118 F.R.D. 534, 543 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir.
1990); *Newman v. Stein*, 464 F.2d 689 (2d Cir. 1972); *City of Detroit v. Grinnell Corp.*, 356 F. Supp.
27 1380, 1386 (S.D.N.Y. 1972), *aff'd in part and rev'd in part on other grounds*, 495 F.2d 448 (2d Cir.
1974); *In re Four Seasons Sec. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla. 1972).

1 Given the uncertainties and risks of trial, and the significant time and risk involved in Ford
2 Canada’s almost certain appeal of any verdict in favor of Plaintiffs, the proposed Settlement is an
3 excellent result for the Class.

4 **4. Settlement Is Appropriate in Light of the Strength of Plaintiffs’ Case and**
5 **the Risk of Further Litigation**

6 Another factor to evaluate in determining final approval is the strength of the Plaintiffs’ case. In
7 evaluating this factor, a “proposed settlement is not to be judged against a hypothetical or speculative
8 measure of what might have been achieved had plaintiffs prevailed at trial.” *Wershba*, 91 Cal. App. 4th
9 at 246. Further, the Court should not reach any conclusions on contested issues of law or fact, because
10 it is the uncertainty of the future outcome of litigation that leads parties to resolve their disputes short of
11 a final, litigated resolution. *7-Eleven*, 85 Cal. App. 4th at 1145.

12 Although Class Counsel believe the evidence supports Plaintiffs’ claims, a trial of this Action
13 posed unique challenges and uncertainties. First, the duration of this litigation and age of the Class
14 Members’ claim meant that the trial would proceed largely without in-person live witness testimony.
15 Moreover, the presence of the COVID-19 pandemic was poised to cause at least some of the handful of
16 “live” witnesses to testify at trial via remote video link. It was contemplated by the Court and the
17 parties that, depending on public health guidance, some jurors might even have viewed the trial
18 proceedings via video from a remote location(s). Consequently, Plaintiffs faced an uphill battle in
19 keeping the jury engaged and interested in events that occurred over twenty years ago, especially when
20 the bulk of the presentations at trial would have been made via well-aged videotape deposition
21 testimony, the quality of which left much to be desired. Showing a jury deposition testimony, or
22 reading a deposition transcript to a jury, is inherently less engaging than live witness testimony.
23 Second, presenting a trial during the COVID-19 pandemic created its own challenges, including the
24 threat of a mistrial if too many jurors became sick or needed to otherwise quarantine or isolate during
25 the five-week trial. Third, given the Court’s pretrial rulings, it was unclear whether Plaintiffs’ claims
26 would be afforded “per se” treatment, as the Court was not inclined to rule that the jury would be so
27 instructed. Consequently there was a chance the jury would be able to weigh the pro-competitive
28

1 justifications Ford Canada would have offered for its conduct in a rule of reason analysis. Courts
2 routinely hold that “tangible, immediate benefits” of settlement outweigh such risks. *Ebarle v. Lifelock,*
3 *Inc.*, No. 15-cv-00258-HSG, 2016 WL 234364, at *8 (N.D. Cal. Jan. 20, 2016).

4 Moreover, it was clear from Ford Canada’s trial witness list and designated pretrial deposition
5 testimony, as well as the settlement negotiations, that it believed it had strong factual and legal defenses
6 to present at trial. Ford Canada also would have had the opportunity, in the case of a jury verdict for
7 Plaintiffs, to appeal various adverse rulings and the verdict. This further weighs in favor of settlement.
8 *See, e.g., Nat’l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (“In
9 most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable
10 to lengthy and expensive litigation with uncertain results.”); *In re LinkedIn User Priv. Litig.*,
11 309 F.R.D. 573, 587 (N.D. Cal. 2015) (“Immediate receipt of money through settlement, even if lower
12 than what could potentially be achieved through ultimate success on the merits, has value to a class,
13 especially when compared to risky and costly continued litigation.”).

14 **5. The Experience and Views of Counsel Support Final Approval**

15 Class Counsel have decades of class action experience and a long and successful record of
16 prosecuting such matters to favorable resolutions, including many cases before this Court. *See* Seaver
17 Decl. Ex. T ¶ 1, 4 & Ex. A. Their view that this Settlement is fair weighs in favor of final approval. *7-*
18 *Eleven*, 85 Cal. App. 4th at 1146.

19 **B. The Court-Approved Notice Plan Comported with Due Process**

20 The Court-approved Class Notice plan that was administered by the Notice and Claims
21 Administrator adequately protected the due process rights of all Class Members and satisfied California
22 Rule of Court 3.766. The manner of giving notice and the content of the notice must “fairly apprise the
23 prospective members of the class of the terms of the proposed settlement and of the options that are
24 open to them in connection with [the] proceedings. *7-Eleven*, 85 Cal. App. 4th at 1164 (alteration in
25 original) (citation omitted). An appropriate notice will have a “reasonable chance of reaching a
26 substantial percentage of the class members.” *Wershba*, 91 Cal. App. 4th at 251 (citation omitted).

1 In its June 23, 2022 Preliminary Approval Order, the Court approved the manner and form of
2 Notice, and made the following finding:

3 The Notice Plan meets the requirements of due process and constitutes the
4 best notice practicable under the circumstances and constitutes valid, due,
5 and sufficient notice to Class Members, complying fully with the
6 requirements of Code of Civil Procedure § 382, California Rules of Court,
7 rules 3.766 and 3.769, the California and United States Constitutions, and
8 any other applicable law.

9 Order at 2-3.

10 As set forth above, the Settlement Administrator is implementing the Notice plan approved by
11 the Court, Schachter Decl. ¶¶ 2-14, and the Notice plan is expected to reach a significant portion of the
12 Class, Schachter Prelim. Approval Decl. ¶ 28. In sum, the Notice plan was carefully tailored to reach a
13 substantial percentage of Class Members and fairly apprise them of the Settlement and this approval
14 process. For the same reasons that the Court approved the Notice for distribution, the Court should
15 again find that the Notice was reasonable and satisfied due process and the requirements of California
16 law.

17 **C. The Reaction of Class Members Favors Final Approval**

18 Another factor that may be considered at final approval is the reaction of Class Members to the
19 settlement. *Dunk*, 48 Cal. App. 4th at 1801. “[T]he absence of a large number of objections to a
20 proposed class action settlement raises a strong presumption that the terms of a proposed class
21 settlement action are favorable to the class members.” *Nat’l Rural Telecomm. Coop.*, 221 F.R.D. at 529.

22 To date, Plaintiffs’ counsel are unaware of any objections having been filed.⁶ This factor
23 therefore also weighs in favor of final approval. *See Jimenez v. Allstate Ins. Co.*, No. LA CV10-08486
24 JAK (FFMx), 2021 WL 4316961, at *8 (C.D. Cal. Sept. 16, 2021) (“A low proportion of opts outs and
25 objections indicates that the class generally approves of the settlement.”) (citation and internal
26 quotation marks omitted).

27 ⁶ Class Counsel will update the Court regarding the response to the Settlement prior to the final
28 approval hearing.

1 **D. The Proposed Plan of Allocation Is Fair and Appropriate**

2 Plaintiffs propose a cash distribution of the net Settlement Fund, after an award of attorneys’
3 fees and reimbursement of litigation costs, to members of the Class who file a claim. Plaintiffs propose
4 to allocate the net Settlement proceeds on a weighted *pro rata* basis utilizing the damages model
5 completed by Plaintiffs’ experts, Dr. Netz and Prof. Hall, which was set to be introduced at trial, and
6 which bases the amount of damages on the purchased or leased vehicle make and model, and the month
7 and year of purchase.⁷ Each purchase or lease made by a Class Member who makes a valid claim
8 (“Authorized Claimant”) will be assigned a Recognized Claim Amount based on the vehicle’s make,
9 model, and month and year of purchase, which equates to the estimated damages assigned to that
10 particular vehicle by Plaintiffs’ experts resulting from the alleged unlawful conduct at issue in the
11 Action. Thus, a purchaser of a Dodge Caravan in January 2002 will be assigned a Recognized Claim
12 Amount of \$343 and will be entitled to receive a comparatively larger *pro rata* share of the settlement
13 proceeds than the purchaser of a Toyota Camry in the same month and year, which has a Recognized
14 Claim Amount of \$317, or a purchaser of a Ford Explorer in that month and year who will be assigned
15 a Recognized Claim Amount of \$241. *See* Schachter Prelim. Approval Decl. Ex. A at App. B.

16 The proposed plan of allocation is fair and reasonable because it treats Class Members exactly
17 how they would have been treated had Plaintiffs prevailed at trial and allocated a judgment according to
18 Plaintiffs’ experts’ vehicle-by-vehicle damages estimates. Moreover, Plaintiffs’ proposed allocation
19 plan is the same type of plan approved by this Court with regard to the GM Canada settlement, and the
20 same type of plan approved by the MDL Court with regard to the Toyota and CADA settlements.

21 //

22 //

23 //

24 _____
25 ⁷ The Settlement Agreement sets out the salient features of the plan of allocation. *See* Seaver Decl. Ex.
26 A (Settlement Agreement), ¶ 21. In addition, as explained *infra*, the Court-approved Long-Form
27 Notice at Appendix A describes in detail the plan of allocation and informs Class Members exactly
28 how recognized claim amounts will be calculated. *See* Schachter Prelim. Approval Decl. Ex. A.

1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully submit that the Court should grant the relief
3 requested herein.

4 Dated: August 12, 2022

Respectfully submitted,

5 **BERMAN TABACCO**

6
7 By: /s/ Todd A. Seaver

8 Todd A. Seaver (SBN 271067)

9 Joseph J. Tabacco, Jr. (SBN 75484)

10 Matthew D. Pearson (SBN 235339)

425 California Street, Suite 2300

San Francisco, CA 94104

11 Telephone: (415) 433-3200

12 Facsimile: (415) 433-6382

jtabacco@bermantabacco.com

13 tseaver@bermantabacco.com

14 mpearson@bermantabacco.com

15 *Attorneys for Plaintiffs*

PLAINTIFFS' STEERING COMMITTEE

1 Joseph J. Tabacco
2 Todd A. Seaver
3 Matthew D. Pearson
4 **BERMAN TABACCO**
5 425 California Street, Suite 2300
6 San Francisco, CA 94104
7 Tel: (415) 433-3200
8 Fax: (415) 433-6382
9 jtabacco@bermantabacco.com
10 tseaver@bermantabacco.com
11 mpearson@bermantabacco.com

Tracy R. Kirkham
COOPER & KIRKHAM, P.C.
357 Tehama Street, 2nd Floor
San Francisco, CA 94103
Tel: (415) 788-3030
Fax: (415) 882-7040
trk@coopkirk.com

8 William Bernstein
9 Eric B. Fastiff
10 Michelle Lamy
11 **LIEFF, CABRASER, HEIMANN &**
12 **BERNSTEIN LLP**
13 275 Battery Street, 29th Floor
14 San Francisco, CA 94111
15 Tel: (415) 956 1000
16 Fax: (415) 956 1008
17 wbernstein@lchb.com
18 efastiff@lchb.com
19 mlamy@lchb.com

R. Alexander Saveri
SAVERI & SAVERI, INC.
706 Sansome Street
San Francisco, CA 94111
Tel: (415) 217-6810
Fax: (415) 217-6813
rick@saveri.com