UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Scott D. Sager, Edward Young, Renada Hall, Michael Marcotte, Sharon Scott, Jack Whittington, Carmelita Nunez, *on behalf of themselves and all others similarly situated,*	
Plaintiffs, vs.	Civil Action No. 2:18-cv-13556 (ES) (SCM)
Volkswagen Group of America, Inc., and Audi of America, Inc.,	Motion Date: June 14, 2021
Defendants.	

MOTION FOR (1) AN AWARD OF ATTORNEY'S FEES AND EXPENSES AND (2) INCENTIVE AWARDS TO THE NAMED PLAINTIFFS

Plaintiffs, Scott D. Sager, Edward Young, Renada Hall, Michael Marcotte, Sharon Scott, Jack Whittington, and Carmelita Nunez ("Plaintiffs"), by and through their undersigned counsel, hereby move the Court to (1) approve an award of attorney's fees and costs in the amount of $1,050,000 to Class Counsel, and (2) approve the payment of incentive awards in the amount of $3,500 to Plaintiffs Young, Hall, Marcotte, Scott and Whittington, $5,000 to Plaintiff Sager, and $5,500 to Plaintiff Nunez. In support, Plaintiffs submits the accompanying memorandum of law, and the Declarations of Sergei Lemberg and Stephen Taylor in support.

Dated: April 15, 2021

Respectfully submitted,

/s/ Sergei Lemberg
Sergei Lemberg (*phv*)
/s/ Stephen Taylor
Stephen Taylor (*phv*)
/s/ Sofia Balile
Sofia Balile

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2021, a true and correct copy of the foregoing was filed with the Clerk of the Court through the ECF system which gave notice of such filing to all parties of record.

/s/ Sofia Balile
Sofia Balile

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Scott D. Sager, Edward Young, Renada Hall, Michael Marcotte, Sharon Scott, Jack Whittington, Carmelita Nunez, *on behalf of themselves and all others similarly situated,*	:	
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	:	u
Volkswagen Group of America, Inc., and Audi of America, Inc.,	:	
Defendants.	:	

[PROPOSED] ORDER

The Court, having read and considered the Plaintiffs' Motion for (1) an Award of Attorney's Fees and Expenses and (2) Incentive Awards to the Named Plaintiffs, and for good cause shown, is of the opinion that the motion should be granted.

Accordingly, the Court hereby awards Class Counsel _____ in attorney's fees and expenses; and awards incentive awards in the amount of _____ to Plaintiff Sager, _____ to Plaintiff Young, _____ to Plaintiff Hall, _____ to Plaintiff Marcotte, _____ to Plaintiff Scot, _____to Plaintiff Whittington, and _____ to Plaintiff Nunez.

IT IS SO ORDERED

Date: _____

_____
UNITED STATES DISTRICT JUDGE

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MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR (1) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND (2) INCENTIVE AWARDS TO THE NAMED PLAINTIFFS

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Plaintiffs, Scott D. Sager, Edward Young, Renada Hall, Michael Marcotte, Sharon Scott, Jack Whittington, and Carmelita Nunez ("Plaintiffs"), respectfully submit this Memorandum in Support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses and Service Awards to the Plaintiffs.

INTRODUCTION

Pursuant to Fed. R. Civ. P. 23(h) and Section VIII(C) of the Settlement Agreement (hereinafter, the "SA"), Plaintiffs and Class Counsel respectfully move this Court for an Order approving attorneys' fees and expenses of $1,050,000.00 and for service awards to the Plaintiffs. In this matter, Plaintiffs sought relief owing to allegedly defective Electric (After-Run) Coolant Pumps (the "Coolant Pumps") installed in Settlement Class Vehicles.[1]

Following briefing where Defendants Volkswagen Group of America, Inc., and Audi of America, Inc. ("Defendant" or "Defendants"), sought to dismiss Plaintiffs' claims for breach of express and implied warranties and state consumer protection statutes, and extensive discovery, the Parties engaged in mediation before Bradley Winters, Esq., a mediator with JAMS in St. Louis, Missouri. Through that mediation, the Parties ultimately agreed to a set of settlement terms providing substantial relief to the Class. Specifically, all Settlement Class Members[2] may be eligible to qualify for a range of benefits, the majority of which do not require the submission of any type of claim by Settlement Class Members.

[1] The function of the Coolant Pump is to cool the turbocharger in Settlement Class Vehicles after the vehicle is turned off – hence the moniker "After-Run" Coolant Pump. Plaintiffs alleged the Coolant Pumps in Settlement Class Vehicles were defective and may short circuit and/or overheat. Further, to the extent the Coolant Pumps may not work or are turned off, Plaintiffs maintained that could potentially damage the turbocharger in Settlement Class Vehicles if it is not sufficiently cooled after the vehicle is turned off.

[2] "Settlement Class" or "Settlement Class Members" means: All persons and entities who purchased or leased a Settlement Class Vehicle in the United States of America and Puerto Rico with certain exclusions. SA § I(Q).

First, the settlement includes a free warranty extension, generally the later of 14-months or 9-months, from the expiration of the original warranty on the turbocharger for current owners or lessees of Settlement Class Vehicles. SA § II(A). For those Settlement Class Vehicles that were afforded a warranty extension on the turbocharger by a particular recall, the Settlement provides for additional time added to that warranty extension. This warranty extension, which applies to all qualifying Settlement Class Vehicles, has a value of $13,300,000.00 (Report of Plaintiffs' Expert Kirk Kirchner (Kirchner Report) ¶ 2) to the Settlement Class.

In addition, Settlement Class Members may get reimbursement for past out-of-pocket expenses for qualifying repair or replacements of a Coolant Pump paid out before Defendant initiated Recall 19N4 in September 14, 2018. SA § II(B).

Further, Settlement Class Members may also get reimbursement for one day of out-of-pocket rental car expenses incurred during the time within which Recall 19O2 (the replacement of the Coolant Pump) was being performed. SA § II(C).

The Court preliminarily approved the Parties' class action settlement agreement on December 8, 2020. (Doc. No. 69). In accordance with the Preliminary Approval Order, Notice detailing the terms of the settlement has been mailed to the Settlement Class and the Settlement Website, https://www.coolantpumpsettlement.com/, has been established. (Declaration of Stephen Taylor ("Taylor Decl."), ¶ 7).

Because of Class Counsel and the Plaintiffs, Settlement Class Members can participate in this excellent result or opt-out if they so choose. The fee award sought here is abundantly reasonable because:

- This is an excellent settlement which provides substantial benefits to the entire class;
- The settlement was agreed only after discovery, dispositive motion practice, and an arms-length mediation before a neutral; and

- The fee and service awards here were agreed to by Defendants separate and apart from any relief to the Settlement Class and do not impact class relief.

For the reasons stated herein, Class Counsel and Plaintiffs respectfully request that the Court approve the service and attorneys' fees and expenses awards.

ARGUMENT

I. LEGAL STANDARD

Under Rule 23 "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The award of attorneys' fees in a class action settlement is within the Court's discretion. *See Rossi v. Proctor & Gamble Co.*, 2013 WL 5523098, at *9 (D.N.J. Oct. 3, 2013).

The Court's role in ruling on an application for attorney's fees and costs depends on the structure of the settlement and whether or not the proposed attorney's fee award come from the same common fund that will be used to compensate class member. In cases where the "money paid to the attorneys comes from a common fund, and is therefore money taken from the class, then the Court must carefully review the award to protect the interests of the absent class members." *Rossi*, 2013 WL 5523098, at *9. "If, on the other hand, money paid to the attorneys is entirely independent of money awarded to the class" – the situation presented in this case – "the Court's fiduciary role in overseeing the award is greatly reduced, because there is no potential conflict of interest between attorneys and class members." *Id.*

Courts in this district approve agreed-upon attorney's fees when the amount is independent from the class recovery and does not diminish the benefit to the class. *Mirakay v. Dakota Growers Pasta Co., Inc.*, 2014 WL 5358987, at *11 (D.N.J. Oct. 20, 2014); *Rossi*, 2013 WL 5523098, at *9; *Pro v. Hertz Equipment Rental Corp.*, 2013 WL 3167736, at *6 (D.N.J. June

20, 2013); *In re LG/Zenith Rear Projection Television Class Action Litigation*, 2009 WL 455513, at *8 (D.N.J. Feb. 18, 2009).

Thus, "[w]hile the Court is not bound by the agreement between the parties, the fact that the award was the product of arm's-length negotiations weighs strongly in favor of approval." *Rossi*, 2013 WL 5523098, at *10. As the *Rossi* court explained, "the benefit of a fee negotiated by the parties at arm's length is that it is essentially a market-set price—[the defendant] has an interest in minimizing the fee and Class Counsel have an interest in maximizing the fee to compensate themselves for their work and assumption of risk." *Id.*

To assess the reasonableness of an attorney's fees award in class actions, courts in the Third Circuit use different methods – the percentage-of-recovery method and the lodestar method – depending on the structure of the settlement and nature of the claims. *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998). The percentage-of-recovery method is generally favored in cases involving a common fund, and the lodestar method is more commonly applied in statutory fee-shifting cases and "in cases where the nature of the recovery does not allow the determination of the settlement's value necessary for application of the percentage-of-recovery method." *Id.* Regardless of which method is used, the court should perform a 'cross-check' by comparing the fee award calculated under the chosen method with the award calculated under the alternative method. *Id.*

Awards under the lodestar method are "calculated by multiplying the number of hours reasonably worked on a client's case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005). In addition, courts

utilize a "multiplier" which is a "device that attempts to account for the contingent nature or risk involved in a particular case and the quality of the attorneys' work." *Id.*, 396 F.3d at 305–06.

The Third Circuit has also identified a non-exhaustive list of factors (the *Gunter* factors) to determine the reasonableness of a fee award, which courts have applied in both common and non-common fund settlements. *Yaeger v. Subaru of Am., Inc.*, 2016 WL 4547126, at *2 (D.N.J. Aug. 31, 2016) ("This is not a case where class counsel's attorney's fees and expenses are to be paid from a common fund that diminishes the net recovery to the class. Nonetheless, in an abundance of caution, the Court will apply the non-exhaustive factors for such cases in the Third Circuit set forth in *Gunter Ridgewood Energy Corp.*, 223 F.3d 190 (3d Cir. 2000)."); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *16 (D.N.J. Mar. 22, 2013).

The "*Gunter* factors" include : (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiff's counsel; and (7) the awards in similar cases. *In re Rite Aid*, 396 F.3d at 301 (*citing Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000)); *see also Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, 639 F. App'x 880, 884, n.3 (3d Cir. 2016).

In addition to the *Gunter* factors discussed above, courts in the Third Circuit consider the factors articulated by the Third Circuit in *In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 148 F.3d 283 (3d Cir. 1998). These factors are (1) whether the benefits accruing to the class are attributable to the efforts of class counsel or other groups, such as government agencies; (2) whether the fee is comparable to the fee that would have been negotiated had the case been

subject to a contingent fee agreement; and (3) whether the settlement agreement contains innovative terms and conditions. *In re AT & T Corp.*, 455 F.3d 160, 165 (3d Cir. 2006) (*citing In re Prudential*, 148 F.3d at 338-40); *see also In re Domestic Drywall Antitrust Litig.*, 2018 WL 3439454, at *3 (E.D. Pa. July 17, 2018).

II. THE LODESTAR METHOD SUPPORTS THE REQUESTED AWARD

The requested attorneys' fees and expenses are reasonable under the lodestar method as counsel's hourly rates are reasonable, the amount of billable time expended was reasonable, and a multiplier in the amount of 2.98 is warranted.

Class Counsel's lodestar in this action is $342,075 which is based on 633 attorney and professional staff hours. (Lemberg Decl., ¶ 12):

Professional	**Rate**	**Hours**	**Lodestar**
Sergei Lemberg, Esq.	$700	184	$128,800
Stephen Taylor, Esq.	$650	167	$108,550
Sofia Balile, Esq.	$450	111	$49,950
Vlad Hirnyk, Esq.	$450	10	$4,500
Josh Markovits, Esq.	$350	134	$46,900
Paralegal Time	$125	27	$3,375
		Total: 633	Total: $342,075

These rates are fully supported by the skill and experience of Plaintiff's counsel and well within the market rate for their services. (Lemberg Decl. ¶¶ 2-8, 18; Taylor Decl. ¶¶ 2-6; *and see, e.g. Campbell et al. v. Synchrony Bank,* No. 17-cv-00022 (W.D.N.C.) (Doc. No. 122-3 ¶ 12 (requesting rates of $700, $650 and $350 for Sergei Lemberg, Stephen Taylor and Joshua Markovits respectively) and Doc. No. 126 ¶ 11 (awarding fees from a settlement common fund); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *16 (D.N.J. Mar. 22, 2013) (finding hourly rates in vehicle defect class action ranging from $175 to $700 to be "entirely consistent with hourly rates routinely approved by this Court in complex class action litigation")). The lodestar does not include additional work associated with the instant motion,

final approval, and Class Counsel's oversight of the settlement administration process. (Lemberg Decl. ¶ 11).

Based on the lodestar to date, the lodestar crosscheck results in a multiplier of 2.98 after accounting for Class Counsel's litigation costs ($27,202.97) and deducting them from the $1,050,000 award.[3] This multiplier is well within the range of appropriate multipliers. *Milliron v. T-Mobile USA, Inc.*, 423 F. App'x 131, 135 (3d Cir. 2011) (Third Circuit has "approved a multiplier of 2.99 in a relatively simple case."); *Arrington v. Optimum Healthcare IT, LLC.*, 2018 WL 5631625, at *10 (E.D. Pa. Oct. 31, 2018) (approving lodestar multiplier of 5.3 where "class counsel undertook significant risk to achieve a substantial settlement amount, and should not be penalized for settling the case early in the litigation."); *Flores v. Express Servs., Inc.*, 2017 WL 1177098, at *4 (E.D. Pa. Mar. 30, 2017) (approving multiplier of 4.6 as reasonable); *Frederick v. Range Res.-Appalachia, LLC*, 2011 WL 1045665, at *13 (W.D. Pa. Mar. 17, 2011) ("Federal courts in this circuit have frequently approved fee award multipliers in the range of 1 to 4" (collecting cases and approving fee award resulting in a 5.95 multiplier)); *In re Vicuron Pharms., Inc. Sec. Litig.*, 512 F. Supp. 2d 279, 287 (E.D. Pa. 2007) (lodestar of 2.23 was "lower than in numerous other cases where multipliers between 2.5 and 4 have been approved."); *see also Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.").

Accordingly, the lodestar method demonstrates that a fee and cost award negotiated between the Parties is fair and reasonable compensation to Class Counsel for their efforts in achieving an excellent result for the Settlement Class.

[3] (Proposed Award – Costs) / Lodestar = Multiplier.

III. THE *GUNTER* FACTORS SUPPORT THE REQUESTED FEE AWARD

Consideration of the *Gunter* factors also weigh strongly in favor of the requested fees and expenses.

A. THE SIZE OF THE FUND AND THE NUMBER OF PERSONS BENEFITTED

The first factor, the amount of relief provided to Class Members and the number of persons benefitted support the requested fees and expenses, supports the requested fee award.

There are 342,866 Settlement Class Vehicles. Under the Settlement Agreement, all Settlement Class Members may qualify to receive a range of benefits, the majority of which do not require the submission of any type of claim by Settlement Class Members. Benefits of the settlement include a free warranty extension, generally the later of 14-months or 9-months from the expiration of the original warranty, on the turbocharger for current owners or lessees of Settlement Class Vehicles. SA § II(A). For those qualifying Settlement Class Vehicles that were afforded a warranty extension on the turbocharger by a particular recall, the Settlement provides for additional time added to that warranty extension.

Plaintiffs engaged an expert in warranty related valuations to determine the worth of this settlement relief. The expert determined the value of the warranty extension by analyzing what it would cost Settlement Class Members to purchase the protection provided under this settlement:

> To estimate the value of the Warranty Extension, my valuation approach was based on estimating the market price Class Members would pay to purchase a Hypothetical Extended Service Contract (Hypothetical ESC) that is equivalent to the financial protection resulting from the existence of the Warranty Extension in the Settlement Agreement. This approach has been accepted by many courts and was incorporated in my valuations—upon which the courts and parties relied—in the VW/Audi, Toyota-US, Toyota-Canadian and Takata Airbag related class actions mentioned in Section 3 above. Thus, I employed methods and analyses of a type reasonably relied upon by courts and experts in my field in forming opinions or inferences on the subject.

(Kleckner Report[4] ¶ 7(b)). Plaintiffs' expert Mr. Kleckner concludes: "I have determined within a reasonable degree of professional certainty that the value of the Settlement Agreement's Warranty Extension exceeds $13,300,000." *Id.* ¶ 7(g); *see also Granillo v. FCA US LLC*, 2019 WL 4052432, at *9 (D.N.J. Aug. 27, 2019) ("other courts have determined the potential value of a settlement involving non-monetary benefits such as automotive warranties by multiplying the total number of vehicles at issue, in this case 314,303, times the estimated value of the extended warranty.").

In addition, Settlement Class Members may also get reimbursement for past out-of-pocket expenses for qualifying repair or replacements of a Coolant Pump paid out before Defendant initiated Recall 19N4 in September 14, 2018. SA § II(B). Settlement Class Members may also get reimbursement for one day of out-of-pocket rental car expenses incurred during the time within which Recall 19O2 (the replacement of the Coolant Pump) was being performed. SA § II(C)

These very substantial and valuable benefits that will be provided to hundreds of thousands of Settlement Class Members fully support the requested fee award. *Granillo*, 2019 WL 4052432, at *9 ("I find that the settlement conferred a substantial benefit on the settling Class Members, which includes both direct monetary payments or trade in vouchers and an extended warranty. Given the combined value of the extended warranty, the trade-in vouchers and cash payments, and the settlement's benefit was substantial and weighs in favor of approval of the attorneys' fee award."); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *17 (D.N.J. Mar. 22, 2013) ("Given the potential combined value of the reimbursements, and the

[4] A copy of the Kleckner Report is available at Doc. No. 61-6.

number of Class Members potentially entitled to benefits [which included an extended warranty], this factor weighs in favor of approval.").

B. THE PRESENCE OR ABSENCE OF SUBSTANTIAL OBJECTIONS BY MEMBERS OF THE CLASS TO THE SETTLEMENT TERMS AND/OR FEES REQUESTED BY COUNSEL

To date there have been no objections to the settlement terms or fees requested by counsel to date. The objection deadline has not passed and this factor may be assessed at the final approval stage.

C. THE SKILL AND EFFICIENCY OF THE ATTORNEYS INVOLVED

The third *Gunter* factor – the skill and efficiency of the attorneys involved – also weighs in favor of the requested fees and expenses. Class Counsel are experienced and skilled class action litigators. They have successfully represented classes in both contested and settled proceedings. *See, e.g., Johnson v. Comodo Grp., Inc.*, 2020 WL 525898 (D.N.J. Jan. 31, 2020) (contested class certification decision in TCPA action); *Larson v. Harman-Mgmt. Corp.*, 2020 WL 3402406 (E.D. Cal. June 19, 2020) (final approval and certification of class settlement of $4MM in TCPA action); *Horton, et al. v. Cavalry Portfolio Services, LLC,* 13-cv-00307, ECF No. 303 (S.D. Cal.) (Oct. 13, 2020) (final approval and certification of class settlement of approximately $24MM in TCPA action); *Carlson v. Target Enter., Inc*., 2020 WL 1332839 (D. Mass. Mar. 23, 2020) (final approval of class action settlement for alleged violations of Chapter 93A and 940 C.M.R. § 7.04(1)(f)); *Lavigne v. First Cmty. Bancshares, Inc.*, 2018 WL 2694457, at *5 (D.N.M. June 5, 2018) ("the Court concludes that Lemberg Law, LLC (Stephen Taylor) should be appointed as class counsel.") (contested class certification decision in TCPA action); *Munday v. Navy Federal Credit Union*, ECF No. 60, 15-cv-01629 (C.D. Cal., July 14, 2017) (final approval of class settlement of $2.75MM in TCPA action).

Class Counsel brought their experience and skill to bear to efficiently investigate, litigate, settle this case, conduct discovery, and oversee the administration of the settlement process. Their skill with class action litigation was critical in efficiently identifying the key issues, negotiating the settlement for the class and demonstrates the reasonableness of the requested fee.

Moreover, "the quality and vigor of opposing counsel is also important in evaluating the services rendered by Class Counsel." *Granillo*, 2019 WL 4052432, at *10. Defendant is represented by attorneys from Herzfeld & Rubin, a "a full-service, internationally-recognized law firm with more than 70 years of experience."[5] That Class Counsel were able to achieve this settlement in light of Defendants' vigorous and skillful defense of this action supports the reasonableness of the requested fee award. *See id.* ("the fact that Class Counsel achieved this Settlement for the Class in the face of formidable legal opposition further evidences the quality of their work, which weighs in favor of approval of the attorneys' fee award.").

D. THE COMPLEXITY AND DURATION OF THE LITIGATION

The fourth *Gunter* factor – the complexity and duration of the litigation – also weighs in favor of the requested fees and expenses. Plaintiffs' Complaint faced considerable legal and factual hurdles absent settlement. For instance, Defendant argued that each of the Plaintiffs' claims – which involved the application of multiple state laws – should be dismissed for numerous independent grounds in its 36-page motion to dismiss the Amended Complaint (Doc. No. 31-1). Plaintiffs opposed that motion and vehemently disagree that the claims were subject to dismissal (Doc. No. 38), but the motion remained pending when the Parties reached a settlement in principle and there was a possibility some of or all of the claims could have been dismissed. Moreover, even if the Amended Complaint survived the motion to dismiss, Plaintiffs'

[5] *See* https://www.herzfeld-rubin.com/about/

case would have faced additional significant legal and factual hurdles throughout discovery, on summary judgment, class certification, at trial, and potentially on appeal.

The complexity and time and resources necessary to litigate Plaintiffs' claims amply supports the requested award, particularly in light of the skillful and efficient manner in which Class Counsel handled those issues and brought the case to a successful resolution on behalf of the Settlement Class.

Moreover, while the Parties commenced their settlement discussions before dispositive issues were decided, the intricacy and nature of the litigation support the request for attorneys' fees. The Parties conducted formal and informal discovery prior to and throughout the mediation process, including discovery regarding the size and scope of the class, the state of various recalls, and the technical details of the Coolant Pump. In addition, all Plaintiffs answered formal discovery. Further, the Parties engaged a respected neutral to conduct the mediation. In short, this is not a case where the Parties hastily negotiated a deal. To the contrary, there were significant efforts and resources expended discovering the claims and in negotiating a resolution. This factor weighs strongly in favor of approval of the requested fee.

E. THE RISK OF NONPAYMENT WAS HIGH

The fifth *Gunter* factor – the risk of nonpayment – also supports the requested award. For any Plaintiff's firm to bring a national class action against a substantial company on a contingent basis requires commitment of time and resources in the face of significant risks of loss and/or delay. *See In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *7 (D.N.J. May 31, 2012) ("Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval."). In this case, Class Counsel is comprised of one small law firm. Firms of small size face even greater risks in litigating large class actions with no guarantee of payment. *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, at

*10 (C.D. Cal. Nov. 18, 2014) (finding heightened risk of small firm representation should be rewarded with larger percentage fee for good result); *see also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 750 (1987) (Delaware Valley II) (plurality opinion) ("[C]ontingent litigation may pose greater risks to a small firm or a solo practitioner because the risk of nonpayment may not be offset so easily by the presence of paying work. . . ."); *Davis v. Mutual Life Ins. Co.*, 6 F.3d 367, 382 (6th Cir. 1993) ("[T]he maintenance of comparatively large pieces of litigation prevents small firms from diversifying risk by taking on additional clients.").

This is a pure contingent fee case, which Class Counsel took on with high risk concerning not only the result of the case, but also how much time and money would need to be invested to get a result. Because hours and resources are limited, the attorneys involved in this case were required to defer or decline other work to properly prosecute this case. Had the case been lost, they would have received no compensation whatsoever for their significant investment of time and effort over the last 2+ years. Accordingly, this factor also weighs in favor of the requested award.

F. THE AMOUNT OF TIME DEVOTED TO THE CASE BY PLAINTIFF'S COUNSEL

The sixth *Gunter* factor also supports the requested award, as Class Counsel have invested significant time and effort in this action. (Lemberg Declaration ¶ 10).

In addition, Class Counsel will devote further time and effort appearing at the final approval hearing, responding to ongoing inquiries from Class Members going forward, addressing any disputes relating to submitted claims, and monitoring claims processing and the distribution of settlement payments by the Claims Administrator. *Id.* ¶ 11. *See McMahon v. Olivier Cheng Catering & Events, LLC*, 2010 WL 2399328, at *8 (S.D.N.Y. Mar. 3, 2010) ("The

fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but for time that they will be required to spend administering the settlement going forward also supports their fee request"). These combined efforts, taken with the risk of no recovery to counsel whatsoever, amply support the requested award in this case, and demonstrate that the fees and expenses requested here have been well earned.

G. AWARDS IN SIMILAR CASES

Finally, the seventh *Gunter* factor – awards in similar cases – supports that the requested award of $1,050,000 is reasonable when compared to fee awards in similar cases. *See, e.g., Granillo*, 2019 WL 4052432, at *11 ("An attorney fee award of $1,200,020 falls within the range of fees approved in other consumer class actions in this District.") (approving fee award in action stemming from alleged defects in the automatic transmissions of vehicles manufactured by defendant); *Yaeger v. Subaru of Am., Inc.*, 2016 WL 4547126, at *4 (D.N.J. Aug. 31, 2016) (awarding fees of $1,500,000 in two-year action alleging an oil consumption defect in the engine); *Skeen v. BMW of N. Am., LLC*, 2016 WL 4033969, at *24-25 (D.N.J. July 26, 2016) (awarding $2,100,000 in attorneys' fees in a three-year class action alleging timing chain defect); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *18 (D.N.J. Mar. 22, 2013) ("In *O'Keefe v. Mercedes–Benz USA, LLC,* 214 F.R.D. 266, 304 (E.D.Pa.2003), a fee of $4,896,783.00 was awarded in a class action involving allegedly defective rear lift-gate latches. (Pls.' Fee Br. 23.) Similarly, in *McGee v. Cont'l Tire N. Am., Inc.*, No. 06–6234(GEB), 2009 U.S. Dist. LEXIS 17199, 2009 WL 539893 (D.N.J. Mar. 4, 2009), the Court awarded $2,274,983.70 in fees and expenses in a consumer class action. Given these, Class Counsel's request of $3,000,000.00 is reasonable and commensurate with awards in comparable cases."); *Coffeng v. Volkswagen Group of America*, Inc., Civil Action No. 2:17-cv-01825-JD (N.D.Cal.) (approving award of $2.4 million in water pump defect class action settlement).

Further, a fee award that is equivalent to 7.9% of Plaintiffs' expert's value of the relief[6], not including the value of the out-of-pocket or rental reimbursement relief, provided to the Class compares favorably to awards approved in consumer class actions. *See Yaeger*, 2016 WL 4547126, at *3 (approving award where lodestar "would represent less than 23 percent of the anticipated overall benefit of the extended warranty to the class not counting the benefit of the reimbursements that Subaru is also required to make in the claims process."); *Skeen*, 2016 WL 4033969, at *24 ("Using the rough $10-$30 million settlement estimate [regarding the value of relief provided to class members], a reasonable percentage-of-recovery fee in this case would be between $1,900,000 and $13,500,000. The fee award sought by counsel and the lodestars calculated under Defendants' proposed New York-Philadelphia mean and fourth-quartile billing rates all fall within this range."); *Mirakay v. Dakota Growers Pasta Co.*, 2014 WL 5358987, at *12 (D.N.J. Oct. 20, 2014) ("Attorneys' fees in the 30% range are not uncommonly awarded in the Third Circuit, and courts in this Circuit have awarded fees of more than 30%.").

The fee and expense request here are in-line with awards in similar cases. Thus, the final *Gunter* factor weighs in support of the requested award.

IV. APPLICATION OF THE *PRUDENTIAL* FACTORS SUPPORTS THE REQUESTED AWARD

In addition to the *Gunter* factors discussed above, courts in the Third Circuit consider the factors articulated by the Third Circuit in *In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 148 F.3d 283. These factors are (1) whether the benefits accruing to the class are attributable to the efforts of class counsel or other groups, such as government agencies; (2) whether the fee is comparable to the fee that would have been negotiated had the case been subject to a contingent fee agreement; and (3) whether the settlement agreement contains innovative terms and

[6] $1,050,000 divided by the estimated $13,300,000 value of the extended warranty.

conditions. These factors further support the requested award in this case. *In re AT & T Corp.*, 455 F.3d at 165 (*citing In re Prudential*, 148 F.3d at 338-40).

With respect to the first *Prudential* factor – whether the benefits are attributable to Class Counsel or the other groups – the settlement results obtained are solely the result of Class Counsel's efforts. In *Prudential*, the Third Circuit singled this factor out for important consideration by district courts. *See In re Prudential*, 148 F.3d at 338. There, the appeals court remanded the trial court's fee award for wrongly "credit[ing] class counsel with creating the entire value of the settlement" and overlooking the considerable contributions of a multi-state life insurance task force. *Id.* Here, there was no such assistance by any state or federal body. Thus, this action is more similar to *In re AT & T*, in which the Third Circuit found that "class counsel was not aided by the efforts of any governmental group, and the entire value of the benefits accruing to class members is properly attributable to the efforts of class counsel." *In re AT & T Corp.*, 455 F.3d at 173. This factor weighs in favor of the proposed fee.

The second *Prudential* factor – comparison of the requested fee to a negotiated contingent fee agreement – also weighs in favor of the requested award. The fee – which is the equivalent of 7.9% of the value of the extended warranty relief alone – is significantly less than a standard contingent fee arrangement where counsel receives 33% of the recovery.

Finally, the third *Prudential* factor – whether the settlement contains innovative settlement terms – is neutral to the requested award here. While *Prudential* contemplates rewarding counsel for an innovative settlement, it does not follow that counsel should be penalized for the lack of an innovative settlement. *McDonough v. Toys "R" Us, Inc.*, 834 F. Supp. 2d 329, 345 (E.D. Pa. 2011) ("In the absence of any innovative terms, this factor neither

weighs in favor or against the proposed fee request."). This last factor should not weigh on the Court's analysis one way or another.

Application of the *Prudential/Gunter* factors demonstrates that an award of $1,050,000 is more than appropriate to compensate Class Counsel for their efforts on behalf of the class.

V. THE REASONABLENESS OF THE REQUESTED AWARD IS FURTHER DEMONSTRATED BY THE FACT THAT IT IS INCLUSIVE OF EXPENSES

The reasonableness of the requested $1,050,000 award to Class Counsel is further demonstrated by the fact that it is inclusive of both attorneys' fees and expenses. In the Third Circuit, requests by counsel for reimbursement of expenses (in addition to attorneys' fees) in class cases are commonly granted as a matter of course. *See, e.g.*, *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 106 (E.D. Pa. 2013) (awarding costs incurred by class counsel); *Lake Forest Partners, L.P.*, 2013 WL 3048919, at *4 (same). Here, Class Counsel's expenses total $ 27,202.97. (Lemberg Decl. ¶¶ 19-22). The fact that these expenses are included in the amount sought by Class Counsel demonstrates that the requested amount is reasonable and appropriate.

VI. THE COURT SHOULD APPROVE INCENTIVE AWARDS TO THE NAMED PLAINTIFFS FOR THEIR EFFORTS ON BEHALF OF THE CLASS

Class Counsel requests that the Court approve the payment of incentive awards in the amount of $3,500 to Plaintiffs Young, Hall, Marcotte, Scott and Whittington, $5,000 to Plaintiff Sager, and $5,500 to Plaintiff Nunez. SA § VIII(C)(ii).

An incentive award to each of the Plaintiffs for bringing and litigating this case on behalf of the class is permissible and promotes a public policy of encouraging individuals to undertake the responsibility of representative lawsuits. *Manual for Complex Litigation,* § 21.62 n.971 (4th ed. 2004). "'Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.'"

Cullen v. Whitman Med. Corp., 197 F.R.D. 136, 145 (E.D. Pa. 2000) (*quoting In re So. Ohio Corr. Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997)).

Plaintiffs seek approval of service awards to the named Plaintiffs in this matter in the amounts of $3,500 to Plaintiffs Young, Hall, Marcotte, Scott and Whittington, $5,000 to Plaintiff Sager, and $5,500 to Plaintiff Nunez. Plaintiffs have each been intimately involved with this case. They have been in contact with and aided their counsel throughout the case, they have all answered discovery and they have all maintained abreast of the litigation. (Taylor Decl. ¶ 9).

A service award of $5,000 for Plaintiff Sager is appropriate as he was the first and only lead Plaintiff when this action commenced. *Id*. ¶ 10. His willingness to be the first putative class representative and to pursue this matter as a class deserves award in the form of a slightly higher service award. Further, a service award of $5,500 for Plaintiff Nunez is appropriate. Among the Plaintiffs, Ms. Nunez alleged fire damage caused by the alleged defect in the Coolant Pump. *Id.* ¶ 11. In Plaintiffs' counsel opinion, her allegations and experiences were of particular worth to the case and to the benefit of the Settlement Class. *Id*.

These awards are fair, reasonable and in line with amounts granted in other matters. *See, e.g.*, *Henderson*, 2013 WL 1192479, at *19 (approving incentive awards ranging between $5,000 to $6,000 per named plaintiff); *Barenbaum v. Hayt, Hayt & Landau, LLC*, 2021 WL 120925, at *7 (E.D. Pa. Jan. 13, 2021) (approving $7,800 incentive award in FDCPA class action); *Kommer v. Ford Motor Co.*, 2020 WL 7356715, at *6 (N.D.N.Y. Dec. 15, 2020) (approving $7,500 incentive award).

CONCLUSION

For the reasons set forth above, Plaintiffs and Class Counsel respectfully request that the Court grant this motion and (1) award attorneys' fees and expenses to Class Counsel in the

amount of $1,050,000.00 and (2) award inventive awards in the amounts of $3,500 to Plaintiffs Young, Hall, Marcotte, Scott and Whittington, $5,000 to Plaintiff Sager, and $5,500 to Plaintiff Nunez.

Dated: April 15, 2021

Respectfully submitted,

/s/ Sergei Lemberg
Sergei Lemberg (*phv*)
/s/ Stephen Taylor
Stephen Taylor (*phv*)
/s/ Sofia Balile
Sofia Balile
LEMBERG LAW, LLC
43 Danbury Road
Wilton, CT 06897
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2021, a true and correct copy of the foregoing was filed with the Clerk of the Court through the ECF system which gave notice of such filing to all parties of record.

/s/ Sofia Balile
Sofia Balile

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Scott D. Sager, Edward Young, Renada Hall, Michael Marcotte, Sharon Scott, Jack Whittington, Carmelita Nunez, *on behalf of themselves and all others similarly situated*,	:	
Plaintiffs,	:	Civil Action No. 2:18-cv-13556 (ES) (SCM)
vs.	:	
	:	Motion Date: May 18, 2020
Volkswagen Group of America, Inc., and Audi of America, Inc.,	:	
Defendants.	:	

DECLARATION OF SERGEI LEMBERG IN SUPPORT OF MOTION FOR (1) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND (2) SERVICE AWARDS TO THE NAMED PLAINTIFFS

I, Sergei Lemberg, under penalty of perjury under the laws of the United States of America, affirm and state as follows:

1. I am the principal of Lemberg Law, LLC. I am a consumer rights attorney experienced in prosecuting actions under various Federal and State consumer protection statutes. I am a 1997 graduate of Brandeis University with a degree in Economics and a Minor in Accounting, a 2001 graduate of University of Pennsylvania School of Law and now the principal of Lemberg Law L.L.C.

2. Prior to starting my own law firm, I held positions in the New York offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. and practiced corporate bankruptcy and reorganization law at Andrews Kurth LLP and Day Pitney LLP. I have personal knowledge as to all matters set forth in this Declaration and could testify to the same if called to do so.

3. I am a member in good standing of the bars of Massachusetts, Connecticut, Georgia, New York and Pennsylvania. I am also admitted to practice before the First, Second, Third, Fifth, Seventh, Ninth and Eleventh Circuit Courts of Appeal. I am admitted to practice before the following Federal courts: the District of Massachusetts, Eastern and Western Districts of Arkansas; the District of Connecticut; the Northern and Middle Districts of Georgia; the Northern, Central and Southern Districts of Illinois; the District of Maryland; the Eastern and Western Districts of Michigan; the Eastern District of Missouri; the District of Nebraska; the Northern, Southern, Eastern and Western Districts of New York; the Northern District of Ohio; the Northern, Eastern and Western Districts of Oklahoma; the Western District of Texas; the Eastern, Middle and Western Districts of Pennsylvania

4. My firm's decisions on consumer right's matters include but are not limited to: *Manuel v. NRA Grp. LLC*, 722 F. App'x 141, 142 (3d Cir. 2018); *Pollard v. Law Office of Mandy L. Spaulding*, 766 F.3d 98 (1st Cir. 2014); *Scott v. Westlake Servs. LLC*, 2014 WL 250251 (7th Cir. Jan. 23, 2014); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015 (9th Cir. 2012); *LaVigne v. First Cmty. Bancshares, Inc.*, No. 1:15-CV-00934-WJ-LF, 2016 WL 6305992 (D.N.M. Oct. 19, 2016); *Butto v. Collecto, Inc*, 290 F.R.D. 372, 395-396 (E.D.N.Y. 2013); *Cerrato v. Solomon & Solomon*, 909 F.Supp.2d 139 (D. Conn. 2012); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011); *Davis v. Diversified Consultants, Inc.*, 2014 WL 2944864 (D. Mass. June 27, 2014); *Hudak v. The Berkley Grp., Inc.*, 2014 WL 354666 (D. Conn. Jan. 23, 2014); *Zimmerman v. Portfolio Recovery Assocs., LLC*, 2013 WL 6508813 (S.D.N.Y. Dec. 12, 2013); *Seekamp v. It's Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012).

5. I and my firm have been certified as class counsel, in both contested proceedings and in settlement, in the following matters: *Johnson v. Comodo Grp., Inc.*, 2020 WL 525898, at *1 (D.N.J. Jan. 31, 2020) (Telephone Consumer Protection Act ("TCPA") contested class action);

Nyby v. Convergent Outsourcing, Inc., 2017 WL 3315264, at *5 (D.N.J. Aug. 3, 2017) (final approval of class action settlement agreement in FDCPA matter); *Lavigne v. First Community Bancshares, Inc., et al.*, 2018 WL 2694457, at *5 (D.N.M. June 5, 2018) (certification in TCPA action); *Munday v. Navy Federal Credit Union*, ECF No. 60, 15-cv-01629 (C.D. Cal., July 14, 2017) (final approval of class settlement of $2.75MM in TCPA action); *Brown v. Rita's Water Ice Franchise Co. LLC*, No. CV 15-3509, 2017 WL 1021025, at *1 (E.D. Pa. Mar. 16, 2017) (final approval of class settlement of $3MM common fund in TCPA action); *Duchene v. Westlake Servs., LLC*, No. 2:13-CV-01577-MRH, 2016 WL 6916734 (W.D. Pa. July 14, 2016) (final approval of class settlement of $10MM common fund in TCPA action); *In Re: Convergent Telephone Consumer Protection Act Litigation*, ECF No. 268, 3:13-md-02478 (D. Conn., November 10, 2016) (final approval of class settlement consisting of $5.5MM common fund in TCPA action); *Oberther v. Midland Credit Management*, Doc. No. 90, 14-cv-30014 (D. Mass. July 13, 2016) (Fair Debt Collection Practice Act ("FDCPA") class action); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011) (certifying FDCPA class action); *Seekamp v. It's Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012) (certifying auto fraud class action); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015 (9th Cir. 2012) (FDCPA class action); *Butto v. Collecto, Inc.*, 290 F.R.D. 372 (E.D.N.Y. 2013) (certifying FDCPA class action); *Douma v. Law Offices of Mitchell N. Kay P.C.*, 09-cv-9957 (S.D.N.Y.) (FDCPA class action); *Waiters v. Collection Tech., Inc.*, 10-cv-02514 (S.D.N.Y.) (FDCPA class action).

6. I have been interviewed and asked to contribute on multiple occasions by the media regarding various matters that I worked on, such as the Boston Herald, NorthJersey.com, Newsweek, The Leader Herald, PatriotLedger.com, Law360, Texas Lawyer, ABC News, Chanel 7 in Boston, McClatchy, AOL Autos, Connecticut Law Tribune, Philly.com, the Los Angeles Times, Consumer Reports.org, Syracuse.com, Daily News, Harford Advocate.com and the Boston Herald.

7. I have co-authored the definitive compilation of form complaints in Connecticut, Connecticut Civil Complaints for Business Litigation, contributing form complaints for the Lemon Law and Auto Fraud sections. Since my firm's inception, we have also represented plaintiffs in over 10,000 individual automotive actions under the Magnuson-Moss Warranty Act, and various state lemon law and express and implied warranty statutes.

8. I am also the former Chair of the Consumer Law Section of the Connecticut Bar Association. I held that position from 2014 to 2015. I have been a guest speaker at the Professional Association for Customer Engagement conference in 2014 and the National Debt Collection Forum in 2016. In both instances I spoke about best practices that should be or are adopted in the debt collection profession from the perspective of a consumer advocate.

OVERVIEW OF EFFORTS ON BEHALF OF PLAINTIFF AND THE CLASS

9. We have litigated this case with and on behalf of Plaintiffs and the putative class since the summer of 2018. When each Plaintiff contacted us, they and we agreed to pursue their claims on a class action basis.

10. My firm has not been paid anything for our work on this case since it was filed. This matter required Class Counsel to spend substantial time on this litigation that could have been spent on other matters.

(1) When we were first contacted by Mr. Sager, a resident of New Jersey, we investigated his claims, Defendants' responses to the claims of allegedly defective Coolant Pumps and measures they had taken to remedy the issue.

(2) We drafted and filed a class action complaint seeking nation-wide relief for violations of the New Jersey Consumer Fraud Act (the "CFA"), N.J. Stat. Ann. § 56:8-1, breach of warranty pursuant to the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301, and breach of implied warranty.

(3) We analyzed Defendant's December 20, 2018, motion to dismiss the complaint arguing (1) Plaintiff failed to plead an unlawful practice, loss or causation sufficient to state a CFA claim, (2) Plaintiff's implied warranty claim was time-barred, (3) his Magnuson-Moss claim was deficient for failure to state a claim for breach of state warranty law, and (4) the doctrine of prudential mootness warranted dismissal where, Defendant maintained, its recall campaign provided all relief Plaintiff and his class could obtain through litigation.

(4) When we were contacted by Plaintiffs Young, Hall, Marcotte, Scott, Whittington and Nunez we again investigated their circumstances and subsequently drafted and filed a First Amended Class Action Complaint ("FAC"). In addition to adding six plaintiffs, the FAC asserted claims for breach of the express and implied warranty, nationally or in the alternative for the six individual named Plaintiffs' home states, a claim under the Magnusson Moss Act and violation of the Texas Deceptive Trade Practices Act.

(5) We opposed Defendant's motion to dismiss the FAC in all respects as wrong on the facts, the law and the alleged Coolant Pump defect.

(6) Each Plaintiff answered interrogatories and document production requests.

(7) We served written discovery and after several meet and conferrals secured supplemental responses and documents including information on class size, the state of the various recalls and engineering schematics of the Coolant Pump.

(8) We also investigated and analyzed the Coolant Pump issue and attempts by class members to get repairs or replacements. This includes questioning of non-party witnesses and responding to inquiries from putative class members.

(9) We attended a September 12, 2019, mediation in St. Louis, Missouri before Bradley Winters of JAMS. Prior to the mediation we provided Mr. Winters detailed mediation statements concerning all aspects of the case.

(10) We prepared the Motion for Preliminary Approval of the Class Action Settlement Agreement motion for preliminary approval of the Settlement.

(11) We regularly communicate with the Settlement Administrator to ensure a smooth notice process following the Court's preliminary approval order.

(12) We reviewed the language and content of the settlement website and all notice and claim documents.

(13) We communicate with the Plaintiffs throughout the case.

11. Additionally, I anticipate a significant amount of work and hours will be expended after the filing of this fee application related to final approval and oversight of the administrator. We will also assist class members with individual inquiries and will oversee administration. Judging by previous experiences, these responsibilities will require the expenditure of significant time and efforts over the coming months.

CLASS COUNSEL'S LODESTAR

12. Our lodestar in this matter is $342,075 which is based on 633 hours expended by three firm attorneys and paralegal staff. The following attorneys contributed significant time towards this case and seek compensation at the following rates.

Professional	Rate	Hours	Lodestar
Sergei Lemberg, Esq.	$700	184	$128,800
Stephen Taylor, Esq.	$650	167	$108,550
Sofia Balile, Esq.	$450	111	$49,950
Vlad Hirnyk, Esq.	$450	10	$4,500
Josh Markovits, Esq.	$350	134	$46,900
Paralegal Time	$125	27	$3,375
		Total: 633	Total: $342,075

13. My billing rate in this matter is $700 per hour which is a reasonable rate given my experience and expertise in consumer rights class action litigation. In addition, Mr. Taylor's billing rate is $650 per hour which is supported by his skill and experience as set forth in his declaration. These are the rates approved by Courts in similar complex class litigation. *See*, *e.g. Campbell et al. v. Synchrony Bank*, No. 17-cv-00022 (W.D.N.C.) (Doc. No. 122-3 ¶ 12 (requesting rates of $700, $650 and $350 for Sergei Lemberg, Stephen Taylor and Joshua Markovits respectively) and Doc. No. 126 ¶ 11 (awarding fees from a settlement common fund); *Horton v. Cavalry*, 13-cv-00307 (S.D. Cal.) (Doc. No. 297-2 ¶ 15 (requesting rates of $700, $650 and $350 for Sergei Lemberg, Stephen Taylor and Joshua Markovits respectively) and Doc. No. 303 ¶ 16 (awarding fees from a settlement common fund).

14. Further, we are seeking compensation for three other firm attorneys in addition to myself and Mr. Taylor, Mr. Josh Markovits, Ms. Balile and Mr. Hirnyk.

15. Mr. Markovits is an associate at Lemberg Law with a focus on consumer protection class actions. Mr. Markovits received his J.D., *cum laude*, from Benjamin N. Cardozo School of Law in 2015 and is admitted to practice in New York. Mr. Markovits is also admitted to practice before the United States District Courts for the Southern, Eastern and Western Districts of New York, the Northern District of Illinois, and the District of Colorado. During law school, Mr. Markovits served as a legal intern in the chambers of both a federal court and a New York Supreme Court judge. He also served as a legal intern in the U.S. Commodity Futures Trading Commission's Division of Enforcement. His rate of $350 per hour has been approved in other courts. *See*, *Campbell et al. v. Synchrony Bank* & *Horton v. Cavalry*, *supra*.

16. Ms. Balile is counsel to Lemberg Law and maintains her own law office, the Law Office of Sofia Balile., with a focus on consumer protection, matrimonial and family law. She has handled hundreds of consumer protection actions, including both individual and class actions. Ms.

Balile received her J.D. from Wake Forest Law School in 2002 and is admitted to practice in New Jersey and New York. Ms. Balile is also admitted to practice before the United States District Court for the District of New Jersey, the United States Court of Appeals for the Third Circuit, and the United States Supreme Court.

17. Mr. Hirnyk is an associate at Lemberg Law with a focus on lemon law, breach of warranty, automobile fraud litigation, and consumer class action litigation. Mr. Hirnyk received his J.D., *magna cum laude*, from Pace University School of Law in 2009 and is admitted to practice in New York and Connecticut. Mr. Hirnyk is also admitted to practice before the following federal courts: the Northern, Central and Southern Districts of Illinois; the Eastern and Western Districts of Michigan; the Northern, Southern, Eastern and Western Districts of New York; and the District of Colorado. Mr. Hirnyk has represented hundreds of consumers in breach of warranty lemon law actions and automobile fraud claims, litigated numerous cases in state and federal courts throughout the country, and resolved thousands more on a pre-litigation basis.

18. These rates, (between $700 and $350 for attorneys and $125 for paralegal staff) are within the range of rates charged by attorneys with similar qualifications in complex class action litigation. *See Granillo v. FCA US LLC*, 2019 WL 4052432, at *5 (D.N.J. Aug. 27, 2019) (approving hourly rates between $245 and $725 in class action involving vehicle defect); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *16 (D.N.J. Mar. 22, 2013) (finding hourly rates in vehicle defect class action ranging from $175 to $700 to be "entirely consistent with hourly rates routinely approved by this Court in complex class action litigation"); *In re Merck & Co., Inc. Vytorin Erisa Litig.*, 2010 WL 547613, at *13 (D.N.J. Feb. 9, 2010) (approving rates between $250 and $825 in complex class action).

EXPENSES

19. Lemberg Law has incurred costs, including court costs and deposition expenses in connection with this action.

20. As reflected in the expense reports attached hereto as Exhibit A, the total costs incurred to date are $27,202.97.

21. These costs and expenses are reflected in the books and records of the firm, and are supported by invoices, receipts, expense vouchers, check records, or other documentation.

22. In my professional opinion, and based on my experience prosecuting the action and overseeing the conduct of the litigation, all of these expenses were reasonable and necessarily incurred in connection with the action.

I declare under penalty of perjury that the above is true and correct.

Dated: April 15, 2021

/s/ *Sergei Lemberg*
Sergei Lemberg

EXHIBIT A

Lemberg Law Costs

Sager et al vs. Volkswagen et al

Date	Memo	Debit	Credit	
04/10/2020	Expert fee	10,000.00		
03/30/2020	Expert fee	10,000.00		
12/20/2019		218.49		
12/20/2019	Court mediation fee		218.49	
12/20/2019	Refund from JAMS		218.49	
09/23/2019	Travel expense	300.00		
09/16/2019	Travel expense	352.50		
09/16/2019	Travel expense		352.50	
09/14/2019	Travel expense	6.60		
09/14/2019	Travel expense	22.79		
09/14/2019	Travel expense	27.00		
09/13/2019	Travel expense	6.08		
09/13/2019	Travel expense	135.86		
09/13/2019	Travel expense	53.44		
09/13/2019	Travel expense	11.00		
09/12/2019	Court mediation fee	3,500.00		
09/11/2019	Travel expense	50.00		
09/07/2019	Travel expense	167.86		
09/05/2019	Travel expense	6.54		
09/05/2019	Travel expense	150.39		
09/05/2019	Court filing fee	50.00		
09/05/2019	Travel expense	348.30		
09/05/2019	Travel expense	383.30		
09/04/2019	Travel expense	401.30		
09/03/2019	Travel expense	406.30		
03/01/2019	Court filing fee	212.00		
02/08/2019	Travel expense	120.12		
02/08/2019	Travel expense	143.44		
02/06/2019	Travel expense	23.14		
02/06/2019	Travel expense	16.00		
01/02/2019	Process server fee	120.00		
01/02/2019	Process server fee	120.00		
09/20/2018	Process server fee	120.00		
09/20/2018	Process server fee	120.00		
09/06/2018	Court filing fee	400.00		
		27,992.45	**789.48**	**27,202.97**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Scott D. Sager, Edward Young, Renada Hall, Michael Marcotte, Sharon Scott, Jack Whittington, Carmelita Nunez, *on behalf of themselves and all others similarly situated*,	:	
Plaintiffs,	:	Civil Action No. 2:18-cv-13556 (ES) (SCM)
vs.	:	
	:	Motion Date: May 18, 2020
Volkswagen Group of America, Inc., and Audi of America, Inc.,	:	
Defendants.	:	

DECLARATION OF STEPHEN TAYLOR IN SUPPORT OF MOTION FOR (1) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND (2) SERVICE AWARDS TO THE NAMED PLAINTIFFS

I, Stephen Taylor, under penalty of perjury under the laws of the United States of America, affirm and state as follows:

1. I am a Partner at Lemberg Law, LLC, of Wilton, Connecticut, and counsel to Plaintiffs in this action. I have personal knowledge as to all matters set forth in this Declaration and could testify to the same if called to do so.

2. In addition to being licensed to practice law in the states of Connecticut and New York, I am admitted to the following Federal District Courts: the Southern, Eastern, Western and Northern Districts of New York; the Southern, Eastern, and Northern Districts of Texas; the District of Colorado; the Central and Northern Districts of Illinois; the Eastern District of Michigan and the District of Connecticut. I am a member in good standing in both Connecticut and New York and appear in this matter *pro hac vice*.

3. I am a 2007 graduate of Tulane University School of Law and a 2003 graduate from Boston College. I am a former judicial clerk and worked for the Connecticut firm the Law Office of Norman Pattis before joining Lemberg Law in 2009.

4. I have extensive experience in consumer rights litigation including matters brought under the Telephone Consumer Protection Act ("TCPA"), the Fair Debt Collection Practices Act ("FDCPA") the Magnuson Moss Warranty Act, the Truth in Lending Act, and a variety of state consumer protection statutes.

5. I have extensive experience in class action litigation and have been certified as class counsel in numerous cases. *See, e.g.*, *Johnson v. Comodo Grp., Inc.*, 2020 WL 525898, at *1 (D.N.J. Jan. 31, 2020) (TCPA contested class action); *Nyby v. Convergent Outsourcing, Inc.*, 2017 WL 3315264, at *5 (D.N.J. Aug. 3, 2017) (final approval of class action settlement agreement in FDCPA matter); *Lavigne v. First Community Bancshares, Inc., et al.*, 2018 WL 2694457, at *5 (D.N.M. June 5, 2018) (certifying TCPA class action and appointing undersigned as class counsel); *Munday v. Navy Federal Credit Union*, ECF No. 60, 15-cv-01629 (C.D. Cal., July 14, 2017) (final approval of class settlement of $2.75MM in TCPA action); *Brown v. Rita's Water Ice Franchise Co. LLC*, No. CV 15-3509, 2017 WL 1021025, at *1 (E.D. Pa. Mar. 16, 2017) (final approval of class settlement of $3MM common fund in TCPA action); *Vinas v. Credit Bureau of Napa County Inc.*, Dkt. No. 112, 14-cv-3270 (D. Md. February 22, 2017) (order granting final approval of FDCPA class action settlement); *Duchene v. Westlake Servs., LLC*, No. 2:13-CV-01577-MRH, 2016 WL 6916734 (W.D. Pa. July 14, 2016) (final approval of class settlement of $10MM in TCPA action); *Oberther v. Midland Credit Management*, Doc. No. 90, 14-cv-30014 (D. Ma. July 13, 2016) (order granting final approval of FDCPA class action settlement); *Butto v. Collecto, Inc.*, 290 F.R.D. 372 (E.D.N.Y. 2013) (certifying FDCPA class action); *Seekamp v. It's Huge, Inc.*, 2012 WL

860364 (N.D.N.Y. Mar. 13, 2012) (certifying auto fraud class action); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011) (certifying FDCPA class action).

6. My billing rate in this matter is $650 per hour which is a reasonable rate given my experience and expertise in consumer rights class action litigation. Courts have approved this rate in other complex class litigation. *See Campbell et al. v. Synchrony Bank*, No. 17-cv-00022 (W.D.N.C.) (Doc. No. 122-3 ¶ 12 (requesting rate of $650) and Doc. No. 126 ¶ 11 (awarding fees from a settlement common fund); *Horton v. Cavalry*, 13-cv-00307 (S.D. Cal.) (Doc. No. 297-2 ¶ 15 (requesting rates $650) and Doc. No. 303 ¶ 16 (awarding fees from a settlement common fund). My rate is also in line with rates awarded in this district for cases of this kind. *See, e.g., Granillo v. FCA US LLC*, 2019 WL 4052432, at *5 (D.N.J. Aug. 27, 2019) (approving hourly rates between $245 and $725 in class action involving vehicle defect).

7. Following preliminary approval of the Parties' settlement agreement, the class administrator caused notice to issue in accordance with the Preliminary Approval Order and established the settlement website https://www.coolantpumpsettlement.com/. In addition to reviewing and approving all notice and claim documents, my firm continues to oversee administration and resolve class member inquiries.

8. Plaintiffs seek approval of service awards to the named Plaintiffs in this matter in the amounts of $3,500 to Plaintiffs Young, Hall, Marcotte, Scott and Whittington, $5,000 to Plaintiff Sager, and $5,500 to Plaintiff Nunez.

9. All seven Plaintiffs have been exemplary representatives. They have kept in regular contact with their counsel, answered discovery requests and otherwise maintained abreast of this litigation. There service to the class should be commended and the awards approved.

10. We seek $5,000 for Plaintiff Sager as he was the first and only lead Plaintiff when this action commenced. His willingness to be the first putative class representative and to pursue this matter as a class deserves award in the form of a slightly higher service award.

11. Further, we seek $5,500 for Plaintiff Nunez. Among the Plaintiffs, Ms. Nunez alleged fire damage caused by the alleged defect in the Coolant Pump. (Doc. No. 19-1 ¶¶ 23-24). In Plaintiffs' counsel opinion, her allegations and experiences were of particular worth to the case and to the benefit of the Settlement Class. Her service to the Class thus also justifies a slightly higher service award.

I declare under penalty of perjury that the above is true and correct.

Dated: April 15, 2021

/s/ Stephen Taylor
Stephen Taylor