UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

DURWIN HAMPTON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

GENERAL MOTORS LLC,

Defendant.

Case No.: 6:21-CV-250-GLJ

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, EXPENSES, AND A SERVICE AWARD

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Pursuant to Federal Rules of Civil Procedure 23(e) and 23(h), Class Counsel[1] respectfully submit this Memorandum of Law in support of their Motion for (a) an award of Attorneys' Fees and Expenses in the amount of $9,436,540.00 (the "Fee and Cost Request"), and (b) a service award of $15,000.00 to Plaintiff Hampton.[2]

I. BACKGROUND

In the interest of brevity, Class Counsel will not recite the entire background of this Action, which has spanned nearly four years. Rather, Class Counsel refer the Court to the Motion for Preliminary Approval (ECF No. 141), the Joint Declaration of Class Counsel (ECF No. 141-1), and the pleadings on file in this action, all of which are incorporated as if fully set out in this memorandum.

II. THE FEE REQUEST IS REASONABLE AND SHOULD BE APPROVED.

In assessing the reasonableness of fee requests, this Court has applied the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974):

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

Sagacity, Inc. v. Cimarex Energy Co., 2024 WL 2923720, at *3 (E.D. Okla. June 10, 2024) (Jackson, M.J.) (quoting *Voulgaris v. Array Biopharma, Inc.*, 60 F.4th 1259, 1263 n.1 (10th Cir. 2023)). The Tenth Circuit has recognized that "rarely are all of the *Johnson* factors applicable; this

[1] Unless specifically defined herein, capitalized terms have the same meanings ascribed to them in the Settlement Agreement, cited as "SA." SA, § II.

[2] On June 23, 2025, Plaintiff's counsel conferred counsel for Defendant General Motors, LLC ("GM"). GM takes no position on Plaintiff's Motion or the requested award of attorneys' fees, expenses, and service award.

is particularly so in a common fund situation." *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988).

The eighth *Johnson* factor—the amount in controversy and the results obtained—is given significantly greater weight when considering a common fund settlement such as this one. "This factor may be given a greater weight in a common fund case when the court determines that the recovery 'was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class.'" *In re Qwest Commc'ns Intern., Inc. Sec. Litig.*, 625 F. Supp. 2d 1143, 1151 (D. Colo. 2009) (quoting *Brown*, 838 F.2d at 456); *see also* Fed. R. Civ. P. 23(h) adv. comm. note ("For a percentage approach to fee measurement, results achieved is the basic starting point.").

The results achieved here strongly support Class Counsel's fee request. The Settlement entitles each identified class member to a pro rata cash payment of their equal share of the $24.8 million settlement fund. Depending on how many Class Members can be identified, this payment will be no less than $815 and as high as $1,702 before fees and costs.[3] Unlike many vehicle defect class settlements, Class Members do not need to show out-of-pocket repair costs or satisfy any other preconditions to receive their share of the proposed Settlement. And those 14,583 Class Members who can be identified without the need for confirmation do not need to do anything at all to receive their payment; the settlement administrator will send their payments automatically. The share that each Class Member would receive under the proposed Settlement is a significant

[3] EisnerAmper identified 30,455 potential Class Members, based on the records obtained from R. L. Polk & Co. ("Polk") and the states' Departments of Motor Vehicles, including 14,583 Direct Payment Class Members and 15,872 Identification Notice Class Members. For those 15,872 Class Vehicles registered in Oklahoma by the current or previous owner (but not both), the owner identified as the current owner as of September 26, 2024 will receive instructions to confirm whether they owned the Class Vehicle as of September 26, 2024 and whether it was purchased in Oklahoma in order to be eligible for an award payment ("Identification Notice").

portion of their claimed damages of $2,700 and, when considered on a per-class-member basis, is one of the most valuable automotive defect class action settlements on record.

The other relevant[4] *Johnson* factors also support Class Counsel's fee request.

Time and labor required: Class Counsel devoted a tremendous amount of time and effort to this challenging litigation over the course of four years. As detailed in the accompanying Declaration, Class Counsel's efforts included but were not limited to: (1) conducting a comprehensive pre-filing investigation and preparing the complaint, (2) overcoming GM's motion to dismiss, (3) conducting fulsome fact discovery and expert work on both technical engineering and economic damages issues, (4) obtaining certification of the proposed class and opposing GM's Rule 23(f) petition to appeal that decision, (5) successfully resisting, in large part, GM's motions to exclude Plaintiff's experts, and (6) negotiating the settlement. Joint Declaration of Class Counsel ("Joint Decl.") (Ex. 1) ¶¶ 11–31. Furthermore, Class Counsel's work on behalf of the Class will continue as they assist class members and oversee the settlement. Class Counsel respectfully submit that this body of work supports their fee request. *See Sagacity*, 2024 WL

[4] The seventh and eleventh *Johnson* factors—time limitations and counsel's relationship with the client—need not be considered given the circumstances here. There were no unusual time limitations under which Class Counsel were operating, nor was there any special pre-existing relationship between Class Counsel and Plaintiff Hampton. *See Uselton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 854 (10th Cir. 1993) ("Further, the district court's findings, which are more extensive than those approved in *Brown*, reflect explicit consideration of all but two of the *Johnson* factors. We will not second guess the district court's judgment that those two, time constraints and the nature of counsel's relationship with the client, would have added little to its analysis.")); *Qwest*, 625 F. Supp. 2d at 1151 ("The *Johnson* court concluded that priority work that delays a lawyer's other work is entitled [t]o a premium. I agree with the lead plaintiffs that this factor is not relevant in this case." (citation omitted)); *id.* at 1153 ("There is no indication that lead counsel adjusted the agreed fee in this case based on any special relationship with the lead plaintiffs. I consider this factor to have no application in this case."). Nevertheless, to the extent this Court should elect to consider them, they weigh in support of Class Counsel's fee request as discussed below.

2923720, at *4 ("The process necessary to achieve this Settlement required years of litigation and negotiations and extensive consultation with experts to evaluate and analyze damages.").

Novelty and difficulty of the questions presented by the litigation: As this Court is well aware, this class action presented a host of complex and difficult questions, including substantive legal questions concerning Plaintiff's warranty, consumer protection, and unjust enrichment claims, technical engineering and economic questions concerning the piston ring defect at the heart of this matter and the resulting damages, and questions concerning the suitability of this litigation as a class action. Working through these questions involved extensive fact discovery involving tens of thousands of documents and motion practice on Plaintiffs' class certification motion and GM's motions to dismiss and to exclude Plaintiff's experts' testimony. *See id*. at *4 ("The successful prosecution and resolution of the Settlement Class's claims required Class Counsel to work with experts to analyze complex data to support their legal theories and evaluate the amount of alleged damages."). These numerous complex and disputed issues of law and fact further support Class Counsel's fee request.

Skill required to perform the legal services properly and experience, reputation, and ability of the attorneys: In light of the difficult questions discussed above, the excellent result that Class Counsel obtained for the class in the settlement evidences their skill in prosecuting class action litigation. As this Court has previously recognized when appointing Class Counsel both at the class certification and preliminary approval stage (ECF No. 192 at 2; ECF No. 150 at 4), Class Counsel's respective firms are highly experienced in litigating complex class actions. *See* ECF No. 142-1 (Beasley Allen firm resume); ECF No. 142-2 (DiCello Levitt firm resume). When considered under both the third and ninth *Johnson* factors, Class Counsel's skill and experience in class actions further supports their fee request. *Sagacity*, 2024 WL 2923720, at *4 ("T]he Court

finds that these attorneys possess the type of experience, reputation, and ability that supports the fee request."); *see also Qwest*, 625 F. Supp. 2d 1143, 1150 (D. Colo. 2009) ("If the issues in a case are complex and difficult then obviously it will take great skill to address those issues successfully. Plaintiffs' lead counsel are highly skilled and specialized attorneys who use their substantial experience and expertise to prosecute complex securities class actions."); *Battle v. Anderson*, 541 F. Supp. 1061, 1071 (E.D. Okla. 1982) ("This suit is a class action with multiple issues and complex legal argument required. The skill required in this case is beyond that of a normal civil action.").

Preclusion of other employment by the attorneys due to acceptance of the case and time limitations imposed by the client or the circumstances: The substantial work that Class Counsel performed in this matter precluded them from working on other cases. This also weighs in favor of Class Counsel's fee request when considered under the fourth and seventh *Johnson* factors. *See Sagacity*, 2024 WL 2923720, at *5 ("Class Counsel were necessarily hindered in their work on other cases due to their dedication of time and effort to the prosecution of this Litigation."); *Qwest*, 625 F. Supp. 2d at 1150 ("Without doubt, time spent by lead counsel on this case, as it pertained to Nacchio and Woodruff, was at the expense of time that lead counsel could have spent on other cases.").

Customary fee and awards in similar cases: Class Counsel's total requested fee and expense award of $9,436,540 amounts to 38% of the settlement fund. This percentage falls below the 40% level that is typically applied in this District in class action settlements.[5] *See, e.g.*,

[5] In common-fund settlements such as this one, the Tenth Circuit and courts in this District have indicated a preference for the percentage method without the need for a lodestar cross-check. "In the Tenth Circuit, in a percentage-of-the-fund recovery case such as this, where federal common law is used to determine the reasonableness of the attorneys' fee under Rule 23(h), neither a lodestar nor a lodestar cross check is required. Courts within this district have acknowledged the

Sagacity, 2024 WL 2923720, at *5 ("The Court finds a 40% fee is consistent with the market rate for high quality legal services in class actions like this."); *Hoog v. PetroQuest Energy, L.L.C.*, 2023 WL 2989947, at *4 (E.D. Okla. Apr. 4, 2023) ("Moreover, I find a 40% fee is consistent with the market rate for high quality legal services in class actions like this."); *Rhea v. Apache Corp.*, 2022 WL 18621782, at *5–7 (E.D. Okla. June 23, 2022) (approving fee request of 40% of the settlement fund); *White Family Minerals, LLC v. EOG Res., Inc.*, 2021 WL 6138867, at *6–7 (E.D. Okla. Nov. 12, 2021) (same); *McClintock v. Enterprise Crude Oil LLC*, 2021 WL 6133884, at *6–7 (E.D. Okla. Mar. 26, 2021) (same). Thus, the fifth and twelfth *Johnson* factors also support Class Counsel's fee request when compared to the customary fee awarded in other class actions in this District.

Contingent nature of the fee: Class Counsel brought this case on a fully contingent basis, with no guarantee of any recovery and with the risk that all of the time, effort, and expense spent would yield nothing. This further supports Class Counsel's fee request. *See Sagacity*, 2024 WL 2923720, at *5 ("Courts consistently recognize that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees.").

Undesirability of the case: Prosecuting complex class actions on a fully contingent basis is not an enterprise that many law firms are eager to undertake. Class Counsel's willingness to invest years of time and expenses in a case that could have potentially returned nothing is also a factor that weighs in favor of their fee request. *See id.* at *5 ("The investment by Class Counsel of their time, money, and effort, in a complex case such as this, coupled with the attendant potential of no recovery and loss of all the time and expenses advanced by Class Counsel, rendered this case

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Tenth Circuit's preference for the percentage method and rejected application of a lodestar analysis or lodestar cross check." *Sagacity*, 2024 WL 2923720, at *2–3 (citation omitted).

sufficiently undesirable so as to preclude many law firms from taking a case of this nature. And this Litigation involved a number of uncertain legal and factual issues."); *Qwest*, 625 F. Supp. 2d at 1152–53 ("At minimum, this case required lead counsel to advance large amounts of time, money, and other resources to determine if any recovery might be had. At bottom, the risk to lead counsel was financial. Most attorneys are unable or unwilling to take such a financial risk. There are other factors that may have made this case undesirable to counsel, but the risk stands out as the key factor.").

Nature and length of the professional relationship with the client: Class Counsel facilitated Plaintiff Hampton's active involvement in this litigation. As discussed further below, Plaintiff Hampton devoted substantial time to gathering and producing documents, preparing written discovery responses, producing his vehicle for inspection, and sitting for a deposition. This involvement also supports Class Counsel's fee request. *See Sagacity*, 2024 WL 2923720, at *5 (finding this factor met where the "Class Representatives were actively involved in the Litigation")

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

"As with attorney fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred . . . in addition to the attorney fee percentage." *Harris v. Chevron U.S.A., Inc.*, 2020 WL 8187464, at *6 (E.D. Okla. Feb. 27, 2020) (quoting *Vaszlavik v. Storage Tech. Corp.*, 2000 WL 1268824, at *4 (D. Colo. Mar. 9, 2000)); *see also* Fed. R. Civ. P. 23(h) ("[T]he court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement.").

Class Counsel requests reimbursement of its current out-of-pocket expenses totaling $70,486.55. Joint Decl., ¶ 35. The expenses are of the type typically billed by attorneys to paying clients, and they were reasonable and necessary for the successful prosecution of this case. *Id.*

Class Counsel incurred these costs for: expert fees, travel to hearings and deposition, copying costs, court reporter fees, filing fees, and legal research. Joint Decl., ¶ 35.

Class Counsel will incur additional expenses on this case going forward, including working with the Settlement Administrator, communicating with Class Members, and attending the Final Approval Hearing. *Id*., ¶ 37. Counsel, however, will not be making a further cost application. Class Counsel's request for reimbursement of $70,486.55 in expenses is reasonable and should be approved.

IV. PLAINTIFF HAMPTON SHOULD BE AWARDED A SERVICE AWARD.

"Federal courts regularly give incentive awards to compensate named plaintiffs." *Hoog v. PetroQuest Energy, L.L.C.*, 2023 WL 2989947, at *6. Such "awards are meant to compensate class representatives for their work on behalf of the class, which has benefited from their class representation." *Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, 2015 WL 2254606, at *4-5 (W.D. Okla. May 13, 2015); *see also UFCW Local 880-Retail Food v. Newmont Mining Corp.*, 352 Fed. Appx. 232, 235 (10th Cir. 2009) (class representative service awards recognize the "additional effort and expertise" that class representatives provide for the benefit of the class).

Mr. Hampton was the sole class representative in a class action that resulted in a $24,833,000 cash fund for his fellow Class Vehicle owners. He contacted Class Counsel in March 2021 regarding the excessive oil consumption in his vehicle, reviewed pleadings, searched for and produced documents, responded to interrogatories, and sat for a deposition in November 2022. *See* Hampton Decl., ¶¶ 5–9. Without his diligent work over the last four-plus years, there would not be any Class relief. Accordingly, because Mr. Hampton "dedicated time, attention, and resources to this [l]itigation," he should receive a service award that reflects the "important role[] [he] played in representing the interests of the . . . Class and in achieving the substantial result reflected in the Settlement." *Sagacity, Inc. v. Cimarex Energy Co.*, 2024 WL 2923720, at *7.

The requested $15,000 service award is eminently reasonable when compared to other class representative service awards within this District, including in cases with smaller total funds than the $24,833,000 that Mr. Hampton helped achieve in this case. *See Lee v. PetroQuest Energy, L.L.C.*, 2023 WL 2989948, at *7 (E.D. Okla. Apr. 17, 2023) (granting a $225,000 service award in a case with a $15,000,000 common fund); *Sagacity*, 2024 WL 2923720, at *7 ($205,000 service award from a $20,500,000 common fund); *Hoog v. PetroQuest Energy, L.L.C.*, 2023 WL 2989947, at *6 ($450,000 service award, representing 1% of the settlement fund); *Harris v. Chevron U.S.A., Inc.*, 2020 WL 8187464, at *2 ($95,781 service award, representing 2% of the settlement fund); *Kunneman Props. LLC v. Marathon Oil Co.*, No. 22-cv-274-KEW (E.D. Okla. Feb. 16, 2023) (ECF No. 24 at 12–13) ($700,000 total service award, representing 2% of the settlement fund).

V. CONCLUSION

Class Counsel respectfully request that the Court award attorneys' fees, costs, and expenses in the amount of $9,436,540, as well as the proposed service award to Plaintiff Hampton in the amount of $15,000.

Dated: June 23, 2025

Respectfully submitted,

/s/ H. Clay Barnett III

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