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-RAW-GLJ

MEMORANDUM IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiff, on behalf of himself and the Class (defined in Section II below), respectfully submit this memorandum in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion for Preliminary Approval"). The proposed settlement ("Settlement") resolves all economic loss Class claims against Defendant General Motors, LLC ("GM" or "Defendant") (and together with Plaintiff, the "Parties").

I. INTRODUCTION

Plaintiff has secured a Settlement that, if approved, will provide significant cash payments to the approximately 21,150 Class Members (defined in Section II below) who own 2011-2014 model year GM vehicles with the Generation IV 5.3 liter V8 Vortec LC9 ("Gen IV") engine that has been the subject of this litigation.[1] The Settlement is the result of years of litigation and hard-fought, arms' length negotiations among experienced counsel.

Plaintiff alleges[2] that GM marketed and sold the Class Vehicles without disclosing to consumers that each vehicle suffered from an inherent defect that caused them to consume an abnormally high quantity of oil, which results in low oil levels, insufficient lubricity levels, and engine component damage (the "Oil Consumption Defect" or the "Defect"). ECF No. 2 (Class Action Complaint) ¶¶ 1–21, 34–94. Plaintiff contends that the primary cause of the Oil Consumption Defect is that the piston rings that GM installed within the Gen IV engines fail to keep oil in the crankcase. *Id*. ¶ 8.

In the Settlement, GM agrees to make available a Settlement Fund of $24,833,000 to be distributed proportionally to the members of the Class. Before the payment of Attorneys' Fees and Expenses, Service Award, and Settlement Administration Expenses this amounts to approximately $1,174 for each Class Member.

Plaintiff submits the Settlement, described in detail below, is fair, reasonable and adequate, and merits this Court's preliminary approval.[3]

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

[2] While GM does not oppose the relief sought in this Motion, it disputes the factual underpinnings of Plaintiff's claims and expressly denies all liability.

[3] *See* Joint Declaration of H. Clay Barnett, III and Adam J. Levitt in Support of Plaintiff's Motion for Preliminary Approval ("Joint Declaration" or "Joint Decl.").

II. RELEVANT FACTS AND PROCEDURAL HISTORY

On August 20, 2021, Plaintiff filed a class action complaint in this matter alleging that Class Vehicles suffered from the Oil Consumption Defect. ECF No. 2. Plaintiff alleged that GM knew of the Oil Consumption Defect as early as 2008. *Id*. ¶ 95. Plaintiff further alleged that GM concealed the Defect from Plaintiff and the Class while falsely touting the safety and reliability of the Class Vehicles. *Id*. ¶¶ 90–123; 150–174. Plaintiff asserted class claims on behalf of an Oklahoma state-wide class for violation of Oklahoma's consumer protection statute, breach of warranties, fraudulent concealment, and unjust enrichment. *Id*. ¶¶ 188–264. Plaintiff sought damages and equitable relief individually and on behalf of Class Members, each of whom purchased or leased a Class Vehicle in the State of Oklahoma. *See Id*. Request for Relief.

On September 28, 2022, the Court denied GM's motion to dismiss. ECF No. 46. On January 1, 2024, Magistrate Judge Jackson denied in part GM's motion to exclude the testimony of Plaintiff's liability expert Dr. Werner J.A. Dahm and denied in full GM's motion to exclude Plaintiff's damages expert Edward M. Stockton. ECF No. 98. On March 5, 2024, the Court denied GM's appeal of that decision. ECF No. 113. On September 26, 2024, the Court adopted Magistrate Judge Jackson's Report and Recommendation certifying a class of owners and lessees of Class Vehicles that were purchased or leased in the State of Oklahoma for Plaintiff's claims of consumer fraud, breach of implied warranty, and unjust enrichment (the "Class"). ECF No. 129. On November 14, 2025, the Tenth Circuit Court of Appeals denied GM's petition for permission to appeal the Court's class certification order. *General Motors LLC v. Hampton*, No. 24-604 (10th Cir.) (ECF No. 15-1). Subsequently, GM filed a motion for summary judgment on all claims. ECF No. 132. At the request of the Parties, and after the commencement of settlement discussions, the Court stayed the case until June 2, 2025. ECF Nos. 136 and 140.

On January 22, 2025, the Parties mediated before Antonio Piazza of Mediated Negotiations, Inc. Joint Decl., ¶¶ 15-17. As a result of Counsel's efforts, the Parties were successful in reaching a Settlement that provides concrete substantial benefits to the potential 21,150 members of the Class ("Class Members")—approximately $1,174 per Class Member before any payment of Attorneys' Fees and Expenses, Service Award, and Settlement Administration Expenses.

III. THE SETTLEMENT

The Settlement Agreement filed with the Court, including exhibits, sets forth all of the terms of the Settlement and controls. The Settlement is summarized below.

A. The Class

The Settlement resolves the claims of the Class, defined as: "[a]ll current owners and lessees as of September 26, 2024, of Class Vehicles that were purchased or leased in the State of Oklahoma." SA, § II, ¶ 2.4; *see* ECF Nos. 121 and 129.[4]

Class Vehicle means 2011–2014 Chevrolet Avalanche, Silverado, Suburban, and Tahoe, and 2011–2014 GMC Sierra, Yukon, and Yukon XL trucks and SUVs with Generation IV Vortec 5300 LC9 engines manufactured on or after February 10, 2011. Any vehicle that has already received adequate piston replacement (i.e., upgraded piston rings) under warranty and at no cost is excluded from the definition of Class Vehicle. The appointed Class Representative is Plaintiff Durwin Hampton.

B. The Settlement Benefits

In consideration for the dismissal of the Action with prejudice and a full and complete release of claims by Plaintiff and Class Members, GM has agreed to provide a settlement fund in the amount of $24,833,000 to be distributed proportionately to Class Members after payment of any costs and fees (the "Settlement Fund").

As discussed below, in Section VI(A)(1), Plaintiff estimates, based on the number of Class Vehicles originally sold in Oklahoma, that there are approximately 21,150 Class Members. The exact number of Class Members will be identified through the robust notice campaign, but they will fall into three groups. First, there will be individuals who, as of September 26, 2024, were the only registered owners of a Class Vehicle purchased (new or used) from an authorized GM dealership in Oklahoma. Second, there will be individuals who, as of September 26, 2024, were the owners of a Class Vehicles registered in Oklahoma whose prior owner was also registered in Oklahoma. Notice of the Settlement will be sent directly to these individuals, and, for those that

[4] Excluded from the Class are: GM; any affiliate, parent, or subsidiary of GM; any entity in which GM has a controlling interest; any officer, director, or employee of GM; any successor or assign of GM; and any judge to whom this Action is assigned, and his or her spouse; individuals and/or entities who validly and timely exclude themselves from this settlement; and current or former owners of a Class Vehicle who previously released claims in an individual settlement with GM that would otherwise be covered by the Release in this Action. SA, § II, ¶ 2.4.

do not opt-out, payments will be made to them directly with no further action required. Third, there will be individuals who, as of September 26, 2024, own a Class Vehicle that is currently registered in Oklahoma or was registered in Oklahoma by its prior owner. These are potential Class Members, and they will receive notice of the Settlement and have the opportunity to certify their inclusion in the Class.

With the estimated 21,150 Class Members, each Class Member will receive $1,174 before any payment of Attorneys' Fees and Expenses and Settlement Administration Expenses. In any event, Class Members will receive a significant portion of the $2,700 that Plaintiff intended to seek per member of the Class at trial. Plaintiff submits that, given the age of the vehicles and potential risks of continued litigation, achieving a settlement that provides a significant and immediate cash payment is an exceptional result.

C. Release and Waiver

In consideration for the Settlement Fund, Class Plaintiff, and each Class Member, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, will be subject to the release and waiver of rights provided at SA, § X, ¶¶ 10.1, 10.2, which provides:

> In consideration of the benefits provided to the Class Members by GM as described in this Settlement Agreement, upon the Final Effective Date, Class Plaintiff and the Class irrevocably release, waive, and discharge any and all past, present, and future disputes claims, causes of action, demands, debts, liens, suits, liabilities, obligations, rights of action, damages, costs, attorneys' fees, losses, or remedies of any kind that have been brought or could have been brought, whether known or unknown, existing or potential, or suspected or unsuspected relating to the alleged Oil Consumption Defect in the Class Vehicles, whether arising under statute (including a state lemon law), rule, regulation, common law or equity, and including, but not limited to, any and all claims, causes of action, rights or entitlements under any federal, state, local or other statute, law, rule and/or regulation, any claims relating to violation of any consumer protection, consumer fraud, unfair business practices or deceptive trade practices laws, any legal or equitable theories, any claims or causes of action in tort, contract, products liability, negligence, fraud, misrepresentation, concealment, consumer protection, restitution, quasi contract, unjust enrichment, express warranty, implied warranty, secret warranty and/or any injuries, losses, damages or remedies of any kind, in law or in equity, under common law, statute, rule or regulation, including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, restitution, recovery of Attorneys' Fees or litigation costs, or any other legal or equitable relief against Releasees, whether or not specifically named herein, asserted or unasserted, and all legal

> claims of whatever type or description arising out of, that may have arisen as a result of, or which could have been brought based on, any of the facts, acts, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters pleaded in the Complaint filed in the Action related to the alleged Oil Consumption Defect (the "Released Claims"). Further, Class Plaintiff and all Class Members waive any and all rights under California Civil Code Section 1542, which provides as follows:
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> > "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN TO HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."
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> The Settlement Agreement and the Mutual Release in Section X do not release claims for (i) death, (ii) personal injury, or (iii) damage to tangible property other than a Class Vehicle. The release effected by this Settlement Agreement is intended to be a specific release and not a general release.

This Release, which will be made part of the Final Order and Final Judgment, will be attached to the Long Form Notice, and will be available on the Settlement Website (defined in Section VI(A)(2)). The Released Claims go beyond the consumer protection act, implied warranty and unjust enrichment claims that the Court certified, but that expansion is appropriate because the Settlement provides for a substantial monetary recovery associated with economic loss caused by the Oil Consumption Defect, and the release does not preclude Class Members from bringing claims relating to death, personal injury, or damage to property other than a Class Vehicle.

D. The Settlement Administrator and Notice Plan

The Parties propose that EisnerAmper serve as Settlement Administrator with responsibility for providing notice; administering and making determinations regarding class membership status; processing settlement payments; making distributions; and providing other services necessary to implement the Settlement. SA, § II.A., ¶ 2.37; SA, § V. All Settlement Administration Expenses, Taxes, and other costs reasonably incurred by the Settlement Administrator will be paid out of the Settlement Fund. SA, §§ III, ¶ 3.4; VII, ¶ 7.3.

As described in Section VI below, as part of the Settlement, EisnerAmper has designed and will implement a Notice Plan to reach Class Members with clear, plainly stated information about their rights, options, and deadlines in connection with this Settlement. SA, § VIII; SA, Ex.

2, EisnerAmper Decl.

IV. PRELIMINARY APPROVAL IS APPROPRIATE

A. The Court Has Already Certified The Class

At the preliminary approval stage, "[i]f the court has already certified a class, the only information ordinarily necessary is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted." Fed. R. Civ. P. 23, Adv. Comm. Notes to 2018 Amendment. [5] Here, the Court has already certified a class of consumers who purchased Class Vehicles in Oklahoma. ECF Nos. 121 and 129. The proposed Settlement does not call for any changes to this class, or of the claims, defenses, or issues regarding which certification was granted. Therefore, for the same reasons identified in Magistrate Judge Jackson's Report and Recommendation, as adopted by the Court, the Class satisfies adequacy, typicality, numerosity, and commonality under Rule 23(a) and predominance and superiority Rule 23(b)(3). *See, e.g.*, *Lawrence v. First Fin. Inv. Fund V, LLC*, No. 2:19-cv-00174-RJS-CMR, 2021 WL 3809083, at *2 (D. Utah Aug. 26, 2021) (incorporating by reference the analysis and reasoning the Court applied in a previous class certification order when certifying identical classes for settlement purposes).

B. The Proposed Settlement Merits Preliminary Approval

Rule 23 provides that "[t]he claims, issues, or defenses of a certified class – or a class proposed to be certified for purposes of settlement – may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). A district court may approve a settlement agreement "after a hearing and only on finding that it is fair, reasonable, and adequate . . . ." Fed. R. Civ. P. 23(e)(2). "It is well-settled, as a matter of sound policy, that the law should favor the settlement of controversies." *Grady v. De Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir.1969).

Approval is a matter within the sound discretion of the district court and requires a two-step process—preliminary approval followed by a later final approval. *Rhodes v. Olson Assocs., P.C.*, 308 F.R.D. 664, 666 (D. Colo. 2015). At the preliminary approval stage, the court "evaluate[s] the terms of the settlement to determine whether they are within a range of possible judicial approval." *Id*. In making this decision, district courts must consider whether:

> (A) the class representatives and class counsel have adequately represented the class;

[5] Unless otherwise stated all internal quotations, citations and emphasis omitted.

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorneys' fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Rule 23(e) largely overlaps with factors the Tenth Circuit has recognized as relevant to settlement approval:[6] (1) whether "the settlement was fairly and honestly negotiated"; (2) whether "serious legal and factual questions placed the litigation's outcome in doubt"; (3) whether "the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation"; and (4) whether the parties "believed the settlement was fair and reasonable." *Tennille v. Western Union Co.*, 785 F.3d 422, 434 (10th Cir. 2015). As set forth below, the Settlement likely satisfies all of the Rule 23(e)(2) and Tenth Circuit factors, and should be preliminarily approved as fair, reasonable, and adequate.

1. Rule 23(e)(2)(A): Plaintiff and Class Counsel Adequately Represented the Class

Plaintiff and Class Counsel submit that, at final approval, Rule 23(e)(2)(A) will be satisfied because they have diligently represented and pursued the best interests of the Class as evident by the results achieved throughout this litigation and the superb result of the Settlement.[7] Indeed, the Court already found Plaintiff and Class Counsel adequate in its order adopting Magistrate Judge Jackson's Report and Recommendation on Plaintiff's Motion for Class Certification. ECF No. 129

[6] As the comments of the Advisory Committee explain, "[t]he goal of [the] amendment [was] not to displace any factor" that would have been relevant prior to the amendment, but rather to address inconsistent 'vocabulary' that had arisen among the circuits and 'to focus the court and the lawyers on the core concerns' of the fairness inquiry." Advisory Committee Comments to 2018 Amendments to Rule 23.

[7] Rule 23(e)(2)(A) requires the Court to consider whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). "The adequacy inquiry is 'redundant of the requirements of Rule 23(a)(4) and Rule 23(g), respectively.'" *In re BofI Holding, Inc. Sec. Litig.*, No. 3:15-CV-02324-GPC-KSC, 2022 WL 9497235, at *4 (S.D. Cal. Oct. 14, 2022) (quoting 4 William B. Rubenstein, Newberg on Class Actions § 13:48 (5th ed. 2020)).

(Order) and 121 (R&R). In the time since the Court's certification order, Class Counsel has successfully opposed GM's Rule 23(f) Petition for Permission to Appeal, *see* ECF No. 131, and successfully resolved this litigation in a manner that provides immediate and substantial cash payments to Class Members, while avoiding the costs, risks and delay of continued litigation. Joint Decl., ¶¶ 12-24. Plaintiff and Class Counsel have adequately represented the Class.

2. The Settlement Was Negotiated at Arms' Length by Informed Counsel

Rule 23(e)(2)(B) and the first Tenth Circuit factor are met because the Settlement was fairly and honestly negotiated at arms' length by informed and capable counsel. After over three and a half years of litigation, the Parties mediated before a highly-experienced mediator, Antonio Piazza of Mediated Negotiations. Joint Decl., ¶¶ 15-17. Class Counsel has substantial experience serving as counsel in class action litigation, including litigation involving vehicle defects. Joint Decl., ¶¶ 27-28. As such, Class Counsel is well-positioned to assess the benefits of the Settlement balanced against the strengths and weaknesses of the Class's claims and GM's defenses. *Rhodes v. Olson Assocs., P.C.,* 308 F.R.D. 664, 667 (D. Colo. 2015) ("Class Counsel are experienced in consumer class actions, and weight is given to their favorable judgment as to the merits, fairness, and reasonableness of the settlement.").

The indicators of collusion or self-dealing recognized by the Tenth Circuit are not present in this case. *In re Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prods. Liab. Litig*., 997 F.3d 1077, 1088–91 (10th Cir. 2021) ("[T]he inclusion of both a 'kicker' agreement and a 'clear-sailing' agreement can be an indication of possible implicit collusion." (cleaned up)). This is not a case with both a "clear sailing" arrangement and a reversionary provision in the Settlement. *Id*. at 1091. All funds, after payment of costs and fees, will be distributed to the Class, and/or *cy pres*, pursuant to the proposed Plan of Allocation. SA, §§ II, IV; SA, Ex. 6. Moreover, this is not a case where a class receives no monetary distribution or a limited monetary distribution. ("[C]lass counsel may be tempted to sell out the class by agreeing with the defendant to recommend that the judge approve a settlement involving a meager recovery for the class but generous compensation for the lawyers.") To the contrary, the Settlement provides for significant cash payments. SA, §§ III, IV; Joint Decl., ¶ 21.

3. The Relief Provided Is Adequate

Under Rule 23(e)(2)(c), a court's assessment of whether a proposed settlement is adequate takes into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any

proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C)(i)–(iv). These factors support granting preliminary approval.

a. The Benefits of the Settlement, Weighed Against the Costs, Risks, and Delay of Appeal, Favor Preliminary Approval

The Settlement, if approved, confers significant, immediate, monetary benefits to the Class, which strongly supports preliminary approval. The precise number of Class Members is unknown and will be ascertained during the notice period. However, at this stage, it is estimated that there are approximately 21,150 Class Members.

As discussed above, in Section III.B, with an estimated 21,150 Class Members, each Class Member will receive approximately $1,174, less Attorneys' Fees and Expenses, Service Award, Settlement Administration Expenses and Taxes. This would be a significant portion of the $2,700 that Plaintiff intended to seek per Class Member at trial. Courts regularly approve settlements in automotive class actions in which class members receive a cash payment, such as this one, finding they provide valuable benefits and merit approval. *See, e.g.*, *In re Hyundai & Kia Fuel Econ. Litig.*, No. MDL 13-2424-GW(FFMX), 2014 WL 12603199, at *2 (C.D. Cal. Aug. 21, 2014) (finding that the settlement amount was a "substantial fraction of the total potential recovery of [the] case"), *aff'd*, 926 F.3d 539 (9th Cir. 2019) (en banc); *In re Navistar MaxxForce Engines Mktg., Sales Pracs. & Prods. Liab. Litig.*, No. 1:14-CV-10318, 2020 WL 2477955, at *3 (N.D. Ill. Jan. 21, 2020) (granting final approval to a settlement that allowed class members the option of accepting a $2,500 cash payment to settle their claims), *aff'd*, 990 F.3d 1048 (7th Cir. 2021); *see also Berman v. Gen. Motors LLC*, No. 2:18-CV-14371, 2019 WL 6163798, at *1 (S.D. Fla. Nov. 18, 2019) (granting final approval of a settlement that provided reimbursement for class members who paid to repair a defect out of pocket). Settlements resolve any inherent uncertainty on the merits, and are therefore strongly favored by the courts, particularly in class actions. *Grady v. De Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir. 1969) ("It is well-settled, as a matter of sound policy, that the law should favor the settlement of controversies."). If this litigation proceeded, the Class would face significant litigation risks. To start, GM has vigorously disputed the merits of Plaintiff's claims and there is uncertainty about the outcome of this litigation through summary judgment proceedings and at trial. Although Plaintiff is confident in his positions, there remain issues that the Parties strongly dispute. As an example, GM argues in its stayed Motion for Summary

Judgment that, among other things, Plaintiff cannot prove the Oil Consumption Defect on a class-wide basis, Plaintiff must and cannot prove class-wide manifestation of the Oil Consumption Defect, and Plaintiff cannot prove that Class Vehicles were unmerchantable at the time of sale on a class-wide basis. *See* ECF No. 132. These are serious legal and factual questions that place the litigation's outcome in doubt. *Tennille v. Western Union Co.*, 785 F.3d at 434. Moreover, and strongly weighing in favor of settlement, the Class Vehicles will all be well over ten years old by the time this case reaches a jury.

Further, although the Court certified a state-wide damages class, it is subject to decertification. *See Braver v. NorthStar Alarm Servs., LLC*, No. CIV-17-0383-F, 2019 WL 5722207, at *2 (W.D. Okla. Nov. 5, 2019) ("Even after a certification order is entered, the judge remains free to modify it in light of subsequent developments in the litigation."); *see also* Fed. R. Civ. P. 23(c)(1)(C). The risk of maintaining class action status through trial is significant, as is evinced by decisions decertifying classes in automobile defect cases. *Sonneveldtv. Mazda Motor of Am. Inc.*, 2023 WL 1812157, at *3–7 (C.D. Cal. Jan. 25, 2023) (decertifying a class asserting claims under the Texas Deceptive Trade Practices Act); *Hamilton v. TBC Corp*., No. CV 17-1060-DMG (JEMx), 2019 WL 1119647, at *1 and n.3 (C.D. Cal. Jan. 29, 2019) (noting that the court had previously decertified the Colorado state-wide class in a multi-state class action challenging defective tires). Avoiding the risk of decertification, especially where the Parties strongly dispute whether class certification was proper in the first instance, favors approval of the settlement. *See McKenzie v. Federal Exp. Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 2930201, *4 (C.D. Cal. July 2, 2012) ("[S]ettlement avoids all possible risk [of decertification]. This factor therefore weighs in favor of final approval of the settlement.").

Here, the immediacy and certainty of substantial benefits for Class Members under the Settlement balanced against the numerous impediments to a class-wide recovery through continued litigation weigh in favor of approval. *See In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 691 (D. Colo. 2014) ("Given the uncertainty of plaintiffs' likelihood of success on the merits and the prospects of prolonged litigation, which would likely continue well beyond any judgment in plaintiffs' favor, . . . immediate recovery in this case outweighs the time and costs inherent in [this] complex . . . litigation, especially when the prospect is some recovery versus no recovery."). Indeed, the expected duration of litigation is a significant factor courts consider in evaluating the reasonableness of a settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(i). Plaintiff reasonably expects that

this case, if not settled, will continue to be zealously litigated for years through trial, post-trial motions, and appeal.

Ultimately, given the significant benefits Class Members can receive immediately through this Settlement and weighed against the significant risks and delay of further litigation, this Settlement is more than adequate and represents a hard-fought victory for the Class. Joint Decl., ¶¶ 19-20, 29-30 (expressing opinion based on experience regarding Settlement).

b. The Proposed Method of Distribution to Class Members Is Equitable and Effective

Rule 23(e)(2)(C)(ii) requires consideration of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Here, the proposed method of distributing relief will be highly effective, as it involves sending checks directly to Class Members. Plaintiff has selected a highly experienced claims administrator to oversee this process—EisnerAmper. SA, §§ II, ¶ 2.37; SA, Ex. 2, ¶¶ 3-4. EisnerAmper (f/k/a Postlethwaite & Netterville, APAC) currently has contact information for many Class Members. *See* SA, Ex. 2, ¶¶ 8-13. As explained in Section III(D), EisnerAmper will send notice of the Settlement to all confirmed Class Members, as well as all other potential Class Members. Potential Class Members will be able to self-identify as Class Members by affirming and attesting under oath that they are members of the Class.

No later than thirty (30) days after the Final Effective Date of the Settlement, EisnerAmper will calculate Settlement Payments and distribute checks by mail, for equal amounts, to all identified Class Members in accordance with the Plan of Allocation. SA, Ex. 6. If any Class Members have not cashed or deposited their checks after 90 days, EisnerAmper will attempt to contact them, and if successful, will reissue them checks. *Id.* Any remaining funds associated with uncashed or undeposited checks will then be distributed, in equal amounts, to those Class Members who cashed or deposited their checks pursuant to the Plan of Allocation. *Id.* In other words, EisnerAmper will work to ensure that any unclaimed funds from the initial distribution are redistributed to Class Members. Any residual funds of less than $500,000 in the Settlement Fund will be distributed *cy pres* to the University of Michigan Transportation Research Institute. *Id.* None of the Net Settlement Fund will revert back to GM or be paid to Class Counsel.

c. The Proposed Attorneys' Fees, Costs, and Class Representative Service Award Support Preliminary Approval

The next consideration for adequacy of relief is the terms of the Settlement regarding

attorneys' fees. Fed. R. Civ. P. 23(e)(2)(C)(iii). Class Counsel did not include any provision in the Settlement Agreement requiring separate payment of attorneys' fees, apart from what was awarded to the Class. Under the Settlement Agreement any fees the Court does not award to Class Counsel remain in the Settlement Fund and do not revert to GM. Moreover, Class Counsel did not negotiate attorneys' fees and costs while negotiating class compensation. Thus, the concerns recognized by the Tenth Circuit regarding attorneys' fees are not present in this case. *In re Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prods. Liab. Litig*., 997 F.3d at 1088–91.

Class Counsel intends to seek an award of attorneys' fees and costs not to exceed 38% of the Settlement Fund, and a service award of $15,000 for Class Representative Hampton to be paid out of the Settlement Fund. Joint Decl., ¶ 25. This Court will determine the appropriate amount to award to Class Counsel, and, again, if the Court chooses to award less than the requested amount, any unawarded attorneys' fees or costs will revert to the Class, not GM. In other words, to the extent that the Court later finds any aspect of attorneys' fees or costs unsupported or unwarranted, the Class alone will benefit from that determination. The undersigned respectfully stress, however, that they will demonstrate to this Court that their requested fees and costs are fair and consistent with Tenth Circuit precedent based on the exceptional Settlement and the significant amount of work, and money spent, by counsel to litigate this case and negotiate this Settlement. *See, e.g.*, *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS, 2019 WL 7758915, at *2 (E.D. Okla. Mar. 8, 2019) (awarding class counsel attorneys' fees equal to 40% of the amount recovered on behalf of the class through a pre-trial settlement); *Sagacity, Inc. v. Cimarex Energy Co.*, No. CIV-17-101-GLJ, 2024 WL 2923720, at *2 (E.D. Okla. June 10, 2024) (same); *Hoog v. PetroQuest Energy, L.L.C.*, No. 16-CV-463-KEW, 2023 WL 2989947, at *5 (E.D. Okla. Apr. 4, 2023) (same); *see also In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 895 F.3d 597, 606, 614–616 (9th Cir. 2018) (affirming final approval to a $10 billion settlement relating to manufacturers' use of emissions "defeat devices" and approving $333 million in attorneys' fees). Notice to the Class will advise Class Members of Plaintiff's planned requests and advise them of the procedures to exclude themselves from the Settlement, or comment on or object to the fee petition before Final Approval. SA, § IX, ¶ 9.2; SA, §§ IV, XII, XIII.

d. There Are No Agreements Between The Parties Separate from The Settlement

The substantive terms of the Settlement are set forth in the Settlement Agreement, and the agreed upon language of the proposed orders and notices are set forth in the exhibits to the Settlement Agreement and in the Confidential Supplemental Agreement addressed in Section XIV of the Settlement Agreement. Separate and apart from these documents, there are no agreements that affect the relief provided to the Class or compensation to be provided to attorneys. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv). Class Counsel and GM have also reached agreements in principle to resolve several related cases, specifically the pending, non-certified, individual claims in *Vita v. General Motors LLC*, No. 2:20-CV-01032 (E.D.N.Y); *Airko Inc. v. General Motors LLC*, No. 1:20-CV-02638 (N.D. Ohio); and *Tucker v. General Motors LLC*, No. 1:20-CV-00254 (E.D. Mo.),[8] and to resolve *Siqueiros v. General Motors LLC*, No. 16-cv-07244-EMC (N.D. Cal.), for $150,000,000, in which the plaintiffs, on behalf of California, Idaho, and North Carolina classes, prevailed at trial and on GM's post-trial motions for decertification and for judgment as a matter of law. None of these agreements trade "possible advantages for the [Certified Class] in return for advantages for others." Fed. R. Civ. P. 23, Adv. Comm. Notes to 2003 Amendment.

4. The Proposal Treats Class Members Fairly

The final element for consideration under Rule 23(e) is whether a proposed settlement treats class members equitably in relation to one another. Fed. R. Civ. P. 23(e)(2)(D). This Settlement does: all Class Members will be entitled to an equal portion of the $24,833,000 Settlement Fund after payment of fees and costs. *See* Ex. 6, proposed Plan of Allocation; SA, §§ III, IV. This is consistent with Plaintiff's intent to seek the same $2,700 in damages for each Class Member at trial.[9] Accordingly, the Court should find the Settlement is fair, reasonable, and adequately protects the interests of the Class Members.

V. THE COURT SHOULD CONFIRM APPOINTMENT OF PLAINTIFF'S COUNSEL AS CLASS COUNSEL PURSUANT TO RULE 23(G)

Rule 23(g) provides that "a court that certifies a class must appoint class counsel" taking into consideration their experience, knowledge, resources, and work on the case. At class certification, the Court appointed Plaintiff's Counsel as Class Counsel. ECF No. 129 at 2. Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., and DiCello Levitt LLP are highly skilled and experienced in complex litigation and have successfully led a multitude of consumer class actions

[8] The aggregate value of these individual settlements, inclusive of all costs, is $167,000.

[9] Plaintiff's Counsel sought, and the jury awarded, $2700 in damages at the *Siqueiros* trial.

concerning fraud, misrepresentation and unfair practices. *See* Joint Decl. ¶¶ 27-28. Class Counsel have led this case from the investigation phase, through discovery, class certification, and settlement. *Id*. ¶ 29. Plaintiff respectfully submits that Class Counsel satisfy the adequacy requirements of Rule 23(g), and the Court should confirm their appointment as Class Counsel pursuant to Rule 23(g) for settlement purposes.

VI. THE COURT SHOULD APPROVE THE NOTICE PLAN AND SCHEDULE A FINAL APPROVAL HEARING

A. The Court Should Authorize Notice to the Class

Rule 23(e)(1)(B) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by the proposal." The rule expressly approves of notice through "United States mail, electronic means, or other appropriate means." *Id*. Procedural due process requires that the "[n]otice . . . must be reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Tennille v. Western Union Co.*, 785 F.3d 422, 436 (10th Cir. 2015). Neither Rule 23 nor the Due Process Clause requires actual notice to each individual class member. *DeJulius v. New England Health Care Employees Pension Fund*, 429 F.3d 935, 944 (10th Cir. 2005).

Rule 23(c)(2)(B) also requires that any such notice clearly and concisely state in plain, easily understood language: the nature of the action; the definition of the class to be certified; the class claims, issues, or defenses; that a class member may enter an appearance through an attorney if the class member so desires; that the court will exclude from the class any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on class members under Rule 23(c)(3). "Notice is adequate if it may be understood by the average class member." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005).

The adequacy of a class notice program is measured by whether the means employed to distribute the notice is reasonably calculated to apprise the class of the pendency of the action, the proposed settlement, and the class members' rights to object. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *DeJulius*, 429 F.3d at 944. Here, the proposed Notice Plan meets all applicable requirements.

The Settlement provides for a robust Notice Plan designed by EisnerAmper to provide Class Members with clear, plainly stated information about their rights, options and deadlines in

connection with this Settlement. SA, Ex. 2.[10] EisnerAmper has more than 70 years of collective, relevant experience and has been directly responsible for the design and implementation of hundreds of class action notice programs, including some of the largest and most complex notice programs ever implemented in both the United States and Canada. *See* Ex. 2, ¶¶ 1-4. Most significantly, EisnerAmper conducted the class notice provided in *Siqueiros v. General Motors LLC*, No. 16-cv-07244-EMC (N.D. Cal.) (*see* ECF No. 396, Motion for Order Approving Class Notice), which, like here, required providing notice to all owners of a class of vehicles purchased within a specific state.

The Notice Plan provides for direct mailed notice to all known and potential Class Members, as well as email notice and text notice where email addresses and phone numbers are available, an established settlement website, and a toll-free telephone number. SA, Ex. 2. All these avenues for notice have been approved by courts as satisfying due process. *See, e.g., White Fam. Mins., LLC v. EOG Res., Inc.*, No. 19-CV-409-KEW, 2021 WL 9973541, at *4 (E.D. Okla. Nov. 12, 2021) (approving a notice plan that provided for direct notice via mail); *Wornicki v. Brokerpriceopinion.com, Inc.*, No. 13-CV-03258-PAB-KMT, 2017 WL 3283139, at *4 (D. Colo. Aug. 2, 2017) (approving a notice plan that provided for direct notice via mail, direct notice via email where email addresses were available, and the establishment of a settlement website). The Settlement Fund will cover all costs of this extensive Notice Plan. SA, § IV.

Plaintiff respectfully requests that the Court appoint EisnerAmper as Settlement Administrator, approve the Notice Plan, and order dissemination of Class Notice, detailed below.

1. Class Notice

The Settlement Administrator will send the Class Notice, which are the Direct Payment Notice and Identification Notice, substantially in the form of Exhibits 4 and 5, attached to the Settlement Agreement, by mail, to all known and potential Class Members as identified through the means described below, with addresses confirmed through the United States Post Office's National Change of Address database and skip-tracing. SA, Ex. 2. If any Class Notices are returned by the United States Post Office as undeliverable, the Settlement Administrator will make appropriate efforts to obtain current addresses and resend them. *Id.* The Settlement Administrator

[10] The forms of notice detailed in the Settlement Agreement, § VIII, are written in simple terminology, are readily understandable, and comply with the Federal Judicial Center's illustrative class action notices. *See https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction*

will also send the Class Notice via email (collectively, the "Email Notices") to all facially valid email addresses that are available for known and potential Class Members.

The Class Notice advises recipients that a proposed class action Settlement has been reached in this action, and informs them that they are Class Members, briefly explains the Settlement terms and Class Members' options, including their right to opt-out of the Settlement, and directs recipients, in English and Spanish, to the Settlement Website where they can get additional information regarding the Settlement, their rights, and important deadlines.

The Class includes all Class Vehicle owners who purchased a Class Vehicle in Oklahoma and were the current owner as of September 26, 2024. *Supra* Section III(A). As discussed below, it is possible to send Class Notice, and eventually Settlement Payments, to all of the known and potential the Class Members.

First, GM has provided Vehicle Identification Numbers ("VINs") for all Class Vehicles sold by an authorized GM dealership (whether new or used) in Oklahoma. SA, Ex. 2, ¶ 8. Polk Automotive Solutions ("Polk"), which maintains vehicle registration data, will provide the identity of registrants for these Class Vehicles. SA, Ex. 2, ¶¶ 8-11. Plaintiff, through EisnerAmper, will ask Polk to provide complete registration data (i.e., the entire registration history) for all these Class Vehicles. With complete registration data from Polk, EisnerAmper will be able to identify those vehicles that have had only one registrant until September 26, 2024, since the purchase from the GM dealership. *Id.* These registrants are all in the Class, and after EisnerAmper performs a check for updated addresses, it can send these Class Members notice of the Settlement. SA, Ex. 2, ¶ 14.

Second, for Class Vehicles not sold by an authorized GM dealership, Plaintiff, through EisnerAmper, will be able to identify those vehicles whose prior owner was registered in Oklahoma and whose current owner is also registered in Oklahoma. These registrants are all in the Class, and after EisnerAmper performs a check for updated addresses, it can send these Class Members notice of the Settlement. SA, Ex. 2, ¶ 14.

Third, EisnerAmper will be able to identify Class Vehicles where the current or previous owner (but not both) was registered in Oklahoma, and where it is unclear who owned the Class Vehicle as of September 26, 2024 or whether it was purchased in Oklahoma. After EisnerAmper performs a check for updated addresses, it can send the current owners of these vehicles, as of September 26, 2024, notice that they are potential Class Members. SA, Ex. 2, ¶ 14. These potential

Class Members will be able to self-identify through an Identification Form, affirming and attesting under oath that they are members of the Class. SA, Ex. 2, ¶ 13. EisnerAmper will determine the validity of the claim of class membership. SA, §§ V, VIII.

2. Settlement Website

The Settlement Administrator will also set up a website that will provide access to the Long Form Notice (in English and Spanish) (SA, Ex. 3), the Direct Payment Notice (SA, Ex. 4), Identification Notice and Identification Form (SA, Ex. 5), and other documents relevant to the Settlement (the "Settlement Website"). SA, § VIII. The Settlement Website will set forth all applicable deadlines and will provide information about the proper methods for submitting the Identification Form, Requests for Exclusion, and objections. *Id.,* § VIII, ¶ 8.10. The URL address for the Settlement Website and the toll-free phone number will be provided on the published notices as well as the Class Notices. The digital notice campaign, and the updated website, will inform Class Members that there are cut-off dates to opt-out of the Settlement and to notify EisnerAmper that they are Class Members.

EisnerAmper will also establish and maintain a 24-hour, toll-free telephone line with information about the Settlement; a dedicated email address to receive and respond to Class Member inquiries; and a post office box to receive Class Member correspondence, Identification Forms, objections, and Requests for Exclusion.

3. Contents of the Long Form Notice

The Long Form Notice shall be in substantially the form of Exhibit 3 to the Settlement Agreement. It will be available on the Settlement Website (in English and Spanish) and upon request by first-class mail. SA, § VIII. It is clear and in plain language and addresses all requisite matters. *See* Fed. R. Civ. P 23(c)(2)(B) and 23(e)(1). It includes: the case caption; a clear description of the nature of the Action; the definition of the Class; the general substance of the Class's claims and issues; the main events in the litigation; a description of the Settlement; a statement of the Release; contact information for Class Counsel; the maximum amount of Attorneys' Fees and Expenses and Class Representative Service Award that may be sought at final approval; the procedures and deadlines for opting out of the Settlement; the procedures and deadlines for objecting to the Settlement; the Final Approval Hearing date; and how to obtain additional information.

Taken as a whole, the Notice Plan exceeds all applicable standards.

B. The Court Should Set Settlement Deadlines and Schedule a Final Approval Hearing

In connection with preliminary approval, the Court must schedule the Final Approval Hearing and set dates for other key events including mailing and publishing notice, objecting to the Settlement, requesting exclusion, and submitting papers in support of final approval. Plaintiff proposes the following schedule:

EVENT	DEADLINES
Commencement of Class Notice Plan	On the date of entry of the Preliminary Approval Order.
Start of Period for Class Members to submit Class Member Identification Forms	On the date of entry of the Preliminary Approval Order.
Class Notice to be substantially completed	Thirty (30) days after the issuance of the Preliminary Approval Order
Plaintiff's Motion, Memorandum of Law and Other Materials in Support of their Requested Award of Attorneys' Fees and Expenses, and Request for Class Representative Service Award to be Filed with the Court	Thirty (30) days after the issuance of the Preliminary Approval Order
Plaintiff's Motion, Memoranda of Law, and Other Materials in Support of Final Approval to be Filed with the Court	Thirty (30) days after the issuance of the Preliminary Approval Order
Deadline for Receipt of All Objections and Requests for Exclusion by Class Members	Sixty-five (65) days after the issuance of the Preliminary Approval Order
Deadline for filing Notice of Intent to Appear at Final Approval Hearing by Class Members and/or their Personal Attorneys	Sixty-five (65) days after the issuance of the Preliminary Approval Order
Deadline for Class Members to submit Class Member Identification Forms.	Sixty-five (65) days after the issuance of the Preliminary Approval Order
Deadline for Settlement Administrator to provide final report to Class Counsel and GM Counsel detailed all proper and timely Requests for Exclusion	Seventy-five (75) days after the issuance of the Preliminary Approval Order
Any submission by the Parties concerning Final Approval of Settlement and Responses to any objections	Ninety (90) days after the issuance of the Preliminary Approval Order
Settlement Administrator Shall File the Results of the Dissemination of the Notice with the Court	No later than Twenty (20) days before the Final Approval Hearing

Final Approval Hearing	Within 120 days after the issuance of the Preliminary Approval Order

VII. CONCLUSION

For all the above-stated reasons, Plaintiff respectfully requests that the Motion be granted and the Court enter an order, substantially in the form of Exhibit 3 to the Settlement Agreement: (a) granting preliminary approval of the Settlement; (b) approving the form and content of, and directing the distribution of, the proposed Class Notice, annexed to the Settlement Agreement as Exhibits 3, 4, and 5; (c) authorizing and directing the Parties to retain EisnerAmper as the Settlement Administrator; (d) confirming appointment of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. and DiCello Levitt, LLP as Class Counsel for settlement purposes; and (e) setting a date and procedures for the Final Approval Hearing and setting related deadlines.

Dated: April 30, 2025

Respectfully submitted,

/s/ H. Clay Barnett, III

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