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 OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiff Durwin Hampton, on behalf of himself and the Class, by and through his counsel, respectfully submits this memorandum in support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement (the "Motion for Final Approval") and requests the Court enter an order: (i) granting final approval to the Settlement set forth in the Settlement Agreement (the "Settlement Agreement" or "SA") (ECF No. 141-2); (ii) certifying a Settlement Class for settlement purposes only; (iii) granting final appointment of Plaintiff Durwin Hampton as the Settlement Class Representative and the law firms of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. ("Beasley Allen") and DiCello Levitt LLP ("DiCello Levitt"), as Settlement Class Counsel; (iv) confirming the appointment of EisnerAmper as the Settlement Administrator and (v) entering a Final Order and Final Judgment dismissing the Action with prejudice.

I. INTRODUCTION

Plaintiff has secured a Settlement[1] that, if approved, will provide significant cash payments to the Class Members (numbering between 14,583 and 30,455)[2] 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. The Settlement is the result of years of litigation and hard-fought, arms'-length negotiations among experienced counsel.

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

[2] As discussed in Section III.D, below, registration data obtained by the Settlement Administrator identified 30,455 unique VIN numbers associated with potential Class Vehicles. 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").

In the Settlement, GM will make available a Settlement Fund of $24,833,000 to be distributed *pro rata* to the members of the Class. Prior to the payment of Attorneys' Fees and Expenses, Taxes, Settlement Administration Expenses, and a Service Award to the Class Representative. As discussed below, (*see* §§ III.B, IV.B.3.a), this amounts to at least $815, and probably considerably more, for each of the Class Members, of which 14,583 will receive notice that they are not required to take further action to receive their award payment, unless they validly and timely exclude themselves from the class ("Direct Payment Notice"). Plaintiff submits that the Settlement provides best-in-class benefits to the Class specifically addressing the relief sought in bringing this Action and, 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.

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

II. RELEVANT FACTS AND PROCEDURAL HISTORY

In the interest of brevity, Plaintiff does not recite the entire background of this litigation, which has spanned nearly four years. Plaintiff refers the Court to the Motion for Preliminary Approval (ECF No. 141-1), the Joint Declaration of Class Counsel (ECF No. 142), the pleadings filed in this Action, and any other matters of which the Court may take judicial notice, all of which are incorporated as if fully set out in this memorandum.

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 ("CAC"). In the CAC,

[3] *See* Joint Declaration of H. Clay Barnett, III and Adam J. Levitt in Support of Plaintiff's Motion for Final Approval ("Joint Declaration" or "Joint Decl."); Declaration of Durwin Hampton ("Hampton Decl."), ¶ 13.

Plaintiff alleged 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").[4] CAC ¶¶ 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

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; 150–74. 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 January 22, 2025, the Parties mediated before Antonio Piazza of Mediated Negotiations, Inc. Joint Decl. ¶¶ 27. As a result of Counsel's efforts, the Parties were successful in reaching a Settlement that provides concrete substantial benefits to the members of the Class ("Class Members")—between $815 and $1,702 per Class Member before any payment of Attorneys' Fees and Expenses, Service Award, Taxes, and Settlement Administration Expenses.

On May 22, 2025, after briefing and argument, the Court entered an Order: (i) finding the Settlement is "fair, reasonable, and adequate," and "the result of informed, good-faith, arm's-

[4] 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.

length negotiations between the Parties and their capable and experienced counsel and is not the result of collusion," ECF No. 150 ("Preliminary Approval Order") at 2; (ii) preliminarily approving the Settlement between Plaintiff, on behalf of themselves and all others similarly situated, and Defendant General Motors, LLC ("GM"), (iii) approving the Notice Plan and forms and content of Class Notice, as outlined in the Settlement Agreement and Declaration of Ryan Aldridge, finding it "is the best notice practicable notice under the circumstances," "constitute[s] sufficient notice to all persons and entities entitled to receive such notice," and "satisfy[ies] all applicable requirements of law, including, but not limited to, Rule 23 and the constitutional requirement of due process," *id.* ¶ 11; (iv) conditionally certifying the Settlement Class for settlement purposes; and (v) setting a Final Approval Hearing for September 15, 2025, as well as other relevant Settlement deadlines, *id.* ¶¶ 20–26.

Plaintiff now moves for final approval of the Settlement so that the substantial monetary relief to the Settlement Class can be delivered without delay.[5]

III. SUMMARY OF THE SETTLEMENT

A. The Class

The Settlement resolves all economic loss claims of the Class, which is comprised of all current owners or lessees, as of September 26, 2024, of a Class Vehicle that was purchased or leased in the State of Oklahoma. ECF No. 150 ¶ 4; SA § II, ¶ 2.4. 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

[5] Plaintiff separately moves for approval of an award of attorneys' fees, reimbursement of expenses, and payment of a service award to the Class Representative. *See* Plaintiff's Motion for Attorneys' Fees, Expenses, and Class Representative Service Award, contemporaneously filed herewith.

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.

The Class Vehicles include model year 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. *Id.* 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. *Id.*

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 will provide a Settlement Fund in the amount of $24,833,000.00, which, in accordance with the Plan of Allocation (ECF 141-2, Exhibit 6), shall be distributed to Class Members on a *pro rata* basis, less any amounts for Settlement Administration Expenses, Taxes, Attorneys' Fee and Expenses, and Service Awards (the "Net Settlement Fund"). As discussed below, in Section VI(A)(1), there are 14,583 verified Class Members who will receive direct Settlement Payments in accordance with the Plan of Allocation. The remaining 15,872 potential Class Members, who may be eligible to receive Settlement Payments, will be determined through the Identification Notice process and verified by the Settlement Administrator.

With 14,583 to 30,455 Class Members, each Class Member will receive between $815 and $1,702 before any payment of Attorneys' Fees and Expenses, Taxes, Service Award, 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.

In consideration for these benefits, the Settlement also includes a Mutual Release (SA § X), which is made part of the proposed Final Order and Final Judgment, attached to the Long Form Notice, and is available on the Settlement Website. 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.

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 and should be approved.

C. The Court-Approved Notice Plan Satisfies Due Process.

To protect the rights of absent members of the Class, the Court must ensure that all Class Members who would be bound by a class settlement are provided the best practicable notice. See Fed. R. Civ. P. 23(e)(1)(B) ("[T]he Court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12 (1985); Manual for Complex Litigation (Fourth) § 21.312 (2004). 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).

In the Preliminary Approval Order, the Court approved the Parties' Notice Plan, holding "[t]he notices and Notice Plan constitute sufficient notice to all persons and entities entitled to

notice," "satisfy all applicable requirements of law, including, but not limited to, Rule 23 and the constitutional requirements of due process," and "is the best practicable notice under the circumstances." ECF No. 150 ¶ 11. The Parties retained, and the Court appointed, Eisner Advisory Group, LLC ("EisnerAmper") as the Settlement Administrator. SA § II, ¶ 2.47; ECF No. 150 ¶ 12. As detailed above and in the Settlement Administrator's Declaration, EisnerAmper implemented and disseminated a robust Notice Plan approved by the Court, disseminated the CAFA notice to appropriate governmental officials, and is currently collecting and reviewing Class Member Identification Forms and W-9 forms. *See* Declaration of Ryan Aldridge Regarding Settlement Notice.

In accordance with the Notice Plan, the Settlement Administrator commenced Class Notice on June 23, 2025. ECF No. 150 ¶ 26; *see also* EisnerAmper Decl. ¶¶ 5–8. To accomplish this, EisnerAmper used eligible VINS provided by GM to acquire contact information from the various Departments of Motor Vehicles for potential Class Members. EisnerAmper analyzed and de-duped the contact information and performed research using the United States Postal Service National Change of Address database to obtain the most current mailing addresses for potential Settlement Class Members. In total, 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.

Class Notice was mailed, by first-class mail, as ordered by the Court, to 30,455 potential members of the Settlement Class on June 23, 2025. *See Declaration of Ryan Aldridge Regarding Settlement Notice Plan Implementation*, dated June 23, 2025 ("EisnerAmper Decl.") ¶¶ 5. EisnerAmper estimates that the Mailed Notice alone will reach virtually the entire Class. *Id.*

Notice was also sent by E-Mail to 13,274 Settlement Class Members for whom an email address was obtained via Skip trace search. Notice will be sent by text message, no later than June 30, 2025, to 6,222 Settlement Class Members who were sent an Identification Notice and for whom a cell-phone number is available as a reminder to complete the identification form. EisnerAmper Decl. ¶¶ 6–8

The Class Notice was published on the Settlement Website, on June 23, 2025, as directed in the Preliminary Approval Order, along with the Identification Form, the Settlement Agreement, and other important documents related to this Action for Class Members to review and download. ECF No. 150 ¶¶ 13–14; EisnerAmper Decl. ¶ 10. The Settlement Website also contains important Settlement deadlines, other case-related information, and contact information for the Settlement Administrator and Class Counsel. EisnerAmper Decl. ¶ 10. Class Members receiving Identification Notice are also able to submit their Identification Form and W-9 electronically on the Settlement Website, ensuring robust participation in the Settlement. The Settlement Administrator estimates that through the robust Notice Plan, nearly every Class Member will be notified directly of the Settlement and their rights. EisnerAmper Decl. ¶¶ 5–8.

All forms of the Court-approved Class Notice provide Class Members with clear, plainly stated information about their rights, options, and deadlines in connection with this Settlement, including how to object to or opt out of the Settlement, how and by when Identifications Forms or Requests for Exclusion must be submitted, and how to contact the Settlement Administrator, or Class Counsel, with any questions or requests for assistance with the Settlement. To date, EisnerAmper has not received any Requests for Exclusion or objections from Class Members. *Id.* ¶ 11.

The Notice Plan that was approved by the Court was fully implemented and has informed the Class of their rights and benefits under the Settlement. The Notice to the Class more than satisfies the necessary requirements of Rule 23 and due process. *See* Fed. R. Civ. P. 23(c)(2)(B).

IV. FINAL APPROVAL IS APPROPRIATE.

A. The Court Should Affirm Its Certification of the Settlement Class and Appointment of Class Counsel and Class Representative.

The Court has already certified a class of consumers who purchased Class Vehicles in Oklahoma and appointed the Class Representative and Class Counsel. ECF No. 121 (Report & Recommendation); ECF No. 129 (Class Certification Order). The Court's Preliminary Approval Order, incorporating its prior analysis, found the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3) to be satisfied, and preliminarily certified the Class for settlement purposes:

> "The proposed Settlement does not call for any changes to the Class, or the claims, defenses, or issues regarding which certification was granted. Therefore, for the same reasons identified in the Court's certification orders, the certified Class satisfies adequacy, typicality, numerosity, and commonality under Rule 23(a) and predominance and superiority under Rule 23(b)(3)."

ECF No. 150 ¶¶ 3–4.[6] Nothing has changed that would affect the Court's ruling on class certification. Therefore, for the reasons stated in the Preliminary Approval Order, and as identified in Magistrate Judge Jackson's Report and Recommendation and as adopted by the Court, the Court's certification of the Class for settlement purposes should be affirmed.

B. The Proposed Settlement Is Fair, Reasonable, and Adequate and Merits Preliminary Approval.

The Federal Rules of Civil Procedure require court approval for class-action settlements. *See* Fed. R. Civ. P. 23(e) ("The claims, issues, or defenses of a certified class – or a class proposed

[6] *See* Fed. R. Civ. P. 23 adv. comm. notes to 2018 Amendment ("If 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.")

to be certified for purposes of settlement – may be settled . . . only with the court's approval."). As a matter of public policy, federal courts favor and encourage settlements, particularly in class actions, where the costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *Grady v. De Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir.1969); *see also Geiger v. Sisters of Charity of Leavenworth Health Sys., Inc.*, 2015 WL 4523806, at *2 (D. Kan. July 27, 2015) ("The law favors compromise and settlement of class action suits."); William Rubenstein, Alba Conte, and Herbert B. Newberg, Newberg on Class Actions § 13:44 (5th ed. 2015).

Rule 23(e) requires the court conduct a fairness hearing and determine whether the proposed settlement is fundamentally "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see generally* Manual for Complex Litigation (Fourth) § 21.62 (2004) ("Rule 23(e)(1)(C) establishes that the settlement must be fair, reasonable, and adequate."); Newberg on Class Actions § 13:42. In making this determination, the court must consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (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:[7] (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, all factors weigh in favor of final approval of the Settlement.

As part of the preliminary approval process, the Court considered the non-exhaustive factors to determine whether a proposed settlement is "fair, adequate and reasonable." *See* ECF No. 150 at 4–5. The pleadings filed in this Action, including Plaintiff's Motion for Preliminary Approval and supporting declaration, detail the reasons this Settlement should be approved. *See* ECF Nos. 141-1, 142. Notice has now been disseminated and no other facts detailed in the preliminary approval briefing have changed. Rather than repeat that briefing, each fairness factor is summarized below.

1. The Settlement Is the Product of Good Faith, Arms' Length Negotiations by Informed Counsel.

In granting preliminary approval, the Court recognized that the Settlement was reached as a result extensive, arm's length negotiations. ECF No. 150 at 2, ¶¶ 6, 20. That fact remains true.

Settlements enjoy a presumption that they are fair and reasonable when, as in this case, they are the product of arm's-length negotiations conducted by experienced counsel who are fully

[7] 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.

familiar with all aspects of class action litigation. *In re Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 2020 WL 2616711, at *18 (W.D. Okla. May 22, 2020), *aff'd sub nom. In re Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 997 F.3d 1077 (10th Cir. 2021) ("When a settlement is reached by experienced counsel after negotiations in an adversarial setting, there is an initial presumption that the settlement is fair and reasonable.").

Class Counsel worked diligently on behalf of the Class to ensure appropriate relief. Class Counsel have substantial experience serving as counsel in class action litigation, including litigation involving vehicle defects, and have led this case from the investigation phase, through discovery, class certification, and settlement. Joint Decl. ¶¶ 43. As such, Class Counsel are qualified and 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 Settlement is the product of over three and a half years hard-fought litigation and was fairly and honestly negotiated at arms' length by informed before a highly-experienced mediator, Antonio Piazza of Mediated Negotiations. *See Ashley v. Reg'l Transp. Dist.*, 2008 WL 384579, at *6 (D. Colo. Feb. 11, 2008) (finding settlement fairly and honestly negotiated where the parties engaged in formal settlement mediation conference and negotiations over four months); *see also* Joint Decl. ¶¶ 27. The Settlement is a great result for the Class considering the nature of the claims at issue and provides significant monetary relief that addresses the reasons for bringing this Action.

Additionally, none of the typical indicators of collusion or self-dealing recognized by the Tenth Circuit are present here. *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)). The Settlement does not include a "clear sailing" arrangement or reversionary provision. Rather, all Settlement 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 & 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. ¶ 31. This factor favors final approval.

2. 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 final 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 immediate value of the $24,833,000.00 cash recovery alone outweighs the uncertainty, additional expense, and likely duration of further

litigation. Here, the Settlement Class is "better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted." *McNeely v. Nat'l Mobile Health Care, LLC*, 2008 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008). As discussed above, in Section III.B, with an estimated 30,455 Class Members, each Class Member will receive between $815 and $1,702, 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 and outweighs the "mere possibility of future relief after protracted and expensive litigation." *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002).

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.*, 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.*, 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*, 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 like this one. *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 vigorously disputes 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. *See* ECF No. 132. Settlement renders the resolution of these issues unnecessary and provides a guaranteed recovery in the face of uncertainty. 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*, 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. *Sonneveldt v. 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*., 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.*, 2012 WL 2930201, at *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. ¶¶ 29–30, 43–44 (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 & 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 sent 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.

The Settlement provides for a fair, equitable, and straightforward Plan of Allocation for Settlement Payment disbursement to Class Members. ECF 141-2, Exhibit 6. The Plan of Allocation, which was formulated by competent and experienced counsel, is the best distribution method under the circumstances. Within 30 days of the Final Effective Date, the Settlement Administrator will calculate the amounts of Settlement Payments due to all verified Oklahoma Class Members. *Id.* ¶ 2. Importantly, this is not a claims-made settlement. Instead, every Class Member, who does not effectively opt-out of the Settlement, will receive an equal Settlement Payment from the Net Settlement Fund. *Id.* Within 60 days of the Final Effective Date, Settlement Payments will be issued to each Class Member in the form of a physical check and mailed to each respective Class Member's last known mailing or forwarding address, or as identified by Class Member Identification Forms. *Id*. ¶¶ 4–5. Settlement Payment checks that are returned as undeliverable or undeposited after 90 days of issuance shall be reissued as necessary to effectuate delivery to the appropriate Class Members using commercially reasonable methods. *Id.* ¶¶ 6–9. 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. ¶ 4. 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.*, 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.*, 2024 WL 2923720, at *2 (E.D. Okla. June 10, 2024) (same); *Hoog v. PetroQuest Energy, L.L.C.*, 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 advises 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,

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

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.

3. 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. Accordingly, the Court should find the Settlement is fair, reasonable, and adequately protects the interests of the Class Members.

4. The Parties Agree the Settlement Is Fair and Reasonable.

The fourth Tenth Circuit factor, "and the only one not to directly overlap with the Rule 23(e)(2) inquiry, is the judgment of the parties that the settlement is fair and reasonable." *Samsung*, 2020 WL 2616711, at *18 (cleaned up). Court's routinely give considerable weight to the Parties' view of a settlement as fair and reasonable, especially where, as here, the "settlement is reached is reached by experienced counsel after negotiations in an adversarial setting." *Id.* (quoting *In re Molycorp, Inc. Sec. Litig.*, 2017 WL 4333997, at *4 (D. Colo. Feb. 15, 2017); *see Ashley v. Reg. Transp. Dist. & Amalgamated Transit Union*, 2008 WL 384579, *7 (D. Colo. Feb. 11, 2008) ("Counsel's judgment as to the fairness of the agreement is entitled to considerable weight."); *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 288–89 (D. Colo. 1997) ("[T]he recommendation of a settlement by experienced plaintiffs' counsel is entitled to great weight."); *Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 548 (D. Colo. 1989) ("Courts have consistently refused to substitute their business judgment for that of counsel and the parties.").

Here, the Parties are highly familiar with the strengths and weaknesses of the case and agree that the Settlement Agreement is fair and reasonable. Plaintiff and Class Counsel only agreed to settle the Action after considering the substantial benefits the Settlement Class will receive, the risks and uncertainties of continued litigation, and the desirability of proceeding under the terms of the Settlement Agreement. Class Counsel have decades of experience leading the prosecution of complex class action matters and fully endorse the Settlement is fair, reasonable, and adequate, and the Settlement is in the Class Members' best interests. Thus, this factor supports final approval.

V. CONCLUSION

For the foregoing reasons, Plaintiff's Motion should be granted.

Dated: June 23, 2025

Respectfully submitted,

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