David S. Stellings (*pro hac vice*)
dstellings@lchb.com
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Telephone: 212.355.9500
Facsimile: 212.355.9592

Roland Tellis (SBN 186269)
rtellis@baronbudd.com
BARON & BUDD, P.C.
15910 Ventura Boulevard, Suite 1600
Encino, CA 91436
Telephone: 818.839.2333
Facsimile: 818.986.9698

Co-Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In re ZF-TRW Airbag Control Units Products Liability Litigation

ALL CASES AGAINST TOYOTA

MDL No. 2905

Judge: John A. Kronstadt

REPLY IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT, AND AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS TO SETTLEMENT CLASS REPRESENTATIVES

Date: November 16, 2023
Time: 11:00 a.m.
Dept.: Courtroom 10B

TABLE OF CONTENTS

		Page
I.	INTRODUCTION	1
II.	ARGUMENT	2
A.	The notice and claims program has already been very successful, with more than three years left to go.	2
B.	The Court should overrule the two objections.	4
1.	*Cy pres* recipient(s), if any, will be subject to the Court's approval at the appropriate juncture.	5
2.	The Court already found that the Settlement compensation is "substantial."	7
3.	The Settlement's substantial non-monetary benefits are not coupons.	9
4.	Non-monetary relief is appropriately considered in the Settlement's total value and in assessing reasonable fees.	11
5.	The Settlement is non-reversionary and contains no clear sailing agreement.	15
6.	The Kress group's inflationary math on the attorneys' fee request is not valid or persuasive.	17
7.	Class Counsel's fee request is reasonable and well supported.	19
CONCLUSION		21

TABLE OF AUTHORITIES

Page

Cases

Chambers v. Whirlpool Corp.,
214 F. Supp. 3d 877 (C.D. Cal. 2016) 4

Chun-Hoon v. McKee Foods Corp.,
716 F. Supp. 2d 848 (N.D. Cal. 2010) 4

Churchill Vill., L.L.C. v. Gen. Elec.,
361 F.3d 566 (9th Cir. 2004) 4

Dennis v. Kellogg Co.,
697 F.3d 858 (9th Cir. Sept. 4, 2012) 7

Dyer v. Wells Fargo Bank, N.A.,
303 F.R.D. 326 (N.D. Cal. 2014) 18

Fleury v. Richemont N. Am., Inc.,
No. C-05-4525 EMC, 2008 WL 3287154 (N.D. Cal. Aug. 6, 2008) 9

Foster v. Adams & Assocs., Inc.,
No. 18-CV-02723-JSC, 2022 WL 425559 (N.D. Cal. Feb. 11, 2022) 3

Hanlon v. Chrysler Corp.,
150 F.3d 1011(9th Cir. 1998) 3

In re Anthem, Inc. Data Breach Litig.,
No. 15-MD-02617-LHK, 2018 WL 3960068 (N.D. Cal. Aug. 17, 2018) 10

In re Apple & AT&T iPad Unlimited Data Plan Litig.,
No. 5:10-CV-02553 RMW, 2014 WL 12650676 (N.D. Cal. Mar. 11, 2014) 4

In re Apple Inc. Device Performance Litig.,
No. 5:18-MD-02827-EJD, 2023 WL 2090981 (N.D. Cal. Feb. 17, 2023) 21

In re Blue Cross Blue Shield Antitrust Litig.
MDL 2406, 2023 WL 7012247 (11th Cir. Oct. 25, 2023) 8

In re Bluetooth Headset Prod. Liab. Litig.,
654 F.3d 935 (9th Cir. 2011) 15, 18

In re Cathode Ray Tube (CRT) Antitrust Litig.,
281 F.R.D. 531 (N.D. Cal. 2012) 4

In re Cendant Corp. Litig.,
264 F.3d 201 (3d Cir. 2001) 19

In re Easysaver Rewards Litig.,
906 F.3d 747 (9th Cir. 2018) 7

In re Google Inc. St. View Elec. Commc'ns Litig.,
21 F.4th 1102 (9th Cir. 2021) 6

In re Groupon, Inc., Mktg. & Sales Pracs. Litig.,
No. 11MD2238 DMS (RBB), 2012 WL 13175871 (S.D. Cal. Sept. 28, 2012) 9

In re Hyundai and Kia Fuel Economy Litig.,
926 F.3d 539 (9th Cir. 2019) 17

TABLE OF AUTHORITIES
(continued)

Page

In re Law Office of Jonathan E. Fortman, LLC,
No. 4:13MC00042 AGF, 2013 WL 414476 (E.D. Mo. Feb. 1, 2013) 5

In re NCAA Grant-in-Aid Cap Antitrust Litig.,
No. 4:14-md-2541-CW, 2017 WL 6040065 (N.D. Cal. Dec. 6, 2017) 19

In re New Motor Vehicles Canadian Exp. Antitrust Litig,
MDL 1532, 2011 WL 1398485 (D. Me. Apr. 13, 2011) 5

In re Omnivision Techs., Inc.,
559 F. Supp. 2d 1036 (N.D. Cal. 2008) 9

In re Online DVD-Rental Antitrust Litig. is illustrative.
779 F.3d 934 (9th Cir. 2015) 10

In re TFT-LCD (Flat Panel) Antitrust Litig., MDL 1827,
2013 WL 1365900 (N.D. Cal. Apr. 3, 2013) 19

In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, and Prods. Liab. Litig.,
No. 8:10ML 02151 JVS, 2013 WL 12327929 (C.D. Cal. July 24, 2013) 19

In re Vitamin C Antitrust Litig.,
No. 06-MD-1738 BMC JO, 2012 WL 5289514 (E.D.N.Y. Oct. 23, 2012) 6

In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.,
No. 15-MD-02672-CRB, 2022 WL 17730381 (N.D. Cal. Nov. 9, 2022) 8

In re Zoom Video Commc'ns, Inc. Priv. Litig.,
No. 20-CV-02155-LB, 2022 WL 1593389 (N.D. Cal. Apr. 21, 2022) 12, 17

Kerr v. Screen Extras Guild, Inc.,
526 F.2d 67 (9th Cir. 1975) 18

Lim v. Transforce, Inc.,
No. LA CV1904390 JAK AGR(x), 2022 WL 17253907 (C.D. Cal. Nov. 15, 2022) 12

Lloyd v. Navy Fed. Credit Union,
No. 17-CV-01280-BAS-RBB, 2021 WL 3186498 (S.D. Cal. July 27, 2021) 7

Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of San Francisco,
688 F.2d 615 (9th Cir. 1982) 8

Pan v. Qualcomm Inc.,
No. 16-CV-01885-JLS-DHB, 2017 WL 3252212 (S.D. Cal. July 31, 2017) 14

Roberts v. Electrolux Home Prods., Inc.,
Ns. SACV12–1644–CAS, 2014 WL 4568632 (C.D. Cal. Sept. 11, 2014) 5

Rodriguez v. W. Publ'g Corp.,
563 F.3d 948 (9th Cir. 2009) 3

Sanders v. RBS Citizens, N.A.,
No. 13-CV-03136-BAS-RBB, 2021 WL 1215800 (S.D. Cal. Feb. 5, 2021) 7

Six (6) Mexican Workers v. Arizona Citrus Growers,
904 F.2d 1301 (9th Cir. 1990) 6

TABLE OF AUTHORITIES (continued)

Page

Staton v. Boeing, 327 F.3d 938 (9th Cir. 2003) 9, 12, 20

Stetson v. Grissom, 821 F.3d 1157 (9th Cir. 2016) 18

Vizcaino v. Microsoft Corp., 290 F.3d 1043 (9th Cir. 2002) 18, 19

White v. Experian Info. Sols., Inc., No. 8:05-CV-01070, 2018 WL 1989514 (C.D. Cal. Apr. 6, 2018) 4

Rules

Fed. R. Civ. P. 23(e)(2) 14

Other Authorities

American Law Institute, Principles of the Law of Aggregate Litigation § 3.07, cmt. b (2010) 5

Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns, *FTC Staff Report* (Sept. 2019) 2

I. INTRODUCTION

The Settlement before the Court provides $147,800,000 in non-reversionary cash and other benefits to settle claims for Toyota Class Members who purchased and leased Toyota Class Vehicles. The Settlement offers a carefully crafted relief package that compensates Toyota Class Members for their economic losses, encourages Toyota Class Members with Recalled Class Vehicles to obtain a free recall repair with minimal friction, and provides important protections for Toyota Class Members in the future at no cost to them.

The Settlement benefits available to all Toyota Class Members reasonably reflect the economic harm Plaintiffs maintain that Toyota caused them due to the ACU Defect. Specifically, Toyota Class Members may claim payments from a non-reversionary common fund for: (a) reimbursement of reasonable out-of-pocket expenses related to obtaining the Recall Remedy, and (b) potential residual distribution payments of up to $250, regardless of whether they incurred any out-of-pocket expenses or whether their Toyota Class Vehicle was subject to an ACU Recall. *See* Settlement Agreement ("SA"), ECF 756-3, § III.B-C. Additional, valuable Settlement benefits include: (a) an Extended New Parts Warranty; SA § III.F, valued by a leading warranty expert at $69,300,000 in economic value for Toyota Class Members with Recalled Vehicles; (b) a commitment from Toyota to spend $3.5 million on an Outreach Program to increase Recall Remedy completion (and to deposit any unspent balance into the Settlement Fund); SA § III.G; (c) a Future Rental Car Reimbursement, Loaner Vehicle, and Outreach Program, expected to provide $10 million in additional value to the Class; SA § III.H; and (d) an innovative, ten-year-long Inspection Program. SA § III.E. Notably, this substantial relief package resolves claims against Toyota only; Toyota Class Members will continue to pursue their economic losses from the ACU Defect that are fairly attributable to the ZF and ST Defendants, too.

This is an excellent result for Toyota Class Members, reached after four years of litigation and investigation, and a year of intensive settlement negotiations under the guidance of the Court-appointed Settlement Special Master. Notably, the vast majority of the Toyota Plaintiffs' claims had not yet even been upheld by the Court when the Settlement was reached. In light of this significant relief and, as detailed below, the *overwhelmingly* positive response from the Class—already exceeding the median claims rate for class actions, with more than 3 years left before the December 2026 claims deadline—the Court should affirm its earlier conclusion that the Settlement is "fair, reasonable, and adequate" (*see* Order granting preliminary approval ("Prelim. Order"), ECF 770 at 22) and grant its final approval.

II. ARGUMENT

A. The notice and claims program has already been very successful, with more than three years left to go.

The Class has responded to the Settlement with near-universal support. From a Class of owners and lessees of approximately 5.2 million Toyota Class Vehicles, only three[1] Toyota Class Members have objected to any aspect of the Settlement, and only 67 opted out. At just **0.001%**, this is a vanishingly small percentage of the Class.

In contrast, Toyota Class Members have moved quickly to show their support by filing claims. By October 30, 2023, Kroll has received 272,716 claim forms, covering (5.2%) of the Toyota Class Vehicles. Second Supplemental Finegan Decl. ("Finegan Decl.") ¶ 3. This is a very strong result—already above the median (5%) national class action claims rate[2]—and only three months into the three-year+

[1] One former Class member, Daniel Sivilich, submitted an objection taking issue with his receipt of the Court-approved direct mailed notice. Mr. Sivilich has since opted out of the Class and his objection is thus no longer pending. *See* ECF 823.

[2] *See* Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns, *FTC Staff Report* (Sept. 2019) at 11, 21.

claims period, which maximizes the window for Toyota Class Members to obtain a Recall Repair and to submit claims.

The parties are focused to ensure that the remaining three+ years will meet with continued success. To that end, since the primary Notice Program ended, the parties have worked closely with the Settlement Notice Administrator to develop a supplemental notice campaign, which includes reminder email notices to Toyota Class Members who have not yet filed claims, and a supplemental digital notice campaign. Finegan Decl. ¶¶ 9-10. Those reminder efforts are underway, with approximately 3.5 million emails sent as of October 29. *Id.* These efforts, and others to come, will continue to generate a significant number of additional claims.

Given the success of the notice program in reaching "over an estimated 95% of potential Class Members, on average, an estimated three times," it is particularly significant that there are just two objections and 67 opt-outs. *Id.* ¶ 15. "[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents . . . positive commentary as to its fairness." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723-JSC, 2022 WL 425559, at *6 (N.D. Cal. Feb. 11, 2022) ("Courts have repeatedly recognized that the absence of a large number of objections to a proposed class action settlement" is a factor suggesting "that the terms of a proposed class settlement action are favorable to the class members.").

The silent support from the Class here speaks volumes—especially given the number of Toyota Class Members and the sums at stake—and strongly supports approval. Indeed, "the Court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it." *Foster*, 2022 WL 425559, at *6. The record unquestionably supports that inference here. *See, e.g.*, *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (approving district court's finding of "favorable reaction" to settlement where fifty-four objected in class of approximately 376,000); *Churchill Vill., L.L.C. v. Gen. Elec.*,

361 F.3d 566, 577 (9th Cir. 2004) (same where forty-five of 90,000 class members objected to the settlement, and 500 opted out); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (approving settlement where 4.86% of the class opted out).

B. The Court should overrule the two objections.

The two objections lodged by three objectors misunderstand the Settlement and dissolve under careful scrutiny. The Court should overrule them.

First comes an objection from Diane Haase and John Kress, represented by attorney-objector John Kress himself,[3] as well as attorneys Steve Miller and Jonathan Fortman (the "Kress group"). Kress, Miller, and Fortman are professional objectors' counsel who serially challenge class settlements by filing meritless objections.[4] They and other similar operators do so to "levy what is effectively a tax on class action settlements, a tax that has no benefit to anyone other than to the objectors." *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 281 F.R.D. 531, 533 n.3 (N.D. Cal. 2012).

---

[3] In other instances, the same Kress-Miller-Fortman team has put forth Mr. Kress' wife as the objector. *See Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 890 (C.D. Cal. 2016), aff'd sub nom. *Hefler v. Pekoc*, 802 F. App'x 285 (9th Cir. 2020).

[4] Counsel for objectors Haase and Kress state that they filed settlement objections "in approximately 3-4 cases during the past five (5) years" but fail to identify the case captions, as the Settlement requires and as Question 29 of the court-approved Long Form Notice reiterates. *See* SA § VI.A. These attorneys also failed to file notices of appearance (or necessary *pro hac vice* applications), or the required declarations attesting to their representation of the objectors. *See id*. While Plaintiffs address the substance of the Kress group's objections, counsel's failure to follow the objection requirements provides an independent basis for the Court to overrule the objections. *See White v. Experian Info. Sols., Inc.*, No. 8:05-CV-01070, 2018 WL 1989514, at *20 (C.D. Cal. Apr. 6, 2018), aff'd in part, rev'd in part and remanded sub nom. *Radcliffe v. Hernandez*, 794 F. App'x 605 (9th Cir. 2019) (striking objections that "have not complied with the requirements in the Court-approved Notice for filing objections"); *In re Apple & AT&T iPad Unlimited Data Plan Litig.*, No. 5:10-CV-02553 RMW, 2014 WL 12650676, at *2 (N.D. Cal. Mar. 11, 2014) (similar); *see also* SA § VI.C.

This group in particular is "well-known" in this Circuit "for routinely filing meritless objections" to "extract[] a fee rather than to benefit the Class." *Hefler v. Wells Fargo & Co*., No. 16-CV-05479-JST, 2018 WL 6619983, at *16 (N.D. Cal. Dec. 18, 2018) (citation omitted); *see also Roberts v. Electrolux Home Prods., Inc.,* Ns. SACV12–1644–CAS, 2014 WL 4568632 at *15 (C.D. Cal. Sept. 11, 2014) (objections filed by the Kress group "appear to have been made with an improper motive (to extract a fee and not to benefit the Class)" and "they are meritless").[5]

In this case, the Kress group throws scattershot and overlapping arguments at the wall to see what sticks. As explained below, nothing does. The sole other objector, Rebecca Kochenderfer, appears to be antagonistic to the plaintiffs' bar and the contingency fee system generally, and raises no specific or unique concern that undermines the Settlement here. None of the objectors' arguments disturb the Court's prior reasoned conclusion that the Settlement is "fair, reasonable, and adequate" (Prelim. Order at 22). Each objection should be overruled.

1. *Cy pres* recipient(s), if any, will be subject to the Court's approval at the appropriate juncture.

The proposed Settlement is non-reversionary. At the close of the three year claims period, if there are any funds remaining after all valid and timely claims are paid, the Settlement contemplates a redistribution of the remaining funds to Toyota Class Members unless and until it is economically infeasible. This is a best practice in class actions. *See* American Law Institute, Principles of the Law of Aggregate Litigation § 3.07, cmt. b (2010) (a settlement should "presumptively provide for further distributions to participating class members unless the amounts involved are too small to make individual distributions economically viable . . ."). Although the

[5] *See also In re New Motor Vehicles Canadian Exp. Antitrust Litig*, MDL 1532, 2011 WL 1398485 at *3 n.22 (D. Me. Apr. 13, 2011) (rejecting Miller's arguments as "specious"); *In re Law Office of Jonathan E. Fortman, LLC*, No. 4:13MC00042 AGF, 2013 WL 414476, at *1 (E.D. Mo. Feb. 1, 2013) (identifying Fortman as a "professional objector attorney").

parties anticipate this post-claims redistribution will largely (if not entirely) exhaust the Settlement Fund, a modest sum could conceivably remain, in an amount too small to cover the cost of a further redistribution. In these circumstances, courts "widely" recognize the *cy pres* doctrine as a tool for "distribut[ing] unclaimed or non-distributable portions of a class action settlement fund." *In re Google Inc. St. View Elec. Commc'ns Litig.*, 21 F.4th 1102, 1111 (9th Cir. 2021); *see also* Prelim. Order at 20 (explaining this rationale). To that end, the Settlement includes a backstop to ensure that any such remaining funds will not revert to Toyota, and will instead be dedicated to the Class and their interests through a *cy pres* distribution subject to the Court's approval.

Despite the *years* remaining in the claims period, the Kress group demands the immediate selection of *cy pres* recipients. ECF 827 at 4-7. But that is not necessary or appropriate. Rather, the parties will reasonably wait until the scope of *cy pres* funds is concrete, so they can propose projects and recipients that can best make use of the funds consistent with the Class' interests. *See Six (6) Mexican Workers v. Arizona Citrus Growers,* 904 F.2d 1301, 1309 (9th Cir. 1990) (rejecting proposed *cy pres* recipient and observing "the district court [would] be in a better position to determine what remedy will best effectuate . . . the interests of the silent class members" "[a]fter the claims period has expired and the amount of the unclaimed fund is known."); *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 BMC JO, 2012 WL 5289514, at *1 (E.D.N.Y. Oct. 23, 2012) ("Counsel's plan to postpone identifying a *cy pres* recipient until the full amount to be distributed . . . is known will assist the Court in its determination.").

If and when the time comes, Settlement Class Counsel and Toyota will jointly present the Court with proposed recipients, and the Court will assess the proposals under the Ninth Circuit's guidance that *cy pres* funding should reflect the nature of the plaintiffs' lawsuit, the objectives of the underlying statutes, or the interests of silent class members. *In re Easysaver Rewards Litig.*, 906 F.3d 747, 761

(9th Cir. 2018). This is a well-worn path to distributing remaining funds *cy pres*. *See Lloyd v. Navy Fed. Credit Union,* No. 17-CV-01280-BAS-RBB, 2021 WL 3186498, at *1 (S.D. Cal. July 27, 2021) (approving proposed *cy pres* recipient after the close of the claims period); *Sanders v. RBS Citizens*, N.A., No. 13-CV-03136-BAS-RBB, 2021 WL 1215800, at *1 (S.D. Cal. Feb. 5, 2021) (similar); *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig*., No. MDL 2672 CRB (JSC), 2017 WL 2212780, at *3 (N.D. Cal. May 17, 2017), aff'd, 746 F. App'x 655 (9th Cir. 2018) (finally approving class settlement including provision that "[a]t the conclusion of the Settlement Benefit Period" remaining "funds will be distributed through *cy pres* payments according to a distribution plan and schedule filed by Class Counsel and approved by the Court").

Particularly in light of the likely *de minimis* amount of any potential *cy pres* funds, it doesn't make sense to choose recipient programs before the parties know how much money there is to distribute.[6] The Kress group's argument that the parties must identify recipients immediately is unfounded.

2. The Court already found that the Settlement compensation is "substantial."

For its second argument, the Kress group distorts the record to claim that the Settlement benefits to individual Toyota Class Members are disproportional to the requested attorneys' fees. *See* ECF 827 at 7-8. This contradicts the Court's prior conclusion that "the parties have not allocated a disproportionate amount of the settlement to be paid to counsel[.]" Prelim. Order at 20. Regardless, the Kress group's argument is misplaced because the Settlement "offers substantial compensation to Class Members" through a $78.5 million Settlement Amount and further benefits from the Extended New Parts Warranty and the Inspection Program. *Id.* at 21. Even in cases of less "substantial" compensation, "a cash settlement

[6] The role of *cy pres* as a backstop to distribute *de minimis* remaining funds distinguishes this settlement from that in *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. Sept. 4, 2012).

amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *Id*. at 20-21 (citing *Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982)).

The Kress group's argument that Toyota Class Members with Unrecalled Class Vehicles stand to "receive nothing" from the Settlement (ECF 827 at 8) is factually incorrect. *All* Toyota Class Members can claim cash compensation in the Settlement, including a residual payment of up to $250 at the conclusion of the Claims Period, which the Court deemed to be "fair and reasonable." Prelim. Order at 22. Toyota Class Members with Unrecalled Class Vehicles also benefit from the innovative Inspection Program, which mandates procedures for the active investigation of airbag non-deployments that may be caused by electrical overstress, and helps ensure that if there are any field failures that may inform a future recall decision, Toyota will document them. SA § III.E. Moreover, if the Unrecalled Vehicles are recalled in the future, they too will receive the Extended New Parts Warranty, and become eligible to file claims for reimbursement if the recall occurs at any time during the three-year claims period. Each of these benefits is targeted specifically at Class Members with Unrecalled Vehicles.

That Toyota Class Members with Recalled Class Vehicles have a first pass to claim reimbursement for out-of-pocket expenses from the Settlement Fund does not, as the Kress group suggests, make the allocation plan unfair. Rather, it reasonably apportions the Settlement compensation based on the economic harm that each Toyota Class Member allegedly suffered. *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig*., No. 15-MD-02672-CRB, 2022 WL 17730381, at *8 (N.D. Cal. Nov. 9, 2022) (concluding allocation formula was equitable where differing payment amounts "roughly correspond[ed] to the strength of [class members'] claims and the likelihood of damages at trial").[7]

[7] *See also In re Blue Cross Blue Shield Antitrust Litig.* MDL 2406, 2023 WL 7012247, at *9-10 (11th Cir. Oct. 25, 2023) (affirming approval of allocation

Footnote continued on next page

Staton v. Boeing, 327 F.3d 938, (9th Cir. 2003) does not support the Kress group's argument. *Staton* dealt with attorneys' fees that were negotiated as a material settlement term, which raised concerns about fairness to class members. *See id.* at 969-72. No such conflicts exist here because Settlement Class Counsel's fees were not even discussed at all until after Toyota and Co-Lead Counsel reached agreement on the terms of the Settlement. SA § VIII.A. Furthermore, comparing Settlement Class Counsel's fee request to individual Toyota Class Member recoveries does not adequately address the "*overall* result and benefit to the class," which is the relevant metric for fee awards. *See In re Omnivision Techs.*, Inc., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). On that score, at $147.8 million, there can be little doubt that the Class obtained a substantial result here. As discussed further below, Settlement Class Counsel's fee request is well under the Ninth Circuit's benchmark of 25% of *the settlement fund*, and is reasonable in light of the excellent outcome achieved for the Class.

3. The Settlement's substantial non-monetary benefits are not coupons.

The Kress group next targets the Settlement's Outreach Program, the Future Rental Car Reimbursement, Loaner Vehicle and Outreach Program, and the Extended New Parts Warranty, and argues that these benefits are "tantamount to a coupon settlement." ECF 827 at 8.

The Kress group is wrong. As CAFA's legislative history reflects, "a coupon is a *discount* on another product or service offered by the defendant in the lawsuit." *Fleury v. Richemont N. Am., Inc.*, No. C-05-4525 EMC, 2008 WL 3287154, at *2 (N.D. Cal. Aug. 6, 2008) (emphasis in original); *see also In re Groupon, Inc., Mktg. & Sales Pracs. Litig.*, No. 11MD2238 DMS (RBB), 2012 WL 13175871, at *6 (S.D. Cal. Sept. 28, 2012) (same). Put another way, a coupon settlement requires class

formula that considered the "comparative strengths of each class's … claims," and concluding "the text of the amended rule requires equity, not equality, and treating class members equitably does not necessarily mean treating them all equally").

members to "hand over … more money to obtain the benefits of the Settlement." *In re Anthem, Inc. Data Breach Litig*., No. 15-MD-02617-LHK, 2018 WL 3960068, at *28 (N.D. Cal. Aug. 17, 2018). *In re Online DVD-Rental Antitrust Litig.* is illustrative. There, the Ninth Circuit rejected objections that the relief provided ($12 in cash or a $12 Wal-Mart gift card) were coupons, relying on a Senate Judiciary Committee report that identified twenty-nine examples of "problematic coupon settlements." 779 F.3d 934 (9th Cir. 2015). In short, all of the settlements identified in the report "require[d] class members to hand over more of their own money before they can take advantage of the coupon, and they often [we]re only valid for select products or services." *Id.* at 950-51.

The Settlement's non-monetary benefits are not "coupons." They do not require Toyota Class Members to purchase anything from Toyota or otherwise spend any of their own money, and Toyota will pay to provide these benefits without any reciprocal obligation. The Kress group does not directly contest these facts, and their argument instead relies on the flawed idea that these benefits give Toyota "the ***opportunity*** to make additional money from each Class Member by inspecting each vehicle and ***recommending*** any repairs needed" when Toyota Class Members visit a Toyota dealership for warranted repairs. ECF 827 at 9 (emphasis added); *see also id.* at 11. Even assuming that's true, this is still not a "coupon" settlement, because there is no *requirement* that Toyota Class Members spend any money to receive the benefits.

The Kress group has not, and cannot, provide any credible support for their "coupon" theory because it's contrary to the terms of the Settlement.

If finally approved and implemented, the Outreach Program requires Toyota to spend up to $3,500,000 to maximize completion of a *free* recall remedy on the Recalled Vehicles. *See* SA § III.G.3. The Outreach Program is unique from any statutorily mandated notice requirements for the NHTSA recall because the Settlement requires Toyota to "adjust and change its methods of outreach as

required to achieve its goal of maximizing completion of the Recall Remedy." *Id.* And, if Toyota does not spend the $3,500,000, the balance is returned to the Settlement Fund. *Id*. § III.G.4. Similarly, the Future Rental Car Reimbursement, Loaner Vehicle and Outreach Program requires Toyota to provide the same kind of outreach described in the Outreach Program for a future recall, and either provide all owners and lessees of the vehicles a loaner vehicle at no cost, or reimburse reasonable rental car costs. SA § III.H. The Court found that this is a valuable Class benefit. Prelim. Order at 21. Finally, the 12-year Extended New Parts Warranty covers necessary repairs or replacement of parts installed under the ACU recall at no cost to Class Members. SA § III.F.

In sum, the Court should reject the baseless argument that the non-monetary benefits above are "coupons." Plaintiffs address the Kress group's challenges to the value of these benefits below.

4. Non-monetary relief is appropriately considered in the Settlement's total value and in assessing reasonable fees.

As explained above, the Class will receive Settlement benefits worth $147,800,000. Settlement Class Counsel seek $25 million in reasonable attorneys' fees, approximately 16.9% of that total, plus reasonable expenses. To argue for a lesser fee, the Kress group claims that non-monetary relief cannot be included in the Settlement value and that the Settlement's non-monetary benefits are worthless. It is these arguments, and not the Settlement relief, that have no value.

The Kress group first argues that "the Outreach Program and Extended New Parts Warranty cannot form the basis for a common fund of $147,800,000," ECF 827 at 13, because they "do not provide any fund of monies for which the class members are entitled, or 'to which others have a claim.'" *Id*. at 15. In other words, they would exclude these benefits because they are not direct cash payments to Toyota Class Members. *See id.* at 15. This argument betrays a fundamental misunderstanding of the law.

Courts consider non-monetary relief for the purpose of analyzing a fee award "where the value to individual class members of benefits deriving from [non-monetary] relief can be accurately ascertained." *Staton*, 327 F.3d at 974; *see also In re Zoom Video Commc'ns, Inc. Priv. Litig.*, No. 20-CV-02155-LB, 2022 WL 1593389, at *10 (N.D. Cal. Apr. 21, 2022) (similar). Indeed, this Court has repeatedly recognized—including in preliminarily approving the Settlement here—that the Settlement's "total recovery" is the relevant measure when calculating fees under a percentage of the fund analysis. *See* Prelim. Order at 23 ("When using the percentage method, a court examines what percentage of the total recovery is allocated to attorney's fees."); *Lim v. Transforce, Inc.*, No. LA CV1904390 JAK AGR(x), 2022 WL 17253907, at *15 (C.D. Cal. Nov. 15, 2022) (Kronstadt, J.) (same). Attorneys' fees expert Professor Brian Fitzpatrick agrees. *See* Fitzpatrick Decl., ECF 815-4, at ¶ 15.

Consistent with that well-settled law, the Court previously found that it is reasonable to include the $3.5 million value of the Outreach Program and the $10 million credit for the provision of future loaner vehicles and outreach in calculating the "total recovery" to the Class, and further contemplated that the value of the Extended New Parts Warranty, once available, would be factored into the reasonableness of the fee request as well. *See* Prelim. Order at 26.

The record provides ample support on value of those benefits. This includes sworn testimony from Toyota that it spent approximately $3.55 million on outreach to accomplish a 62% recall completion rate for the Recalled Vehicles, exclusive of the costs for oversight and management. ECF 758-1 at ¶¶ 3-4. Based on that expenditure, Toyota estimates it will spend *at least* an additional $3.5 million on outreach for unrepaired Recalled Vehicles. ECF 758 at 1. This is not an illusory benefit—importantly, as this Court recognized, "[i]f Toyota's expenditures on the Outreach Program are less than $3.5 million, the Settlement Agreement provides that it shall deposit the difference into the QSF to be distributed as residual

payments to Class Members." Prelim. Order at 8 (citing SA § III.G.4).

Similarly, regarding Toyota's $10 million commitment to provide future loaner vehicles and reimbursements under the Future Rental Car Reimbursement, Loaner Vehicle and Future Outreach Programs, Toyota's supplemental brief and accompanying declaration explain that: (1) based on the $7.05 million it has spent or will spend on outreach for 2,891,976 Recalled Vehicles, it is reasonable to expect that it will spend at least $5 million on future outreach if the 2,285,878 Unrecalled Vehicles are recalled in the future, and (2) "[g]iven that Toyota has spent approximately $4.8 million on loaner vehicles for the approximately 1,793,025 Recalled Vehicles that have received the Recall Remedy, it is reasonable to expect that it will spend at least $5 million for future loaner vehicles . . . for the remaining approximately 1,098,951 Recalled Vehicles that have not completed the Recall Remedy, plus the 2,285,878 Unrecalled Vehicles should [they] be recalled in the future[.]" ECF 758 at 1-2.

The value of the 12-year Extended New Parts Warranty finds support from a leading warranty expert—whose warranty valuations have repeatedly been accepted and relied upon by courts—valuing the warranty at $69,300,000. *See* Final App. Br. at 5 (citing Kleckner Decl.). That does not even include the potential value attributed to the Extended New Parts Warranty for the Unrecalled Vehicles, which would add a prospective value of at least 60% of that amount. *Id*. at 3, fn. 2.

The Kress group's argument that the Outreach Program and Extended New Parts Warranty provide no value for Class Members (ECF 827 at 11, 13-15) cannot stand up to this record, or the Court's previous finding that the valuations of these benefits were reasonable.[8]

The Kress group also separately contests the Settlement valuation because the Outreach Program and Extended New Parts Warranty benefit only Class Members with Recalled Vehicles. *Id.* at 14-15. This is a red herring. The

[8] The Court has not yet opined on the Extended New Parts Warranty valuation.

$147,800,000 amount is the value provided to the Settlement *Class as a whole*. While Toyota Class Members with Recalled Vehicles may be entitled to benefits that those with Unrecalled Vehicles are not (barring another ACU recall), that is logical and appropriate,[9] and not a basis to reduce the requested attorneys' fee award.[10]

Finally, as detailed in Plaintiffs' motion, Settlement Class Counsel's fee request is reasonable even setting aside the value of the Outreach Program and Extended New Parts Warranty. Settlement Class Counsel's lodestar of $11,520,547.22 attributable to Toyota, along with a reasonable multiplier of 2.17, supports the $25 million fee request. *See* Plaintiffs' Motion for Final Approval ("Final App. Br."), ECF 815, at 33-42. Moreover, subtracting the contested $3.5 million for the Outreach Program and the $69,300,000 from the Extended New Parts Warranty, the Settlement value to the Class is $75 million, and the Court already recognized that a fee request of 33% "may be warranted here, where favorable results were achieved for the Class, substantial non-monetary benefits will be conferred, and counsel have undertaken significant risks in pursuing this litigation over the course of several years." Prelim. Order at 26.

---

[9] As discussed above, "Rule 23's flexible standard allows for the unequal distribution of settlement funds so long as the distribution formula takes account of legitimate considerations and the settlement remains 'fair, reasonable, and adequate.'" *Radcliffe*, 794 F. App'x at 607 (quoting Fed. R. Civ. P. 23(e)(2)).

[10] Notably, the ten-year Inspection Protocol, which mandates procedures for the active investigation and documentation of airbag non-deployments that may be caused by electrical overstress, likewise provides valuable benefits to the Class, including Class Members with Unrecalled Vehicles. This significant (but unquantified) nonmonetary relief further supports the requested fee. *See Pan v. Qualcomm Inc.*, No. 16-CV-01885-JLS-DHB, 2017 WL 3252212, at *12 (S.D. Cal. July 31, 2017) (concluding that "substantial" non-monetary relief that could not be accurately valued supported fee award of nearly 30%).

For all the reasons stated in the parties' submissions, even crediting the Kress group's arguments on non-monetary relief value (which should be rejected), the fee request would still be well supported here.

5. The Settlement is non-reversionary and contains no clear sailing agreement.

The Court can quickly dispatch with the Kress' groups fifth argument, which is obviously repurposed from objections to other settlements and inapplicable here. Among the many flaws with this section is its insistence that the Settlement has a "clear sailing provision," a "reverter," and a "kickback," none of which is true. ECF 827 at 15-16.

On clear sailing, the Court previously found there was not clear-sailing provision in the Settlement. Prelim. Order at 20. Indeed, the Settlement says expressly: "*Toyota reserves the right to oppose Co-Lead Counsel's motion*" for fees. SA § VIII.A (emphasis added). This is, quite plainly, the opposite of clear sailing. *Cf. In re Bluetooth Headset Prod. Liab. Litig*., 654 F.3d 935, 940 n.6 (9th Cir. 2011) (clear sailing is an agreement "wherein the defendant *agrees not to oppose* a petition for a fee award up to a specified maximum value."). Stretching credulity, the Kress group suggests there has been clear sailing in practice because Toyota did not actually object to the motion for attorneys' fees. Of course, there is no requirement that a defendant exercise its rights to object to prove the lack of clear sailing, and the plain text of the Settlement already resolves that question.

The Kress group's other allegation of a "reverter" or a "kickback" to Toyota also misconstrues the plain (and directly opposite) terms of the Settlement. Reversion refers to settlements where otherwise available, unclaimed funds "revert to defendants rather than be added to the *cy pres* fund or otherwise benefit the class." *In re Bluetooth*, 654 F.3d at 947. This argument wholly misses the mark because the Settlement expressly provides that any remaining, unclaimed funds will *not* revert to Toyota. SA § III.C ¶ 2. Indeed, this Court in granting preliminary

approval credited the non-reversionary nature of the Settlement to demonstrate a lack of collusion between the parties and support its approval. Prelim. Order at 20.

That reasoned conclusion is not undermined because the Settlement includes commitments from Toyota to spend fixed amounts on specific efforts—including a $3.5 million Outreach Program to increase recall participation, and $10 million to provide future loaner vehicles and reimbursements to minimize inconveniences in obtaining recalls.[11] This is not reversion. The objection's related, unseemly suggestion that the Outreach Program is a gambit to boost settlement value is wholly unsupported for many reasons, chief among them that it overlooks the Court-appointed Settlement Special Administrator's authority to "audit and confirm" Toyota's compliance with the commitment (which would preclude any such incentives) (SA § III.H.3), and the evidence in the record to substantiate the assessed value (ECF 758, 758-1).

Finally, and similarly misguided, the Kress group aims to malign Toyota's commitment to spend $3.5 million on the Outreach Program because of a separate explanation in the Long Form Notice which states that "if necessary" the parties, in consultation with the Settlement Special Master, may authorize expenditures from the Settlement Fund to conduct additional Settlement notice and outreach efforts (FAQ #10). ECF 827 at 14. In the Kress group's telling, FAQ #10 is a nefarious workaround to avoid Toyota actually abiding by its Outreach Program commitment. But the two are not related. If the Settlement Special Master and the parties agree that reminder notice efforts would benefit the Class, as contemplated in FAQ #10 (as they already have, *see* Finegan Decl. ¶¶ 9-10), Toyota's obligation to fund the Outreach Program to encourage recall participation is unaffected. To the contrary, as noted above, the Settlement requires Toyota to "deposit the difference into the Settlement Fund" if it does not spend the full $3.5 million. SA § III.G.4. The Kress

[11] *See* ECF 758 and 758-1 (Toyota's supplemental filing with underlying data and testimony that supports the cost of these two programs).

group's argument otherwise falls flat, and this objection should be overruled.

6. The Kress group's inflationary math on the attorneys' fee request is not valid or persuasive.

As detailed in their opening motion and above, Settlement Class Counsel request an aggregate award of $25,472,730.40 in attorneys' fees and expenses, with the fees amounting to approximately 16.9% of the Settlement's guaranteed economic value to the class. Final App. Br. at 3. This is a conservative estimate, as it does not include the potential value of the extended warranty for Unrecalled Vehicles or the ten-year long Inspection Program, which likewise offer material and valuable commitments that will benefit Toyota Class Members.

As their final salvo, the Kress group doctors the math to argue that the requested attorneys' fees are actually 39% of the Settlement and thus merit a negative lodestar multiplier, and then alternatively, that the $147.8 million Settlement is a "megafund" that requires a reduced percentage award. ECF 817 at 18-20. None of these arguments hold water.

First, courts routinely affirm that a settlement fund includes *all* benefits with a calculable economic value obtained for the Class, not just cash compensation. *See* Fitzpatrick Decl. ¶ 15; *see also In re Zoom,* 2022 WL 1593389, at *10; Final App. Br. at 31 (collecting authority). Try as it might, the Kress group cannot disregard this authority to construct its own percentage using the $65 million Settlement Fund alone. The Court should reject its repeat efforts to do so.

Second, the Kress group continues to ignore precedent to push for a "negative" lodestar multiplier, pointing to a dissenting opinion from *In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539 (9th Cir. 2019). In that decision, because the settlement relief is a key factor to assess an appropriate multiplier, the dissent critiqued the district court's use of an upward multiplier for the fees request without information on the maximum settlement value, which was "difficult to estimate." *Id.* at 581. Even if it were precedential, the dissent's reasoning has no

application here because the Settlement value is not "difficult to estimate."

In any event, the Kress group ignores the law on multipliers in the Circuit, which *requires* an upward multiplier when certain risk factors are present, and authorizes a multiplier for certain "reasonableness" factors, including the quality of representation, the complexity of the issues, and most importantly, the benefits obtained for the class.[12] Based on the applicable factors, Settlement Class Counsel's requested multiplier—2.17 with anticipated future time and 2.31 without—falls squarely in the middle of the "presumptively acceptable range of 1.0-4.0" in this Circuit. *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014); *see also* Final App. Br. at 40-42. The Kress group offers no reason for the Court to revisit its prior conclusion (addressing higher, preliminary multipliers at preliminary approval) that the requested multiplier was "likely to be reasonable." Prelim. Order at 29. Indeed, Professor Fitzpatrick opines that Plaintiffs' requested multiplier is *below* typical multipliers in complex cases with large recoveries like the settlement here. *See* Fitzpatrick Decl. ¶ 30.

Third, as to the Kress group's alternative argument that the Settlement is a "megafund" that also merits a fee reduction, the Ninth Circuit has "not adopt[ed]" a categorical rule that an award percentage must "decrease[] as the amount of the fund increases." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Rather, "fund size is *one* relevant circumstance to which courts must refer." *Id.* at 1047. Contrary to the Kress group's argument, the "sliding scale" approach to fee awards has "been criticized by respected courts and commentators, who contend that such a fee scale often gives counsel an incentive to settle cases too early and too cheaply." *In re Cendant Corp. Litig.*, 264 F.3d 201, 284 n.55 (3d Cir. 2001).[13]

[12] *See, e.g., Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975); *In re Bluetooth*, 654 F.3d at 942.

[13] *See also, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL 1827, 2013 WL 1365900, at *8 (N.D. Cal. Apr. 3, 2013) (noting "some objectors argu[ed] that the

Footnote continued on next page

Regardless, even applying such a comparison, the requested percentage (16.9%), and multiplier (2.17 to 2.31), are well-supported by similar or greater figures approved in other "megafund" settlements. *See In re NCAA Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-md-2541-CW, 2017 WL 6040065, at *1 (N.D. Cal. Dec. 6, 2017), aff'd, 768 F. App'x 651 (9th Cir. 2019) (3.66 multiplier and 20% of a $208 million fund); *Vizcaino*, 290 F. 3d 1043 (3.65 multiplier and 28% of a fund of $96.88 million); *see also* ECF 761-1 (chart of cases with percentage near or above the benchmark 25%, and with a lodestar multiplier of approximately 2.5 or above).

7. Class Counsel's fee request is reasonable and well supported.

The lone objector apart from the Kress group, Rebecca Kochenderfer, also expresses opposition to Settlement Class Counsel's fee request. *See* Kochenderfer Objection.[14] In support, she implies that Settlement Class Counsel's billed hours and rates are inflated, but provides no basis for her suspicions or related ad hominem attacks on Settlement Class Counsel's honesty. She then asks the Court to "engage a firm" to audit counsel's billing records *at the expense of the Class* and the Settlement Fund. Ex. 1 at p. 2. But this extreme measure is not warranted.

The Court takes very seriously its obligation to closely scrutinize attorney fee requests in class action settlements "to ensure that the award, like the settlement itself, is reasonable." *In re Bluetooth*, 654 F.3d at 941. As the Court knows, its Civil

---

Court must reduce the award or use a sliding scale model due to the size of the Settlement Fund," but concluding that "[h]aving reviewed other cases involving large Settlement Funds, the Court finds that its award [i.e., 28.6% of the $1.08 billion settlement fund] is proper and fair in light of the amount and quality of the work done by the attorneys"); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, and Prods. Liab. Litig.*, No. 8:10ML 02151 JVS, 2013 WL 12327929, at *34 n.16 (C.D. Cal. July 24, 2013) ("agree[ing] with Plaintiffs' expert [Brian Fitzpatrick] and other courts, which have found that decreasing a fee percentage based only on the size of the fund would provide a perverse disincentive to counsel to maximize recovery for the class").

[14] Counsel received this objection via mail and attach a copy hereto as Exhibit 1.

Standing Order required Settlement Class Counsel to submit, at both preliminary and final approval, detailed billing records for each timekeeper including "all of the tasks on which the attorney worked, the hours worked on each task, and the hourly rate of each attorney." *See* Civil Standing Order § 10(e). Moreover, the objection ignores that the Court entered common benefit order (ECF 111) imposes limitations on the hourly rates for all participating Plaintiffs' Counsel. *Id.* at 6 ($895/hour for partners; $350-$600/hour for associates; $415/hour for document review attorneys; and $175-$275/hour for paralegals and assistants). For many timekeepers, these Court-capped hourly rates fall well below their standard and customary rates. *See* ECF 815-1 ¶¶ 10, 24. Settlement Class Counsel's lodestar was calculated using the *Court-approved* hourly rates.

After Settlement Class Counsel submitted billing records at the preliminary approval stage, the Court found that "to date, the attorney's fees submitted by Plaintiffs' counsel are largely reasonable." Prelim. Order at 27-29. Those time records were re-submitted (following further auditing and adjustments) in support of the attorneys' fees motion, which will provide any data needed for the Court to "assure itself that the fees awarded in the agreement were not unreasonably high, so as to ensure that the class members' interests were not compromised in favor of those of class counsel." *Staton*, 327 F.3d at 965.

Ms. Kochenderfer's other purported concerns are abstract challenges to the contingency fee system, not this Settlement. She suggests for example that attorneys should bill their time at cost rather than market rates because profits to law firms are improper payments to "investors," and that Settlement Class Counsel's historFy of successful results means they selectively take on cases such that the work is not really contingent. These arguments wholly lack merit, including as to the risks, incentives, and societal benefits of contingent representation, which

ensures competent representation for plaintiffs who may not otherwise be able to afford it.[15]

At bottom, these policy challenges do not undermine the fair, reasonable, and adequate nature of the Settlement before the Court, and should be overruled.

CONCLUSION

Plaintiffs respectfully request that the Court overrule the objections; certify the Settlement Class and appoint Settlement Class Counsel and Class Representatives; grant final approval to the Settlement; approve $2,500 service awards for each of the 11 Settlement Class Representatives; and approve an award of $25,472,730.40 in attorneys' fees and costs.

Dated: October 30, 2023

Respectfully submitted,

/s/ Roland Tellis

BARON & BUDD, P.C.
Roland Tellis (SBN 186269)
rtellis@baronbudd.com
David Fernandes (SBN 280944)
dfernandes@baronbudd.com
Adam Tamburelli (SBN 301902)
atamburelli@baronbudd.com
15910 Ventura Boulevard, Suite 1600
Encino, CA 91436
Telephone: 818.839.2333
Facsimile: 818.986.9698

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
David Stellings (*pro hac vice*)
dstellings@lchb.com
John T. Nicolaou (*pro hac vice*)

[15] *See, e.g., In re Apple Inc. Device Performance Litig.*, No. 5:18-MD-02827-EJD, 2023 WL 2090981, at *15 (N.D. Cal. Feb. 17, 2023) ("When counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award.").

jnicolaou@lchb.com
Katherine McBride
kmcbride@lchb.com
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Telephone: 212.355.9500
Facsimile: 212.355.9592

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
Elizabeth J. Cabraser (SBN 83151)
ecabraser@lchb.com
Nimish R. Desai (SBN 244953)
ndesai@lchb.com
Phong-Chau G. Nguyen (SBN 286789)
pgnguyen@lchb.com
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415.956.1000

Co-Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record, including counsel for Defendants.

/s/ Roland Tellis
Roland Tellis