IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Navistar MaxxForce Engines Marketing, Sales Practices and Products Liability Litigation	))))))))	**Case No. 1:14-cv-10318** **This filing applies to: All Class Cases** **Judge Joan B. Gottschall**

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND FOR CLASS REPRESENTATIVE SERVICE AWARDS

Dated: September 10, 2019

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INTRODUCTION & SUMMARY OF ARGUMENT

As detailed in the contemporaneously-filed papers in support of final approval, Class Counsel[1] respectfully submit that the proposed Settlement[2] represents not just a fair, adequate, and reasonable resolution of this MDL class litigation, but an outstanding result for the class measured against any realistic standard.

In brief, the Settlement provides the Class with $135 million in value, including an $85 million Cash Fund and a $50 million Rebate Fund, none of which will revert to Navistar. Class Members may each choose from three forms of relief for each Class Vehicle owned or leased: up to $2,500 cash or up to $10,000 in rebate value on a new Navistar truck depending on months of ownership or lease and without any documentation of damages, or up to $15,000 for documented costs relating to the defect. In exchange, Class Members release only the economic-loss claims at issue in this class litigation; they do not release claims for personal injury or damage to property other than to the truck itself or its cargo.

This is an outstanding result for the Class, especially in light of the risks and costs of proceeding with litigation, where Navistar intended to vigorously contest class certification, and given the results of individual litigation regarding the same defect which have largely favored Navistar. In that latter respect, the Settlement has only improved with age. In the time since preliminary approval, the most significant jury verdict in favor of an individual plaintiff was overturned on appeal. *See Milan Supply Chain Solutions, Inc. v. Navistar, Inc.*, No. 2018-84, 2019 WL 3812483 (Tenn. Ct. App. Aug. 14, 2019). This dramatically illustrates the risks of litigation—individual or class—and the real and certain value provided by the Settlement.

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[1] Class Counsel here refers to Court-appointed Co-Lead Class Counsel, Liaison Counsel, and other firms that worked on the class action portion of this MDL.

[2] The Settlement Agreement appears at Dkt. 632-1. Capitalized terms not otherwise defined have the meanings defined in the Settlement Agreement.

Respectfully, a settlement like this does not and did not happen by chance. It is the result of nearly five years of hard work, investment, and risk undertaken by Class Counsel, with no guarantee of recovery. Not many MDL class actions are as thoroughly discovered, worked up, and hotly litigated as this one has been. This Court is well-familiar with that work. This Court is also familiar with the quality of Class Counsel's representation over those years, and the significant resources (in both time and more than $3 million in out-of-pocket costs) Class Counsel invested and risked to provide that representation. Indeed, as a result of the Court's appointment order (Dkt. 27), Class Counsel contemporaneously reported the lodestar and costs incurred in that effort to the Court.

Now, as Class Counsel previously informed the Court and noticed the Class, Class Counsel submit this motion seeking (1) an award of attorneys' fees and costs of $40 million (broken down as $36,488,073.26 in attorneys' fees and $3,511,926.74 in reimbursement for out-of-pocket costs), (2) service awards of $25,000 to each Named Plaintiff to compensate them for their significant time and effort spent on behalf of the Class, and (3) authority for Co-Lead Class Counsel to allocate the fees and costs among all Class Counsel, as provided by the Settlement. Any amounts awarded will come from the Cash Fund established as part of the Settlement. Class Counsel seek the $36.5 million in fees based upon $31.6 million in documented (and trimmed) lodestar, enhanced by a modest 1.16 multiplier. They also seek reimbursement only of their actual, documented out-of-pocket costs.

Class Counsel respectfully submit that the attorneys' fees and costs are well warranted given the substantial risks they undertook, the exhaustive effort and extensive investment over five years of hard-fought litigation, and the outstanding value obtained for the Class through the Settlement. Class Counsel further submit that the requested service awards are fair and modest in light of the Class Representatives' significant contributions to this litigation.

Class Counsel respectfully request that the Court grant their motion.

BACKGROUND

I. Summary of Plaintiffs' Allegations

This case involves allegations that certain heavy-duty trucks that Navistar manufactured and sold included a defectively-designed emissions system. *See, e.g.*, Dkt. 573 (Order) at 1 (summarizing Plaintiffs' allegations). Plaintiffs contend that the defect resulted from Navistar's decision to use exhaust gas recirculation ("EGR") emissions technology only to comply with Environmental Protection Agency emissions standards, instead of also employing selective catalytic reduction ("SCR") emissions technology. *Id.*; *see also* Dkt. 626-1 (Third Am. Compl.). Plaintiffs allege that the defect damaged EGR components, turbochargers, diesel particulate filters, and other engine parts, causing the trucks to frequently break down and requiring numerous repairs, sometimes including complete engine replacement. Dkt. 626-1 at 3-4.

II. Material Terms of the Settlement

The Settling Parties agreed to the Settlement only after hard-fought and adversarial litigation, including motion practice and contentious discovery, and negotiations, with the final terms informed by years of experience with the case and reached with the substantial aid of an experienced and skilled mediator over the course of many months. This Settlement provides excellent benefits to the proposed Class of all entities and persons who ever owned or leased a Class Vehicle,[3] including:

- Payment by Navistar of $135 million in non-reversionary funds, initially allocated as $85 million in cash and $50 million in rebates.
- Each Class Member has the option to choose from three different forms of relief for each truck the Class Member owned or leased:
  - Up to $15,000 in reimbursements for documented out-of-pocket expenses for each owner and lessee of each truck.

[3] The Class definition includes certain limited exclusions. Dkt. 632-1 at 6-7.

- A cash payment of $2,500 per truck without documentation of any damages, apportioned among different owners and lessees of that truck over the Class Period.

- A $10,000 rebate toward the purchase of a new Navistar truck, apportioned among different owners and lessees of that truck over the Class Period.

- Protection against oversubscription in the form of two-way "waterfalls" such that if either the Cash Fund or the Rebate Fund is oversubscribed while the other is undersubscribed, funds from one will be used to cover the shortfall of the other (up to $120 million in cash). *See* Settlement at 21-22.

- State-of-the-art notice. The Settlement Administrator was able to locate contact information for, and send notice to, the current or former owners or lessees of more than 99.8% of the Class Vehicles. *See* Dkt. 660 (declaration of Settlement Administrator stating that it located contact information associated with all but 118 of 66,518 potential Class Vehicles).

In exchange, absent class members release only the economic-loss claims at issue in this class litigation. They retain claims for personal injury or damage to property other than to the truck itself or its cargo.

CLASS COUNSEL LITIGATED THIS CASE VIGOROUSLY

I. Litigation History

This MDL was created in December 17, 2014. *See In re Navistar MaxxForce Engines Mktg., Sales Practices & Prod. Liab. Litig.*, 67 F. Supp. 3d 1382, 1383 (J.P.M.L. 2014). Following a contested Rule 23(g) motion, this Court appointed Interim Co-Lead Counsel and Liaison Counsel on March 5, 2015. Dkt. 27. After initial mediation efforts failed, Plaintiffs and Navistar litigated this case for more than four years. Selbin Decl. ¶ 21. During this time, the parties engaged in extensive discovery, including exchanging and reviewing more than 2.5 million documents, taking and defending more than 60 depositions, attending 26 vehicle inspections, and litigating multiple critical motions before this Court. *Id.* ¶ 22; *see also* Declaration of James Bulthuis ¶¶ 1-10 (discussing inspections). Plaintiffs retained and worked extensively with more than half a dozen consulting and testifying experts, including mechanical

engineering experts prepared to testify whether and why the EGR-only design is defective, as well as economics experts prepared to testify about the damages they calculated were suffered by the Class. Selbin Decl. ¶ 23. In March 2019, counsel fully drafted and were prepared to file a motion for class certification, supported by a host of exhibits including extensive expert reports. *Id.* at ¶ 24.

II. Settlement Negotiations and Administration

The parties mediated with the assistance of Hon. Wayne Andersen, a retired judge in this District and a respected class action mediator with whom the Court is familiar. Selbin Decl. ¶ 25. After efforts at settlement early in the litigation failed, renewed mediation efforts began in June 2018 and continued for months, including six in-person negotiations in Chicago, dozens of hours on telephone conferences, and many dozens of email exchanges. *Id.* Negotiations were at arm's-length and often contentious, albeit professional. *Id.* In March 2019, Plaintiffs finalized their class certification motion and supporting expert reports. *Id.* On the literal eve of that filing, the parties reached a tentative agreement in principle. *Id.* The final Settlement Agreement was executed on May 28, 2019. Dkt. 632-1.

On June 12, 2019 this Court found the Settlement would likely merit final approval and directed notice to the Class. Dkt. 648. Since then, Co-Lead Class Counsel have worked carefully and cooperatively with Defendants' counsel and with the Court-appointed Settlement Administrator to establish the Settlement Website and deliver timely notice to the Class, and responded to questions and concerns from hundreds of Class Members. Selbin Decl. ¶ 26. On August 9, 2019, pursuant to the Court's preliminary approval order, the Settlement Administrator delivered notice to the Class. *See* Dkt. 660. Class Members began filing claims both by mail and online—more than 1,200 already have—and may continue to do so until the claims deadline

on May 11, 2020. Thus far, there are 4 opt outs and 0 objections; the deadline for both is October 10, 2019 and Class counsel will update the Court with the final numbers thereafter.

THE REQUESTED FEES ARE SUPPORTED AND REASONABLE

In a class action, the Seventh Circuit requires courts to determine reasonable attorneys' fees by "do[ing] their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) (collecting cases). Compensation also depends on "the quality of [counsel's] performance, . . . in part on the amount of work necessary to resolve the litigation, and in part on . . . the stakes of the case." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 597 (N.D. Ill. 2011) (citing *Synthroid*, 264 F.3d at 721).

Courts in this Circuit have discretion to employ either a percentage of the fund recovered, or the "lodestar amount" plus a "risk multiplier warranted by the contingent nature of the case." *Americana Art China, Co., Inc. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014). Class Counsel here seek fees based on the lodestar method. The lodestar method is a more appropriate metric here because the Settlement includes different types of relief, including non-cash relief, some of which are not immediately amenable to a percentage-based calculation. *See, e.g.*, *In re Easysaver Rewards Litig.*, 906 F.3d 747, 759 (9th Cir. 2018) (affirming use of "the lodestar approach . . . in mixed settlements"); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (explaining that the lodestar method is appropriate "where the nature of the recovery does not allow the determination of the settlement's value required for application of the percentage-of-recovery method"); *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 893 (C.D. Cal. 2016) (lodestar method appropriate where settlement benefits are "not easily monetized"), *appeals pending* (9th Cir. Nos. 16-56666, 16-56684, 16-56688, 16-56694).

The lodestar is calculated by "[m]ultiplying the hours reasonably expended by the reasonable hourly rates . . . ." *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 974 (7th Cir. 1991). Next courts determine whether that lodestar should be increased by a multiplier to "compensat[e] in a manner that provides adequate incentive for the attorney to bring this type of case" based on "what size risk the attorney assumed at the outset by taking this type of case." *Id.*; *see also, e.g.*, *Americana Art*, 743 F.3d at 246 ("The district court applied the lodestar method to determine an appropriate fee award in this case . . . applying a risk multiplier to account for the contingent nature of the recovery."). A "multiplier is, within the court's discretion, appropriate when counsel assume a risk of non-payment in taking a suit." *Harman*, 945 F.2d at 976; *see also, e.g.*, *Wright v. Nationstar Mortg. LLC*, No. 14-10457, 2016 WL 4505169, at *15 (N.D. Ill. Aug. 29, 2016) ("When a court uses the lodestar approach, a risk multiplier is necessary because the lodestar does not adequately compensate an attorney for the risks of taking on a consumer class action on a contingency basis."). "Multipliers anywhere between one and four . . . have been approved." *Harman*, 945 F.2d at 976 (citation omitted).

I. Class Counsel's fee request is appropriate under the lodestar method.

Here, the lodestar analysis confirms that the requested fees of $36,488,073.26 ($40 million less than $3,511,926.74 in costs) are reasonable. For purposes of this fee petition, Co-Lead Class Counsel submit, for the Court's consideration, the time of the fifteen firms that undertook the most significant amount of work on behalf of the Class. As further set out in the accompanying declarations, those firms report 73,901.53 hours and $31,590,660.40 in lodestar:

Table 1: Hours and Lodestar by Firm

FIRM	HOURS	LODESTAR	DECLARANT
Audet & Partners	7,720.63	$ 3,513,843.10	Audet
Badham & Buck	335.50	$ 173,740.00	Ialacci
Barrack Rodos & Bacine	1,139.70	$ 439,538.75	Gittleman
Bellows & Bellows	1,444.20	$ 602,453.00	J. Bellows
Birka-White	387.04	$ 269,987.80	Birka-White
Bellows Law Group	139.10	$ 71,470.00	L. Bellows
DiCello Levitt Gutzler	18,043.91	$ 7,489,063.25	Levitt
Farella Braun & Martel	169.80	$ 150,958.50	Green
Fine Kaplan & Black	4,395.10	$ 1,979,454.00	Liebenberg
Gordon & Partners	749.75	$ 352,002.00	Calamusa
Grant & Eisenhofer	5,188.20	$ 2,257,030.00	Levitt
Kohn Swift & Graf	2,431.30	$ 850,955.00	Shub
Lieff Cabraser Heimann & Bernstein	26,019.10	$ 10,427,135.00	Selbin
Lite DePalma	441.80	$ 188,380.00	DePalma
Tousley Brain Stephens	5,296.40	$ 2,824,650.00	Dennett
TOTAL	**73,901.53**	**$ 31,590,660.40**	

This time was reported on an itemized basis, identified by discrete task codes, to Co-Lead Class Counsel. Selbin Decl. ¶ 29:

Table 2: Hours and Lodestar by Task Code

TASK CODE	DESCRIPTION	HOURS	LODESTAR
1	Lead and/or Liaison Calls/Meetings	2,162.60	$ 1,496,652.50
2	Lead/Liaison Duties	2,723.35	$ 1,371,697.75
3	Litigation Strategy & Analysis	1,330.16	$ 999,961.50
4	MDL Status Conf.	35.20	$ 28,102.00
5	Court Appearance	122.90	$ 90,701.00
6	Discovery	14,489.46	$ 7,014,361.40
7	Document Review	41,722.58	$ 14,353,257.75
8	Depo: Prep/Taken/Defend	1,798.10	$ 983,848.75
9	Experts/Consultants	991.57	$ 646,125.25
10	Pleadings/Briefs/Research	4,683.35	$ 2,508,379.75
11	Settlement	1,731.60	$ 1,190,580.50
15	Miscellaneous	1,997.76	$ 821,706.75
1, 2	Mixed	68.90	$ 47,885.50
1, 3, 4, 9	Mixed	44.00	$ 37,400.00
	TOTAL	**73,901.53**	**$ 31,590,660.40**

In addition to review and exercise of billing judgment by each individual firm, all of this time was subjected to careful review by Co-Lead Counsel and reduced across the board in the following ways:

- All time before the March 5, 2015 Order appointing Rule 23(g) interim class counsel (Dkt. 27) was excluded, even though much of this time ultimately did benefit the Class.
- All time after June 30, 2019 was excluded, including substantial time devoted to responding to Class Member inquiries. No time spent on this fee motion or on final approval papers is included in the request.
- Large billing items were capped at ten hours for document review, and fourteen hours for other work.
- Any billers with fewer than twenty hours (after the other adjustments) were removed.

Selbin Decl. ¶¶ 31. These across-the-board reductions alone removed nearly $5 million in lodestar. Selbin Decl. ¶ 32. In addition, eleven additional firms (beyond the fifteen included here) reported more than 1,000 hours and $500,000 lodestar to Co-Lead Class Counsel, time not included in the support for this fee petition. *Id.* ¶ 28.[4] Put differently: the time submitted in support of this petition was subjected to multiple levels of careful review and reduction, both at the individual firm level and by Co-Lead Class Counsel, and as a result represents millions of dollars less than what was reported to Co-Lead Class Counsel.[5] For the reasons below, both the number of hours worked and the associated hourly rates are reasonable.

A. <u>**The number of hours counsel worked is reasonable.**</u>

Co-Lead Class Counsel and assisting firms devoted a tremendous amount of time and effort to this difficult and risky litigation over the course of nearly five years, often to the exclusion of other cases. The submitting firms collectively report nearly 74,000 hours of work

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[4] Co-Lead Class Counsel will allocate fees out of the Court's fee award to compensate *all* firms that performed work on behalf of the Class and reported time to the Court.

[5] Co-Lead Class Counsel also submitted time to the Court contemporaneously, but did a full second round of verification before calculating the time submitted with this motion.

performed in conjunction with this litigation. The accompanying declarations identify each biller's hours and rates, and describe the work done by each firm. Should the Court desire any further detail or documentation, including detailed time entries, Class Counsel stand ready to provide it *in camera* in advance of, at, or after the hearing at the Court's request. *See Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, at *3 n.1 (S.D. Ill. Jan. 31, 2014) ("The Court may rely on summaries submitted by attorneys and need not review actual billing records.").

As described above, Class Counsel's efforts included but were not limited to: (1) investigating and filing the initial actions; (2) conducting extensive discovery, including collectively producing and reviewing more than 2.5 million documents (constituting tens of millions of pages), taking and defending more than 60 depositions, presenting Named Plaintiff vehicles for inspection, and litigating multiple discovery motions before this Court; (3) retaining and working with more than half a dozen consulting and testifying experts on mechanical engineering and economics; (4) fully drafting a motion for class certification and preparing attendant exhibits, including expert reports; (5) vigorously negotiating for a favorable settlement through six in-person negotiations and dozens of telephone conferences and email exchanges; and (6) working with the 29 Named Plaintiffs and hundreds of other Class Members who contacted Class Counsel during litigation, mediation, and Settlement administration. Selbin Decl. ¶¶ 22-25, 34-40. Co-Lead Class Counsel allocated these responsibilities among the various firms throughout this litigation, taking care to avoid duplicate efforts. Selbin Decl. ¶ 30. Work was delegated appropriately between partners, associates, and staff as well. Selbin Decl. ¶ 50; Levitt Decl. ¶ 9; Audet Decl. ¶ 27.

These submitted hours do not include every firm that conducted work on behalf of the Class, nor do they include every hour reported even by the fifteen submitting firms. For example, Lieff Cabraser's records show more than 27,430 hours worked on this case from

inception to present, yet the fee request, after the global adjustments described above and line-by-line review, reflects only 26,019 hours for that firm. Selbin Decl. ¶ 32.

Furthermore, although the reported hours account only for work through June 2019, Class Counsel's work on behalf of the Class continued through preliminary approval, and will continue through the close of the claims period in May 2020 and beyond as they assist Class Members and oversee the Settlement. Class Counsel have spent, and will continue to spend, hundreds of hours monitoring the Settlement Administrator, responding to hundreds of Class Member inquiries, communicating with Named Plaintiffs, preparing this motion and the accompanying motion for final approval of the Settlement, and otherwise assisting Class Members. *Id.* ¶ 50.[6]

A word about document review, sometimes a contentious topic in fee requests. The time submitted includes 41,722.58 hours and $14,353,257.75 lodestar coded under task 7, document review. *Id.* ¶ 32. As noted, this time was capped at ten hours per day per biller, notwithstanding the fact that many of these attorneys sometimes legitimately worked more than ten hours in a day as needs of the case dictated. And document review was critical in this case, which involved sophisticated machinery developed by a company with hundreds of engineers and managers. Navistar produced more than two million documents. *Id.* ¶ 34. Counsel maximized efficiency by employing technology-assisted review. *Id.* The document review team, in addition to coding for relevance on five different topics, added detailed commentary about why a document was relevant, which portions were interesting, and how it could be used. *Id.* ¶ 35. As a result, when preparing for deposition, the taking attorney had the benefit of sophisticated coding and analysis, necessary in a case where any given witness might have hundreds of relevant documents attached to his or her name, many of them long presentations full of engineering lingo. *Id.* ¶¶ 35-

[6] Indeed, just since preliminary approval on June 12, Lieff Cabraser has incurred 385 hours (and will incur many more throughout the remaining claims period), few of which are included in this fee request. *Id.*

36. The review also paid off in briefing—the document review team's superior knowledge of the massive universe of documents enabled them to respond quickly to requests for factual support or research. *Id.* ¶ 37. This was substantive work important to the case and its success.

Equally important was review of Plaintiffs' documents, both the 500,000 actually produced, and the additional 406,000 collected and reviewed but determined to be non-responsive or privileged. *Id.* ¶ 39. The volume of documents was so high because Navistar's document requests were extensive, both in number and in scope, and required production of essentially the entire purchase, sale, and maintenance history of small- and medium-sized trucking business, as well as custodial email files. *Id.* ¶ 40. And Navistar deposed each Named Plaintiff, including many as corporate representatives under Rule 30(b)(6), requiring the defending attorneys to be familiar with the documents produced by the Named Plaintiffs. *Id.*

Accordingly, Class Counsel respectfully submits that the approximately 73,900 hours recorded over nearly five years in this case are reasonable. *See City of Greenville v. Syngenta Crop Prot., Inc.*, 904 F. Supp. 2d 902, 909 (S.D. Ill. 2012) (finding reasonable 83,300 hours for two firms over eight years).

B. Class Counsel's hourly rates are reasonable.

To determine whether counsel's hourly rates are reasonable, courts in the Seventh Circuit compare to the market rate, i.e. "the amount the attorney actually bills for similar work." *Montanez v. Simon*, 755 F.3d 547, 553 (7th Cir. 2014). The Court may also rely on "evidence of rates set for the attorney in similar cases." *Id.* Typically the relevant benchmark is "the rates charged by similarly experienced attorneys in the community." *Id.* The situation is different, however, when litigation is consolidated under the MDL procedures and plaintiffs' counsel from across the country litigate in the forum by necessity rather than by choice.

In this MDL—which was created by Navistar's motion to the JPML—the attorneys come from states across the country, and so it is appropriate to use each attorney's home market rates and/or national rates as the relevant metrics. *See Eli Lilly & Co. v. Zenith Goldline Pharms., Inc.*, 264 F. Supp. 2d 753, 764 (S.D. Ind. 2003) ("[S]ome distinctly 'national' litigation, such as multi-district litigation under 28 U.S.C. § 1407, may justify the use of essentially 'national' rates because the location of the forum court is fortuitous"); *see also Chrapliwy v. Uniroyal, Inc.*, 670 F.2d 760, 768-69 (7th Cir. 1982) (holding that district "court erred as a matter of law in limiting the hourly rates to local rates" when there was cause to hire out-of-market attorneys); *Mathur v. Bd. of Trustees of S. Ill. Univ.*, 317 F.3d 738, 744 (7th Cir. 2003) (same, quoting *Chrapliwy*); Rubenstein, Newberg on Class Actions § 15.42 (5th ed. 2019).[7]

Here, the requested rates, which range between $75 and $985, are reasonable. Co-Lead Class Counsel are highly regarded members of the bar who are among the most experienced and successful in the country in the fields of consumer class actions, products liability, and complex litigation. *See* Selbin Decl. ¶¶ 4-26; Levitt Decl. at Ex. A; Audet Decl. ¶ 27. The remaining firms are highly qualified as well, with specifics set out in each declaration and accompanying exhibits.

The hourly rates have been evaluated and approved by many courts in class action and complex litigation matters.[8] And they are in line with rates approved by other courts in this

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[7] *See also, e.g.*, *In re Ford Motor Co. Spark Plug and 3-Valve Engine Prods. Liab. Litig.*, No. 12-02316, Dkt. 122 (N.D. Ohio Jan. 26, 2016) (explaining that "[i]t was reasonable to employ counsel from outside this District to prosecute this case because of the national scope of the litigation . . . and the highly-specialized and talented opposing counsel," and "elect[ing] to utilize the national hourly rates"); *In re Vioxx Prods. Liab. Litig.*, 760 F. Supp. 2d 640, 660 (E.D. La. 2010) (in MDL, applying "national rate[s]"); *see generally* Robert L. Rossi*,* Attorneys' Fees § 10:4 & n.11 (3d ed. 2016) (explaining that the relevant community is "generally the jurisdiction where the case was litigated, unless special factors exist which necessitated the employment of out-of-forum attorneys," and collecting cases).

[8] *See, e.g.*, *In re Whirlpool Corp. Front–loading Washer Prods. Liab. Litig.*, No. 08-65000, 2016

Circuit, *see, e.g.*, *Spano v. Boeing Co.,* No. 06-743, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31, 2016) (finding the following rates reasonable three years ago: "for attorneys with at least 25 years of experience, $998 per hour; for attorneys with 15-24 years of experience, $850 per hour; for attorneys with 5-14 years of experience, $612 per hour; for attorneys with 2-4 years of experience, $460 per hour; for Paralegals and Law Clerks, $309 per hour; for Legal Assistants, $190 per hour."), and across the country, *see, e.g.*, *In re Shop-Vac Mktg. & Sales Practices Litig.*, No. 12-2380, 2016 WL 7178421, at *15 (M.D. Pa. Dec. 9, 2016) (noting that district courts then approved hourly rates reaching $835.00/hour, averaging $681.15/hour, and collecting cases).

Finally, the requested rates are reasonable because counsel submitted historical, not current rates, and do not seek interest on past rates. *See Mathur*, 317 F.3d at 744-45 ("We have allowed district courts to use either current rates or past rates with interest when calculating the lodestar amount, because either method provides an adjustment for delay in payment which is an

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WL 5338012, at *22 (N.D. Ohio Sept. 23, 2016) (approving Lieff Cabraser Heimann & Bernstein rates); *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, No. 06-7023, 2016 WL 4765679, at *13 (N.D. Ill. Sept. 13, 2016) (same, and approving rates for the Chicago area similar to those charged by Bellows & Bellows and Bellows Law Group), *reversed and remanded on other grounds*, 867 F.3d 791 (7th Cir. 2017); *In re Rust-Oleum Restore Mktg., Sales Prac. & Prods. Liab. Litig.*, No. 15-1364, Dkts. 112-2, 127 (N.D. Ill. Mar. 6, 2017) (approving Audet & Partners rates); *Simerlein v. Toyota Motor Corp.*, No. 17-1091, 2019 WL 2417404 (D. Conn. June 10, 2019) (approving DiCello Levitt Gutzler fees on a lodestar cross-check); *Keller v. N.C.A.A.*, No. 09-1967, Dkt. 459 (N.D. Cal. Dec. 15, 2015) (approving Grant & Eisenhofer rates); *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-2591, Dkt. 3849 (D. Kan. Dec. 7, 2018) (approving in MDL rates charged by Alabama firm higher than those charged by attorneys with comparable experience at Badham & Buck); *Feller v. Transamerica Life Ins. Co.*, No. 16-1378, Dkt. 444 (C.D. Cal. Feb. 6, 2019) (approving Barrack, Rodos & Bacine's rates); *Roth v. Uponor, Inc. F1807 Plumbing Fittings Prods. Liab. Litig.*, No. 11-1684, Dkt. 50 (D. Minn. June 29, 2012) (approving Birka-White rates); *In re Chrysler-Dodge-Jeep Eco Diesel Mktg., Sales Prac., & Prods. Liab. Litig.*, No. 17-2777, Dkt. 561 (N.D. Cal. May 3, 2019) (approving Gordon & Partners rates); *Glenn v. Hyundai Motor Am.*, No. 15-2052, Dkt. 272 (C.D. Cal. Aug. 26, 2019) (approving Tousley Brain Stephens rates); *Bishop v. Behr Process Corp.*, No. 17-4464, Dkt. 118 (N.D. Ill. Dec. 19, 2018) (approving Lite DePalma and Kohn, Swift & Graf rates); *In re Steel Antitrust Litig.*, No. 08-5214, Dkt. 680 (N.D. Ill. Feb. 16, 2017) (approving Fine Kaplan & Black rates); *see also* Green Decl. ¶ 4 (confirming that the Farella Braun & Martel rates are those regularly paid by hourly clients).

appropriate factor in the determination of what constitutes a reasonable attorney's fee.") (internal quotation marks and alterations omitted).

C. **A modest multiplier is warranted.**

When "a court uses the lodestar approach, a risk multiplier is necessary because the lodestar does not adequately compensate an attorney for the risks of taking on a consumer class action on a contingency basis." *Wright v. Nationstar Mortg. LLC*, No. 14-10457, 2016 WL 4505169, at *15 (N.D. Ill. Aug. 29, 2016). The "need for such an adjustment is particularly acute in class action suits" because "lawyers for the class receive no fee if the suit fails"—therefore "failure to make any provision for risk of loss may result in systematic undercompensation of plaintiffs' counsel in a class action case." *Matter of Cont'l Illinois Sec. Litig.*, 962 F.2d 566, 569 (7th Cir. 1992). In fact, "a risk multiplier is not merely available in a common fund case but mandated, if the court finds that counsel had no sure source of compensation for their services." *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 565 (7th Cir. 1994) (internal quotation marks omitted).[9]

All firms that worked on behalf of the Class in this case did so on a purely contingent fee basis, such that if they recovered nothing for the Class they would recover nothing for themselves, even if they invested (as they did) years of time, thousands of hours of work, and

[9] In *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, 867 F.3d 791, 792 (7th Cir. 2017), the Seventh Circuit reversed the award of a multiplier where (1) the district court did not base the multiplier on risk, (2) "the case wasn't very complex," and (3) the fee "greatly exceeded the likely award of damages to the class." None of those factors applies here. As set out in this brief and in the final approval papers, this case carried a real risk of no recovery at all, required complex work to litigate, and provides a substantial non-reversionary monetary benefit to the Class. In addition, in that case, Magistrate Judge Rowland found that a risk multiplier was unavailable because the class asserted claims under the Magnuson-Moss Warranty Act, a federal fee-shifting statute. *See id.* at *21. Here, the asserted claims all arise under state law, and so risk is an appropriate basis for a multiplier.

millions of dollars in expenses.[10] And no recovery was a real possibility, both at the outset and throughout the case. At the beginning of this litigation, the business press speculated that the financial crisis resulting from the defect could drive Navistar into bankruptcy, depriving the Class (and counsel) of any relief whatsoever.

Had the parties not settled, Navistar intended to vigorously contest class certification, which was no sure bet. *See* Dkt. 641 at 7-9 (recounting the numerous grounds on which Navistar planned to oppose class certification). Even if a Class were certified, damages would be highly uncertain for allegedly defective trucks that many Named Plaintiffs and Class Members had (out of necessity) continued to drive for years. Further, with or without class certification, success at summary judgment and trial was far from certain, as demonstrated by the poor track record of individual cases against Navistar. *See* Dkt. 641 (Pls.' Supp. Statement in Further Support of Preliminary Approval) at 5-7. And again—the one significant success against Navistar in an individual case has now been reversed on appeal, with judgment ordered for Navistar, the plaintiff owing attorneys' fees to the dealer defendant, and Navistar's costs likely taxed against the plaintiff as well. *See Milan*, 2019 WL 3812483, at *11 (reversing the judgment against Navistar and affirming the award of fees entered against the plaintiff and in favor of the dealer); Tenn. R. Civ. P. 54.04 (providing for taxable costs to prevailing party).

This litigation also required significant investment of time and money in the face of this risk, and well in advance of knowing how the case might resolve. This was not a case where—even arguably—the bulk of the work was completed after the risk was gone: fewer than .8% of the hours were incurred after the Settlement was reached in principle on March 5, 2019. Selbin Decl. ¶ 28. By its nature—alleging platform-wide defects in the emissions systems of heavy-duty trucks—this litigation required significant and expensive expert work to understand the

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[10] *See, e.g.*, Selbin Decl. ¶ 58.

defect, as well as complex expert economic modeling to understand the impacts of that defect on resale values and downtime. In total, counsel risked more than $3 million in actual out of pocket costs.

Given the risks involved in this particular case, counsel's request for a fee award of $36,488,073.26, which represents a miniscule multiplier of 1.16 on the (already trimmed and discounted for historical rates) lodestar, is reasonable. Courts routinely grant equal or larger multipliers in similar fee-award cases. *See, e.g.*, *Schulte*, 805 F. Supp. 2d at 598 ("[m]ultipliers anywhere between one and four . . . have been approved") (quoting *Harman,* 945 F.2d at 976); *see also, e.g.*, *In re Sw. Airlines Voucher Litig.*, 799 F.3d 701, 705 (7th Cir. 2015) (affirming 1.5 multiplier in class action settlement); *Americana Art*, 743 F.3d at 247 (same).[11]

To put it another way, some courts view a multiplier as a direct calculation of the probability of success *ex ante*, and so it is "determined by dividing 1 by the probability of success" at the outset of the case. *City of Greenville*, 904 F. Supp. 2d at 909 (citing *Florin*, 60 F.3d at 1248 n. 3). Thus, the 1.16 multiplier is justified here if Plaintiffs had less than an 86% chance of prevailing when they filed suit. For all the reasons detailed above, that is certainly the case.

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[11] *See also, e.g.*, *Chieftain Royalty Co. v. XTO Energy Inc.*, No. 11-29, 2018 WL 2296588, at *10 (E.D. Okla. Mar. 27, 2018) (multiplier of 2.58 "is well within the range of multipliers approved in the Tenth Circuit, and other circuits," and collecting cases); *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 171 (D. Mass. 2015) (awarding multiplier of 2 in auto defect class action MDL); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-52 & n.4 (9th Cir. 2002) (approving multiplier of 3.65 and citing a survey of class settlements from 1996–2001 indicating that most multipliers range from 1.0 to 4.0); *In re Davita Healthcare Partners, Inc.*, No. 12-2074, 2015 WL 3582265, at *5 (D. Colo. June 5, 2015) (multiplier of 3 "will adequately compensate Plaintiffs' counsel for their extensive work on this complex case pursuant to the applicable Johnson factors, and is in line with the multipliers awarded in similar cases"); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 185 (W.D.N.Y. 2011) (multiplier of 5.3 is "not atypical" because "courts regularly award lodestar multipliers from two to six times lodestar," and collecting cases) (citation omitted).

II. <u>The stakes of the case and quality of the Settlement supports the fees sought.</u>

In addition to the "amount of work necessary to resolve the litigation," courts consider the "stakes of the case" and "the quality of [counsel's] performance." *Schulte*, 805 F. Supp. 2d at 597 (citing *Synthroid*, 264 F.3d at 721). The stakes of the case—"the size of the Class, the scale of the challenged activity, the complexity and costs of the legal proceedings, and the amount of money involved," *id.* at 598—are all unquestionably high here. The allegations are that expensive, complex machinery sold across the country contained a serious defect, and the Settlement provides for non-reversionary relief of $135 million for ~45,000 Class Members.

The quality of counsel's performance is reflected in the excellent Settlement achieved for the Class. First, the value available to Class Members through this Settlement compares favorably to how Plaintiffs' damages experts valued these claims, and how individual litigation fared. Under the Settlement, Class Members can claim for each truck up to $2,500 in cash, up to a $10,000 rebate, or up to $15,000 in proven damages. The two options that do not require damages of proof (cash or rebate) average to $6,250 in potential recovery per truck. Plaintiffs' experts calculated downtime loss per truck to be about $3,764 and lost value to be about $9,354, which together amount to damages about double the potential recovery per truck available even *without* proof under the Settlement. *See* Dkt. 641-8 (Tangren Decl.) ¶¶ 6-7. Given the risk at class certification and trial, a potential 50% recovery (or more for Class members who can prove high out-of-pocket damages) is an unusually successful result. *See, e.g.*, *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 634 (7th Cir. 2011) (affirming settlement approval that awarded retirees about 24.3% of their estimated maximum recovery). And this Settlement compares favorably to a case involving defects in similar commercial products, which settled for $60 million for approximately 30,000 vehicles. *See In re Caterpillar, Inc. C13 and C15 Prods. Liab. Litig.*, No. 14-3822 (D.N.J.).

Furthermore, out of 31 individual cases (of which Plaintiffs are aware) brought against Navistar based upon the same allegations here, only two individual plaintiffs obtained favorable jury verdicts. *See Milan Supply Chain Sols., Inc. v. Navistar, Inc.*, No. 14-285 (Tenn. Cir. Ct.); and *Dutch Maid Logistics, Inc. v. Navistar Inc.*, No. 15CV0129 (Ohio Com. Pl.). Of those two, only the *Milan* jury awarded higher compensatory damages per truck than available in this Settlement, and the Tennessee Court of Appeals recently overturned that verdict. *Milan*, 2019 WL 3812483. To date, therefore, no individual plaintiff has achieved a higher award of compensatory damages per truck than the $15,000 in damages available through this Settlement. This is strong evidence of the high value of the Settlement—and thus the high quality of Class Counsel's performance to achieve that Settlement.

Moreover, the Settlement does *not* require a general release by Class Members (besides the Named Plaintiffs); rather, absent Class Members retain full rights to sue for personal injury or property damage, even those related to the defect. *See Soto v. Wings 'R Us Romeoville, Inc.*, No. 15-10127, 2018 WL 1875296, at *5 (N.D. Ill. Apr. 16, 2018) ("The absence of a general release [further] exemplifies the results achieved for the Settlement Class.").

III. A cross-check of the requested fees as a percentage of the recovery, though unnecessary, also demonstrates the fee request is reasonable.

Although it is not required, cross-checking the requested fees as a percentage of the Class recovery further demonstrates their reasonableness. *See Harman*, 945 F.2d at 974 ("After establishing the lodestar and multiplier, the judge may find it useful to compare the percentage of the fund to contingent arrangements negotiated in other cases of the same type. . . . [T]his final step is a reasonable, though not essential, 'check' for the judge.").

Here, Class Counsel requests fees of $36,488,073.26. The total amount that the Class Members will receive will be the $85 million Cash Fund (minus the estimated $550,358 cost of claims administration and the requested $725,000 in service awards) plus the value of the $50

million Rebate Fund. It bears emphasis that the entire $50 million Rebate Fund will be distributed to Class Members, whether or not $50 million in Rebates are initially selected by claimants. If Rebates are unpopular among Class Members, then the value of the Rebate Fund will "waterfall" into the Cash Fund as necessary to ensure all Cash claims are paid (up to a cap of $120 million in total cash payments). *See* Settlement at 21-22. And if, after the "waterfall" process, there remain amounts in the Rebate Fund, Class Members will be awarded additional Rebates until the Fund is exhausted. *Id.* This is not a reversionary settlement.

And these Rebates are not likely to go unused. Any Class Member who selects a Rebate makes the decision to forego cash, strongly suggesting intent to use the Rebate. And the Rebates offer discounts on large, expensive products that Class Members (trucking companies) regularly purchase, meaning that decision is likely the product of thoughtful planning. In light of the Settlement terms, and the cash option provided to every single Class Member, Class Counsel submit that the value of the Rebate Fund for the purposes of a cross-check is $50 million.

The percentage cross-check, then, is $36,488,073.26 / ($85 million + $50 million - $550,538 - $750,000) = 27%.[12] A flat fee of 27% of the Class recovery—or any percentage at least as high as 33%—would be well-supported as the market rate for a complex class action like this one. *See, e.g.*, *Young v. Cty. of Cook*, No. 06-552, 2017 WL 4164238, at *6 (N.D. Ill. Sept. 20, 2017) (awarding 33.33% of $52 million common fund and overruling objections calling for sliding scale approach); *Spano*, 2016 WL 3791123, at *2 ("A one-third fee is consistent with the market rate in settlements concerning this particularly complex area of law.").[13]

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[12] Even accounting only for the value of the maximum Cash Fund (assuming minimum Rebate popularity) of $120 million still yields a percentage cross-check of 31%.

[13] *See also, e.g.*, *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 862 (N.D. Ill. 2015) (awarding one third plus expenses of $46 million common fund); *Standard Iron Works v. ArcelorMittal*, No. 08-5214, 2014 WL 7781572, at *1 (N.D. Ill. Oct. 22, 2014) ("The Court finds that a 33% fee [of $163.9 million common fund] comports with the prevailing market rate for

THE REQUESTED EXPENSES ARE SUPPORTED AND REASONABLE.

It is well established that Class Counsel are entitled to reimbursement of out-of-pocket costs advanced for the Class. *See* Fed. R. Civ. P. 12(h); Newberg § 16:1; *Beesley*, 2014 WL 375432, at *3. Here, Class Counsel seek reimbursement of $3,511,926.74 in out-of-pocket expenses, which they spent on behalf of the Class with no guarantee of repayment. *See* Selbin Decl. ¶ 44. That amount includes $3,501,926.74 of out-of-pocket costs incurred by the fifteen firms submitting declarations (as well as $10,000 in cost fund contributions by other firms).[14]

Table 3: Costs by Category

CATEGORY	AMOUNT	CATEGORY	AMOUNT
COST FUND	$ 2,630,000.00	AIR TRAVEL	$ 180,608.77
FEDEX	$ 11,269.40	DEPOSITION	$ 83,101.95
POSTAGE	$ 1,493.23	LEGAL RESEARCH	$ 91,768.79
FAX	$ 86.00	COURT FEES	$ 2,423.49
PHONE	$ 20,582.15	WITNESS/EXPERT FEES	$ 19,216.42
IN-HOUSE COPY	$ 82,880.71	SERVICE FEES	$ 23,637.11
OUTSIDE COPY	$ 23,080.28	TRANSCRIPTS	$ 18,249.66
HOTELS	$ 139,329.60	GROUND TRANSPORTATION	$ 40,770.93
MEALS	$ 38,364.73		
MILEAGE	$ 9,080.92	MISC	$ 95,982.60
TOTAL:	**$3,511,926.74**		

As described in the declarations, these costs were reasonably and necessarily incurred in the prosecution of this litigation, and are "of the type that are routinely reimbursed by paying clients, such as experts' fees, other consulting fees, deposition expenses, travel, and

legal services of similar quality in similar cases."); *Beesley*, 2014 WL 375432, at *4 (awarding one third); *Fosbinder-Bittorf v. SSM Health Care of Wisconsin, Inc.*, No. 11-CV-592-WMC, 2013 WL 5745102, at *1 (W.D. Wis. Oct. 23, 2013) (same); *George v. Kraft Foods Global, Inc.*, No. 1:07-CV-1713, 2012 WL 13089487, at *4 (N.D. Ill. June 26, 2012) (same); *City of Greenville*, 904 F. Supp. 2d at 908-09 (awarding one-third of $105 million settlement plus roughly $8.5 million in costs and holding that "[w]here the market for legal services in a class action is only for contingency fee agreements, and there is a substantial risk of nonpayment for the attorneys, the normal rate of compensation in the market is 33.33% of the common fund recovered."); *Schulte*, 805 F. Supp. 2d at 601 (awarding one third of common fund); *Will v. Gen. Dynamics Corp.*, No. 06-698, 2010 WL 4818174, at *4 (S.D. Ill. Nov. 22, 2010) (same).

[14] This amount does not include approximately $8,000 of costs reported by additional firms. Co-Lead Counsel intend to reimburse all reasonable and necessary costs out of any fee/costs award.

photocopying costs." *City of Greenville*, 904 F. Supp. 2d at 910.[15] The great bulk of the costs were spent through a common cost fund administered by Co-Lead Class Counsel. The declaration of Adam J. Levitt Regarding the Litigation Fund describes how that fund was maintained, accounted, and spent. *See* Levitt Litigation Fund Decl. ¶ 8 (categorizing costs expenses experts, eDiscovery, deposition services, mediation services, process service, and miscellaneous). The largest category of expenses drawn from the litigation fund went to experts ($1,743,211.71). *Id.*

And, at 2.6% of the $135 million Funds, the request is significantly less than the average costs award, which is approximately "4 percent of the relief for the class." *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1041 (N.D. Ill. 2011). Moreover, "the fact that Class Counsel does not seek interest as compensation for the time value of money or costs associated with advancing these expenses to the Class makes this fee request all the more reasonable." *Beesley*, 2014 WL 375432, at *3.

<u>THE SERVICE AWARDS ARE SUPPORTED AND REASONABLE.</u>

Co-Lead Class Counsel also request $25,000 service awards for the 29 Named Plaintiffs (counting related corporate entities as single plaintiffs). Courts regularly award class representatives service awards in recognition of their service to the class. *See* Newberg § 17:1 ("[T]he payments aim to compensate class representatives for their service to the class and simultaneously serve to incentivize them to perform this function."). When courts evaluated such awards, "relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time

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[15] Counsel provide detailed summaries of their expenses, broken down into 19 different categories. This summary is sufficient for the Court to "perform its oversight function." *Schulte*, 805 F. Supp. 2d at 600 (relying on a "summary document" of expenses); *see also Northbrook Excess & Surplus Ins. Co. v. Procter & Gamble*, 924 F.2d 633, 643 (7th Cir. 1991).

and effort the plaintiff expended in pursuing the litigation." *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (approving $25,000 service award for class representative).

Here, the Named Plaintiffs each engaged in significant work on behalf of the Class, spending time and effort that required meaningful interruptions to their day-to-day business. Selbin Decl. ¶¶ 62-68 & Ex. D. The Named Plaintiffs were required to, and did, search for and produce hundreds or thousands of documents each in discovery detailing their purchase, use, and sometimes sale of the trucks in question; each sat for at least one deposition, often requiring travel; and most presented their trucks for inspection. *Id.* The Named Plaintiffs also reviewed key documents, kept in regular touch with Class Counsel, and advised Class Counsel based on their trucking expertise, for example advising on the types of costs that should be covered for the Class in the Settlement's Prove-Up Option. *Id.* And it was necessary to have a large number of geographically diverse Plaintiffs in order to overcome any choice-of-law objections at class certification.

Courts in the Seventh Circuit have approved $25,000 awards for class representatives who contributed as much—or even less—work. *Heekin v. Anthem, Inc.*, No. 05-01908, 2012 WL 5878032, at *1 (S.D. Ind. Nov. 20, 2012) (awarding $25,000 each to two named plaintiffs who "conferred and participated with Class Counsel to make key litigation decisions, travelled to Indianapolis to attend hearings, and reviewed the Settlement to ensure it was a fair recovery for the Class"); *Will*, 2010 WL 4818174, at *4 (S.D. Ill. Nov. 22, 2010) (awarding $25,000 each to three class representatives who "assisted with discovery, submitted to lengthy depositions, and were involved in the settlement process"); *Spano*, 2016 WL 3791123, at *4 (awarding $25,000 each to three class representatives who "initiated the action, took on a substantial risk, remained in contact with Class Counsel, and acted at all times for the benefit of the Class").

Courts also look at the percentage of the common fund that would be going to each class representative and the lot of them together. Here, $25,000 service awards would provide the Named Plaintiffs each with 0.029% of the $85 million Cash Fund or 0.019% of the total $135 million in value. These percentages fit well within the range previously approved in the Seventh Circuit. *See Cook*, 142 F.3d at 1016 ($25,000 out of approximately $14 million equaled about 0.18%—ten times larger than the percentage per class representative requested here).[16] Altogether, $25,000 service awards for the 29 Named Plaintiffs sum to $725,000, which is only 0.85% of the $85 million Cash Fund or 0.54% of the $135 total Settlement value. "Awards of $15,000 to $25,000 for a Named Plaintiff award and total Named Plaintiff awards of less than one percent of the fund are well within the ranges that are typically awarded in comparable cases." *Beesley*, 2014 WL 375432, at *4.[17]

CONCLUSION

For the reasons stated above, Class Counsel respectfully request that the Court (1) award $36,488,073.26 in attorneys' fees and $3,511,926.74 in costs, to be paid from the Cash Fund and allocated according to the terms of the Settlement; (2) grant the 29 Named Plaintiffs, identified in Exhibit D to the Selbin Declaration, service awards of $25,000, each, to be paid to be paid from the Cash Fund according to the terms of the Settlement; and (3) authorize Co-Lead Class Counsel to allocate the fees and costs among all Class Counsel, subject to any disputes being resolved by the Court.

Dated: September 10, 2019

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[16] *See also, e.g.*, *Will*, 2010 WL 4818174, at *4 ($25,000 out of $15.15 million equaled 0.17% per class representative); *Heekin*, 2012 WL 5878032, at *1 ($25,000 out of $90 million equaled 0.028% per class representative).

[17] *See also, e.g.*, *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015) (stating the same and awarding $25,000); *Will*, 2010 WL 4818174, at *4 (total award of about "0.5% of the total Settlement Fund" approved as "well within the ranges that are typically awarded in comparable cases").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Andrew R. Kaufman, hereby certify that on September 10, 2019, a copy of the foregoing document was filed electronically using the CM/ECF System, which will send notification of such filing to all counsel of record.

/s/ Andrew R. Kaufman