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United States District Court,
C.D. California.

Brad AARONS, et al.
v.
BMW OF NORTH AMERICA, LLC.

No. CV 11–7667 PSG (CWx).
| Signed April 29, 2014.

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Proceedings: (In Chambers) Order GRANTING Final Approval of Class Settlement and GRANTING Motion for Attorneys' Fees and Costs

Honorable PHILIP S. GUTIERREZ, District Judge.

***1** Wendy K. Hernandez, Deputy Clerk.

Before the Court are Plaintiffs' motions for: (1) final approval of a class settlement; and (2) attorneys' fees, costs, and incentive awards. Dkts. # 138, 139. Pursuant to the Court's August 5, 2013 Order, the parties have filed: *in camera* memoranda discussing their views of the merits and the value of the case; a memorandum addressing the requested attorneys' fees, costs, and incentive awards; and attestations that there are no separate deals between the opposing parties or counsel. Dkts. # 145–149. Plaintiffs have also submitted statements from nine objectors and a response to the objections. Dkt. # 150. The Court held a fairness hearing on April 28, 2014. Having considered the arguments in all of the submissions, as well as those raised at the April 28, 2014 fairness hearing, the Court GRANTS Plaintiffs' motions.

I. *Introduction*

Plaintiffs Brad Aarons, Dolores Kollmer, Mary Limon, Lynette Bourne–Miller, Victor Ferrer, Robert Hare, Paul Pugliese, Darren Bailey, and James Frederic Bonomo (the "Class Representatives") filed five separate class-action lawsuits against Defendant BMW of North America, LLC ("BMW") concerning the Continuously Variable Automatic Transmission ("CVT") used in First Generation MINI Cooper vehicles ("MINIs") sold by BMW (the "Class Vehicles"). Plaintiffs asserted claims under various state statutes, alleging that the Class Vehicles' CVTs contained design and manufacturing defects. *See Aarons v. BMW of North America, LLC*, No. CV 11–7667 PSG (CWx) (C.D.Cal. Sept. 15, 2011); *Bourne–Miller, et al. v. BMW of North America, LLC, et al.*, No. CV 12–9824 PSG (JCx) (C.D.Cal. Sept. 23, 2011); *Limon v. BMW of North America, LLC, et al.*, No. SACV 11–1952 PSG (CWx) (C.D.Cal. Dec. 16, 2011); *Kollmer v. BMW of North America, LLC*, No. CV 11–10444 PSG (CWx) (C.D.Cal. Dec. 19, 2011); *Bonomo v. BMW of North America, LLC*, No. CV 12–9820 PSG (CWx) (C.D.Cal. July 9, 2012). [1]

Plaintiffs allege that the CVTs used in the Class Vehicles are prone to sudden premature failure before the end of the useful life of the vehicles. *ACAC* ¶ 7. The CVTs allegedly fail without warning, resulting in a complete loss of power to the Class Vehicles' drive wheels. *See id.* ¶ 9. Those failures potentially expose drivers and passengers to collisions and other accidents. *See id.*Plaintiffs contend that affected Class members were required to either spend approximately $6,000 to $9,000 to replace or repair faulty CVTs, or sell their un-repaired vehicles at a substantial loss. *See id.* ¶ 8. Further, according to Plaintiffs, BMW knew about the defect in the CVTs, but failed to disclose and actively concealed the problem from consumers. *Id.* ¶ 11.

Plaintiffs' operative Amended Consolidated Class Action Complaint ("ACAC") pleads claims for: (1) violation of the Consumers Legal Remedies Act ("CLRA"), Cal. Civ.Code § § 1750, *et seq.;* (2) violation of the Unfair Business Practices Act, Cal. Bus. & Prof.Code § § 17200, *et seq.;* (3) breach of implied warranty pursuant to the Song–Beverly Consumer Warranty Act, Cal. Civ.Code §§ 1791.1, 1792, *et seq.;* (4) unjust enrichment; (5) breach of written warranty under the Magnuson–Moss Warranty Act, 15 U.S.C. § 2301, *et seq.;* (6) violations of the express warranty statutes of various states; (7) violations of the implied warranty statutes of various states; and (8) violations of the consumer protection statutes of various states. *ACAC* ¶¶ 130–207.

***2** On August 5, 2013, the Court granted preliminary approval of a class settlement, and preliminarily certified a settlement class (the "Class") of:

> All current and former owners and lessees within the United States of the following vehicles ("Class Vehicles") equipped with a Continuously Variable Automatic Transmission ("CVT"):
>
> -MINI R50 (June 11, 2001–Nov. 28, 2006 production period);
>
> -MINI R52 (March 6, 2004–July 31, 2008 production period) [.]

August 5, 2013 Order ¶ 3. The Class excludes BMW's officers, directors, and employees. *See ACAC* ¶ 116. The Class also excludes all individuals who opted out of the Class. *See Tellis Reply Decl.* ¶ 3.

Following the Court's August 5, 2013 Order, the parties' Claims Administrator distributed a Court-approved notice to approximately 124,000 Class members. *See Cooper Decl.* ¶ 7. The Claims Administrator also established an Interactive Voice Response system and website to distribute information about the proposed settlement. *See id.* ¶ 5, 6. Nine Class members filed objections, and fourteen individuals opted out of the Class. *See Tellis Reply Decl* . ¶ 3. At the fairness hearing, Class Counsel represented that 1,453 timely claims were filed.

Plaintiffs now seek final approval of the class settlement, as well as attorneys' fees, costs, and incentive awards. Dkts. # 138, 139. BMW has joined in the motion for approval of the settlement, and has not opposed Plaintiffs' request for fees, costs, and incentive awards. *See* Dkt. # 142.

II. *Background*

A. *Procedural History*

Class Counsel began researching problems with the MINI CVT in March 2011, and retained an expert to inspect and analyze the CVT. *See Tellis Decl.* ¶ 10. Class Counsel also consulted with automotive experts, reviewed BMW manuals and technical service bulletins, researched consumer complaints filed with the National Highway Traffic Safety Administration ("NHTSA"), and examined federal auto safety regulations. *See id.* ¶ 11.

The first lawsuit in this matter, *Aarons v. BMW of North America., LLC,* No. CV 11–7667 PSG (CWx), was filed in this Court in September 2011. Class Counsel filed a First Amended Complaint ("FAC") in November 2011. Dkt. # 22. BMW moved to dismiss the FAC. Dkt. # 23. The Court granted BMW's motion, but held that Plaintiff Aarons had adequately pleaded a safety-related defect, and granted Aarons leave to amend. *See March 16, 2012 Order* at 5.

The *Aarons* case was consolidated with *Kollmer* and *Limon* on March 9, 2012. Dkt. # 36. On April 9, 2012, Plaintiffs Aarons, Kollmer, and Limon filed a Consolidated Class Action Complaint. *See CAC* ¶ 73. BMW answered on September 18, 2012. Dkt. # 71.

Class Counsel engaged in substantial discovery. Among other things, Class Counsel obtained and reviewed: "service and repair manuals; maintenance and warranty manuals; technical service bulletins; warranty repair invoices; warranty reimbursements; service records; vehicle population numbers for Class Vehicles equipped with CVT transmissions; warranty data; and consumer complaint reports."*See Tellis Decl.* ¶ 13. Class Counsel also engaged in motion practice to obtain documents from BMW. *See id.* ¶¶ 14–15.

***3** In June 2012, Class Counsel and BMW began arm's length negotiations regarding a possible settlement. *See id.* ¶ 20.Between June 2012 and February 2013, the parties engaged in three separate mediations. On February 13, 2013, in a mediation before the Honorable Howard B. Weiner, a retired Associate Justice of the California Court of Appeal, the parties reached a global settlement. *See id.* ¶ 25.

The Court notes that this is the second settlement that has been proposed. The plaintiffs in the *Bonomo* case, which was filed in the Southern District of Florida, reached a proposed

settlement with BMW in September 2012. *See Joint Motion for Preliminary Approval of Settlement, Bonomo v. BMW of North America,* No. CV 12–9820 PSG (CWx), Dkt. # 18. After the *Aarons* and *Bourne–Miller* plaintiffs moved to intervene in *Bonomo,* Judge Donald M. Middlebrooks of the Southern District of Florida transferred *Bonomo* and *Bourne–Miller* to this Court *sua sponte. See Nov. 6, 2012 Order,Bonomo v. BMW of North America,* No. CV 12–9820 PSG (CWx), Dkt. # 32. The *Bonomo* and *Bourne–Miller* cases were consolidated with *Aarons* in August 2013. Dkts. # 121, 123.

B. ***The Proposed Settlement***

The proposed settlement offers three key categories of compensation: (1) reimbursements for Class members who incurred out-of-pocket costs to replace or repair their CVTs; (2) reimbursements for Class members who incur out-of-pocket costs to replace or repair their CVTs after the effective date of the settlement; and (3) reimbursements for Class members who sold their vehicles as a result of CVT failures.

Class members who replaced or repaired their CVTs through authorized BMW or MINI dealerships can receive reimbursement for a portion of their out-of-pocket expenses. The reimbursement rate will be determined by the following schedule, based on the age and mileage of the Class Vehicle at the time of the replacement or repair:

Up to	50,000 miles	75,000 miles	100,000 miles	125,000 miles	150,000 miles
4 years100%	77.5%	55%	45%	35%	
5 years	77.5%	65%	47.5%	35%	27.35%
6 years	65%	55%	37.5%	30%	22.5%
7 years	55%	45%	27.5%	22.5%	17.5%
8 years	37.5%	27.5%	20%	17.5%	12.5%

See Settlement Agreement III.A. Class Vehicles that were older than eight years or had more than 150,000 miles at the time of the CVT replacement/repair are not eligible for reimbursement. *See id* .The same reimbursement terms apply for Class members whose CVTs fail after the effective date of the settlement. *See id.*Any CVTs replaced or repaired at a BMW or MINI dealership will be covered by a 3 year/50,000 mile parts warranty, inclusive of labor costs. *See id.*III.D.
Class members who replaced or repaired their CVTs at repair facilities other than authorized BMW or MINI dealerships can also receive reimbursement for some of their out-ofpocket expenses. *See id.*III.B. Under the settlement agreement, each Class Vehicle is allotted a budget of $4,100. *See id.*Subject to that budget, Class members who replaced or repaired their CVTs at third party facilities can receive reimbursement for their out-of-pocket expenses based on the reimbursement rates listed above and the age/mileage of their vehicles at the time of the CVT replacement or repair. *See id.*Class members may seek reimbursement for multiple replacements or repairs, until the $4,100 budget allotted to each vehicle is exhausted. *See id.*Reimbursements within each vehicle's budget will be made on a “first come, first served” basis. *See id.*These provisions do not apply to any replacements or repairs after the effective settlement date. *See id.*Moreover, Class members who claim reimbursement for third-party repairs cannot make any other claims for reimbursement. *See id.*

***4** Class members who sold their Class Vehicles for $4,000 or less due to CVT failures can receive reimbursement as follows, based on the model year of their vehicle:

2002–2003 model year	$1,000
2004–2005 model year	$1,500
2006–2008 model year	$2,000

*See id.*III.F. Class members submitting such claims must attest under penalty of perjury that they sold their Class Vehicles because of a CVT failure. *See id.*Class Vehicles that were older than eight years or had more than 150,000 miles at the time of sale are not eligible for this reimbursement. *See id.*Reimbursements for sales, like reimbursements for third-party replacements and repairs, will be allocated on a "first come, first served" basis. *See id.*

The settlement provides that Class members release BMW; BMW (US) Holding Corp.; Bayerische Motoren Werke Aktiengesellschaft (BMW AG); all BMW subsidiaries and related entities; all entities involved in the design, development, supply, manufacture, sale, lease or distribution of the Class Vehicles; and all officers, directors, shareholders, predecessors in interest, successors in interest, and employees of those entities from all claims or causes of action that could be asserted regarding the Class Vehicles' CVTs. *See id.*I .30, VIII.A. However, the settlement does *not* release claims for personal injury, claims for property damage (other than damage to the CVT), or claims for subrogation. *See id.*VIII.B.

The settlement agreement states that BMW will not oppose Class Counsel's application for fees and costs up to the amount of $1,997,500. *See id.*IX.A. BMW also states that it will not oppose the Class Representatives' application for certain incentive awards-namely, $3,500 for Aarons and $2,000 each for the other Class Representatives. *See id.*IX.B.

Class Counsel and counsel for BMW have attested that the proposed settlement agreement represents the only settlement agreement between the parties. *See Tellis Supp. Decl.* ¶ 5; *Kizirian Supp. Decl.* ¶ 2.

C. *Objections to the Settlement*

Nine individuals have filed objections to the settlement: Victor DeGrande, Elaine Golladay, Brittany Harris, Catherine Jackson, Devin Jaremus, William Jarosz, Xiaopeng Jiang, Mary Dana Maggiolino, and Yvonne Yeh. *See Tellis Reply Decl.*, Ex. 1. Their objections can be grouped into five overlapping categories.

DeGrande, Golladay, Jackson, and Harris object to the eight-year age cap for replacement/repair reimbursement. *See id.* at 2, 13, 17–23, 57.DeGrande, Golladay, and Jackson purchased Class Vehicles whose CVTs failed more than eight years after their initial sale, and argue that the settlement is unfair because they would not receive compensation. Harris's CVT failed within five years, but she did not replace or repair her CVT.

Jaremus objects to the $4,000 limit for vehicles sold as a result of CVT failure. *See id.* at 62–63.He sold his vehicle for $4,500 following a CVT failure, and argues that it would be unfair to exclude him from recovery under the settlement.

***5** Jarosz objects to the reimbursement amount for vehicles sold as a result of CVT failure. *See id.* at 73.After experiencing a CVT failure, he traded in his vehicle for a value of $300. He estimates that he would be eligible for a reimbursement of $1,500, but contends that he should be reimbursed in the amount of $4,500. Jarosz also objects to the "first-come, first-serve" method of allocating the reimbursement budget for Class Vehicles.

Maggiolino and Yeh object to the settlement on the basis that it does not compensate owners who did not take any affirmative steps to replace or repair their CVTs, and who did not sell their vehicles. *See id.* at 79–81, 97–98.

Jiang argues that defective vehicles, under any circumstances, should be recalled and repaired by the manufacturer, and that owners should be reimbursed for any expenses they incurred regardless of mileage or vehicle age. *See id.* at 8. Similarly, Harris argues that the Class Vehicles should be maintained by BMW "for the life of the car, at least[.]"*See id.* at 21.

III. *Discussion*

A. *Class Certification*

i. Legal Standard

When "the parties reach a settlement agreement prior to class certification, courts must ... ratify both the propriety of the certification and the fairness of the settlement."*Staton v. Boeing Co.*, 327 F.3d 983, 952 (9th Cir.2003).

Plaintiffs seeking class certification must affirmatively demonstrate that it meets the four requirements of Rule 23(a) and at least one of the requirements of Rule 23(b).*Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613–14, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997). To satisfy Rule 23(a), the plaintiffs must show that: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative

parties will fairly and adequately protect the interests of the class."Fed.R.Civ.P. 23(a). To certify a class under Rule 23(b)(3), as Plaintiffs seek to do here, the plaintiffs must also show that: (5) "questions of law or fact common to class members predominate over any questions affecting only individual members," and (6) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."Fed.R.Civ.P. 23(b)(3). These requirements are often referred to, respectively, as numerosity, commonality, typicality, adequacy, predominance, and superiority.

The Court must conduct a "rigorous analysis" to confirm that the Rule 23 standard is met. *See Gen. Tel. Co. of the Sw. v. Falcon,* 457 U.S. 147, 161, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982); *Conn. Ret. Plans & Trust Funds v. Amgen Inc.,* 660 F.3d 1170, 1175 (9th Cir.2011); *Zinser v. Accufix Rsch. Inst., Inc.,* 253 F.3d 1180, 1186 (9th Cir.2001). As the Supreme Court has explained: "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule-that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc."*Wal–Mart Stores, Inc. v. Dukes,* ––– U.S. ––––, ––––, 131 S.Ct. 2541, 2551, 180 L.Ed.2d 374 (2011). The Court must "pay 'undiluted, even heightened, attention' to class certification requirements in a settlement context."*Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1019 (9th Cir.1998) (quoting *Amchem Prods.,* 521 U.S. at 620).

***6** Before a class is certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."Fed.R.Civ.P. 23(c)(2)(B).

ii. Numerosity

The numerosity requirement is satisfied if the class is "so numerous that joinder of all members is impracticable."Fed.R.Civ.P. 23(a)(1). There is no bright-line test for numerosity-rather, it is based on a consideration of the specific facts of each case. *See Gen. Tel. Co. of the Nw., Inc. v. EEOC,* 446 U.S. 318, 330, 100 S.Ct. 1698, 64 L.Ed.2d 319 (1980). However, courts have generally presumed numerosity when there are at least forty members in the proposed class. *See Charlebois v. Angels Baseball, LP,* No. SACV 10–0853 DOC (ANx), 2011 WL 2610122, at *4 (C.D. Cal. June 30, 2011); *Alba v. Papa John's USA, Inc.,* No. CV 05–7487 GAF (CTx), 2007 WL 953849, at *5–6 (C.D.Cal. Feb.7, 2007); *see also Jordan v. Cnty. of Los Angeles,* 669 F.2d 1311, 1319 (9th Cir.1982)*vacated on other grounds,*459 U.S. 810, 103 S.Ct. 35, 74 L.Ed.2d 48 (1982).

In this case, the parties have identified well over 120,000 Class members. *See Cooper Decl.* ¶¶ 3–4. More than 1,400 individuals have filed claims. The numerosity requirement has plainly been met.

iii. Commonality

To fulfill the commonality element of Rule 23(a)(2), Plaintiffs must establish that there are questions of law or fact common to the Class as a whole. *See*Fed.R.Civ.P. 23(a)(2). To meet this burden, Plaintiffs must show that the Class members' claims "depend upon a common contention" that is "capable of classwide resolution-which means that the determination of its truth or falsity will resolve an issue that is central to the validity of each one of its claims in one stroke."*Dukes,* 131 S.Ct. at 2551;*see Mazza v. Am. Honda Motor Co., Inc.,* 666 F.3d 581, 588–89 (9th Cir.2012) (quoting *Dukes,* 131 S.Ct. at 2551). The Ninth Circuit has construed Rule 23(a)(2) permissively and noted that the "existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class."*Hanlon,* 150 F.3d at 1019. In fact, "even a single common question" may satisfy Rule 23(a)(2).*See Dukes,* 131 S.Ct. at 2556.

Here, there are many common questions of law and fact, including: (1) whether the CVTs used in the Class Vehicles were prone to premature failure; (2) whether BMW knew or should have known that those CVTs were prone to premature failure; (3) whether BMW had a duty to disclose that the CVTs were prone to premature failure; (4) whether BMW breached that duty; and (5) whether BMW actively concealed a defect in the CVTs from consumers. *See ACAC* ¶ 127. These common questions are sufficient to satisfy the commonality requirement.

v. Typicality

Plaintiffs seeking to represent a class must establish that their claims are typical of the class. Fed.R.Civ.P. 23(a)(3)."[R]epresentative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical."*Hanlon,* 150 F.3d at 1020 (citation omitted)."The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named

plaintiffs, and whether other class members have been injured by the same course of conduct.' " *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.1992) (citation omitted).

***7** Here, the Class Representatives' claims are essentially identical to those of the Class members as a whole. All members of the Class, including the Class Representatives, are asserting claims based their purchases or leases of Class Vehicles, the alleged defect in the Class Vehicles' CVTs, and BMW's failure to disclose that alleged defect to consumers. *See ACAC* ¶¶ 6–12, 48–111. Thus, the Court finds that the typicality requirement is satisfied.

v. Adequacy of Class Representatives

Plaintiffs seeking to represent a class must also show that they will "fairly and adequately protect the interests of the class."Fed.R.Civ.P. 23(a)(4)."The proper resolution of this issue requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?"*In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir.2000) (citation omitted).

There do not appear to be any conflicts of interest between the Class Representatives and the Class as a whole. As the Supreme Court has noted, the commonality, typicality, and adequacy requirements of Rule 23(a) "tend to merge." *Dukes*, 131 S.Ct. at 2551 n. 5. Here, because the claims of the Class are based almost entirely on common issues of law and fact, and because the Class Representatives' claims are typical of the Class, the Class Representatives' interests appear to be closely aligned with those of the absent Class members.

Further, the Court notes that at least one of the Class Representatives could claim each form of relief available under the proposed settlement: Plaintiff Ferrer had his CVT replaced at a MINI dealership, *see Ferrer Decl.*¶¶ 5–6; Plaintiffs Bailey and Hare had their CVTs replaced at third-party facilities, *see ACAC* ¶ 108; *Bailey Decl.* ¶ 6; *Hare Decl.* ¶¶ 6–7; and Plaintiff Aarons sold his Class Vehicle due to a CVT failure, *see Aarons Decl.* ¶ 4. Plaintiff Bonomo states that he paid to have his CVT repaired, but it is unclear whether those repairs were carried out through a BMW/MINI dealership or a third party facility. *See Bonomo Decl.* ¶ 2. It appears that the other Class Representatives have not replaced or repaired their CVTs, but may seek future repairs or replacements through BMW/MINI dealerships. *See Kollmer Decl.* ¶ 7 (stating only that Plaintiff Kollmer had her transmission fluid serviced by a third-party repair facility); *Limon Decl.* ¶ 4 (stating only that Plaintiff Limon's vehicle was diagnosed with a CVT failure); *Bourne–Miller Decl.* ¶ 9 (stating that Plaintiff Bourne–Miller's vehicle has not been repaired); *Pugliese Decl.* ¶ 6 (stating that Plaintiff Pugliese's vehicle is inoperable). This diversity among the Class Representatives provides additional confirmation that the Representatives had strong incentives to represent the interests of all Class members.

***8** The Court is also satisfied that the Class Representatives, together with Class Counsel, have vigorously prosecuted this lawsuit. Plaintiffs conducted a significant pre-filing investigation, litigated this case through a motion to dismiss, and engaged in substantial discovery before reaching the proposed settlement. As part of those efforts, the Class Representatives have assisted Class Counsel with the development of this case; gathered potential evidence; reviewed pleadings, court filings, and correspondence with BMW; participated in settlement discussions; and evaluated the proposed settlement. *See Aarons Decl.* ¶¶ 6–8, 11–13; *Bailey Decl.* ¶¶ 11–12; *Limon Decl.* ¶¶ 7–12; *Kollmer Decl.* ¶ 9; *Pugliese Decl.* ¶ 11–12; *Hare Decl.* ¶¶ 12–13; *Ferrer Decl.* ¶¶ 11–12; *Bourne–Miller Decl.* ¶¶ 14–15; *Bonomo Decl.* ¶¶ 5–7.

The Court finds that the Class Representatives can fairly and adequately protect the interests of the Class.

vi. Adequacy of Class Counsel

The adequacy of class counsel is governed by Rule 23(g). Pursuant to that Rule, the Court must consider: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class."Fed.R.Civ.P. 23(g)(1)(A). The Court may also consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class."Fed.R.Civ.P. 23(g)(1) (B). Finally, "[c]lass counsel must fairly and adequately represent the interests of the class."Fed.R.Civ.P. 23(g)(4).

Class Counsel have done a considerable amount of work to develop Plaintiffs' claims in this case, and have committed significant resources to this matter. *See Tellis Decl.* ¶¶ 10–15, 22–23; *Harke Decl.* ¶¶ 6–9; *Esensten Decl.* ¶¶ 4–18; *Shahian Decl.* ¶¶ 10; *Mendelsohn Decl.* ¶¶ 6–17; *Lurie Decl.*

¶¶ 6–7; *Mullins Decl.* ¶¶ 2–3; *Caplan Decl.* ¶ 3; *Blood Decl.* ¶¶ 3–4. Class Counsel have also submitted declarations and firm resumes detailing their extensive experience with class action and complex litigation, including significant trial experience. *See Tellis Decl.*, Ex. 4; *Harke Decl.*, Ex. A; *Shub Decl.*, Ex. 2; *Meneses Decl.* ¶¶ 2–4; *Shahian Decl.* ¶¶ 3–8, 11–12; *Mendelsohn Decl.* ¶¶ 3–5 & Ex. A; *Lurie Decl.* ¶¶ 2–4; *Mullins Decl.* ¶¶ 5– & Ex. A; *Caplan Decl.*, Ex. A; *Blood Decl.*, Ex. A. Based on the documents submitted by Class Counsel and the Court's own observation of their work throughout the litigation of this case, the Court concludes that Class Counsel can fairly and adequately represent the interests of the Class.

vii. Predominance

***9** Plaintiffs attempting to certify a class under Rule 23(b)(3) must show that common issues of law or fact predominate over questions affecting only individual class members. Fed.R.Civ.P. 23(b)(3). The predominance test assesses "whether proposed classes are sufficiently cohesive to warrant adjudication by representation .... [and] focuses on the relationship between the common and individual issues. 'When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is a clear justification for handling the dispute on a representative rather than on an individual basis.' " *Hanlon,* 150 F.3d at 1022 (citation omitted).

As explained above, all claims in this case are based on the CVT used in the Class Vehicles. As a result, the material factual issues are common to the entire Class. Although individual damages will vary, "[t]he amount of damages is *invariably* an individual question and does not defeat class action treatment."*Blackie v. Barrack,* 524 F.2d 891, 905 (9th Cir.1975) (emphasis added). The legal issues raised by Class members' claims are also common, and any slight variations between state laws do not preclude certification under Rule 23(b)(3).*See Hanlon,* 150 F.3d at 1022–23. Accordingly, the Court finds that the predominance requirement is satisfied.

viii. Superiority

Finally, Plaintiffs must show that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."Fed.R.Civ.P. 23(b)(3). Because Plaintiffs are seeking certification only for the purposes of settlement, the Court is not required to consider whether a trial of this case would be manageable. *See Amchem Prods.,* 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial.") (internal citation omitted).

The alternative to a class action-individualized cases-would be inefficient, costly, and unwieldy. To adjudicate claims individually, the Court would be required to hear thousands of individual cases. Moreover, the cost and difficulty of litigation might dissuade many Class members from seeking redress in the first place. Consequently, the Court finds that the superiority requirement is met.

ix. Notice

The Court approved a notice of this class action and proposed settlement in its Order granting preliminary approval of the settlement. *See August 5, 2013 Order* ¶ 6 & Ex. A. The Claims Administrator distributed that notice to approximately 124,000 Class members identified from BMW's records, and established an Interactive Voice Response system and website to distribute information about the proposed settlement. *See Cooper Decl.* ¶¶ 5–7. Accordingly, the Court finds that the Class has received notice, as required by Rule 23(c)(2)(B).

x. Conclusion

***10** For the reasons above, Plaintiffs' motion for class certification is GRANTED, for the purposes of settlement only.

B. *Final Approval of the Class Settlement*

i. Legal Standard

A court may approve a class action settlement "only after a hearing and on finding that [the settlement] is fair, reasonable, and adequate."Fed.R.Civ.P. 23(e)(2). In determining whether a settlement is fair, reasonable, and adequate, the district court must "balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement."*Hanlon,* 150 F.3d at 1026;*see Staton,* 327 F.3d at 959;*see also Officers for Justice v. Civil Serv. Comm'n of San Francisco,* 688 F.2d 615,

625 (9th Cir.1982) (noting that the list of factors is "by no means an exhaustive list of relevant considerations").

The Court must approve or reject the settlement as a whole. *See Hanlon,* 150 F.3d at 1026 ("It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness."). The Court may not delete, modify, or rewrite particular provisions of the settlement. *Id.* The Court must recognize that the settlement "is the offspring of compromise[,][and] the question ... is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion."*Id.* at 1027.

The Ninth Circuit has held that a settlement reached before formal class certification is measured against a higher standard of fairness. *See id.* at 1026.("The dangers of collusion between class counsel and the defendant, as well as the need for additional protections when the settlement is not negotiated by a court-designated class representative, weigh in favor of a more probing inquiry than may normally be required under Rule 23(e).").

Many courts have presumed that settlements arrived at through arm's length negotiations are fair and reasonable. *See, e.g., Ross v. Trex Co., Inc.,* No. 09–cv–00670–JSW, 2013 WL 6622919, at *3 (N.D.Cal. Dec.16, 2013); *Fernandez v. Victoria Secret Stores, LLC,* No. CV 06–04149 MMM (SHx), 2008 WL 8150856, at *4 (C.D.Cal. July 21, 2008). In light of the Ninth Circuit's warning in *Hanlon,* the Court will not apply any such presumption here. However, the Court will consider the arm's length nature of the settlement negotiations in its analysis.

ii. Strength ofPlaintiffs' Case

Plaintiffs maintain that they have strong claims, and believe that they would prevail at trial. *See Mem.* 19:8–19:10. However, Plaintiffs also recognize several potential weaknesses in their case. BMW has argued that its CVT systems are not defective, that Plaintiffs' CVTs have failed for a variety of reasons-including individualized maintenance issues-and that BMW did not have a uniform duty to disclose a defect during the class period because it did not have knowledge of a defect. BMW could also argue that many of Plaintiffs' claims are barred by the statute of limitations, given that the Class includes vehicles that were almost a decade old when this lawsuit was filed and that many Class Vehicle owners had publicly reported problems with their CVTs to the NHTSA and on the Internet. In the absence of a settlement, it is very likely that this case could ultimately be decided at trial by a "battle of the experts" over the existence of a safety-related defect and causation. Such battles are inherently risky. In addition, taking those issues to trial might be more challenging for Plaintiffs than for BMW, given complex technical nature of the CVT system.

***11** After reviewing the parties' *in camera* filings discussing their views of the merits of this case, and for the reasons noted above, the Court concludes that this factor weighs in favor of approval of the settlement.

ii. Risk, Expense, Complexity, and Duration of Further Litigation

Plaintiffs would face significant risks and expenses if this case were to proceed. Plaintiffs would have to persuade the Court that it would be appropriate to certify a class for litigation, and would likely face a substantial motion for summary judgment. Ultimately, Plaintiffs would have to overcome the testimony of BMW's experts and BMW's potentially significant defenses at trial. Finally, even if Plaintiffs were able to establish liability, they might have difficulty adequately establishing monetary damages on a class-wide basis.

Aggressively litigating class certification, fending off summary judgment, and taking this case to trial would consume significant time and resources. Moreover, there is a considerable risk that Plaintiffs would come away from this case empty-handed. In light of the "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned,"*Linney v. Cellular Alaska P'ship,* 151 F.3d 1234, 1238 (9th Cir.1998), the Court find that this factor weighs in favor of approval of the settlement.

iv. Risk of Maintaining Class Action Status Through Trial

Plaintiffs recognize that they would face significant risks in attempting to certify a litigation class for trial, and would bear the risk of defending certification through trial. Among other things, BMW's argument that CVTs fail for a number of individualized reasons could pose a continuing threat to certification. If the Court determined that decertification was appropriate, absent Class members could very well lose any realistic chance of obtaining a recovery from BMW. Accordingly, the Court finds that this factor weighs in favor of approval of the settlement.

iv. Amount Offered in Settlement

"[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.' " *Officers for Justice*, 688 F.2d at 624 (citations omitted). In that vein, the Ninth Circuit has explained that "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id* . at 625 (citations omitted). Rather, any analysis of a fair settlement amount must account for the risks of further litigation and trial, as well as the expenses and delay associated with continued litigation.

The proposed settlement offers considerable benefits for Class members. Owners and lessees of Class Vehicles who paid to replace or repair faulty CVTs are eligible for thousands of dollars in reimbursements. At the high end, a Class member whose CVT failed and was replaced or repaired within less than four years and 50,000 miles would be eligible for a 100% reimbursement if she obtained a replacement or repair at a BMW/MINI dealership, and a 100% reimbursement for any out-of pocket expenses up to $4,100 if she obtained a replacement or repair from a third party. *See Settlement Agreement* III.A–III.B. In the middle range, a Class member whose CVT failed and was replaced or repaired within six years and 100,000 miles would be eligible for a 37.5% reimbursement valued at between $3,375 and $2,250. *See id.;ACAC* ¶ 8. Even at the low end, a Class member whose CVT failed and was replaced or repaired within eight years and 150,000 miles would be eligible for a 12.5% reimbursement valued at between $1,125 and $750. *See Settlement Agreement* III.A–III.B; *ACAC* ¶ 8. Class members who had their vehicles repaired at BMW or MINI dealerships would receive the added benefit of a 3 year/50,000 mile parts warranty, inclusive of labor costs. *See Settlement Agreement* III.D.

***12** The settlement's provisions for Class members who sold their vehicles due to CVT failures are also substantial, as are the settlement's provisions for Class Vehicles whose CVTs fail in the future. *See id.*III.A., III.F. Colin Johns, a forensic accountant retained by Class Counsel, has estimated the value of the future benefits offered by the settlement at approximately $5.19 million. *See Johns Decl.* ¶ 3.

The Court is not persuaded that the vehicle age limitations set out in the settlement render the settlement unfair. Age and mileage limitations are common in automotive defect cases, and reflect manufacturers' strong arguments that vehicles ordinarily fail after a number of years or miles due to wear and tear. *See, e.g.*, *Henderson v. Volvo Cars of N. Am.*, No. 09–4146(CCC), 2013 WL 1192479, at *8–9 (D.N.J. Mar.22, 2013) (overruling objections to 8 year/100,000 mile cap for reimbursements in case alleging an automobile transmission defect); *Milligan v. Toyota Motor Sales, U .S.A., Inc.*, No. C 09–05418 RS, 2012 WL 10277179, at *7 (N.D.Cal. Jan.6, 2012) (overruling objections to 10 year/150,000 mile cap for reimbursements in case alleging an automobile transmission defect).

The Court is also not moved by the objections to the reimbursement rates provided by the settlement, or by the objections that BMW should be required to recall and repair all affected Class Vehicles. The Court is conscious that the settlement will not make most Class members completely whole. But that is the nature of a settlement. BMW denies any liability, but will nonetheless pay millions of dollars to Class members. In turn, the Class members will discount their claims to obtain a certain and timely recovery, rather than bear the significant risk and delay associated with further litigation.

With respect to Jaremus's objection to the $4,000 eligibility limit for vehicles sold as a result of CVT failures, the Court is persuaded by Class Counsel's explanation that the "parties had to agree on a threshold sales amount which would account for the fact that it was the CVT failure, and not other issues, that impacted the sales price of the vehicle."*Reply* 6:16–6:26. Such cut-offs are by their nature somewhat arbitrary in the sense that they do not account for the individualized circumstances associated with each vehicle. However, given that the cut-off here was the product of arm's length negotiations between BMW and experienced Class Counsel, the Court is not convinced that it is unfair, unreasonable, or inadequate.

The Court also does not believe that the "first come, first served" method of allocating the $4,100 reimbursement budget for each Class Vehicle is unfair or unreasonable. The "first come, first served" policy principally means that if a Class member has claims for multiple replacements or repairs, his claims will be paid in the order they were submitted. It could also mean that if a Class vehicle had more than one owner during the relevant time period, the Class member who filed the first claim might deplete the reimbursement budget allotted to the vehicle. However, the

Court does not see a reason why that approach, which rewards diligent claimants, is necessarily unfair.

***13** Finally, the Court is not persuaded by objections that the settlement does not compensate owners who did not repair or replace their CVTs, and did not sell their vehicles. Owners or lessors who have not paid to fix their CVTs and who have not sold their vehicles would likely find it difficult to prove their damages without resorting to speculation. *See Milligan,* 2012 WL 10277179, at *7 (overruling objections that a settlement was limited to "reimbursement for repairs paid for out-of-pocket," and noting that "diminution in value cases face significant obstacles regarding proof"). To the extent those individuals believe the settlement is unfair, they could have opted out of the Class.

After considering all of the objections and the provisions of the settlement, the Court is persuaded that this factor weighs in favor of approval of the settlement. The objections to the settlement are overruled.

vi. Extent of Discovery and Stage of the Proceedings

This factor requires the Court to gauge whether Plaintiffs have sufficient information to make an informed decision about the merits of their case. *See In re Mego Fin. Corp. Sec. Litig.,* 213 F.3d at 459. The more discovery has been completed, the more likely it is that the parties have "a clear view of the strengths and weaknesses of their cases."*Young v. Polo Retail, LLC,* No. C–02–4546 VRW, 2007 WL 951821, at *4 (N.D.Cal. Mar.28, 2007) (internal quotation marks and citation omitted).

Class Counsel state that they have engaged in "an extensive investigation" that included "discovery, review and analysis of certain documents and data produced by BMW and consulting with automotive engineering experts."*Mem.* 22:12–12:16. Plaintiffs also engaged in substantial written discovery in both this case and *Bourne–Miller*.*See Tellis Decl.* ¶¶ 11–15. Based on Class Counsel's description of their investigation into this case, the Court is satisfied that Plaintiffs can make an informed decision about their position. Accordingly, the Court finds that this factor weighs in favor of approval of the settlement.

vii. Experience and Views of Counsel

The recommendations of Plaintiffs' counsel are given a presumption of reasonableness. *See, e.g., In re Omnivision Techs., Inc.,* 559 F.Supp.2d 1036, 1043 (N.D.Cal.2008) (citation omitted)."Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation."*In re Pac. Enter. Sec. Litig.,* 47 F.3d 373, 378 (9th Cir.1995).

Here, as noted above, Class Counsel have considerable experience in class action litigation. Armed with a fully informed view of this case, Class Counsel recommend approval of the settlement. *See Tellis Decl.* ¶ 35. Accordingly, the Court finds that this factor weighs in favor of approval of the settlement.

viii. Presence of a Governmental Participant

This factor is neutral, as no government entities are participating in this case. However, the Court observes that a notice of the settlement was provided to federal and state government officials. *See Kizirian Decl.* ¶¶ 2–3. None have objected.

ix. Reaction of Class Members

***14** Fourteen individuals opted out of the Class, and nine Class members objected to the settlement. *See Tellis Reply Decl.* ¶ 3. More than 1,400 individuals, on the other hand, have filed Class claims. This highly positive response to the settlement strongly suggests that the Class finds the settlement to be fair, reasonable, and adequate. *See, e.g., Hanlon,* 150 F.3d at 1027 ("[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness."). Moreover, the Court is not persuaded by any of the objections that the settlement is unfair. Accordingly, the Court finds that this factor weighs in favor of approval of the settlement.

x. Conclusion

Seven of the relevant factors weigh in favor of approval of the settlement. *See id.* at 1026.One factor, the presence of a government participant, is neutral. *See id.*After considering all of the submissions before the Court, including the objections, the Court finds that the settlement is fair, reasonable and adequate. Final approval of the settlement is GRANTED.

C. *Attorneys' Fees and Costs*

i. Legal Standard

Awards of attorneys' fees in class action cases are governed by Federal Rule of Civil Procedure 23(h), which provides that after a class has been certified, the Court may award reasonable attorneys' fees and nontaxable costs as authorized by law. The Court "must carefully assess" the reasonableness of the fee award. *See Staton,* 327 F.3d at 963;*see also Browne v. Am. Honda Motor Co., Inc.*, No. CV 09–06750 MMM (DTBx), 2010 WL 9499073, at *3–5 (C.D.Cal. Oct.5, 2010) (explaining that in a class action case, the court must scrutinize a request for fees when the defendant has agreed not to oppose a certain fee request as part of a settlement).

Class Counsel seek attorneys' fees and costs under the fee-shifting provisions of the CLRA and California's Private Attorney General statute. *See Fees Mem.* 4:19–7:17. The CLRA provides that "[t]he court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section."Cal. Civ.Code § 1780(e). The Private Attorney General statute provides that:

> [A] court may award attorney's fees to a successful party ... in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.

Cal.Code Civ. Proc. § 1021.5. The Court finds that both statutes are applicable here. The settlement discussed above is favorable for the Class, and constitutes a victory for Class members. As a result, the CLRA mandates an award of fees and costs. *See Milligan*, 2012 WL 10277179, at *8–9 (awarding fees and costs under the CLRA following a favorable class action settlement); *Parkinson v. Hyundai Motor Am.*, 796 F.Supp.2d 1160, 1170–71 (C.D.Cal.2010) (same). An award is also justified under the Private Attorney General statute. Class Counsel advanced the public interest by enforcing consumer protection laws, and obtained significant benefits for more than 1,400 members of the Class. The necessity and financial burden of private enforcement weigh in favor of an award, as an individual seeking compensation for a $6,000–$9,000 repair could not reasonably be expected to litigate against BMW's substantial resources and defenses. And in the interest of justice, a fee award should not be paid out of the Class members' recovery. *See Parkinson*, 796 F.Supp.2d at 1171.

***15** Because Class Counsel are seeking fees and costs under California statutes, California law applies to their request. *See Mangold v. Cal. Pub. Util. Comm'n*, 67 F.3d 1470, 1478–79 (9th Cir.1995)."[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e. the number of hours reasonably expended multiplied by the reasonable hourly rate."*PLCM Grp. v. Drexler*, 22 Cal.4th 1084, 1095, 95 Cal.Rptr.2d 198, 997 P.2d 511 (2000).

"The reasonable hourly rate is that prevailing in the community for similar work."*Id.* (citations omitted); *see Building a Better Redondo, Inc. v. City of Redondo Beach*, 203 Cal.App.4th 852, 870, 137 Cal.Rptr.3d 622 (2012); *accord Gonzalez v. City of Maywood*, 729 F.3d 1196, 1200 (9th Cir.2013) ("[T]he court must compute the fee award using an hourly rate that is based on the 'prevailing market rates in the relevant community.'") (citation omitted); *Viveros v. Donahoe*, CV 10–08593 MMM (Ex), 2013 WL 1224848, at *2 (C.D.Cal.2013) ("The court determines a reasonable hourly rate by looking to the prevailing market rate in the community for comparable services."). The relevant community is the community in which the court sits. *See Schwarz v. Sec. of Health & Human Servs.*, 73 F.3d 895, 906 (9th Cir.1995). The burden is on the applicant to show that its requested rates are reasonable. *See ComputerXpress, Inc. v. Jackson*, 93 Cal.App.4th 993, 1020, 113 Cal.Rptr.2d 625 (2001); *accord Gonzalez*, 729 F.3d at 1206 ("Importantly, the fee applicant has the burden of producing 'satisfactory evidence' that the rates he requests meet these standards."). If an applicant fails to meet its burden, the Court may exercise its discretion to determine reasonable hourly rates based on its experience and knowledge of prevailing rates in the community. *See, e.g., Viveros*, 2013 WL 1224848, at *2;*Ashendorf & Assocs. v. SMI–Hyundai Corp.*, CV 11–02398 ODW (PLAx), 2011 WL 3021533, at *3 (C.D.Cal. July 21, 2011); *Bademyan v. Receivable Mgmt. Servs. Corp.*, CV 08–00519 MMM (RZx), 2009 WL 605789, at *5 (C.D.Cal. Mar. 9, 2009).

With regard to the hours expended, "an attorney fee award should ordinarily include compensation for all the hours reasonably spent, including those relating solely to the fee."*See Ketchum v. Moses*, 24 Cal.4th 1122, 1133, 104 Cal.Rptr.2d 377, 17 P.3d 735 (2001) (citation omitted).

However, inefficient or unnecessarily duplicative efforts do not merit compensation.*Id.* at 1132, 104 Cal.Rptr.2d 377, 17 P.3d 735 (citation omitted); *accord Costa v. Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132, 1135 (9th Cir.2012) (noting that "hours that are excessive, redundant, or otherwise unnecessary" should be excluded).

After calculating an appropriate lodestar, the court may, but is not required to, adjust the award in light of a number of factors to "fix the fee at the fair market value for the legal services provided."*PLCM Grp.*, 22 Cal.4th at 1095, 95 Cal.Rptr.2d 198, 997 P.2d 511 (quoting *Serrano v. Priest*, 20 Cal.3d 25, 49, 141 Cal.Rptr. 315, 569 P.2d 1303 (1977) (en banc)). When considering a lodestar adjustment, the relevant considerations include: "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award."*Ketchum*, 24 Cal.4th at 1132, 104 Cal.Rptr.2d 377, 17 P.3d 735.

ii. Hourly Rates

***16** Class Counsel's requested hourly rates are summarized in the table below.

Firm	Partners/ Counsel	Associates/ Junior Counsel	Paralegals	Admin. Assistants
Baron & Budd, P.C.	$775–$630	$390	$95	N/A
Harke Clasby & Bushman LLP	$500–$450	$250	$120	N/A
Wasserman Comden Cassselman & Esensten LLP	$750–$670	$500–$335	$180	$150
Seeger Weiss LLP	$750	$595	$215	N/A
Initiative Legal Group APC	$665–$520	$395–$300	N/A	N/A
Strategic Legal Practices, APC	$590–$545	$325	N/A	N/A
Mazie Slater Katz & Freeman LLC	$650–$535	N/A	N/A	N/A
Capstone Law APC	$675	$550–$300	N/A	N/A
Astigarraga Davis Mullins & Grossman, P.A.	$460–$320	$240	$125	N/ A
Lawrence A. Caplan, P.A.	$400	N/A	N/A	N/A
Blood Hurst & O'Reardon LLP	695–$510	N/A	N/A	N/A

Tellis Decl., Ex. 6; *Harke Decl.*, Ex. B; *Esensten Decl.*, Ex. 1; *Shub Decl.*, Ex. 1; *Meneses Decl.*, Ex. A; *Shahian Decl.*, Ex. 1; *Mendelsohn Decl.*, Ex. C; *Lurie Decl.* ¶ 5; *Mullins Decl.* ¶ 8; *Caplan Decl.*, Ex. B; *Blood Decl.* ¶ 6.

The Court has reviewed Class Counsel's submissions regarding the experience and qualifications of the attorneys who worked on this case. After considering Class Counsel's statements regarding market rates for plaintiffs' class action attorneys, *see, e.g.*, *Tellis Decl.* ¶¶ 62–64, a nationwide survey of law firm billing rates, *see Meneses Decl.*, Ex. B, and the Court's own experience with hourly rates in the Los Angeles area, the Court is satisfied that those requested rates are reasonable.

The Court also finds, based on its experience, that most of the hourly rates requested for paralegals are reasonable. However, the Court will adjust the paralegal rates requested by Wasserman Comden Casselman & Esensten LLP and Seeger Weiss LLP to $125.

The Court declines to award any fees based on the work of administrative assistants. Time spent on clerical or secretarial tasks is excluded in lodestar analyses, because it is considered part of a firm's overhead. *See Browne*, 2010 WL 9499073, at *8. Wasserman Comden Casselman & Esensten LLP-the only firm that has requested fees based on the work of an administrative assistant-has not made any showing that its billed administrative assistant performed substantive case-related work that might be recoverable, as opposed to clerical work. *See Esensten Decl.*

iii. Hours Expended

The hours billed by Class Counsel are summarized as follows:

Pre-filing Investigation	658.5
Post-filing Investigation and Discovery	765.2
Legal Research	302.4
Document Review	202.7
Discovery Motion Practice	396.2
Mediation	614.45
Preparation of Settlement Agreement	359.95
Preparation of Settlement Motions and Related Documents	365.55
Post–Settlement Communications with Claims Administrator and Class	109.9
Non–Discovery Motion Practice	898.35
Total	**4,673.2**

***17** *Pl. Conf. Mem.* 12:3–13:3; *Tellis Supp. Decl.* ¶ 3; *Lurie Supp. Decl.* ¶ 2.

The Court has reviewed the discussion of Class Counsel's work submitted to the Court *in camera*. *See Pl. Conf. Mem.* Based on that narrative and the Court's own experience, as well as Class Counsel's decision to unilaterally reduce their collective lodestar by 10%, *see Tellis Decl.* ¶ 51, the Court finds that the hours expended by Class Counsel are reasonable. The Court also notes that Class Counsel's billings compare favorably with amounts that have been approved in similar cases. For example, in *Browne v. American Honda Motor Co.*-a lawsuit which involved less technologically complex allegations concerning premature wear in brake pads, and which did not involve any consolidated cases-the court approved a fee based on 2,749.37 hours of attorney and paralegal time, and 460.7 hours of substantive, non-clerical work performed by support staff. *See Browne*, 2010 WL 9499073, at *8, 10. Given that this case arose out of five independently-filed suits-two of which faced motions to dismiss-alleged a technically complex alleged defect, and was litigated over the course of over two and half years, the Court is satisfied that the time spent by Class Counsel was reasonable.

iv. Lodestar Calculation and Adjustment

Based on the rates and hours above, Class Counsel's total base lodestar is $2,235,243.25.

	Rate	Hours	Lodestar
Baron & Budd, P.C.			

Tellis	Partner	$ 775.00	360.8	$ 279,620.00
Pifko	Counsel	$ 630.00	640.1	$ 403,263.00
Mehta	Associate	$ 390.00	138.3	$ 53,937.00
Benavedez	Paralegal	$ 95.00	387.8	$ 36,841.00
Harke Clasby & Bushman LLP				
L. Harke	Partner	$ 500.00	185.9	$ 92,950.00
Engel	Partner	$ 475.00	112.6	$ 53,485.00
Bushman	Partner	$ 450.00	306.6	$ 137,970.00
A. Harke	Partner	$ 450.00	5.8	$ 2,610.00
Peters	Associate	$ 250.00	49.25	$ 12,312.50
Pengel	Paralegal	$ 120.00	10.8	$ 1,296.00
Gonzalez	Paralegal	$ 120.00	1.2	$ 144.00
Wasserman Comden Casselman & Esensten LLP				
Casselman	Partner	$ 750.00	0.5	$ 375.00
Comden	Partner	$ 750.00	0.4	$ 300.00
Harnett	Partner	$ 670.00	22.9	$ 15,343.00
R. Esensten	Partner	$ 750.00	2.6	$ 1,950.00
L. Esensten	Associate	$ 335.00	120.5	$ 40,367.50
Scarlett	Associate	$ 500.00	268.3	$ 134,150.00
Nielsen	Paralegal	$ 125.00	2.3	$ 287.50
Juval	Paralegal	$ 125.00	175.6	$ 21,950.00
House	Paralegal	$ 125.00	6.8	$ 850.00
Seeger Weiss LLP				
Shub	Partner	$ 750.00	259.0	$ 194,250.00
George	Associate	$ 595.00	8.6	$ 5,117.00
Laukaitis	Paralegal	$ 125.00	5.0	$ 625.00
Wickline	Paralegal	$ 125.00	10.4	$ 1,300.00

Griffith	Paralegal	$ 125.00	1.3	$ 162.50
Initiative Legal Group APC				
Balderrama	Partner	$ 665.00	15.9	$ 10,573.50
March	S. Counsel	$ 665.00	11.6	$ 7,714.00
Sokolowski	S. Counsel	$ 520.00	105.9	$ 55,068.00
Hendin	J. Counsel	$ 395.00	147.3	$ 58,183.50
Park	J. Counsel	$ 365.00	122.9	$ 44,858.50
Rivapalacio	J. Counsel	$ 300.00	32.4	$ 9,720.00
Briederwell	J. Counsel	$ 300.00	39.0	$ 11,700.00
Strategic Legal Practices, APC				
Shahian	Partner	$ 590.00	177.1	$ 104,489.00
Yu	S. Counsel	$ 545.00	94.6	$ 51,557.00
Swanson	Associate	$ 325.00	36.0	$ 11,700.00
Mazie Slater Katz & Freeman LLC				
Mendelsohn	Partner	$ 535.00	263.1	$ 140,758.50
Katz	Partner	$ 650.00	5.4	$ 3,510.00
Capstone Law APC				
Lurie	Counsel	$ 675.00	66.0	$ 44,550.00
Wu	Associate	$ 550.00	34.7	$ 19,085.00
Zohdy	Associate	$ 445.00	5.4	$ 2,403.00
Ratanavongse	Associate	$ 395.00	4.2	$ 1,659.00
Hall	Associate	$ 395.00	44.5	$ 17,577.50
Kim	Associate	$ 395.00	9.5	$ 3,752.50
Padgett	Associate	$ 300.00	3.0	$ 900.00
Astigarraga Davis Mullins & Grossman, P.A.				
Mullins	Shareholder	$ 460.00	81.0	$ 37,260.00
LaChuisa	Shareholder	$ 320.00	77.6	$ 24,832.00

Rodriguez	Associate	$ 240.00	4.5	$ 1,080.00
Hernandez	Paralegal	$ 125.00	0.9	$ 112.50
Lawrence A. Caplan, P.A.				
Caplan	Partner	$ 400.00	132.8	$ 53,120.00
Blood Hurst & O'Reardon LLP				
Blood	Partner	$ 695.00	34.75	$ 24,151.25
Hurst	Partner	$ 585.00	5.5	$ 3,217.50
O'Reardon	Partner	$ 510.00	0.5	$ 255.00
Total Base Lodestar				**$ 2,235,243.25**

***18** Class Counsel have unilaterally reduced their base lodestar by 10% to account for any potentially duplicative or unnecessary work. *See Tellis Decl.* ¶ 51. After that adjustment, Class Counsel's lodestar is $2,011.718.93. However, Class Counsel is only moving for a fee award of $1,882,713.76. *See id.;Fees Mem.* 24:6–24:8. That request means that Class Counsel are accepting an additional 6.4% discount, or a negative lodestar modifier of 93.6%.

The Court might ordinarily consider granting an upward lodestar adjustment based on the skill displayed by Class Counsel during the litigation of this case and the contingent nature of Class Counsel's fee. *See Ketchum*, 24 Cal.4th at 1132, 104 Cal.Rptr.2d 377, 17 P.3d 735. However, Class Counsel's conservative request makes the Court's analysis much simpler. The Court is satisfied that Class Counsel's request for $1,882,713.76 in attorneys' fees is reasonable.

v. Costs

Although Class Counsel list costs of $114,854.84, they are only requesting an award of $114,786.24. *See Tellis Decl.* ¶¶ 50–51. The Court has reviewed Class Counsel's costs, and is satisfied that they are reasonable, with one exception.

Wasserman Comden Casselman & Esensten LLP claims a $5,000 litigation fund expense, along with $3,411.60 in other expenses. *See Esensten Decl.*, Ex. 1 at 2. Class Counsel explained at the fairness hearing that Baron & Budd, P.C., Seeger Weiss LLP, and Wasserman Comden Casselman & Esensten LLP each set aside $5,000 for litigation expenses. Neither Baron & Budd, P.C. nor Seeger Weiss LLP listed their litigation fund contributions as separate expense items. *See Tellis Decl.*, Ex. 8; *Shub Decl.*, Ex. 1. The Court assumes that Wasserman Comden Casselman & Esensten LLP expended its litigation fund, but the firm has not explained how those funds were used. As a result, the Court will not compensate Wasserman Comden Casselman & Esensten LLP for its litigation fund expense, and will reduce Class Counsel's award of costs by $5,000, to $109,786.24.

vi. Conclusion

For the reasons above, Class Counsel are awarded $1,882,713.76 in fees and $109,786.24 in costs, for a total of $1,992,500.00.

D. *Incentive Awards*

i. Legal Standard

"Incentive awards are fairly typical in class action cases."*Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir.2009) (citations omitted); *see In re Toys R Us–Delaware, Inc. Fair and Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 470 (C.D.Cal.2014). When considering requests for incentive awards, courts consider five principal factors:

> 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class

> representative; 4) the duration of the litigation[;] and[ ] 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

***19** *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 299 (N.D.Cal.1995). Incentive awards in the range of $5,000 are typical. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 457, 463 (affirming award of $5,000 to class representatives); *In re Toys R Us*, 295 F.R.D. at 470 (granting awards of $5,000 to class representatives); *Faigman v. AT & T Mobility LLC*, No. C06–04622 MHP, 2011 WL 672648, at *5 (N.D.Cal. Feb.16, 2011) (noting that awards of $5,000 are presumptively reasonable in the Northern District of California). Courts may award different fees to representatives based on their different contributions to the case. *See, e.g., Hartless v. Clorox Co.*, 273 F.R.D. 630, 646–47 (S.D.Cal.2011) (awarding $4,000 to one class representative and $2,000 to another, based on their varying degrees of involvement in the case).

The court must ensure that any incentive awards do not create conflicts of interest between the recipients and the class. *See Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1163–64 (9th Cir.2013).

i. Discussion

Class Counsel have requested an incentive award of $3,500 for Plaintiff Aarons and awards of $2,000 each for the other Class Representatives. *See Mem.* 17:18–17:20.

Three of the *Van Vranken* factors weigh in favor of the requested awards: the time and effort expended by the Class Representatives; the duration of the litigation; and the personal benefits to the Class Representatives. *See Van Vranken*, 901 F.Supp. at 299.

"An incentive award is appropriate where the 'class representatives remained fully involved and expended considerable time and energy during the course of the litigation."*In re Toys R Us*, 295 F.R.D. at 471 (internal quotation marks and citation omitted). Plaintiff Aarons was the first Class Representative to bring suit, and has worked closely with Class Counsel since March 2011. *See Aarons Decl.; Tellis Decl.* ¶ 34. Among other things, he has provided documents to Class Counsel; reviewed pleadings and court filings; participated in mediation sessions; visited Class Counsel to discuss the case; and evaluated the proposed settlement. *See Aarons Decl.* ¶¶ 11–13. The other Class Representatives have also contributed significant time and effort, to a somewhat lesser degree. *See Bailey Decl.* ¶¶ 11–12; *Limon Decl.* ¶¶ 7–12; *Kollmer Decl.* ¶ 9; *Pugliese Decl.* ¶ 11–12; *Hare Decl.* ¶¶ 12–13; *Ferrer Decl.* ¶¶ 11–12; *BourneMiller Decl.* ¶¶ 14–15; *Bonomo Decl.* ¶¶ 5–7. Based on the declarations submitted by the Class Representatives, the Court finds that the time and expense contributed by the Class Representatives weighs in favor of the requested incentive awards. The Court also finds that Plaintiff Aarons' more extensive involvement in the case justifies a larger incentive award.

All of the Class Representatives have participated in this litigation for well over a year and a half. Plaintiff Aarons filed his lawsuit over two and a half years ago. *See* Dkt. # 1. Plaintiffs Bailey, Bourne–Miller, Ferrer, Hare, and Pugliese filed the *Bourne–Miller* action soon after. *See Bourne–Miller v. BMW of North America, LLC, et al.*, No. CV 12–9824 PSG (JCx), Dkt. # 1. The plaintiffs in *Limon* and *Kollmer* entered the fray approximately three months later. *See Limon v. BMW of North America, LLC, et al.*, No. SACV 11–1952 PSG (CWx), Dkt. # 1; *Kollmer v. BMW of North America, LLC*, No. CV 11–10444 PSG (CWx), Dkt. # 1. Even the newest plaintiff, Bonomo, has been in litigation for over a year and a half. *See Bonomo v. BMW of North America, LLC*, No. CV 12–9820 PSG (CWx), Dkt. # 1. The duration of the Class Representatives' efforts weighs in favor of the requested awards. *See Van Vranken*, 901 F.Supp. at 299 (finding that a class representative's throughout "many years of litigation" weighed in favor of an award).

***20** Apart from any incentive awards, none of the Class Representatives will receive any benefits beyond those they would receive as ordinary members of the Class. That weighs in favor of an award. *See In re Toys R Us*, 295 F.R.D. 438, 472 ("An incentive award may be appropriate when a class representative will not gain any benefit beyond that he would receive as an ordinary class member.").

The remaining *Van Vranken* factors are neutral. The Court is not persuaded that any of the Class Representatives undertook any particular personal risk in joining this litigation, or were required to bear any notoriety or personal difficulties. *See Van Vranken*, 901 F.Supp. at 299.

The requested incentive awards will not give rise to any conflicts of interest between the Class Representatives and the Class. The requested awards are modest, and Class Counsel

has represented that they are not linked to any conditions. *Cf. Radcliffe,* 715 F.3d at 1163–67 (finding that incentive awards created a conflict when they were conditioned on support for a settlement); *Staton,* 327 F.3d at 975–78 (finding that incentive awards created a conflict when they were disproportionately large).

iii. Conclusion

Based on the factors discussed above, the Court finds that the incentive awards requested for the Class Representatives are warranted and reasonable. The requests are GRANTED.

IV. *Conclusion*

For the reasons above, the motions are GRANTED. The parties are directed to submit a proposed judgment consistent with this Order and Federal Rule of Civil Procedure 23(c)(3)(B) no later than May 12, 2014.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2014 WL 4090564

Footnotes

1 *Aarons, Limon,* and *Kollmer* were filed in this District.*Bourne–Miller* was filed in the District of New Jersey and *Bonomo* was filed in the Southern District of Florida. Both cases were transferred to this Court on November 6, 2012. *See Bourne–Miller, et al. v. BMW of North America, LLC, et al.,* No. CV 12–9824 PSG (JCx), Dkt. # 95; *Bonomo v. BMW of North America, LLC,* No. CV 12–9820 PSG (CWx), Dkt. # 32.