UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

CATHERINE DUFFY, MATTHEW EDLIN, LAWRENCE MULCAHY, PAULA HALL, individually and on behalf of all others similarly situated,	:	Case No. 3:24-cv-388-BJB
Plaintiffs,	:	
v.	:	
MAZDA MOTOR OF AMERICA, INC. d/b/a MAZDA NORTH AMERICAN OPERATIONS and MAZDA MOTOR CORPORATION,	:	CLASS ACTION
Defendants.	:	JURY TRIAL DEMANDED

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

I. INTRODUCTION

On behalf of the Plaintiffs, Class Counsel[1] have diligently prosecuted this matter on a contingency fee basis for over three years. They have filed actions in this Court and in California, and participated in four hard-fought, arm's-length mediation sessions with a retired federal judge. Class Counsel are pleased to report that the result of these efforts is a Settlement that meaningfully addresses the alleged underlying defect in the Mazda Connect infotainment system (the "Defect"). The Settlement extends the warranty for 24 months (and without regard to mileage) for software updates and CMU repairs and replacements on approximately 1.7 million Mazda vehicles. It also creates a "speedy and straightforward process" to reimburse consumers who previously incurred a qualifying out-of-pocket expense. ECF No. 39 at 3.

In view of the many litigation risks faced by Plaintiffs—coupled with the efficiency with which the Settlement was reached—this is an excellent result for the Settlement Class. And because of the number of Settlement Class Vehicles, the Settlement's value is substantial. As discussed below, Plaintiffs' actuarial expert estimates the fair market value of the Limited Warranty Extension ("LWE") component of the Settlement to be at least $32 million. This figure does not account for the fact that Settlement Class Members who previously incurred a covered expense can seek to receive a monetary reimbursement, nor does it include the estimated $2.1 million or more that Mazda is paying for Settlement administration expenses and Class Notice.

Pursuant to Fed. R. Civ. P. 23(h) and under the terms of the Settlement Agreement, Plaintiffs respectfully request that the Court approve a total payment from Mazda of $1,900,000 for their attorneys' fees and reimbursement of litigation costs and expenses ($59,500.31 as of

[1] Unless separately defined herein, capitalized terms shall have the same definition as the defined terms in Section II of the Settlement Agreement. *See* ECF No. 18-1.

today). As discussed below, this request is supported by each of the Sixth Circuit's *Ramey* factors and is reasonable under both the percentage of the recovery methodology (approximately 5.2% of the lower estimated value of the constructive common fund), and the lodestar method (resulting in a modest 1.27 multiplier).

Additionally, Plaintiffs seek Court approval for payment of Class Representative Service Award payments in the amounts of $4,000 for Plaintiff Duffy, and $2,500 for the other three Plaintiffs. These payments will not reduce any benefits available to the Settlement Class Members. For the reasons set forth below, Plaintiffs respectfully request that their motion be granted.

II. PROCEDURAL AND FACTUAL HISTORY[2]

On January 24, 2022, Plaintiff's counsel sent a letter on behalf of Plaintiff Duffy to Mazda's legal department providing Mazda with pre-litigation notice pursuant to the Kentucky Consumer Protection Act, § 367.110 *et seq.* and the Uniform Commercial Code. *See* Declaration of Benjamin F. Johns ("Johns Decl.") at ¶ 5. On December 23, 2022, Plaintiffs filed a case in the Superior Court of California alleging the Defect in the Mazda Connect system. *Duffy, et al. v. Mazda Motor of America, Inc. et al.*, Case No. 30-2022-01298682-CU-BC-CXC (Cal. Super. Ct. Orange Cty.).

After several months of pre-mediation discussions and exchanges of information, the Parties participated in an all-day virtual mediation with Judge Dickran M. Tevrizian (Ret.) of JAMS on January 10, 2023. Johns Decl. at ¶ 7; Declaration of Andrew W. Ferich ("Ferich Decl.") at ¶ 7. The Parties then participated in a second mediation session with Judge Tevrizian on April 25, 2023. *Id*.

In view of the significant progress made at the first two mediation sessions and the need

[2] The Court is familiar with the Parties' Settlement Agreement and the underlying facts of the litigation and Settlement. Plaintiffs address the factual and procedural history of the case only insofar as relevant to the instant motion.

for further confirmatory discovery, the Parties informally agreed to stay the prosecution of the case in California while they continued to negotiate a potential settlement. *Id*. After agreeing to an expanded tolling agreement, Plaintiffs voluntarily dismissed the original California state court complaint without prejudice on May 25, 2023. After many additional months of finalizing the settlement details, in October 2023, the Parties memorialized the material terms of the Settlement in a term sheet. Johns Decl. at ¶ 8; Ferich Decl. at ¶ 8.

At no point prior to reaching a settlement in principle did the Parties discuss or negotiate the issue of Plaintiffs' attorneys' fees, litigation costs and expenses, or Service Awards. Johns Decl. at ¶ 9; Ferich Decl. at ¶ 9. The Parties were unable to reach agreement on these amounts and, accordingly, returned to Judge Tevrizian for a third mediation session on January 16, 2024, and a fourth session on April 30, 2024. *Id*. The Parties reached an agreement on the Service Awards for Plaintiffs during the third mediation session. *Id*. At the conclusion of the fourth mediation session—with the parties still unable to reach agreement on a fee award amount—Judge Tevrizian made a mediator's proposal for attorneys' fees and litigation expenses. The mediator proposal was subsequently accepted by both sides. *Id.*

On June 20, 2024, the Parties executed the Settlement Agreement. Plaintiffs filed a complaint in this Court on June 28, 2024, and then filed their motion for preliminary settlement approval on July 2, 2024. ECF No. 18. The Court held a telephonic hearing on Plaintiffs' motion on February 10, 2025. DN 38. On February 17, 2025, the Court issued an opinion and order granting the motion, certifying the class for settlement purposes, appointing Class Counsel, authorizing the dissemination of notice, and scheduling a Final Approval Hearing. ECF No. 39.

III. OVERVIEW OF THE SETTLEMENT

The Settlement Class is defined as follows:

> All residents of the continental United States, Hawaii, Alaska, and all United States territories who currently own or lease, or previously owned or leased, a Settlement Class Vehicle originally purchased or leased in the continental United States, Hawaii, Alaska, or any United States territory.

Settlement Agreement ("SA") ¶ III.A. The Settlement Class Vehicles include: Mazda2 model years 2016-2022; Mazda3 model years 2014-2018; Mazda6 model years 2016-2021; Mazda CX-3 model years 2016-2021; Mazda CX-5 model years 2016-2020; Mazda CX-9 model years 2016-2020; and Mazda MX-5 model years 2016-2023. SA ¶ II.NN. Confirmatory discovery has borne out that there are nearly 1.7 million Settlement Class Vehicles. Johns Decl. at ¶ 12; Ferich Decl. at ¶ 12.

The two primary components of the Settlement are: (1) the Limited Warranty Extension (LWE"); and (2) a reimbursement program through which Settlement Class Members can seek reimbursement of certain out-of-pocket expenses related to the alleged Defect. All the Settlement Class Vehicles initially come with a three year/36,000-mile New Vehicle Limited Warranty ("NVLW") that provides coverage for the Mazda Connect system. The proposed Settlement essentially extends that warranty by two years (and creates a new two-year warranty for Vehicles with a NVLW that has already expired) (i.e., the LWE).

The LWE covers Mazda Connect software updates and (if recommended by the authorized Mazda Dealership who performs the Update), repair or replacement for the CMU for the Settlement Class Vehicles.[3] SA ¶ IV.B.3; II.Q. The LWE will cover these issues for a period of 24 months beginning on the date the Court enters the Preliminary Approval Order.[4] *Id*. ¶ IV.B.2.

[3] CMU means Connectivity Master Unit. In the Settlement Class Vehicles, the CMU is the hardware component of Mazda Connect.

[4] For the small number of Settlement Class Vehicles that are still within the NVLW at that time, the LWE would be added to and run from the expiration of the still-existing NVLW. In other words, these Settlement Class Members would receive the full benefit of both their NVLW from the manufacturer and the LWE under the Settlement.

Unlike the NVLW, the LWE is not subject to a mileage limitation (*id.*), which is significant because Mazda estimates that most of the Class Vehicles are outside of the NVLW based on either age or mileage (or both). Johns Decl. at ¶ 13; Ferich Decl. at ¶ 13. In other words, the LWE will essentially create new Mazda Connect warranty coverage for the majority of Settlement Class Vehicles that are (or soon will be) outside of the NVLW's durational limitation. All Settlement Class Members will get the benefit of the LWE under the Settlement, and a Settlement Class Member is not required to submit a Claim Form to receive this benefit. SA ¶ IV.B.1. The LWE is fully transferrable to subsequent Vehicle owners. *Id.* ¶ IV.B.4.

In addition to the forward-looking relief provided by the LWE, the Settlement allows Settlement Class Members to submit claims for reimbursement of out-of-pocket expenses incurred prior to preliminary approval for eligible software updates for Mazda Connect, repair and/or replacement of a CMU, or a SD card, or display, or rear-view camera in a Settlement Class Vehicle. SA ¶ IV.C. Settlement Class Members can be reimbursed for these out-of-pocket expenses whether they were incurred at an authorized Mazda dealer or at a third-party repair facility. *Id*. ¶ IV.C.-D.

In exchange for the benefits and consideration provided under the Settlement—and subject to the Court's final approval—Plaintiffs and Settlement Class Members (excluding those who timely and validly opt out) will release any claims against Mazda that were or could have been asserted related to defects alleged in the Mazda Connect system equipped in the Settlement Class Vehicles. SA ¶¶ VII.A-F. The Litigation will also be dismissed with prejudice. *Id*. ¶ VII.A.

The Court has previously appointed JND to serve as Settlement Administrator. ECF No. 39 at 8. All costs of settlement administration and Notice have been and will continue to be paid for by Mazda. SA ¶ V.B. JND has estimated that the cost of doing so will be at least $2,195,985.

This figure could be significantly higher depending on the final number of claims. Johns Decl. at ¶ 17.

IV. ARGUMENT

A. The Court Should Approve the Requested Attorneys' Fees

The Settlement Agreement permits Class Counsel to petition the Court for $1,900,000.00 to cover both the payment of attorneys' fees and reimbursement of litigation costs and expenses. SA ¶ VI.C. Fed. R. Civ. P. 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." "The party requesting fees bears the burden of establishing the reasonableness of the requested award." *Love v. Gannett Co. Inc.*, No. 3:19-CV-296-BJB-RSE, 2021 WL 4352800, at *4 (W.D. Ky. Sept. 24, 2021) (citing *Yellowbook Inc. v. Brandeberry*, 708 F.3d 837, 848 (6th Cir. 2013)). "'A reasonable fee is one that is adequate to attract competent counsel but does not produce windfalls to attorneys.'" *Id.* (quoting *Ross v. Jack Rabbit Servs., LLC,* No. 3:14-CV-44-DJH, 2016 WL 7320890, at *5 (W.D. Ky. Dec. 15, 2016)).

The preliminary issue before the Court is how to ensure that the requested fee is, in fact, reasonable. *See Dick v. Sprint Commc'ns Co. L.P.,* 297 F.R.D. 283, 298 (W.D. Ky. 2014). It does so by "first determin [ing] if the lodestar or percentage approach is more appropriate." *Id.* (citing *In re Cardinal Health Inc. Sec. Litig.,* 528 F.Supp.2d 752, 760 (S.D. Ohio 2007)). "Courts have discretion 'to select the more appropriate method for calculating attorney's fees in light of the unique characteristics of class actions in general, and the unique circumstances of the actual cases before them.'" *Southard v. Newcomb Oil Co., LLC,* No. 3:21-CV-607-DJH-CHL, 2024 WL 4263639, at *3 (W.D. Ky. Sept. 23, 2024) (quoting *In re Flint Water Cases,* 63 F.4th 486, 495 (6th Cir. 2023)). As discussed below, both methods confirm the reasonableness of the fee here.

1. The Requested Fee Amount is Reasonable Under the Percentage of the Recovery Analysis

When a settlement creates a quantifiable common benefit, courts in the Sixth Circuit have developed a preference for using the percentage of benefit method to calculate attorneys' fees because it "is easy to calculate; it establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation." *Rawlings v. Prudential-Bache Properties*, 9 F.3d 513, 516-17 (6th Cir. 1993). "[U]nder the 'percentage of the fund' approach, the Court determines a percentage of the settlement to award the class counsel, applying several case-specific factors." *Dick,* 297 F.R.D. at 298–99 (citing *Rawlings*, 9 F.3d at 516).

The amount awarded is calculated as a percentage "from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). As the Sixth Circuit has explained:

> When conducting a percentage of the fund analysis, courts must calculate the ratio between attorney's fees and benefit to the class. Attorney's fees are the numerator and the denominator is the dollar amount of the Total Benefit to the class (which includes the "benefit to class members," the attorney's fees and may include costs of administration).

Gascho v. Glob. Fitness Holdings, LLC, 822 F.3d 269, 282 (6th Cir. 2016).

In this context, and despite that there is no true common fund here, courts have found that the value of extended warranty coverage is the estimated price that consumers would be expected to pay to acquire similar coverage if such coverage were sold on the market. *See In re Volkswagen & Audi Warranty Extension Litig*., 89 F. Supp. 3d 155, 169 (D. Mass. 2015) ("from a consumer's perspective, a warranty against repair has value even when no repairs are claimed during the period of coverage. The fact of coverage is its own benefit; for a price, a consumer can purchase certainty as to what repairs will cost if they are needed."); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig*., 2013 U.S. Dist. LEXIS 123298 at *234

n.7, 298-99, n.10 (C.D. Cal. July 24, 2013) (valuing warranty "based on the market price of similar extended service contracts offered in the industry"); *In re Sony Corp. SXRD Rear Projection TV Mktg., Sales Practices & Prods. Liab. Litig*., 2010 U.S. Dist. LEXIS 87643, at *27 (S.D.N.Y. Aug. 24, 2010) (extrapolation based on market cost); *O'Keefe v. Mercedes-Benz USA*, *LLC*, 214 F.R.D. 266, 304-305 (E.D. Pa. 2003) (value should "be based on the benefit to the class and not the cost to the defendant").

The LWE has an estimated value of at least $32,426,000. *See* Declaration of Lee Bowron, ACAS, MAAA, at ¶ 4, and Exhibit 2. And, as noted above, the value of settlement administration costs is at least $2,195,985. Johns Decl. at ¶17. Adding the LWE's lower estimated value, the lower end of the estimated claims administration costs, and the requested attorneys' fees and expense award results in a constructive common fund of approximately $36.5 million. The $1.9 million request amounts to approximately 5.2% of this amount. This amount is well within (and far below) those that have been approved by this Court. *Lott v. Louisville Metro Gov't*, No. 3:19-CV-271-RGJ, 2023 WL 2562407, at *4 (W.D. Ky. Mar. 17, 2023) ("30% of the Total Settlement Amount is in the middle of what courts in this district have found to be reasonable using the percentage-of-the-fund method…"); *Dick,* 297 F.R.D. at 299 (24% of common fund was reasonable); *Chambers v. Cont'l Secret Serv. Bureau, Inc.,* No. 3:22-CV-468, 2024 WL 4363161, at *9 (N.D. Ohio Sept. 30, 2024) (". . . courts in this circuit have designated fees ranging from 20 to 50 percent of the common fund as 'reasonable.'") (collecting cases).

2. The Reasonableness of the Requested Fee Amount is Supported by a Lodestar Cross-Check

Plaintiffs' fee and expense request is also supported by the lodestar method. The lodestar amount is calculated by multiplying "'the number of hours reasonably expended on the litigation by a reasonable hourly rate." *Walls v. JPMorgan Chase Bank, N.A.*, No. 3:11-CV-673-DJH, 2016

WL 6078297, at *6 (W.D. Ky. Oct. 14, 2016) (quoting *Gascho*, 822 F.3d at 279). Reasonable hourly rates are determined by "prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). "To arrive at a reasonable hourly rate, courts use as a guideline the prevailing market rate, defined as the rate that lawyers of comparable skill and experience can reasonably expect to command within the venue of the court of record." *Id.* (quoting *Geier v. Sundquist*, 372 F.3d 784, 791 (6th Cir. 2004). "[A] court can also look to 'national markets, an area of specialization, or any other market [it] believe[s] is appropriate to fairly compensate attorneys.'" *Id.* (quoting *Brandenburg v. Cousin Vinny's Pizza, LLC,* No. 3:16-CV-516, 2019 WL 6310376, at *6 (S.D. Ohio Nov. 25, 2019)).

In considering the reasonableness of a fee request in a contingency-fee class action settlement, courts consider how the legal market would have assessed the case's risk at its inception and, in turn, how the market's risk assessment would have affected a hypothetical *ex ante* fee negotiation between counsel and potential client. *See Goodell v. Charter Commc'ns, LLC*, 2010 WL 3259349, at *1 (W.D. Wis. Aug. 17, 2010) ("The question is not how risky the case looks when it is at an end but how the market would have assessed the risks at the outset.").

Over a three-year duration, Plaintiffs' counsel have collectively billed 2018.05 hours, for a total lodestar of $1,501,924.50. These figures are set forth in more detail in the accompanying declarations of counsel.

Counsel's hours spent pursuing the claims and achieving the Settlement are reasonable. As set forth in Class Counsel's declarations, all hours were reasonably and necessarily incurred in pursuit of the claims here. Johns Decl. at ¶ 23; Ferich Decl. at ¶ 22. The declarations of counsel describe in detail the efforts undertaken by counsel's respective firms, and the number of hours spent on the case by each timekeeper. All timekeepers kept contemporaneous time records in six-

minute increments, and Class Counsel reviewed the detailed time of each timekeeper in their respective firms and made appropriate reductions in the exercise of billing discretion to ensure that all time billed was reasonable. *Id*. Further, the current figures do not account for any billable time incurred after the filing of the instant motion, such as drafting, refining, and finalizing the motion for final settlement approval, continued communications with Class Members about the Settlement, coordination with Mazda and the Settlement Administrator regarding settlement administration (e.g., responding to inquiries by Class Members, reviewing Claim Forms, etc.), and preparing for and traveling to the July 28, 2025 Final Approval Hearing in Louisville. Johns Decl. at ¶ 26; Ferich Decl. at ¶ 25; *see Estate of McConnell v. EUBA Corp*., 2021 U.S. Dist. LEXIS 97576, *19 (S.D. Ohio May 24, 2021) ("The Court is aware that Class Counsel's work does not end at final approval. Class Counsel frequently spend additional time, sometimes significant time, dealing with class members' inquiries, administration issues, and other post-approval matters.").

Class Counsels' hourly rates are reasonable, as has been determined repeatedly by courts. Reasonable hourly rates are determined by "prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). "'In ascertaining the proper 'community,' district courts may look to national markets, an area of specialization, or any other market they believe is appropriate to fairly compensate attorneys in individual cases.'" *Amos v. PPG Indus*., 2015 U.S. Dist. LEXIS 106944, at *27-28 (S.D. Ohio Aug. 13, 2015) (citation omitted). Thus, Class Counsel are entitled to the hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *Blum*, 465 U.S. at 895 n.11.

Class Counsel's hourly rates are within the range typically approved in the Sixth Circuit. *See, e.g. Gann v. Nissan*, No. 3:18-cv00966, ECF Nos. 107, 108, 109 (Attorney Declarations) & 130 at ¶ 16 (M.D. Tenn. Mar. 10, 2020) (approving rates as high as $1,000 and $875 per hour in

an automotive defect case against NNA); *Weckwerth v. Nissan*, No. 3:18-cv-00588, ECF Nos. 148, 149, 150, 151, 152 (Attorney Declarations) & 181 at ¶ 17 (M.D. Tenn. Mar. 10, 2020) (approving rates as high as $1,150 and $875 per hour in an automotive defect case against NNA); *Cassell v. Vanderbilt Univ*., No. 162086, ECF No. 174 at 3 (M.D. Tenn. Oct. 22, 2019) (approving a rate of $1,060 per hour for a non-local firm); *In re Auto. Parts Antitrust Litig.,* 2020 U.S. Dist. LEXIS 174177, at *170 (E.D. Mich. Sept. 23, 2020) (approving hourly rates that exceeded $700 for senior attorneys); *Gilbert v. Abercrombie & Fitch, Co.*, Case No. 2:15-cv-2854, 2016 U.S. Dist. LEXIS 103441, at *48 (S.D. Ohio 2016) (approving rates of $850 per hour for firm partners in a stockholder class action case).

Moreover, as class action practitioners, Class Counsels' hourly rates are frequently reviewed and found to be reasonable by courts across the country. *See, e.g., In re Philadelphia Inquirer Data Sec. Litig.*, No. CV 24-2106-KSM, 2025 WL 845118, at *15 (E.D. Pa. Mar. 18, 2025) (finding Shub Johns & Holbrook's billable rates to be reasonable); *In re Onix Grp., LLC Data Breach Litig.*, No. CV 23-2288-KSM, 2024 WL 5107594, at *13 (E.D. Pa. Dec. 13, 2024) (same); *McCullough v. True Health New Mexico, Inc.*, No. D-202-CV-2021-06816 (N.M. 2nd Judicial Dist.) (granting full fee request and approving Ahdoot Wolfson's then-current rates); *In re Zoom Video Commc'ns, Inc. Priv. Litig.*, No. 20-cv-02155-LB, 2022 WL 1593389, at *11 (N.D. Cal. Apr. 21, 2022) (granting final approval, and approving Ahdoot Wolfson's then-current hourly rates)*; Steinhardt, et al. v. Volkswagen Group of America, Inc., et al.*, No. 3:23-cv-02291-RK-RLS (D.N.J. Oct. 8, 2024) (ECF No. 76) (awarding attorneys' fees and reimbursement of costs and expenses at Ahdoot Wolfson's then-current hourly rates of $500 for associates, $850 for partners, and $1,200 for senior partners).

After calculating the lodestar figure, the Court has the discretion to "enhance[e] the lodestar with a separate multiplier" which "can serve as a means to account for the risk an attorney assumes in undertaking a case, the quality of the attorney's work product, and the public benefit achieved." *Love,* 2021 WL 4352800, at *4. Lodestar multiples of 2 to 5 are common in the Sixth Circuit. *See, e.g., Suarez v. Nissan North Am., Inc.*, No. 21-cv-00393 (M.D. Tenn. Dec. 12, 2021) (ECF No. 48) (approving a 2.12 multiplier); *Rawlings*, 9 F.3d at 517 (approving a 2 multiplier); *In re Cardinal Health*, 528 F. Supp. 2d at 767-68 (5.9 multiplier); *City of Plantation Police Officers' Emples. Ret. Sys. v. Jeffries*, 2014 U.S. Dist. LEXIS 178280, at *48 (S.D. Ohio Dec. 29, 2014) (3 multiplier); *In re Se. Milk Antitrust Litig.*, 2013 U.S. Dist. LEXIS 70167, at *20 (E.D. Tenn. May 17, 2013) ("The requested fee represents a lodestar multiplier of 1.90, clearly within, but in the bottom half of, the range of typical lodestar multipliers."); *In re Skechers Toning Shoe Prods. Liab. Litig.,* No. 3:11-MD-2308-TBR, 2013 WL 2010702, at *13 (W.D. Ky. May 13, 2013) (2.14 multiplier).

When awarding a multiplier, courts consider "the nature of the case, the market for such legal services, the risk involved, and the results achieved." *In re Cardinal Health Inc. Sec. Litigs*., 528 F. Supp. 2d at 76; *see also Rawlings*, 9 F.3d at 51 (multiplier considerations include the benefits obtained under the settlement, the complexity of the case, and the quality of the representation). Courts should "reward a lead counsel that takes on more risk, demonstrates superior quality, or achieves a greater settlement with a larger lodestar multiplier." *In re Cardinal Health Inc. Sec. Litig*., 528 F. Supp. 2d at 76. These factors support the requested fee here. Most importantly, the results achieved in the Settlement are outstanding. Further, Class Counsel achieved an excellent result extremely efficiently in a complicated and technical case, which they took on a purely contingent basis.

These factors support the requested fee, which yields a modest lodestar multiplier of 1.27. Most importantly, the results achieved in the Settlement are outstanding. Further, Class Counsel achieved an excellent result extremely efficiently in a complicated and technical case, which they took on a purely contingent basis.

Class Counsel here achieved the Settlement in the most efficient way possible, minimizing burden on the court system, even though it meant their own lodestar (and fees) would necessarily be less. After serving their demand letter, Class Counsel worked diligently with Mazda to negotiate an early resolution, despite the fact that filing a lawsuit and litigating in court would have most certainly increased their lodestar and, ultimately, fees. By agreeing to proceed with informal discovery and engaging in early settlement discussions, Class Counsel instead prioritized getting relief to Class Members quickly.

Accordingly, the multiplier of 1.27 here is fully justified and well within the range regularly approved. Moreover, as discussed above, Class Counsel will continue to devote significant hours to this case into the future, which will further decrease the multiplier.

3. The Sixth Circuit's *Ramey* Factors Also Support the Fee Request

Courts also assess the reasonableness of an attorney's fee request by reference to the so-called *Ramey* factors. *See Ramey v. Cincinnati Enquirer, Inc.,* 508 F.2d 1188, 1196 (6th Cir. 1974), *cert. denied,* 422 U.S. 1048 (1975). Those six factors are: "'(1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides.'" *Dick,* 297 F.R.D. at 298 (quoting *Moulton v. United States Steel Corp.,* 581 F.3d 344, 352 (6th Cir. 2009)). None of the *Ramey* factors is dispositive, and this Court "enjoys wide discretion in assessing the[ir] weight and

applicability…" *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205–06 (6th Cir. 1992) (citing *Maher v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983)).

As discussed below, the relevant *Ramey* factors support approval of the requested attorneys' fee here.

a. Class Counsel Has Secured a Valuable Benefit for the Class

The value of the benefit to the class is the most important factor in assessing the reasonableness of fees. *Dick*, 297 F.R.D. at 299. Assessing the overall value includes consideration of both tangible and intangible benefits. *See Gascho*, 822 F.3d at 282 (requiring "appropriate consideration" of "cash and noncash settlement components" in assessing the total benefits to the class). The risk of continued litigation also is considered in relation to the value of the benefit to the class under this factor. *Sprint*, 297 F.R.D. at 299.

In this case, the value of the benefit to the Class is significant, particularly when considered against the litigation risks faced by Plaintiffs. As discussed below, the settlement creates an automatic warranty extension to cover the alleged Mazda Connect issues, and also sets up a procedure whereby class members who previously incurred a covered expense can be reimbursed. All of this will occur at Mazda's expense, thanks to the efforts undertaken by Plaintiffs' counsel for the last several years. Accordingly, this factor weighs in favor of approval.

b. Society Has a Stake in Incentivizing the Pursuit of Complex Consumer Class Actions

Society has a strong stake in rewarding attorneys who produce the type of benefits achieved by the settlement here. *In re Cardizem*, 218 F.R.D. at 534 ("Encouraging qualified counsel to bring inherently difficult and risky but beneficial class actions . . . benefits society."); *Gascho*, 822 F.3d at 287 ("Consumer class actions…have value to society more broadly, both as deterrents to unlawful behavior—particularly when the individual injuries are too small to justify the time and

expense of litigation…"). "Without compensation to those who are willing to undertake the inherent complexities and unknowns of consumer class action litigation, enforcement of the federal and state consumer protection laws would be jeopardized*." In re Rio Hair Naturalizer Prods. Liab. Litig.,* No. MDL 1055, 1996 WL 780512, at *17 (E.D. Mich. Dec. 20, 1996).

The Class Members' reaction to the Settlement to date confirms that it has provided a significant benefit. *See In re Delphi*, 248 F.R.D. at 504 ("The Class's overwhelming favorable response lends further support to the conclusion that the requested fee award is fair and reasonable."). All Class Members' have received and will continue to receive the benefit of the LWE, and to date 6,445 Class Members have submitted reimbursement claims; no objections have been filed; and 8 Class Members have requested to opt out of the Settlement. Johns Decl. at ¶ 18. Class Counsel should be rewarded for the benefits they obtained for the common good.

c. Class Counsel Took the Case on a Contingency Basis, Thereby Undertaking the Risk of Nonpayment

Undertaking an action on a contingency basis lends additional support to the reasonableness of a requested fee award. *See In re Cardizem*, 218 F.R.D. at 533; *Stanley v. U.S. Steel Co.*, 2009 WL 4646647, at *3 (E.D. Mich. Dec. 8, 2009) ("Numerous cases recognize that the contingent fee risk is an important factor in determining the fee award."). When attorneys invest significant time and resources in litigation, despite the risk they will not be compensated at all, this factor is generally satisfied. *NILI 2011, LLC v. City of Warren,* No. 15-CV-13392, 2018 WL 5264236, at *5 (E.D. Mich. Oct. 23, 2018) ("Class Counsel undertook this case on a contingency basis"); *Kogan v. AIMCO Fox Chase L.P.*, 193 F.R.D. 496, 504 (E.D. Mich. 2000).

The risks faced by Plaintiffs in this case included proving that all the Settlement Class Vehicles contain a common defect, demonstrating that Mazda had pre-sale knowledge of it, presenting a damages model that would withstand *Daubert* challenges, and obtaining and

maintaining class certification. These are not theoretical risks. Around the same time Plaintiffs were negotiating their settlement with Mazda in this case, another group of plaintiffs were suing it for an alleged water pump defect in an unrelated case in California. After those plaintiffs initially obtained class certification, the district court issued an opinion decertifying the class, granting Mazda's motion for summary judgment and excluding plaintiffs' merits expert. *Sonneveldt v. Mazda Motor of Am., Inc.*, No. 8:19-CV-01298-JLS-KES, 2023 WL 2292600, at *1 (C.D. Cal. Feb. 23, 2023). That opinion was later affirmed by the Ninth Circuit. *Sonneveldt v. Mazda Motor of Am., Inc*., No. 23-55325, 2024 WL 5242611 (9th Cir. Dec. 30, 2024). Courts that have approved settlement in similar cases involved alleged defects in an automobile's infotainment system cases have also recognized these risks. *In re MyFord Touch Consumer Litig.,* No. 13-CV-03072-EMC, 2019 WL 1411510, at *10 (N.D. Cal. Mar. 28, 2019) (identifying "several deficiencies in Plaintiffs' case that could jeopardize their recovery at trial" in another vehicle infotainment system settlement); *Udeen v. Subaru of Am., Inc.,* No. CV 18-17334 (RBK/JS), 2019 WL 4894568, at *3 (D.N.J. Oct. 4, 2019) (same).

The Settlement was reached despite the various risks that Plaintiffs faced, thus satisfying this *Ramey* factor.

d. The Complexity of Litigation Supports the Requested Fees

The complexity of the litigation reinforces the reasonableness of the requested fee award. *In re Cardizem*, 218 F.R.D. at 533. "[M]ost class actions are inherently complex." *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1013 (S.D. Ohio 2001). Automobile defect cases are particularly so. *See, e.g., Vaughn v. Am. Honda Motor Co.*, 627 F. Supp. 2d 738, 747 (E.D. Tex. 2007) ("The legal issues in this case were novel and the class proceedings, complex. Litigation of this type is expensive and time consuming."); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 812 (3d. Cir. 1995) ("Had the case not been settled, both plaintiffs

and GM would have had to conduct discovery into the background of the six million vehicles owned by class members . . . . Each side would also have needed to hire or produce a retinue of experts to testify on a variety of complex issues.").

This case is no exception. If the settlement was not reached, Mazda would have challenged Plaintiffs' claims at any of several stages of the litigation. The complex factual and legal questions here and the inherent uncertainty of the outcome support the reasonableness of the requested fees.

e. The Parties are Represented by Skilled Counsel

The skill and standing of counsel on both sides, including their experience and professionalism, also validates the reasonableness of a requested fee award. *See Nili*, 2018 WL 5264236, at *5 ("Class Counsel . . . us[ed] their extensive experience to achieve a fair result for their clients"). When counsel for both parties have significant experience, "[t]he ability of [counsel] to negotiate a favorable settlement in the face of formidable legal opposition further evidences the reasonableness of the fee award requested." *In re Delphi*, 248 F.R.D. at 504. Class Counsel here submit that their skill, judgment and experience assisted in obtaining the excellent result here. The Court previously recognized Class Counsel's skill and experience in appointing them as Class Counsel at the preliminary approval stage. ECF No. 39 at 3. This factor weighs in favor of the fee request.

f. The Value of Services Performed on an Hourly Basis is Reasonable

The sixth and final factor assesses the value of the legal services performed on an hourly basis. *In re Cardizem*, 218 F.R.D. at 533; *see also Isabel v. City of Memphis*, 404 F.3d 404, 415 (6th Cir. 2005) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). Even though this Court has recognized that "a cross-check isn't required,"[5] Plaintiffs have performed one nevertheless,

[5] *Love,* 2021 WL 4352800, at *6 (citations omitted).

and submitted relevant materials to summarize the billable work performed on this case. *See generally* Johns Decl., Ferich Decl. Plaintiffs respectfully submit that this analysis demonstrates that the value of the services they provided on an hourly basis was reasonable.

B. The Court Should Approve the Payment of Plaintiffs' Litigation Costs and Expenses

The Court should also approve Mazda's reimbursement of $59,500.31 for Class Counsel's total out-of-pocket litigation expenses. Plaintiffs seek to recover these costs out of the requested all-in $1.9 million payment. "'[C]lass counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document productions, consulting with experts and consultants, travel, and other litigation-related expenses." *Dick,* 297 F.R.D. at 298 (quoting *In re Cardizem,* 218 F.R.D. at 535). In determining which expenses are reasonable and compensable the question is whether such costs are of the variety typically billed by attorneys to paying clients in similar litigation. *In re Cardizem CD Antitrust Litig*., 218 F.R.D. 508, 535 (E.D. Mich. 2003).

The expenses, which are described more fully in the attached Class Counsel declarations, include expert fees, mediator fees, filing fees, computer research, photocopies, postage, and other expenses reasonably necessary to the prosecution of this action, which are recorded on the books and records of Class Counsel's law firms and have not been reimbursed previously. Johns Decl. at ¶ 24-26; Ferich Decl. at ¶¶ 23-25. All these expenses were reasonable and necessarily incurred and are of the sort that would typically be billed to paying clients in the marketplace. Johns Decl. at ¶ 26; Ferich Decl. at ¶ 25.

C. The Court Should Approve the Requested Service Awards

The Court should approve Mazda's payment of Service Awards to the Plaintiffs. These amounts were negotiated with the assistance of Judge Tevrizian only after all other material terms

of the settlement had been agreed.

The Settlement Agreement provides that Mazda will pay, subject to Court approval, service awards of $4,000 to Plaintiff Duffy and $2,500 Plaintiffs Edlin, Mulcahy, and Hall. SA ¶ VI.D. "'Courts often grant so-called service awards to named plaintiffs or collective representatives to compensate them 'for the services they provided and the risks they incurred during the course of the class action litigation.'" *Love,* 2021 WL 4352800, at *3 (quoting *Ross v. Jack Rabbit Servs., LLC,* No. 3:14-CV-44-DJH, 2016 WL 7320890, at *1 (W.D. Ky. Dec. 15, 2016)). "'The Sixth Circuit has used the following factors to determine whether incentive awards are appropriate:

> (1) the action taken by the Class Representatives to protect the interests of the Class Members and others and whether these actions resulted in a substantial benefit to Class Members; (2) whether the Class Representatives assumed substantial direct and indirect financial risk; and (3) the amount of time and effort spent by the Class Representatives in pursuing the litigation.

Id. (quoting *Burnham v. Papa John's Paducah, LLC,* No. 5:18-CV-112-TBR, 2020 WL 2065793, at *4 (W.D. Ky. Apr. 29, 2020)).

The amounts sought are consistent with those previously approved by this Court. *See Walls,* 2016 WL 6078297, at *6 (approving $5,000 service awards); *Dick,* 297 F.R.D. at 301 (approving $1,300 incentive awards to the class representatives); *Love,* 2021 WL 4352800, at *3 ("Due to the substantial benefit this settlement brings…, the risk undertaken by Love in helping to lead the litigation, and the approximately 20 hours (and perhaps more) of time Love invested as the lead plaintiff in guiding this case… the Court agrees that [$5,000] is a reasonable sum."). It is also noteworthy that Mazda has agreed to pay the Service Awards – as well as attorneys' fees, expenses, and claims administration costs – separate from and independent of the benefits going to the Settlement Class. *See In re Skechers Toning Shoe Prods. Liab. Litig*., 2013 WL 2010702, at *14 (approving $2,500 incentive awards where the payments did "not diminish class recovery and

[were] relatively small awards," and where the defendant "has already agreed to pay these awards.").

Moreover, these amounts are justified by each Plaintiff's efforts and contribution to achieving the Settlement here. As detailed in the Class Counsel Declarations, Plaintiffs spent time reviewing documents, investigating and otherwise assisting Class Counsel with this case. *See* Johns Decl. at ¶ 28; Ferich Decl. at ¶ 27. They stayed in contact with counsel throughout the litigation and made themselves available to answer any questions. *Id.* Plaintiffs also undertook certain risks by being named Plaintiffs in this matter. *Id.* As part of the case, they provided personal information, some of which could have been disclosed publicly in court filings. *Id.* Their names were shared with Mazda and with the public because of the filing of this lawsuit. *Id.* Suing Mazda in this capacity was a significant risk and undertaking and one that Plaintiffs did not take lightly. *Id.* Plaintiffs agreed to serve as class representatives understanding that proceeding with a class action might involve a delay in obtaining recovery for their losses as opposed to filing an individual claim that could be resolved quicker. *Id.* They nevertheless agreed to put their names on the line and undertake the risks associated with being a named Plaintiff, to obtain a result for other purchasers of Class Vehicles that contained the Defect, as well as for themselves. The Settlement would not be possible without Plaintiffs' efforts. Ferich Decl. at ¶ 27. The Service Awards are well-deserved and should be approved.[6]

[6] Plaintiffs acknowledge that the Court's preliminary approval order cited a case from the Eleventh Circuit that has described service awards as a "bounty." ECF No. 39 at 7 (citing *Johnson v. NPAS Sols.*, LLC, 975 F.3d 1244, 1249, 1258–59 (11th Cir. 2020)). This rationale has been rejected by the First, Second, Seventh, and Ninth Circuits. *See Murray v. Grocery Delivery E-Services USA Inc.*, 55 F.4th 340, 353 (1st Cir. 2022) ("…we choose to follow the collective wisdom of courts over the past several decades that have permitted these sorts of incentive payments…"); *Moses v. N.Y. Times Co.*, 79 F.4th 235, 254–55 (2d Cir. 2023) ("providing incentive payments to class representatives for their role in advancing litigation is, on its own, insufficient to create a conflict of interest."); *Scott v. Dart*, 99 4th 1076, 1085 (7th Cir. 2024); *Named Plaintiffs v. Feldman*, 50

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve (1) their requested attorneys' fees and litigation costs and expenses, and (2) the requested Service Awards for the Plaintiffs. A proposed order addressing the relief requested in this motion will be submitted with the motion for final approval of class action settlement.

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F.4th 769, 785 (9th Cir. 2022). The Sixth Circuit has also rejected an argument that an incentive award should not be paid because it is a "bounty." *See Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 833 Fed. Appx. 430, 431 (6th Cir. 2021).

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